Ontario

Application and Report to Treasury Board/Management Board of Cabinet

(Refer to instructions on next page)

1. MINISTRY OF ENERGY	2. MINISTRY LOG #	3. TB/MBC LOG #

4. TYPE OF REQUEST: (Indicate if Financial Transaction / Treasury Board Order/ General/ Procurement/ Legislation/ Regulation/ Order-in-Council)
Treasury Board Order

The Ministry of Energy is reporting back to the Treasury Board/Management Board of Cabinet (TB/MBC) on following:
i. Global Adjustment (GA) Refinancing;
ii. Delivery of Electricity Social Programs (i.e., Rural or Remote Rate Protection, Ontario Electricity Support Program and First Nations On-Reserve Delivery Credit); and
iii. Industrial Conservation Expansion (ICI).

APPROVE the Ministry funding a media buy procurement with a maximum value of $3,500,000 with PHD Canada, the Advertising Review Board's mandatory-use media planning and buying Agency of Record.

6. FINANCIAL DETAILS		($ Millions)							
		Current Year		Year 2		Year 3		Matures In	
		20xx/20xx		20xx/20xx		20xx/20xx		20xx/20xx	
		Operating	Capital	Operating	Capital	Operating	Capital	Operating	Capital
A. Program Current Base	Expense								
	Asset								
B. Program Request (change from existing base)	Expense								
	Asset								
C. Available for Offset	Expense								
	Asset								
D. Net Impact On Program Allocation (B-C)	Expense								
	Asset								
E. Revenue Implications									

7. IMPACT ON FTE LIMIT	Current Year 20xx/20xx	Year 2 20xx/20xx	Year 3 20xx/20xx	Mature in 20xx/20xx
A. Program Current Base FTE Limit				
B. Program FTEs Request				
C. Available FTE Offset				
D. Net Impact on FTE Limit (B-C)				
E. Change to Ministry Salaries & Wages Allocation (included in the Program Request ($ Millions)				

8. OTHER DECISION FACTORS	Y/N	EXPLANATION
A. Consistent with Government Priorities and Results (If Yes identify key Results) - include details in submission)	Y	Province introduced the Fair Hydro Plan in March 2017.
B. Policy approval (if yes identify policy committee and date approved)	Y	March 1, 2017 Cabinet Approval
C. Key Performance Risks (If yes provide details in submission)	N	
D. Impact on other Ministries (if yes - include sign-off date. Include resources impact in submission)	N	Ministries:
E. Impact on the Fiscal Plan (if yes provide details in submission)	N	

9. AUTHORIZATION /DATE

Signature of Minister	Day/Month/Year	Signature of Deputy Minister	Day/Month/Year

MINISTRY OF ENERGY

TREASURY BOARD / MANAGEMENT BOARD of CABINET SUBMISSION

ONTARIO'S FAIR HYDRO PLAN – REPORT BACK

May 9, 2017

CONFIDENTIAL
MINISTRY OF ENERGY

1.0 MINISTRY REQUEST

1. The Ministry of Energy is reporting back to the Treasury Board/Management Board of Cabinet (TB/MBC) on following:

   i. Implementation of Global Adjustment (GA) Refinancing;

   ii. Delivery of Electricity Social Programs (i.e., Rural or Remote Rate Protection, Ontario Electricity Support Program and First Nations On-Reserve Delivery Credit); and

   iii. Expansion of Industrial Conservation Initiative (ICI).

2) APPROVE the Ministry funding a media buy procurement with a maximum value of $3,500,000 with PHD Canada, the Advertising Review Board's mandatory-use media planning and buying Agency of Record.

3) NOTE the Ministry of Energy has already spent approximately $1,000,000 with PHD Media in 2016-17 and is forecasting expense of approximately $2,500,000 in 2017-18.

4) NOTE the Ministry of Energy will return to TB/MBC to request a transfer of funds to the Ministry of Energy from the Bulk Media Buy program in Treasury Board Secretariat to fully recover the costs for the public education campaign.

5) APPROVE the creation of a new transfer payment line entitled "Price Mitigation Support Initiatives" under Vote/Item 2905-01, Electricity Price Mitigation, with a $1,000 placeholder, to support future rate mitigation initiatives.

Note: The Independent Electricity System Operator (IESO) is in discussions with the Ontario Financing Authority (OFA) regarding an increase to its current lines of credit with the OFA and OEFC.

2.0 PURPOSE OF REQUEST

On March 2, 2017, the government announced Ontario's Fair Hydro Plan (OFHP), which will lower bills by 25 per cent for a typical residential consumer, starting in the summer of 2017. Up to half a million small businesses and farms are also expected to benefit. Any rate increases for residential consumers over four years would be held to the rate of inflation. Note: These measures include the 8 per cent rebate introduced in January 2017 and builds on previously announced initiatives to deliver broad-based rate relief on electricity bills.

As part of the OFHP approval process, TB/MBC requested that the Ministry "report back" before legislation to enable OFHP was introduced on the following items:

1) GA Refinancing;

2) Social Programs; and

3) ICI Expansion.

In addition to the report back, the Ministry is also requesting the creation of a new transfer payment line, "Price Mitigation Support Initiatives" in Vote 2905-01. The purpose for this is to provide the Ministry an appropriate transfer payment line to support future activities and initiatives around electricity price mitigation for Ontarians.

There is no fiscal impact associated with this request. All new funding placed into the transfer payment lines will be offset by services dollars previously approved within the Ministry's multi-year allocation.

In February 2017, the Ministry reported back to TB/MBC on the details related to the establishment of the new Affordability Fund announced in the OFHP. In April 2017, the Affordability Fund Trust was established. It is expected that electricity distributors will be able to begin applying to the Affordability Fund Trust in Summer 2017.

The Ministry has developed proposed legislation to implement key components of OFHP by summer 2017, and address financing, accounting and legal issues raised in the March 1, 2017 Cabinet Submission. Note: The Ministry is also preparing a number of supporting regulations to enable implementation of OFHP.

1. GA Refinancing:

Ontario's energy system is being transformed – more than $50 billion has been invested to decarbonize and modernize the electricity system, including an investment of over $35 billion in clean and renewable generation.

Over the last decade the government has invested in Ontario's transmission and distribution infrastructure (i.e., the grid), clean generation and phased out the use of coal-fired generation, which has resulted in electricity prices increasing.

<u>Proposal</u>

On March 2, 2017, as part of OFHP, it was announced that a portion of the GA would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system).

Refinancing a portion of GA provides significant and immediate rate relief by spreading the cost of electricity investments over the expected lifecycle of the infrastructure that has been built. For example, by recognizing that generation assets are expected to continue to provide residual benefit to future ratepayers, beyond the term of current contracts, future ratepayers are expected to be able to utilize these assets and reduce the need to finance the development of new generation assets.

Under this proposal, the electricity bills of current residential consumers would be reduced by 25 per cent on average starting in summer 2017. In addition, increases to electricity bill would be held to the rate of inflation for four years. Up to 500,000 small businesses and farms would also benefit.

Implementation

To implement GA refinancing and mitigate financing, accounting and legal risks, the Ministry has:

- Worked closely with key ministries (i.e., TBS-OPCD, MOF-OFA/IGS, MAG, CO), OEB, IESO, OPG and their independent advisors and third party financing (i.e., dealers);
- Developed proposed legislation to respond to the financing, accounting and legal issues outlined in the March 1, 2017 Cabinet Submission. Note: The Ministry is also preparing a number of supporting regulations;
- Sought independent advice regarding financing, accounting and legal requirements from E&Y (OPG), KPMG (IESO), TD Securities (OFA) and Blakes (ENERGY);
- Launched a third party research project to assist with implementation of GA refinancing; and
- Developed comprehensive risk-based costing, including forecast models and sensitivity tests on key assumptions.

Proposed legislation to enable GA refinancing is planned for a May 2017 introduction.

2. Social Programs:

To date, a number of electricity support programs are funded through the electricity rate-base. There is opportunity to provide support to a more targeted subset of customers who are disproportionately affected by increased electricity costs and to shift these costs to the tax base.

These customers include:

- **High Distribution Cost Customers:** Some customers in rural areas where the cost to distribute electricity is high can experience difficulty in reducing their electricity bill through conservation, particularly when reliant on electric heating.
- **Low-Income Customers:** Rising electricity costs make up a disproportionally large amount of the household expenditures for low-income households.
- **First Nation On-Reserve Customers:** On-Reserve First Nations customers experience challenges with energy affordability and are seeking to address historical grievances associated with electricity system infrastructure.

The proposed legislative amendments enable the creation or expansion of programs that provide meaningful rate relief to these customers.

<u>Proposal</u>

The Government is proposing to introduce legislation and regulatory changes for the enhanced electricity support programs which will shift costs from the rate base to the tax base, as well as establish the necessary frameworks to deliver these new or enhanced programs.

Rural or Remote Rate Protection

Rural or Remote Rate Protection (RRRP) mitigates some of the high costs of electricity distribution in rural or remote areas of the Province. It is a legacy program of the old Ontario Hydro and has existed in its current form since 2001.

The legislative proposal enables, through regulation, the transfer of the costs of funding the program for Hydro One's R2 customers from the rate-base to the tax-base for prescribed customers.

- R2 customers are those customers of Hydro One classified as living in the lowest density areas of the Province.

Distribution Rate Protection

While the RRRP program helps mitigate some of the higher distribution costs for Hydro One R2 customers, as well as certain customers served by Algoma Power, Hydro One Remote Communities and James Bay First Nation LDCs, there is an opportunity to provide further relief to consumers served by higher cost distribution cost LDCs.

Proposed legislation will enable tax-based funding to support distribution rate protection for prescribed residential customers of LDCs with high-cost distribution rates. If passed, the eight high-distribution cost LDCs whose customers are eligible customers will be prescribed in regulation. Residential customers of Algoma Power and Hydro One R2 customers would be eligible for additional relief as these LDCs are the highest cost distributors in the province (as well as six additional higher-distribution cost LDCs).

Proposed legislation enables the establishment of a maximum monthly base distribution charge for those prescribed customers. If the proposed legislation is passed, the mechanism to set this charge will be established in regulation.

On-Reserve First Nations Delivery Credit

On July 12, 2016, the Province and First Nations in Ontario announced an agreement-in-principle for the Province to sell to First Nations for their collective benefit, shares of Hydro One Limited.

The Province would sell up to approximately 15 million shares (2.5 per cent of total current outstanding Hydro One common shares), depending on the level of First Nation participation, to a new collective investment fund owned by First Nations.

As part of discussions on Hydro One shares and rates at COO's All Chiefs Conference and the First Nations-Ontario Energy Table, the Minister of Energy issued a letter directing the OEB to prepare a report providing "advice on options for an appropriate electricity rate (or rate assistance) for on-reserve First Nations electricity consumers". The proposal is premised around the findings in the OEB Report submitted to the Ministry on December 29, 2016.

The program proposal involves the elimination of the delivery charge, or monthly service charge for those customers served by LDCs that do not have a delivery charge, for on-reserve customers prescribed in regulation.

The resulting First Nations Delivery Credit is a reflection of First Nation leadership on this issue and an example of the Political Accord coming to life.

Ontario Electricity Support Program (OESP)

The OESP began on January 1, 2016 as a rate-payer funded program to provide relief to low income Ontarians who are struggling to afford their electricity bills. The OEB administers the program.

The Fair Hydro Plan committed to move the program from the rate base to the tax base, and to expand the OESP by increasing the credit amounts by 50 per cent, making more Ontarians eligible for the program, and aligning the OESP with other social assistance programs to increase uptake.

On March 23, 2017, the OEB issued a Decision and Order to end the OESP volumetric charge paid by all Ontario consumers on May 1, 2017 ($0.0011 per kilowatt-hour of power consumed). On April 10, 2017, Cabinet approved amendments to the OESP regulation (O.Reg. 314/15) to increase credit amounts by 50% and introduce new eligibility categories so more Ontarians can access the program. These changes will also come into effect on May 1, 2017.

The amendments to the *Ontario Energy Board Act, 1998* pertaining to OESP will move the program funding from the rate-base and transfer it to the tax-base, and enable alignment of the OESP with social assistance programs delivered by the Ministry of Community and Social Services.

<u>Implementation</u>

Rural or Remote Rate Protection (RRRP)

Appropriated funds shall be used to offset the cost of the RRRP program for electricity consumed on or after July 1, 2017.

The implementation of the amended RRRP program (moving the majority of costs to the tax base) will require oversight of the money appropriated from the legislature by the Ministry of Finance (MOF).

The OEB sets amount that LDCs charge for RRRP to all customers. Once the regulatory mechanism is in place to enable the recovery of the majority of RRRP costs from the tax base, the OEB will significantly reduce the RRRP charge. Change to the funding structure of the program does not require any additional implementation risks or efforts.

Distribution Rate Protection

Appropriated funds shall be used to offset the cost of providing distribution rate protection to prescribed residential distribution rate protected consumers based on electricity consumed on or after July 1, 2017.

LDCs and eligible customers would be prescribed in regulation, if the legislation is passed. Additionally, the Ontario Energy Board would be empowered by regulation to determine the rate at which affected LDCs would be harmonized.

The efforts required to implement the program will fall upon the impacted LDCs who will need to adjust their billing systems in order to carry out the program.

On-Reserve First Nation Delivery Credit

A new regulation will need to be passed to set out the program particulars including eligibility for the program.

The LDCs will need to enter into communication plans in order to work with local First Nations Band Councils and to increase awareness of the delivery credit to all eligible consumers.

There are transitional provisions for both the enhanced rate protection and First Nations Delivery Credit that provide distributors with a prescribed time by which they must have adapted their billing systems while maintaining program eligibility for the rate assistance being provided. As part of the regulations, Energy intends to prescribe eligibility as of July 1, 2017. Distributors would be given a three month transitional period to begin delivering the rate assistance by no later than October 1, 2017.

Ontario Electricity Support Program

A legislative amendment to the *Ontario Energy Board Act, 1998* will allow funding to shift from the rate base to the tax base. The amendments will be proclaimed into force at a later date when the OESP charges collected to date (which are being held in an IESO variance account) are depleted. Amendments to the OESP regulation (O.Reg. 314/15) will be needed to implement these legislative changes.

3. ICI Expansion:

Ontario is committed to providing competitive electricity rates for energy intensive consumers in the manufacturing sector while also promoting electricity conservation.

In January 2011, the Industrial Conservation Initiative (ICI) was announced to help large industrial electricity power users better manage their electricity costs while reducing electricity consumption during peak periods.

ICI provides a strong incentive for large electricity consumers to shift their electricity consumption to off-peak hours to reduce their bills by about one-third. Reducing peak demand increases the reliability of the electricity system, reduces greenhouse gas (GHG) emissions and helps defer the need to procure new resources. There are currently about 300 participating consumers who collectively reduced Ontario's peak demand by an estimated 1,000 MW in 2015.

<u>Proposal</u>

On March 2, 2017, as part of OFHP), the government announced plans to further reduce the ICI threshold from 1 megawatt (MW) to 500 kilowatts (kW) and to target more small manufacturing and industrial consumers.

- As of January 1, 2017, the regulatory amendments came into effect to make ICI available to electricity consumers with an average monthly peak demand greater than 1 MW. The lowering of the ICI threshold to 1MW and removal of sector restrictions was announced in the 2016 Speech from the Throne.

<u>Implementation</u>

Effective April 13, 2017, electricity consumers and market participants in the manufacturing and greenhouse sectors in Ontario with an average monthly peak demand of greater than 500 kW and less than or equal to 1 MW are eligible to opt-in to ICI. Billing for electricity consumers that opt-in to ICI begins July 1, 2017.

- Provisions were also provided to allow electricity consumers to continue their participation in ICI if their demand falls below the monthly peak demand threshold while participating in certain prescribed Conservation and Demand Management (CDM) programs and/or Ontario Climate Change Solutions Deployment Corporations (OCCSDC) programs and pilots.

In addition, the Ministry has retained the Ontario Chambers of Commerce (OCC) and the Canadian Manufacturing and Exporting (CME) to undertake targeted stakeholder outreach on ICI and other cost saving energy programs/measures available to the commercial and industrial sectors in Ontario.

3.0 KEY CONTEXT

On March 2, 2017, the government announced Ontario's Fair Hydro Plan (OFHP), which would reduce the electricity bills of residential consumers by 25 per cent on average starting in summer 2017. In addition, increases to electricity bill would be held to the rate of inflation for four years. Up to 500,000 small businesses and farms would also benefit.

OFHP also announced other measures to enhance business competitiveness, helping vulnerable consumers and bend the future cost curve of electricity (see Background for details).

On April 20, 2017, the OEB announced new Regulated Price Plan (RPP) rates effective May 1, 2017 that include a portion of the bill reduction proposed under OFHP and the shifting of the funding of the OESP to provincial revenues. The full reduction from OFHP is expected to be addressed through a July 1st RPP rate adjustment.

The Ministry's report back to TB/MBC focuses on the following OFHP initiatives:

1) GA Refinancing:

As part of OFHP, it was announced that a portion of the GA would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system).

- Today's electricity consumers have been responsible for the costs of investments in developing the clean, modern and reliable electricity system that Ontario has today and that will continue to provide benefit to future generations. There is an opportunity to recognize the long-term benefit of these generation assets to the electricity system and "bring forward" that benefit for ratepayers today by deferring some of the current costs.

Refinancing a portion of GA provides significant and immediate rate relief by spreading the cost of electricity investments over the expected lifecycle of the infrastructure that has been built.

To implement GA refinancing and to mitigate the financing, accounting and legal risks, the Ministry has:

- Worked closely with key ministries (i.e., TBS-OPCD, MOF-OFA/IGS, MAG, CO), OEB, IESO, OPG and their independent advisors and third party financing (i.e., dealers);

- Developed proposed legislation to respond to the financing, accounting and legal issues outlined in the March 1, 2017 Cabinet Submission. Note: The Ministry is also preparing a number of supporting regulations;

- Sought independent advice regarding financing, accounting and legal requirements from E&Y (OPG), KPMG (IESO), TD Securities (OFA) and Blakes (ENERGY);

- Launched a third party research project to assist with implementation of GA refinancing; and

- Developed comprehensive risk-based costing, including forecast models and sensitivity tests on key assumptions.

<u>Financing, Accounting and Legal Risk Considerations / Mitigations</u>

The Ministry was asked to report back to TBS/MBC with on details on how financing, accounting and legal risks would be mitigated.

Financing

<u>OFHP Legislation</u>

The purpose of the proposed legislation is to support the Government of Ontario's commitment to ensure that the costs of investments in the electricity system are allocated fairly among present and future generations of consumers. Costs to be allocated include clean and renewable generation facilities, conservation, demand management, energy efficiency programs.

The supporting legislation defines the mechanisms and framework that would achieve the refinancing of the (GA), including:

- <u>Fair Allocation Amount</u>: Is a calculation and allocation of clean energy costs over time. It is expected that the calculation would lead to decreased rates in the near term with rates higher than forecast in the long term. The Minister of Energy is to calculate the Fair Allocation Amount and provide the amount to the Financial Services Manager

(OPG). Subsequent calculations may be undertaken by other agents as prescribed by the Minister.

- Fair Adjustment: Sets out the mechanism for the Ontario Energy Board (OEB) to determine the "relief", including the initial decrease in rates to achieve the 25% decrease, for the period July 1, 2017 to April 30, 2018. Under the legislation, the OEB must determine the amount within 15 business days of the legislation coming into force. The Fair Adjustment also allows the Lieutenant Governor in Council (LGIC) to make regulations prescribing electricity rates for the period May 1, 2018 to June 30, 2021.

- Clean Energy Adjustment: Is the mechanism to recover the under-collection of GA from eligible consumers during the recovery period. This is an adjustment to a consumer invoice on a monthly basis to repay principal, interest and other financing. IESO and each electricity distributor will act as an agent for the financing entity to impose, invoice and collect the clean energy adjustments.

The Ministry has prepared legislation and regulations in close collaboration with key ministries (i.e., TB, MOF, AG and CO), agencies (i.e., OEB, IESO, OPG) and third party financial advisors.

- The proposed legislation enables the province to provide assurances in the form of a "provincial guarantee" to OPG and investors regarding the permanence of the GA Refinancing framework and the authority of the legislature to pass the legislation. The intent is to ensure that the full value of any investment is recoverable.

- The legislation also enables the Province to guarantee borrowing of the trust in the event of a market disruption to mitigate OPG's financing risk. Specifics of these guarantees will be determined in agreements to be negotiated later this year

It is still possible that the full value of the Regulatory Asset may not be purchased. In such cases, IESO may be able to retain the unsold amounts recorded in its variance account for a short period of time.

In addition, the Ministry has been worked closely with the Ontario Financing Authority (OFA) and TD Securities (TD), as the Province's external financial advisor, on the financing structure (i.e., legislation, provincial guarantees, OPG's equity injections and IESO's enhanced credit facilities).

In particular, the proposed legislation enables a structure that OFA and TD believe will enable financing at a reasonable cost. Key elements that support this financing structure include:

- OPG issuances of subordinated debt to the SPV/Trust representing up to 49% of total borrowing; and
- Conditional (springing) guarantees by the Province to provide a backstop in the event of specific and limited events (e.g., changes to legislation that harm investor interests).

Note: The ability to finance and the cost of financing will only be known with certainty once OPG takes this structure to market.

OPG Financing / OPG Equity Financing

The ability to engage in the fair distribution of clean energy costs requires financing during periods where the collection of the clean energy costs is deferred to later years. The proposed legislation outlines mechanisms that are required to enable the financing and meet requirements for rating agencies and investors.

IESO will have a funding gap resulting from the reduction in amounts collected over four years. The legislation enables IESO to record the under-collection of GA in a variance account, and deems this under-collected amount to be a “Regulatory Asset”.

- OEB would determine rates to allow IESO to recover under-collection recorded in its variance account.
- IESO is authorized to sell all or a portion to the OPG Special Purpose Vehicle (SPV)/Trust under the Financing Plan.

As part of supporting the financing and administration of the GA refinancing mechanism, it is expected that OPG would purchase the right to future cash flows from IESO on an ongoing basis.

The sale of the regulatory asset from IESO to the OPG Special Purpose Vehicle (SPV)/Trust creates an “Investment Asset”.

- The Investment Asset allows for the recovery of the under-collected GA as the Investment Asset may in turn be sold to other investors or group of investors.

The Ministry has worked closely with third-party financial advisors in advance of and throughout the drafting process to help to ensure that the proposed legislation enables refinancing of the GA.

These purchases would be financed in part by capital infusions from the Province to OPG for the purposes of stabilizing OPG's capital structure:

- OPG would require monthly "equity injections" from the Province which would be fiscally neutral as OPG would issue new shares to the Province in exchange;

- Funds from the Province would flow from the Ontario Financing Authority (OFA); and

- The Ministry, OFA and OPG are working through the specific mechanisms, timelines and share features.

- It is anticipated that the initial equity injection would take place as early as June 2017.

Through PRRT, the Ministry of Energy received approval for the creation of an operating asset "OPG Share Purchase" and expenditure increase of $1.1billion in 2017-18 within Vote 2905-5, which is based on the latest estimates by IESO, and provides flexibility to account for forecasting uncertainty. This approval is pending passage of the proposed legislation.

OPG will provide a two year forecast of its equity requirements to the Ministry on annual basis, as part of OPG's business plan process. Note: While included in the business plan, equity requirements will not form part of the Ministry of Energy's concurrence process.

For future funding requirements, the Ministry will seek appropriation through the PRRT process.

OPG will seek to achieve the highest possible credit rating (i.e., AAA is possible) in order to reduce borrowing costs and attract a wide investor base. Credit ratings will depend on provisions in legislation, regulation and agreements as well as the capital structure of the SPV / Trust. Despite these factors, rating agencies may see the Province's rating forming a ceiling given the contingent guarantees that the Province will provide (described above).

In addition, given the long term nature of this program (i.e., approximately thirty-years), the calculations related to refinancing of the GA set out in the proposed legislation will be subject to fluctuations in Ontario electricity demand, GA and interest rates in the medium to long-term.

- Should electricity demand be higher than forecast as a result of greater electrification, the cost of paying off the debt will be spread over a greater pool of consumption and decreasing future costs for individual ratepayers. Note: The reverse is also true in regards to decreasing demand.

- Should interest costs increase from the assumed 5%, total borrowing costs would rise. Given that this is a unique offering, managing investor confidence will be key to ensure borrowing costs don't rise. Note: The reverse is also true in regards to interest rates being lower than assumed.

IESO's Credit Facilities

IESO is in discussions with the Ontario Financing Authority (OFA) regarding an increase to its current "line of credit" with the OFA and OEFC (i.e., credit facilities). The increases are in response to IESO role in the delivery of OFHP and to provide a necessary buffer to fund short periods where OPG SPV/Trust does not fund a shortfall.

IESO advises that this is important not only for IESO solvency, but also to maintain its credit rating (i.e., IESO's contracted suppliers' credit arrangements are often based on IESO maintaining a certain rating).

IESO would require financing to compensate generators should it be required to hold any portion of the unpurchased Regulatory Asset beyond each monthly settlement period. OPG Trust is not expected to access public capital markets monthly, nor is it required to purchase the regulatory asset. Therefore, IESO will need a credit facility for interim financing. IESO may also require longer-term financing to maintain the deferral financing plan, should the OPG Trust not be able to access debt markets on a timely basis for purchase of some or all of the regulatory asset.

Accounting

The legislation to enable GA refinancing has benefitted from the review and input of IESO/KPMG, OPG/E&Y and OPCD/E&Y.

The proposed legislation establishes mechanisms to enable the funding, sale and transfer between IESO and OPG that respond to the accounting requirements and advice outlined in the March 1, 2017 Cabinet Submission, such as concerns regarding consolidation by the Province.

Under the proposed legislation, OEB will issue an "accounting order" to authorize IESO to create a variance account in which it will record the funding shortfall and recover the shortfall in accordance with the legislation and regulations. This satisfies accounting concerns regarding OEB oversight in the establishment of the Regulatory Asset.

IESO will effectively sell the “right to collect” deferred future revenue from ratepayers to OPG in return for cash proceeds.

The proposed legislation and the associated amendments to the Electricity Act, 1998, enable OPG to create OPG’s SPV/Trust as a stand-alone entity able to conduct business separately under a Trust agreement.

To recover its revenue shortfall, IESO will establish a Regulatory Asset that it would sell to OPG’s SPV/Trust.

<u>KPMG</u>

The Ministry has worked closely with the Independent Electricity System Operator (IESO) and KPMG on the accounting considerations of GA Refinancing (i.e., legislation, applications of accounting standards/principles, minimizing consolidation risks and ability to establish a regulatory asset).

In particular, the proposed legislation provides a structure that IESO and KMPG believe meets the necessary accounting requirements. Key elements include:

- An IESO variance account created by the proposed legislation that would be recognized as a “regulatory asset”.

- An Ontario Power Generation (OPG) special purpose vehicle (SPV) / Trust that would not controlled by IESO and thus have no consolidation risk for IESO.

In addition, KMPG provided some commentary on the accounting requirement for the “derecognition” of the regulatory asset once it’s sold to OPG SPV/Trust. KPMG advised that the regulatory asset should be derecognized upon transfer to the OPG SPV/Trust as IESO no longer has rights or obligations to the asset (i.e., the transformation from a regulatory asset to an investment asset).

<u>OPG</u>

The Ministry has worked closely with the Ontario Power Generation (OPG) and E&Y, on the accounting requirements to enable GA Refinancing with respect to consolidation (i.e., legislation, applications of accounting standards/principles, establishing a special purpose vehicle (SPV) / Trust).

The proposed legislation and the associated amendments to the Electricity Act, 1998, enable OPG to create OPG’s SPV/Trust as a stand-alone entity able to conduct business separately under a Trust agreement. Note: To further support the operations and mechanics of the OPG SPV/Trust, additional work will be done through the regulations and supporting agreements/documents.

- OPG will have the authority to set up the SPV/Trust and assign it with powers regarding decision-making, funding and ongoing operation.
- OPG and IESO are developing a process that will allow interest payments to occur under GA Refinancing.

Based on the existing and proposed legislation, key operating conditions being addressed in regulations and supporting agreements/documents and no introduction of new conditions that would conflict with OPG's control of the SPV/Trust, E&Y concurs with OPG's assessment that the accounting requirements to support "consolidation" of OPG SPV / Trust with OPG Inc. can be met.

Legal

In principle, refinancing the Global Adjustment (GA) to spread the costs of generation and conservation assets over the useful life of the assets presents only a "low" risk of being an unconstitutional 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.

Legal risk arises if it becomes apparent that the Government is not spreading cost so that it is shared proportionately by future consumers who cause a need for or benefit from the generation asset, but rather is doing so in order to lower the price in the "short" term by increasing the price in the long term. If the proposed financing served to encumber future consumers with a premium payment to cover the GA financing in order to subsidize current ratepayers, then there would be a moderately high constitutional risk that the financing proposal would result in an unconstitutional tax.

Former Supreme Court Justice Ian Binnie has provided a legal opinion concluding that the current proposal is at a moderately high risk of being a tax, for the following reasons:

- 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.

- The judges can be expected to be aware of the difficult political problem of high energy costs in in Ontario, and will take a careful look at the government's evidence in support of the re-allocation of the GA.

The legislation contains provisions to mitigate the constitutional law risks, including requiring the Minister of Energy to reallocate estimated clean energy costs attributable to each reference period in a way that takes into account the need to align those costs with the estimated clean energy benefits attributable to the same period. Limiting the near-term rate reductions to such amounts which can be justified as counterbalancing disproportionate GA payments during the 2005-2017 period ensures that the statutory 25% reduction is consistent with proportionate reallocation.

The bill provides for provincial assurances, guarantees and a statutory cause of action.

The provincial assurance provision is intended to mirror as closely as possible the language of a similar provision that appears in legislation in the United States that purports to limit a state legislature's ability to enact legislation that would affect the transaction.

The main legal risk associated with the provision is that its precise legal purpose and intended effect are not clear. Under Canadian law, it is not possible for legislation to limit the future exercise of legislative power by the Legislature, including the power to amend or repeal statutory provisions or to expropriate private rights conferred under past statutes.

In light of this limitation, the U.S. provision has been modified to focus on possible actions by the executive branch of government that might undermine the value of the proposed securities (including regulation-making), rather than seeking to constrain the Legislature's powers. However, in the absence of some future statutory amendment, it is not clear what, if any, executive action could have the effect of undermining the payment obligation that would be imposed on consumers under the Act and, therefore, it is not clear what practical risk the provision is designed to mitigate against. This uncertainty creates a risk that a reviewing court could construe the provision in unanticipated ways.

The guarantee provisions are intended to backstop the provincial assurance provision and provide that:

- The Minister of Energy and Minister of Finance may, with LGIC approval, enter into agreements regarding the performance of IESO or electricity vendors; and

- The Minister of Energy and Minister of Finance may, pursuant to LGIC order, agree to guarantee and indemnify any debt, obligation, security or undertaking associated with an investment interest.

Legal risk to the province will be assessed as the agreements are negotiated and drafted.

A statutory cause of action may be created by LGIC regulation. Much like the provincial assurance provision, the statutory cause of action provision is intended to mirror features of US legislation. Legal risk to the province will be assessed as the regulation defining the statutory cause of action is developed.

The Ministry retained Blakes to provide external legal advice in the development of the legislation. The Blakes team provided securitization, constitutional law, energy sector and government expertise. This team was integral to balancing the accounting, legal and finaceability imperatives, as well as differing interests among OPG, IESO, OEB and investment dealers, in crafting the legislation. Blakes will continue to advise through the development of regulations and the commercial agreements that will ensue.

<u>Navigant Analysis</u>

Navigant Consulting has been retained and is conducting research and analysis that would support the implementation of GA refinancing. Specifically, Navigant is conducting analysis that would inform the expected lifecycle of existing generation infrastructure. Navigant is also analyzing the financial benefits that could be achieved by more closely aligning the costs of this infrastructure with the period over which it is expected to provide benefits. In addition, the Ministry has asked for analysis of the social, health and environmental benefits of phasing-out of coal-fired generation in the province and identify which, if any of these benefits are already accounted for in generator contracts.

2) Social Programs:

<u>Program Design</u>

Rural or Remote Rate Protection (RRRP)

The legacy RRRP program remains intact with no changes made to the amount of the rate protection or the eligible LDCs. The proposed legislation provides the authority for the government to prescribe classes of customers, customers or LDCs that would be funded through the tax-base rather than the rate-base.

If passed, the government proposes to identify Hydro One R2 customers, as having their RRRP funded through appropriated funds.

Distribution Rate Protection

New Distribution Rate Protection program, to complement the Rural or Remote Electricity Rate Protection (RRRP) program, would be established through proposed legislative amendments under the *Fair Hydro Act, 2017,* and the creation of consequential regulations. Eligible residential customers would have their monthly base distribution charges held to a maximum amount.

Distribution rate protection would be extended to eligible residential customers served by LDCs with the highest distribution costs. Roughly 800,000 customers would receive benefits from the broadened rate protection.

Customers of the following LDCs are eligible for the enhance protection: 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.

On-Reserve First Nations Delivery Credit

Eligible on-reserve customers will receive a 100% delivery credit or the elimination of their monthly service charge on their electricity bills. The eligibility requirements will be prescribed under regulation.

There are 11 LDCs identified by OEB that provide service to on-reserve customers affected by the program. These include: Algoma, Attawapiskat, Bluewater, Cat Lake, Cornwall, Fort Albany, Kashechewan, Hydro One, Remote Communities, PUC(Sault Ste. Marie), Thunder Bay. In total, about 21,500 customers may be eligible.

Ontario Electricity Support Program (OESP)

The OESP is an income-tested, application based program that lowers electricity costs of the most vulnerable consumers by a rebate directly on bills. The OESP is currently funded by the rate base.

OESP credits vary by income level and family size, and there are two credit scales that include:

- The basic program credit ranges from $30/month to $50/month.
- An enhanced credit that ranges from $45/month to $75/month for consumers that are either Indigenous, use electric heat or use certain electrically intensive medical devices.

Ontario's Fair Hydro Plan (OFHP) committed to move the program from the rate base to the tax base, and to expand the OESP by increasing the credit amounts by 50 per cent, making more Ontarians eligible for the program, and aligning the OESP with other social assistance programs to increase uptake.

The proposed legislative changes will address the move to the tax base, and regulatory changes approved by Cabinet on April 10, 2017 will enable the expansion of the OESP effective May 1, 2017. Discussions are ongoing with the OEB and MCSS on aligning OESP delivery with other social assistance programs.

<u>Roles and Responsibilities</u>

Rural or Remote Rate Protection

The roles and responsibilities of the Board remain the same in terms of administering the legacy RRRP program. ENERGY will now be responsible for appropriating the funds from the legislature on an annual basis to cover the costs faced by those consumers or classes of consumers prescribed under regulation (namely Hydro One R2 customers).

Enhanced RRRP or Distribution Rate Protection

The Board would be empowered, by regulation, to set the maximum monthly base distribution charge, based on prescribed criteria.

ENERGY would once again need to appropriate money from the legislature to cover the costs of administering the program.

On-Reserve First Nations Delivery Credit

ENERGY would be responsible for appropriating the money from the legislature to cover the costs of administering the credit to on-reserve customers. In addition, ENERGY would need to work with LDCs, Chiefs of Ontario and Band Councils to ensure the program is delivered to all eligible consumers.

Ontario Electricity Support Program

The OEB will continue to the deliver the OESP under the current legislative framework until the variance account is depleted. When legislative changes to shift the program from the rate base to the tax base are proclaimed, the OEB will continue to administer the program, but certain decision making responsibilities and oversights will shift to the Minister of Energy.

MCSS will begin supporting OESP uptake by helping social assistance clients to apply to the OESP. Legislative and regulatory changes will enable this work.

The IESO will continue to manage payments to utilities, unit sub-meter providers, and the OEB in relation to OESP credit delivery and program administration costs. When legislative changes are proclaimed, IESO will begin reporting costs to the Ministry to support forecasting and audit.

3) ICI Expansion:

As part of OFHP, the government announced plans to further reduce the ICI threshold from 1 megawatt (MW) to 500 kilowatts (kW) and to target more small manufacturing and industrial consumers.

Effective April 13, 2017, electricity consumers and market participants in the manufacturing and greenhouse sectors (i.e., with North American Industry Classification Standard (NAICS) codes commencing with the digits "31", "32", "33", and “1114”) in Ontario with an average monthly peak demand of greater than 500 kW and less than or equal to 1 MW are eligible to opt-in to ICI. Billing for electricity consumers that opt-in to ICI begins July 1, 2017.

In addition, the Ministry has retained the OCC and the CME to undertake targeted stakeholder outreach.

The rate-base impact of expanding ICI to consumers in the manufacturing and greenhouse sectors is expected to be modest for non-ICI participants. **Note:** The extent of the impact will depend on the uptake in the newly expanded ICI. The Ministry of Energy regularly monitors electricity prices and electricity demand for all classes of electricity consumers and would be able to assess the potential impacts of the regulatory amendments, starting after July 2017.

4.0 BACKGROUND

Decarbonizing and Modernize Ontario's Energy System

Ontario's energy system is being transformed – more than $50 billion has been invested to decarbonize and modernize the electricity system, including an investment of over $35 billion in clean and renewable generation.

Over the last decade the government has invested in Ontario's transmission and distribution infrastructure (i.e., the grid), clean generation and phased out the use of coal-fired generation, which has resulted in electricity prices increasing.

The Ministry of Energy has taken a number of actions to lower electricity costs for all consumers by:

- Deferring investments in generation (e.g., new build nuclear), improving market efficiency (e.g., wind dispatch) and decreasing the cost of renewable procurements (e.g., Green Energy Investment Agreement (GEIA) renegotiation, decreasing Feed-In Tariff (FIT) prices; and

- Increasing cost effectiveness and improving efficiency by adopting new electricity market approaches (e.g., no new NUG contracting and demand response).

Following the 2016 Speech from the Throne, several actions were announced to further reduce electricity costs:

- As of January 1, 2017, Ontario is rebating an amount equal to the provincial portion of the HST to reduce eligible residential, small business and farm electricity bills by 8 per cent.

- Expanded support to eligible rural consumers by updating Rural or Remote Rate Protection (RRRP) with the additional relief, decreasing total electricity bills by an average of $45 each month when combined with the 8 per cent rebate.

- Expanding the Industrial Conservation Initiative (ICI) – up to one-third savings for participants.

- Suspending the LRP II and the Energy from Waste Standard Offer Program (EFWSOP) – up to $3.8 billion in savings.

- Limiting the Feed-In Tariff (FIT) 5 procurement target to 150 MW and suspending future FIT procurements – average annual savings of $15 million.

Ontario's Fair Hydro Plan

On March 2, 2017, the government announced Ontario's Fair Hydro Plan (OFHP). The OFHP includes the following:

- Refinancing the GA over a longer period for Regulated Price Plan (RPP) eligible consumers, including residential consumers and most small businesses and farms.

- Shifting cost recovery for Rural or Remote Rate Protection (RRRP) and Ontario Electricity Support Program (OESP) from electricity bills to the tax base, lowering the regulatory charges paid by ratepayers. Consumers of all sizes would benefit from this change.

- Helping vulnerable electricity consumers by enhancing electricity support programs, including:

  - Broadening RRRP to provide delivery charge relief for the customers of the local distribution companies (LDCs) with the highest delivery charges. We currently support approximately 350,000 Ontarians living in rural or remote areas through RRRP. The enhancement would extend relief to approximately 800,000 households in total.

  - Expanding the OESP, which provides relief directly on the bills of low-income consumers who have applied and meet the eligibility criteria. The expansion would increase OESP credits by 50 per cent and allow more Ontarians to benefit from the program.

  - Establishing a new Affordability Fund, which would provide financial support to lower-income Ontarians who are not eligible for the Home Assistance Program to make home energy efficiency improvements, helping to manage their energy costs.

  - Establishing a Delivery Credit to eliminate delivery charges for all First Nations people living on reserve.

- Expanding the Industrial Conservation Initiative (ICI), which allows large consumers to reduce their electricity bills by up to one-third by reducing their consumption during peak hours. The expansion will allow manufacturers and greenhouses between 500 kW and 1 MW to participate, in addition to the consumers over 1 MW that are already eligible.

- OFHP also committed to reducing system costs by improving sector efficiency and modernizing Ontario's electricity market, working in collaboration with the Independent Electricity System Operator (IESO) and the Ontario Energy Board (OEB).

Legislation to Enable the Refinancing of Global Adjustment

To enable implementation of GA refinancing and mitigate financing, accounting and legal risks, the Ministry has developed proposed legislation (and is working on supporting regulations) that outlines:

- Roles and responsibilities for the OEB, IESO, OPG and the Province;

- A detailed Preamble, Purpose and Definitions;

- Details with respect to Fair Adjustment, Clean Energy Adjustment, Implementation (i.e., Financial Services Manager, Fair Allocation Amount, Financing Plan), Regulatory Asset and Investment Asset;

- Scope of provincial undertaking and enabling the Province to provide guarantees and indemnities to back stop that undertaking; and

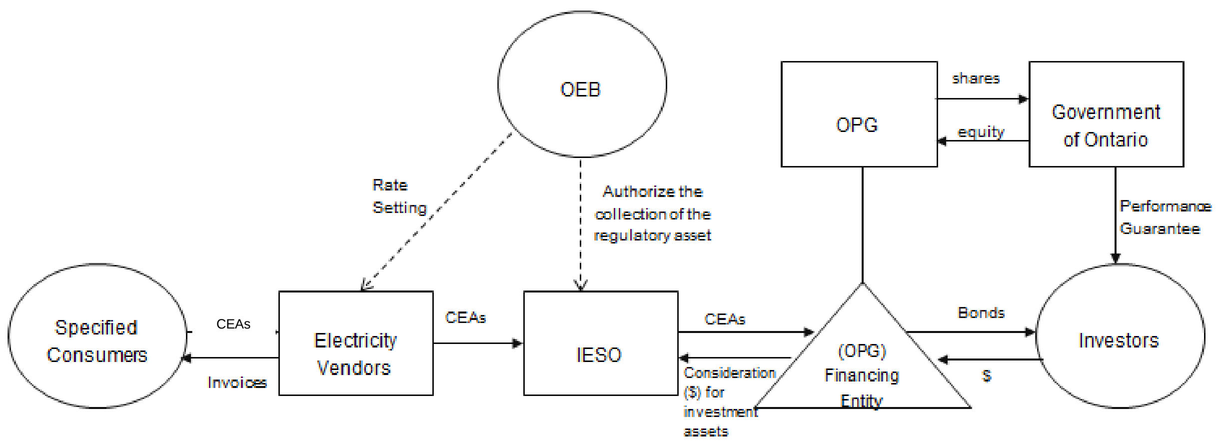
- Amendments to other acts (i.e., *Electricity Act* and *Ontario Energy Board)*.

The supporting legislation defines the mechanisms and framework that would achieve the refinancing of the Global Adjustment.

The Ministry has worked closely with key ministries (i.e., TBS-OPCD, MOF-OFA/IGS, MAG, CO), OEB, IESO, OPG and their independent advisors and third party financing in the development of the proposed legislation.

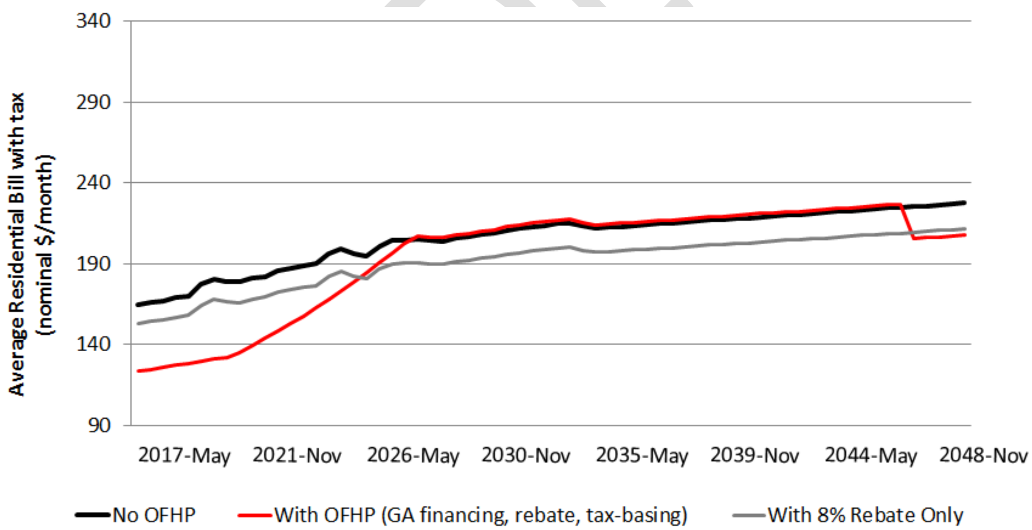
GA Refinancing Implementation Model – Overview

The diagram below outlines how the refinancing of GA would be implemented:



Note: CEAs are “clean energy adjustments”.

Multi-Year Profile of GA Refinancing / Assumptions



The chart above shows the expected multi-year profile under GA Refinancing for each Regulated Price Plan (RPP) period. In the first year, residential bills are projected to be 25 per cent lower as result of the OFHP. In the early years, bills increases are held to the rate of inflation – assumed to be 2% per year in the chart above. From July 1, 2021 onwards, prices increase at a higher rate compared to the first four years on the OFHP.

In the medium to longer term, residential bills exceed what they would have been but for the OFHP. However, in any given year, a typical residential bill under the OFHP cannot exceed what it would have been without OFHP by more than 10 per cent.

OPG's Financing Structure / Equity Financing

The ability to engage in the fair distribution of clean energy costs requires financing during periods where the collection of the clean energy costs is deferred to later years. The legislation outlines mechanisms that are required to enable the financing and meet requirements for rating agencies and investors.

IESO will have a funding gap resulting from the reduction in amounts collected during four years. The legislation enables IESO to record the under-collection of GA in a variance account, and deems this under-collected amount to be a "Regulatory Asset".

- OEB would determine rates to allow IESO to recover under-collection recorded in its variance account.
- IESO is authorized to sell all or a portion to the OPG Special Purpose Vehicle (SPV)/Trust under the Financing Plan.

As part of supporting the financing and administration of the GA refinancing mechanism, it is expected that OPG would purchase the right to future cash flows from IESO on an ongoing basis.

The sale of the regulatory asset from IESO to the OPG Special Purpose Vehicle (SPV)/Trust creates an "Investment Asset".

- The Investment Asset allows for the recovery of the under-collected GA as the Investment Asset may in turn be sold to other investors or group of investors.

As part of supporting the financing and administration of the GA refinancing mechanism, it is expected that OPG would purchase the right to future cash flows from IESO on an ongoing basis.

These purchases would be financed in part by capital infusions from the Province to OPG for the purposes of stabilizing OPG's capital structure:

- OPG would require monthly "equity injections" from the Province;
- Funds from the Province would flow from the Ontario Financing Authority (OFA); and

- The Ministry, OFA and OPG are working through the specific mechanisms, timelines and share features.

Global Adjustment – Overview

The Global Adjustment (GA) accounts for the fixed costs, including capital costs, of running Ontario's generation fleet, as well as the cost of conservation programs. GA is instrumental in maintaining a reliable electricity system by ensuring that sufficient generating capacity is available.

It is via GA that much of the costs of investments in developing a clean, modern and reliable electricity system with a diverse supply mix are recovered.

The vast majority of GA costs now stem from greenhouse gas (GHG) emissions-free renewable and nuclear generation facilities, as well as natural gas plants that were constructed to improve system reliability and replace coal-fired capacity. Generators in Ontario received contracted or regulated rates, which are typically designed to recover capital, financing and fixed operations costs. The GA recovers these fixed costs of running the province's generation fleet, as well as the cost of conservation programs.

The majority of the province's electricity generators are under 20-year contracts and account for under 50% of the GA. Some of these generators will continue to provide value to the electricity system beyond their contract lives (i.e., beyond 20 years). Similarly, conservation costs are recovered annually on an 'as incurred basis' through GA while conservation initiatives can reasonably be expected to provide benefits to the electricity system over many years.

The Ministry is proposing in legislation to recognize the long-term benefit of specific assets to the electricity system and "bring forward" that benefit for ratepayers today by deferring some of the current costs. The proposed legislation outlines how costs would be fairly allocated among eligible consumers over time.

OEB's Regulated Price Plan (RPP) – Overview

On April 20, 2017, the OEB announced new Regulated Price Plan (RPP) rates effective May 1, 2017 that include a portion of the bill reduction proposed under OFHP and the shifting of the funding of the Ontario Electricity Support Program (OESP) to provincial revenues. The full reduction from OFHP is expected to be addressed through a July 1st RPP rate adjustment.

Social Program

Rural or Remote Rate Protection (RRRP)

Part of the program helps fund the costs of Hydro One customers classified into the “R2” residential rate class. There are approximately 335,000 R2 customers across the Province. These customers have some of the highest distribution costs in the Province.

- From 2001-2016 the program provided $125.4 million annually to help defray these costs.
- In the 2016 Speech from the Throne, this funding was expanded by $116.4 million to a total of $241.9 million.
- As of Jan 2017 R2 customers receive $60.50/month off their distribution costs.
- These customers still have high distribution costs and are often faced with significantly higher than average bills.

The higher than average consumption patterns coupled with higher than average distribution rates has resulted in monthly bills many view as no longer affordable or equitable.

RRRP is currently funded by rate-payers. All IESO-grid connected consumers pay a charge of $0.0021 per kilowatt-hour to off-set the costs of delivering RRRP. For an average residential customer this amounts to ~$1.60 per month. This charge will be substantially reduced once the R2 portion of the RRRP program is funded through the tax-base, rather than rate payers.

Distribution Rate Protection (DRP)

RRRP is targeted to customers based on geographic and density-based criteria. Many customers, including those in rural areas, face higher than average distribution costs, but are not eligible to receive rate protection under RRRP.

Energy is proposing legislative amendments that will broaden rate protection by creating a new distribution rate protection program to complement the Rural or Remote Electricity Rate Protection program.

Distribution rate protection would be extended to eligible residential customers served by LDCs with the highest distribution costs. Roughly 800,000 customers would receive benefits from the broadened rate protection.

- Providing distribution rate protection to a broader number of consumers would help mitigate geographic-based differences in rates for the consumers who are most impacted and often see such differences as inequitable.

Mitigation for all electricity consumers would be provided by moving the existing RRRP program costs and the proposed enhancements from the electricity rate base to the tax-base.

On-Reserve First Nations Delivery Credit

On-Reserve First Nations customers experience challenges with energy affordability and are seeking to address historical grievances associated with electricity system infrastructure.

ENERGY has a number of Bilateral Tables with the Chiefs of Ontario (COO) and First Nations that include the Energy Table to discuss policy issues, the Hydro One Negotiating Table to discuss Hydro One shares, and the Grievance Table.

The Grievance Table process was established at the request of COO as a means to avoid litigation to resolve historic grievances related to the energy sector and prevent these issues from impeding progress on broadening the ownership of Hydro One (H1).

The cost of electricity and delivery charges were identified as the prevailing grievance at the First Nations-Ontario Energy Table meeting in Timmins in 2016, and the Minister of Energy agreed to explore options for a First Nations Rate through the Grievance Table process.

Ontario Electricity Support Program (OESP)

The OESP launched on January 1, 2016. By the end of March 2017:

- Almost 192,000 have been enrolled in the program, which is approximately 1/3 of all potentially eligible low-income customers in Ontario.

- Over $60 million in credits have been provided to vulnerable consumers.

- 172 intake agencies have been mobilized to assist low income consumers to apply for the OESP.

Industrial Conservation Initiative (ICI)

Ontario is committed to providing competitive electricity rates for energy intensive consumers in the manufacturing sector while also promoting electricity conservation.

In January 2011, ICI was announced to help large industrial power users better manage their electricity costs while reducing electricity consumption during peak periods. ICI provides a strong incentive for large electricity consumers to shift their electricity consumption to off-peak hours to reduce their bills by about one-third. Reducing peak demand increases the reliability of the electricity system, reduces greenhouse gas (GHG) emissions and helps defer the need to procure new resources. There are now about 300 participating consumers who collectively reduced Ontario's peak demand by an estimated 1,000 MW in 2015.

Currently, ICI is available to electricity consumers who have an average monthly peak demand greater than 1 MW (i.e., Class A). Smaller electricity consumers – known as “Class B” consumers – are charged GA based on their total consumption regardless of when it occurs.

ICI provides a strong incentive for participating consumers to reduce their consumption during peak hours to reduce their cost. Note: ICI is administered by the Independently Electricity System Operator (IESO) and Local Distribution Companies (LDCs).

As of January 1, 2017, the regulatory amendments came into effect to make ICI available to electricity consumers with an average monthly peak demand greater than 1 MW. The lowering of the ICI threshold to 1MW and removal of sector restrictions was announced in the 2016 Speech From the Throne.

On March 2, 2017, as part of Ontario’s Fair Hydro Plan (OFHP), the government announced plans to further reduce the ICI threshold from 1 megawatt (MW) to 500 kilowatts (kW) and to target more small manufacturing and industrial consumers.

Effective April 13, 2017, electricity consumers and market participants in the manufacturing and greenhouse sectors in Ontario with an average monthly peak demand of greater than 500 kW and less than or equal to 1 MW are eligible to opt-in to ICI. Billing for electricity consumers that opt-in to ICI begins July 1, 2017.

- Provisions were also provided to allow electricity consumers to continue their participation in ICI if their demand falls below the monthly peak demand threshold while participating in certain prescribed Conservation and CDM programs and/or OCCSDC programs and pilots.

5.0 TIMING

As part of OFHP, the government announced that eligible electricity consumers would see the reduction to their electricity bills in the summer of 2017 (i.e., July).

On April 20, 2017, OEB announced that it has adjusted the RPP rates effective May 1, 2017 to account for its estimation of the impact of a portion of GA Refinancing. The Ministry anticipates that the OEB will set an interim rate adjustment following the passage of the legislation to enable GA Refinancing that would account for the full impact (i.e., 25 per cent).

The Ministry is planning to introduce legislation in early May 2017 and develop supporting regulations in early summer 2017 to enable GA Refinancing. Note: The OPG will require legislation and regulations to be in place to support its discussions with rating agencies and third-party financing.

The timeline for all of the social programs, with the exception of the OESP, is identical as the program implementation for the regulations that follow to be passed in unison for July 1, 2017.

Some of Ontario’s Fair Hydro Plan commitments for the OESP came into effect on May 1, 2017 (e.g., removal of the OESP charge from customer bills; expanding credit amounts and program eligibility). Remaining changes associated with moving the program from the rate-base to the tax-base will be proclaimed at a later date when the OESP variance account is depleted. Additional regulatory amendments needed to implement this legislative change will come into effect on the same date.

As part of the OFHP, the government also announced the expansion of ICI to enable greater participation from the manufacturing sectors in Ontario.

The April 2017 ICI amendments enabled new electricity consumer’s time to opt in to the expanded program ahead of the next ICI billing period (i.e., July 1, 2017). Note: Under ICI, as set out in Ontario Regulation 429/04, eligible electricity consumers must opt in to the ICI program on or before June 15 of each calendar each year.

6.0 FINANCIAL IMPACT

1) GA Refinancing:

As it relates to the “equity injection”, these changes are expected to have no impact on the Provincial net debt position as the Province’s increased investment in OPG will be offset by the incremental borrowing to fund the equity injections. The Province has assumed incremental income from OPG arising from interest income on the subordinated debt which OPG will lend to the OPG Special Purpose Vehicle (SPV)/Trust. This offsets forecast increases in Provincial interest on debt expenses associated with equity injections.

Proposed legislation to enable GA refinancing has been drafted to mitigate financing, accounting and legal risks. In addition, IESO and OPG have sought independent advice and confirmation with respect to financing, accounting and legal matters.

Note: There would be a significant impact on provincial net debt and the fiscal plan if the legal, financing and accounting conditions change.

2) Social Programs:

As approved in the TB/MBC submission of Mach 1, 2017 and confirmed in Vote-Item 2905-1, the financial impacts of the social programs for the period July 1 2017- March 31 2018 are as follows:

Program	2017-18 Budget
Rural or Remote Rate Protection	344,000,000
Ontario Electricity Support Program	140,000,000
On-Reserve First Nations Delivery Credit	15,000,000

The IESO manages a variance account for the OESP, which holds the difference between the amount of OESP charge collected from the rate base, and the amount of OESP paid out in the form of credits. The amount in the variance account is about $109 million as of March 1, 2017. These funds will be used to fund the OESP program until the variance account is depleted, at which point the transfer payment line will be used to finance the program costs. Due to the potential range in costs of the OESP, which will depend on program uptake and any costs associated with supporting increased participation, the set allocation is required despite the variance account.

ENERGY will report back as part of PRRT with an update on out-year projections following analysis on rate applications before the Ontario Energy Board.

3) ICI Expansion:

Since ICI is funded through the electricity rate-based and not the provincial tax-base, ICI expansion will have no direct financial impact for the Province.

With respect to rate-base impacts, expanding ICI to consumers in the manufacturing and greenhouse sectors (i.e., between 500 kW and 1 MW) is expected to result in a modest increase on electricity bills for non-ICI participants starting in July 2017. For example, preliminary analysis estimates that the increase on a typical residential bill would by up to 0.66% or just over $1/month based on a 2016 bill of about $158.

Note: The extent of the non-ICI participant impact will depend on the uptake in the newly expanded ICI. The Ministry of Energy regularly monitors electricity prices and electricity demand for all classes of electricity consumers and would be able to assess the potential impacts of the regulatory amendments, starting in July 2017.

7.0 STAKEHOLDER ANALYSIS

Stakeholder	Comments
Eligible Electricity Consumers	• As a result of OFHP, eligible electricity consumers will welcome the immediate reduction in electricity bills that they will experience in the short to medium term.
Electricity Agencies	• In the development of legislation to enable implementation of OFHP, the Ministry has been working closely with OEB, IESO and OPG and their independent advisors.
Local Distribution Companies (LDCs)	• The Ministry hosted LDC workshop sessions on March 16 and April 19, 2017. Nearly 40 LDC representatives attended in person or by phone and were briefed on OFHP, including implementation.
Chief of Ontario (COO)	• COO have publicly supported the introduction of the First Nations Delivery Credit. • ENERGY met with COO on April 26, 2017 to discuss implementation.
Future Industrial Conservation Initiative (ICI) Participants	• On March 9, 2017, the Ministry posted an ICI expansion proposal for comment on the Regulatory Registry for stakeholder comment. The Ministry has received 7 comments. • The Ministry is also working with the IESO, OCC and the CME regarding targeted outreach in relation to the ICI expansion.

8.0 RISK ASSESSMENT AND MITIGATION

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy
1) Global Adjustment (GA) Refinancing			
Maintaining OPG's Financial Viability / Capital Structure	L	H	• OPG requires equity injections on an on-going basis from the Province (i.e., Ministry of Energy). • Equity injections are necessary to support OPG as the owner and manager of GA refinancing. The equity injections allow OPG to strengthen the capital structure of the Trust in order to secure financing at a reasonable cost.

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy
			• In order to provide financing, OPG would develop a special purpose vehicle (SPV). • OPG has a great deal of experience managing the risks associated with borrowing through its experience developing capital-intensive generation projects as well as their management of Nuclear Funds. • OPG will seek to achieve the highest possible credit rating (i.e., AAA is possible) in order to reduce borrowing costs and attract a wide investor base.
OPG Securing Capital Markets Funding	L	H	• OPG will need to obtain a portion of the required funding from the capital markets. • The Ministry has worked closely with third-party financial advisors in advance of and throughout the drafting process to help to ensure that the proposed legislation enables refinancing of the GA. • In order to provide financing, OPG would develop a special purpose vehicle (SPV) which will use 100% debt financing to purchase the regulatory asset, financing 51% through capital markets as senior debt, with the remaining 49% being provided by OPG as subordinated debt. • The 49% subordinated debt from OPG will be financed through debt OPG issues in its own capacity, through capital markets (up to 5%) with the remainder (44-49%) financed through equity injections from the Province. This will help to ensure OPG's capital structure remains in line.
Managing Interest Cost Risks	M	H	• Proposed legislation has been drafted with input from third-party financers (i.e., dealers). • OPG's Special Purpose Vehicle (SPV) / Trust is borrowing in its own

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy
			corporate capacity from the capital markets. • Risk that it may incur a higher interest cost than what was originally forecast (i.e., 5%).
Provincial Guarantee is Triggered	L	H	• The proposed legislation sets out that the province would provide assurances in the form of a "provincial guarantee" to OPG and investors regarding the permanence of the GA Refinancing framework. The intent is to ensure that the full value is recovered. • The legislation also establishes assurances that the Province would: - Through the Minister of Finance as provided by Lieutenant Governor in Council, agree to guarantee any debts and obligations; and - Not hinder the charging and remittance of the under-collection of GA refinancing (i.e., through a provincial undertaking and guarantee).
IESO Failure to Establish a Regulatory Asset	L	H	• Under the proposed legislation, the Ontario Energy Board (OEB) is providing the necessary oversight required to enable IESO the ability to establish a Regulatory Asset. • To recover its revenue shortfall, IESO will establish as a Regulatory Asset that it would sell to OPG's SPV / Trust. • The OEB will issue an accounting order to authorize IESO to do create a variance account in which it will record the funding shortfall and recover the shortfall in accordance with the legislation and regulations.
GA Refinancing Approach is Viewed as an Indirect-tax	L	H	• Proposed legislation to enable GA refinancing the costs associated with electricity generation facilities will be allocated across present and future electricity consumers will be set out in the Fair Allocation Amount. • The degree of constitutional risk is in direct proportion to the extent the government is not able to show a

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy
			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. • The Fair Allocation Amount will help to ensure that the allocation of costs associated with electricity generation facilities is reflected over the term of GA Refinancing.
2) Social Programs			
Social Program Implementation Delays	L	M	• Work with LDCs; provide transitional provisions. • Work with Chiefs of Ontario (COO) to develop a plan to identify eligible on-reserve customers. • The bill includes transitional provisions that would ensure customers remain eligible for the rate protection and First Nations Delivery Credit from the prescribed date.
Social Program Cost Estimating	M	M	• OESP costs will depend on uptake of the program, which will be impacted by the 50% increase in credits, enhanced eligibility, and work with MCSS on aligning OESP delivery with their social assistance programs. • Distribution Rate Protection costs are driven by a number of variable factors including: the OEB's rate setting process; the lowest cost distributor in the prescribed cohort of "high cost distributors" and consumption patterns. • Work with Ontario Energy Board (OEB) and the Independent Electricity System Operator (IESO) to ensure access to data for regular forecasting • A mechanism would be created in regulation to ensure that all parties are aligned in the yearly forecasting and costing of the program.

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy
Non-Status Indigenous communities without reserves or Metis could raise a Charter challenge on the First Nations On-Reserve Delivery Credit Program	L	L	• 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.
3) Industrial Conservation Initiative (ICI) Expansion			
Perceived Fairness Between Electricity Consumer Classes	M	L	• The expansion of the ICI program include electricity consumers in the manufacturing and greenhouse sectors with average monthly peak demand greater than 500 kW and less than 1 MW will impact those consumers that remain outside the program (i.e., Class B and RPP electricity consumers). • Increases to electricity bills will occur for non-ICI participants to ensure full cost recovery in the electricity system. Note: the extent of the impact on other non-ICI participants would depend on the uptake in the newly expanded ICI, but is expected to be modest. • Restricting eligibility to the manufacturing and greenhouse sector helps to ensure that the expanded ICI is focused on those consumers which are most impacted by GA costs and associated economic competitiveness pressures from neighbouring jurisdictions.

9.0 JURISDICTIONAL ANALYSIS

GA Refinancing approached outlined in the proposed legislation is model on a those used in the United States (e.g., Duke Energy), where utility debt is financed by selling it to investors with recovery from ratepayers over time.

The Ministry conducted no jurisdictional analysis related to the expansion of social program funding as the structure of Ontario's electricity sector, and thus the delivery of these benefits, is unique.

The ICI program is unique to Ontario and the proposed expansion would not directly impact on other jurisdictions.

10.0 PERFORMANCE MEASURES

The proposed legislation sets parameters within which refinancing of GA can proceed. These parameters include the initial percentage reduction in eligible electricity rates, the number of years that rates will increase at a rate equivalent to CPI and the length of time within which the recovery of funds must take place (i.e., by 2047). In addition, OPG's existing financial reporting process provides an additional framework for monitoring and reporting of OPG's role in OFHP.

With respect to the social programs, performance will be evaluated by the amount of funding flowed to consumers in order to reduce their electricity bills. The Ministry will work with the OEB over the coming years to ensure that data is available to determine if the programs continue to provide meaningful rate relief.

The Ministry and the OEB have engaged with the Behavioral Insights Office at the TBS to consider ways to increase program participation. Discussions are ongoing.

With respect to ICI, the Ministry regularly monitors electricity prices and electricity demand for all classes of electricity consumers and would be able to assess the potential impacts of the regulatory amendments, starting in July 2017.

11.0 COMMUNICATIONS

ENERGY has developed a comprehensive, two-phase media campaign to increase awareness of Ontario's existing rate mitigation measures and new proposed electricity initiatives under Ontario's Fair Hydro Plan OFHP):

- Phase I – Launched on March 13, 2017 and included radio and digital media in English and French. This was followed by multi-cultural extensions on radio in 19 languages. Phase I of the media campaign is complete.

- Phase II – Is expected to launch early Summer 2017 and will include television, radio, print, digital and social media advertising support.

ENERGY received TB/MBC approval on February 6, 2017 for an exemption from the competitive acquisition requirement under the *Procurement Directive on*

Advertising, Public and Media Relations, and Creative Communications Services for the development of the electricity cost reduction public education campaign. Through this, ENERGY acquired the services of Rain43, an Agency of Record under Advertising Review Board's corporate vendor of record arrangement for advertising, public and media relations, and communication services, to develop this public education campaign with an estimates maximum value of $1,500,000.

As of July 20, 2015, PHD Canada is the Advertising Review Board's mandatory-use media planning and buying Agency of Record. In 2016-17, through Phase I, ENERGY has spent approximately $1,000,000 on media planning and buying for radio and digital media. The cost of media space for television is substantially higher than radio; as such, ENERGY is forecasting to spend an additional $2,500,000 in 2017-18.

This campaign is integral for demonstrating Ontario's commitment to lower energy costs for ratepayers through the new proposed electricity initiatives. This campaign could also open the Ministry to increased scrutiny as critics may conclude savings are too little or too late to help those suffering from what the media has deemed energy poverty. Public perception may be unchanged as emotional triggers to rising electricity prices and the constant stream of negative news by the media could overpower the campaign.

The Ministry has assessed the risks, and deems the benefits for running this campaign outweigh any risks of not doing so. ENERGY anticipates reaction from electricity consumers is to be generally positive with an awareness that changes to the electricity system have led to a reliable, cleaner system that is now more affordable.

In addition, the communications for GA refinancing, delivery electricity social programs and ICI expansion will be referenced in ongoing announcements related to Ontario's Fair Hydro Plan (OFHP) broadly, and as necessary targeted communications for specific stakeholder group can be developed.

For example, the Ministry has retained the OCC and the CME to undertake targeted stakeholder outreach on ICI and other cost saving energy programs/measures available to the commercial and industrial sectors in Ontario.

The Ministry will ensure that the social programs are communicated effectively to stakeholders and specific target audiences. The Ministry will leverage its agencies and its relationship with LDCs to ensure eligible consumers are aware of the programs.

Chiefs of Ontario (COO) will be a vital partner in communicating the benefits of the First Nations Delivery Credit.

The Ministry also believes there is opportunity for consultation on the design of the electricity bill, with a goal to refresh the regulatory framework to improve the value of the bill to the consumer across all LDCs. The Ministry proposes to convene with LDCs in July, once they've had sufficient time to implement the OFHP initiatives and prescribed messaging.

Changes of this nature will require more in-depth consultation with LDCs, as well as broader regulatory amendments to simplify the requirements, necessitating a longer period to implement. This refresh would also include opportunities to communicate OFHP savings in a more personalized and comprehensive manner. For example, each customer could receive a "personalized" message indicating how much they saved as a result of the plan.

Based on this feedback, the Ministry would aim to introduce regulatory amendments to simplify bill presentment and introduce dynamic OFHP messaging in the Fall 2017.

12.0 RECOMMENDATION

1) The Ministry of Energy is reporting back to the Treasury Board/Management Board of Cabinet (TB/MBC) on following:

    i. Implementation of Global Adjustment (GA) Refinancing;

    ii. Delivery of Electricity Social Programs (i.e., Rural or Remote Rate Protection, Ontario Electricity Support Program and First Nations On-Reserve Delivery Credit); and

    iii. Expansion of Industrial Conservation Initiative (ICI).

2) APPROVE the Ministry funding a media buy procurement with a maximum value of $3,500,000 with PHD Canada, the Advertising Review Board's mandatory-use media planning and buying Agency of Record.

3) NOTE the Ministry of Energy has already spent approximately $1,000,000 with PHD Media in 2016-17 and is forecasting expense of approximately $2,500,000 in 2017-18.

4) NOTE the Ministry of Energy will return to TB/MBC to request a transfer of funds to the Ministry of Energy from the Bulk Media Buy program in Treasury Board Secretariat to fully recover the costs for the public education campaign.

5) APPROVE the creation of a new transfer payment line entitled "Price Mitigation Support Initiatives" under Vote/Item 2905-01, Electricity Price Mitigation, with a $1,000 placeholder, to support future rate mitigation initiatives.

Appendix:

- KPMG Opinion
- E&Y Opinion (including OPG Management Memo)

FINAL DRAFT

KPMG Letter to the Independent Electricity System Operator

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 *Ontario Fair Hydro Plan Act, 2017*

This letter has been prepared in draft form and will be updated upon receipt of the adopted legislation (including the amendments of the Electricity Act and the OEB Act) and finalized financial structure (including the bylaws and regulations of the OPG Trust) and other relevant agreements necessary for us to provide our final opinion, of which legislation and other relevant agreements are expected to be enacted/ finalized on or before September 30, 2017.

<u>NOTICE OF NON RELIANCE</u>

This Notice is regarding the accompanying Letter to provide an accounting opinion on the application of Public Sector Accounting Standards to the consolidation of a trust and to the recognition and derecognition of a variance account in relation to the proposed *Ontario Fair Hydro Plan Act, 2017* (the "**Letter**") prepared by KPMG LLP for the Independent Electricity System Operator ("Client").

<u>**The following terms apply to any review of the Letter and should you not agree to these terms, please do not review the Letter and delete copy of the same.**</u>

The Letter was prepared in connection with certain services we provided to the Client and should not be used for any other purpose or regarded as suitable for use by any person or persons other than the Client

No one other than the Client is authorized by KPMG to rely upon any information or views expressed in the Letter. KPMG shall have no responsibility or liability for loss or damages or claims, if any, to or by any third party as the Letter has not been prepared for, and is not intended for, and should not be used by, any third party or for any other purpose.

KPMG in no way accepts any duty of care to you or any other person or accepts any agreement or other arrangement of a contractually binding nature between our firm and such parties.

KPMG neither warrants nor represents that the Letter is accurate, complete, sufficient or appropriate for any purpose contemplated by you or any other person or body. You shall have no right to disclose the Letter to any other party, unless disclosure is required by law or to fulfill a professional obligation required under applicable professional standards.

Yours very truly,

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May 4, 2017

CONFIDENTIAL

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The Board of Directors

Dear Sirs,

We have been engaged to provide you with an accounting opinion on the application of Public Sector Accounting Standards to the consolidation of a trust and to the recognition and derecognition of a variance account in relation to the proposed *Ontario Fair Hydro Plan Act, 2017* ("the proposed Act") (Appendix A, Version 6, to this letter). This letter is being issued to the Independent Electricity System Operator ("IESO" or the "Company") in connection with its evaluation of the consolidation requirements and the accounting for the variance account under Canadian Public Sector Accounting Standards ("PSAS"). Our engagement has been conducted in accordance with generally accepted standards in Canada for such engagements.

The ultimate responsibility for the decision on the appropriate application of PSAS for the specific issues described below rests with management of the Company as preparers of the financial statements.

The adoption of the proposed Act (including the subsequent amendments of the Electricity Act, 1998 ("the Electricity Act") and the Ontario Energy Board ("OEB" or the "Board") Act ("the OEB Act")), and the finalization of the financing structure (including the bylaws and regulations of the OPG Trust) and other agreements will take several weeks. Accordingly, our judgment on the appropriate application of PSAS for the specific matters described below is based on the facts, circumstances and assumptions provided to us. The finalization of the legislation, regulations, financing structure and other agreements may impact the comments and conclusions set out herein. Our comments and conclusions are based on the proposed Act and related matters as they exist at the date of this letter.

The following three issues are addressed in this letter:

Issue #1: Can the IESO recognize a regulatory asset related to the variance account created by the proposed Act?

Issue #2: Is the trust to be established by Ontario Power Generation (the "OPG Trust") controlled by the IESO according to the guidance issued under PSAS 1300 *Government Reporting Entity* and therefore subject to consolidation by IESO?

Issue #3: What is the accounting treatment for derecognition of the regulatory asset by the IESO upon transfer of the variance account to the OPG Trust?

Background for issue #1

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party) 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. Management of the IESO has determined that the Company is an Other Governmental Organization and accordingly prepares its financial statements in accordance with PSAS.

2. IESO is rate regulated by the OEB in accordance with the Electricity Act and the OEB Act.

3. *Extract from the 2016 IESO financial statements, note 3 New Accounting Policies,* audited by KPMG "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."

4. *Extract from the 2016 IESO financial statements, note 2(d) Summary of Significant Accounting Policies, Regulatory 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 applies guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, *Regulated Operations ("ASC 980")*, in this policy."

5. *Extract from Section 78(3.3) of the OEB Act:* 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.

6. Currently, IESO recognizes two regulatory assets for unrecovered smart metering expenses and unrecovered PSAB transition items as permitted by rates approved by the OEB. In addition, in accordance with section 25.33 of the Electricity Act, IESO also recognizes variance accounts (eg. OESP, RPP and RRRP variance accounts) to record all amounts payable or receivable by it in connection with the amounts paid to generators, the Ontario Electricity Financial Corporation ("OEFC"), distributors and to entities with whom the IESO has a procurement contract.

7. The Electricity Act, OEB Act and other regulations will be amended to reflect the following *extracts of the proposed Act:*

   Section 1xx Definitions, Transfer of regulatory asset

   (3) In this Act, a reference to the transfer of a specified portion of the regulatory asset is a reference to the following, as provided for in subsection 22xx (3):

1. A reduction in the balance in the variance account.
2. The adjustment of the regulatory asset.
3. The acquisition by a financing entity of the investment interest corresponding to the specified portion of the regulatory asset.

Section 20.1xx Variance account to be established

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

(2) 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 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, including adjustments in respect of the period that commences after May 1, 2017 and before the day this section comes into force.

(3) Subject to the correction of any obvious error by IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

(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.

Section 21xx Regulatory asset established

(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.

(2) Subject to subsection (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.

(3) 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.

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

Section 30.1xx Board's Authority

(2) Despite anything to the contrary in the OEB Act, the Board may exercise any of its responsibilities under this Act without a hearing.

8. It is expected that the funding shortfall recorded by the IESO in the variance account (the regulatory asset) will be transferred to an investment asset owner (ie a trust to be established by OPG) on a monthly basis and cash collected within a short period of time. The total IESO funding shortfall for the period from May 1, 2017 to April 30, 2047 is estimated at $28 billion plus interest.

Appropriate Accounting Principle for issue #1

ASC 980 Regulated Operations

– For general-purpose financial reporting, an incurred cost for which a regulator permits recovery in a future period is accounted for like an incurred cost that is reimbursable under a cost-reimbursement-type contract. [980-10-05-6]

- 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. [980-10-05-8]
- 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.
  (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. [980-10-15-2]
- 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. [980-10-20] Glossary
- Failure of an entity's operations to continue to meet the criteria in paragraph 980-10-15-2 can result from different causes. Examples include the following:
  (a) Deregulation.
  (b) A change in the regulator's approach to setting rates from cost-based rate-making to another form of regulation.
  (c) Increasing competition that limits the entity's ability to sell utility services or products at rates that will recover costs (as used in paragraph 980-10-15-2).
  (d) Regulatory actions resulting from resistance to rate increases that limit the entity's ability to sell utility services or products at rates that will recover costs if the entity is unable to obtain (or chooses not to seek) relief from prior regulatory actions through appeals to the regulator or the courts. [980-20-15-2]
- 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. [980-340-25-1]

– Rate actions of a regulator can reduce or eliminate the value of an asset. If a regulator excludes all or part of a cost from allowable costs, the carrying amount of any asset recognized pursuant to paragraph 980-340-25-1 shall be reduced to the extent of the excluded cost. Whether other assets have been impaired shall be judged the same as for entities in general and the Impairment or Disposal of Long-Lived Assets Subsections of Subtopic 360-10 shall apply. [980-340-35-1]

– 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. [980-340-40-1]

– 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. [980-340-55-2]

– 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. [980-340-55-3]

Issue #1: Can the IESO recognize a regulatory asset related to the variance account created by the proposed Act?

As noted above, as of January 1, 2016, the IESO changed its accounting policy to recognize the economic impacts of rate regulation and now applies guidance from US GAAP Topic 980, *Regulated Operations,* as PSAS does not have any specific guidance for entities with rate-regulated activities.

IESO concluded that it met the requirements of PS2120.02, which allows them to reflect the impacts of rate regulation, as it is considered that the change of accounting policy in its 2016 financial statements resulted in a more appropriate presentation of transactions in its financial statements. 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.

The regulatory framework in Ontario relating to the generation and sale of electricity will be significantly impacted by the proposed Act. Currently, a substantial amount of the energy purchased from the generators is collected by IESO from the local distribution companies through the customer billing, with the remaining being recovered through variance accounts over a period of 12 months maximum. As mentioned above, the effect of the proposed Act is to defer the collection of a total estimated amount of $28 billion (plus interest) of energy purchased from the generators over a period of 30 years. The proposed Act will not permit IESO to collect the funding shortfall before May 1, 2021 and the recovery process will be established through regulations. Such a long-term deferred recovery plan requires IESO to consider whether the uncollected energy costs qualify for deferral as a regulatory asset and whether it continues to meet the criteria that allow IESO to use the guidance for regulated operations of Topic 980. These two accounting issues are analyzed in the two tables below.

Criteria for the recognition of regulatory assets

ASC 980-340-25-1 states that 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:

Criteria	Comment	Evaluation
(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. *(emphasis added)* 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.	The proposed Act states that, • *A recording of the balance in the variance account is determinative of the balance as of the time of the recording.* • *Effective May 1, 2017, 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.* • *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.* • *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.* Based on the proposed Act, IESO has the right to recover the balance recorded in the variance account. As a result, it is clear that IESO will be able to recover the amount previously incurred rather than to provide for expected levels of similar future costs.	Met

Criteria for the adoption and continued use of ASC 980 guidance

Deferred recovery plans are plans adopted by regulators or legislations in response to significant increases in costs (e.g. purchased power costs). These plans typically provide for rates to remain fixed or increase moderately with a variance account mechanism to capture costs in excess of the level allowed in current rates. A regulated utility subject to such plans is required to consider whether it continues to meet the criteria that allow it to use the guidance for regulated operations of Topic 980, especially criteria ASC 980-10-15-2 (b).

The proposed plan for the recovery of purchase power costs over a 30 year period is considered a deferred recovery plan as the rates for the first four years will remain fixed and subsequently the rates will increase moderately with a variance account to capture energy costs in excess of the level allowed in current rates. The following is an analysis of the ASC 980-10-15-2 criteria.

Criteria	Comment	Evaluation
(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	Currently, IESO recognizes regulatory assets related to smart meters and PSAS transition costs as permitted by rates approved by the OEB and regulatory liabilities related to the variance accounts (eg. OESP, RPP and RRRP variance accounts) established under section 25.33 of the Electricity Act related to the procurement of energy.	Met

Criteria	Comment	Evaluation
regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.	It is important to note that both Hydro One and OPG are classified as government business enterprises and are reporting under IFRS in their consolidated financial statements, are consolidated by the modified equity method into the province's books, are regulated by the OEB, and their respective regulatory assets and liabilities are reported in the province's books.	

(b) 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.
	
	As mentioned above, a regulated utility subject to a deferred recovery plan is required to consider whether it continues to meet the criteria ASC 980-10-15-2 (b).
	
	This criterion requires a cause-and-effect relationship between a reporting entity's costs and its revenue. In addition, the timing of cost recovery and the related frequency of ratemaking is important. A reporting entity should consider its rate case experience, including the design of its rates and timing of recovery, when determining whether this criterion is met. These factors are analyzed below.
	
	Frequency of rate case
	
	- Currently, IESO is subject to OEB's annual reviews
	
	- Although the recovery of purchase energy costs will be frozen at the approved rate on May 1, 2017 for the first four years, the IESO will be granted a right to recover after May 1, 2021 the funding shortfall recorded in the variance account during the four-year period.
	    - *A recording of the balance in the variance account of the balance is determinative of the balance, as of the time of the recording. (We note that this confirms that there will be no prudence review by the OEB)*
	    - *Right to recover the balance recorded in the variance account.*
	    - *Obligation on the part of the OEB to dispose the variance account in accordance with the regulation.*
	
	- Subsequent to May 1, 2021, the OEB will be required to determine and set rates payable by specified consumers to allow for IESO to recover the balance
		Met

Criteria	Comment	Evaluation
	recorded in the variance account. - *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.* - *Despite anything to the contrary in the OEB Act, the Board may exercise any of its responsibilities under this Act without a hearing.* *Rates are designed to recover incurred costs* - There is a cause-and-effect relationship between the purchase energy costs and revenue, as IESO will be allowed to recover the costs incurred. - *A recording in the variance account of the balance in the variance account is determinative of the balance as of the time of recording (We note that this confirms that there will be no prudence review).* - *Right to recover the balance recorded in the variance account.* - *Obligation on the part of the OEB to ensure IESO will recover the balance recorded in the variance account.* *Periods of alternative ratemaking (e.g., rate freezes)* Evaluation of the second criterion requires additional judgment if the regulated utility is subject to any form of ratemaking that introduces uncertainty about the cause-and-effect relationship between costs and rates. A rate freeze period is defined as a fixed rate that is charged to customers during a period of time (more than two years) and the utilities are exposed to increases in operating and energy costs with no ability to recover the variances. This is not the case as IESO will be granted the right to recover fully the funding shortfall recorded in the variance account, including the first four-year period. - *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.*	

Criteria	Comment	Evaluation
	Costs uncertainty As the IESO will be granted the right to fully recover the funding shortfall recorded in the variance account, there is no uncertainty about the recovery of the costs. *Disallowances of costs* The OEB has never disallowed the recovery of any material costs incurred by IESO. More importantly, as the IESO will be granted by legislation the right to fully recover the funding shortfall recorded in the variance account, there is no risk of the potential disallowance of the purchase power costs. Based on the analysis of the above factors, there are no indications that this criterion would not be met. The above factors establish that there will be a direct cause-and-effect relationship between IESO's costs and its future collection.	

(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."	The remaining criterion is whether limitations, including considering demand levels at the approved rates, on the extent of recovery of the regulatory asset could prevent the IESO from recognizing a regulatory asset for the entire balance in the recovery right granted to the IESO.
	
	The proposed Act notes that:
	
	- *Effective May 1, 2017, the IESO's right to recover the balance in the variance account is subject to the following:*
	  o *The Board shall, from time to time, determine and set rates payable by specified customers to allow for IESO to recover the balance recorded in the variance account.*
	  o *IESO shall not be entitled to collect the variance account from specified consumers before May 1, 2021.*
	
	Although the process, especially the timing of the recovery of the regulatory asset has not been established yet by the OEB, the wording and intent of the proposed legislation is clear that it is intended by law to be recoverable over the period of 30 years. Further, 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
		Met

Criteria	Comment	Evaluation
	need to be continually evaluated throughout the recovery period.	

Management conclusion:

IESO management has concluded that the IESO can recognize a regulatory asset related to the variance account created by the proposed Act based on the foregoing analysis.

The variance account created by the proposed Act is subject to rate regulation by the OEB and the variance account will be established with the right to collect funds against the variance amount in the future. In these circumstances, the IESO is able to establish a regulated asset. The IESO financial statements are prepared in accordance with Canadian public sector accounting standards. Although PSAB does not provide specific guidance on rate regulated accounting, it does under PS 1150 *Generally Accepted Accounting Principles* allow for guidance to be followed from other accounting frameworks. IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, Regulated Operations in its accounting policies.

Our conclusion:

We have considered the foregoing analysis and management's conclusion. We concur that the variance account created by the proposed Act 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.

Background for issue #2

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party), in addition to those described in the background for issue #1, are as follows:

1. The IESO currently has the right to collect the global adjustment ("GA") monthly from ratepayers through provisions in the Electricity Act. It is proposed that collection of a certain portion of the monthly GA be deferred in a regulatory asset for collection in the future, and that the right to recover the deferred GA from ratepayers be used as the basis for structured financing/ securitization.
2. In connection with the proposed Act, it is proposed that a trust to be created as a financial vehicle by OPG in connection with the deferred GA. The OPG Trust will finance the deferral of the GA by purchasing the regulatory asset from the IESO for the principal amount of the GA being deferred.
3. The OPG 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 of Ontario).
4. OPG will be appointed as the Financial Services Manager and will be given the responsibility to direct the activities of the OPG Trust, through a services agreement and/or through the Trust's constating documents.

Appropriate Accounting Principle for issue #2

PS1300 *Government Reporting Entity*:

PSAS refer to government or government organizations. For the purpose of this analysis, the PSAS guidance below relating to government or government organizations should be read and understood as being the IESO (emphasis added).

- The government reporting entity should comprise government components and those organizations that are controlled by the government. [PS 1300.07]
- Control is 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 organization's activities. [PS 1300.08] (emphasis added).
- Whether a government controls an organization is a question of fact that must be determined by reference to the definition of control established in paragraph PS 1300.08 and the particular circumstances of each case. The determination of the fact that control exists will require the application of professional judgment. Government achieves its objectives through a wide range of organizations which individually will fall somewhere along a continuum. At one end of the continuum, it will be clear that an organization does not have the power to act independently and is controlled by the government. At the other end, the organization will have the power to act independently and, while government will have a level of influence on the organization, it will be clear that it does not have control. Along the continuum, consideration needs to be given to the nature of the relationship between the government and the organization in order to determine whether control exists. This Section provides guidance intended to assist in this assessment. [PS 1300.10]
- In applying this guidance, it is necessary to determine the substance of the relationship between the government and the organization. The true nature of certain relationships may not be completely reflected by their legal form. All relevant aspects and implications of the relationship would be considered in determining whether or not the government controls the organization. Where various aspects of the relationship are designed, in effect, to achieve an overall objective, they would be viewed as a whole. [PS 1300.11]
- Financial and operating policies are principles and practices that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control because it establishes the fundamental basis for the conduct of the organization's operations and the achievement of its mission and mandate. [PS 1300.13]
- 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. [PS 1300.14]
- A government does not need to manage an organization's activities on a day-to-day basis to control the organization. It is the government's existing authority to determine the policies governing those activities that is important. [PS 1300.15]

– For the purposes of this Section, it is assumed that where the government has the power to govern the financial and operating policies of an organization, it expects to derive a financial or non-financial benefit. The government may also be exposed to the risk of loss. [PS 1300.16]

Issue #2: Is the trust to be established by Ontario Power Generation (the "OPG Trust") controlled by the IESO according to the guidance issued under PSAS 1300 *Government Reporting Entity* and, therefore, subject to consolidation by IESO?

Under PSAS, IESO is required to consolidate all entities that are considered to be part of its reporting entity, applying the guidance provided in *Section PS 1300 Government Reporting Entity.* Under PS 1300, IESO must consolidate all entities it "controls".

In determining whether or not the OPG Trust should be consolidated by IESO, it must first be determined whether or not the IESO exercises control as a consequence of power to govern the financial and operating policies of the OPG Trust resulting in expected benefits to the IESO or the risk of loss from the activities of the OPG Trust.

PS 1300.17 indicates that "whether a government controls an organization is a question of fact that requires the application of professional judgment based on the definition of control in this Section and the substance of the relationship in each case." Under PS 1300.08 control is defined 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 organization's activities". Therefore, the determination of whether IESO will consolidate the OPG Trust will be based on an assessment of whether IESO is considered to control the OPG Trust based on the indicia of control set out in PS 1300. The assessment of the IESO's control of the OPG Trust is made based on the proposed Act, facts and nature of the relationship between the IESO and the OPG Trust and based on facts and assumptions provided by IESO. PS 1300.18 and .19 set out 11 potential indicia of control. Several of these indicia have been categorized as more persuasive of a finding of control (see the first four indicators in the table below). For each indicator that applies, the degree of government influence would determine its importance as evidence of control. Finally, the indicia are considered both collectively and individually.

A detailed analysis of the 11 Indicators of control is provided in the following table.

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
Primary (more persuasive) indicators (PS 1300.18):		
Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization	- The proposed Act states: - *OPG is appointed as the Financial Services Manager for the purposes of this Act. (Section 13xx)* - *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. (Section 14xx (1))* - *Subject to any prescribed limitations, the Financial Services Manager may establish and charge fees to recover, the costs of doing anything the*	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?

	Financial Services Manager is required or permitted to do under this or any other Act; and any other type of expenditure, the recovery of which is permitted by the regulations. (Section 14xx (3))
	- The Electricity Act, 1998 (EA) will be amended as follows:
	  - *In addition to the objects mentioned in subsection (1), the objects of OPG 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." (Section 53.1 (1.1))*
	  - *"OPG 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." (Section 53.1 (1.2))*
	- OPG will establish a trust to manage the collection of the regulatory asset and related financing and administrative expenses. The Board of Trustees of the OPG Trust will be the governing body of the Trust and will be appointed by OPG. OPG will have the power to unilaterally appoint or remove all members of the Board of Trustees.
	- The IESO will not have any rights in respect of the appointment or replacement of the Board of Trustees of the OPG Trust.	

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	- Section 23xx of the proposed Act states:
	  - *A transfer of a specified portion of the regulatory asset under section 22xx constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.*
	  - *Without limiting subsection (1), any transfer agreement that states an intention of the parties for*
		No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
	IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of IESO's right to recover the corresponding amount in the variance account and not merely as a security interest. - *At the time a transfer of the regulatory asset is made under section 22xx, 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.* - Based on the proposed Act, *upon transfer by IESO of a portion of the regulatory asset to the OPG Trust, the investment asset resulting from the transfer is immediately vested in the OPG Trust, free and clear of any adverse claim.* (Section 24xx (1.1)) - Therefore, upon transfer of the regulatory asset to the OPG Trust, IESO will no longer have access/ability to direct the regulatory asset nor have the ongoing responsibility for losses. - The credit risk related to the collection of the investment asset is borne by the OPG Trust.	
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 organization	- IESO will not have any ownership in the OPG Trust and will not have the power to govern the financial and operating policies of the OPG Trust.	No
Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations	- IESO will not have the power to dissolve the organization.	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
Other indicators that may provide evidence of control exist when government has the power to (PS 1300.18):		
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	- OPG will have the power to unilaterally appoint or remove all members of the Board of Trustees of the OPG Trust. - IESO will not provide input in the appointment of members of the Board of Trustees.	No
Appoint or remove the CEO or other key personnel	- OPG will have the power to unilaterally appoint or remove all members of the Board of Trustees of the OPG Trust and other key personnel.	No
Establish or amend the mission or mandate of the organization	- The Trust will be established by OPG and the mandate of the Trust will be set based on the proposed Act.	No
Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis	- The proposed Act states: - *OPG is appointed as the Financial Services Manager for the purposes of this Act. (Section 13xx)* - *"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 and financing an investment asset in accordance with this Act or for the purposes of refinancing a funding obligation." (Section 16 (1))* - OPG is the Financial Services Manager, not IESO. - IESO is not involved in the preparation or approval of the business plans or budget of the OPG Trust.	No
Establish borrowing or investment limits or restrict the organization's investments	- Section 17 of the proposed Act states: - *The Financial Services Manager shall ensure that funding obligations incurred for the purposes*	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
	of this Act are incurred in a manner that is consistent with the applicable Financing Plan. - OPG not IESO, is responsible for ensuring that the borrowings of the OPG Trust meet the above conditions.	
Restrict the revenue-generating capacity of the organization, notably the sources of revenue	- N/A	No
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	- As mentioned above, OPG will be granted by legislation the power to establish or amend the policies of the OPG Trust and the ability to appoint and remove all members of the Board of Trustees.	No

Management Conclusion:

IESO management has concluded that the OPG Trust to be established would not be controlled by the IESO and therefore is not subject to consolidation by the IESO.

Based on the foregoing analysis of the 11 indicators of control as defined in Section PS 1300 *Government Reporting Entity,* considered both individually and collectively there is no evidence of control by the IESO in respect of the OPG Trust. The IESO will not have the power to govern the Trust, nor have ongoing access to Trust's assets. The IESO will also not have any voting shares or future rights to the Trust nor the power to dissolve the Trust. Without control, the Trust is not subject to consolidation within the IESO financial statements.

Our Conclusion:

We have considered the foregoing analysis and management's conclusion. We concur that based on the Proposed Act, none of the four primary (more persuasive) indicators of control are considered to be met, and none of the seven other indicators of control are considered to be met. Accordingly, we concur that the IESO does not control the OPG Trust under the proposed Act and hence would not consolidate the OPG Trust.

The adoption of the proposed Act (including the subsequent amendments of the Electricity Act and the OEB Act) and the finalization of the financing structure (including the bylaws and regulations of the OPG Trust) and other agreements will take several weeks. Accordingly, our judgment on the appropriate application of PSAS to the conclusion on control may change subject to further analysis of any changes to the terms of the proposed Act or review of the final regulations, financing structure and other agreements.

Background for issue #3

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party), in addition to those described in the background for issues #1 and 2, are as follows:

1. The total IESO funding shortfall for the period from May 1, 2017 to April 30, 2047 is estimated at $28 billion plus interest and will be recorded by the IESO in a variance account recognized as a regulatory asset.
2. The IESO does not currently have the financial capability to finance the regulatory asset and will transfer the variance account to an investment asset owner (i.e. OPG Trust) on a monthly basis.
3. The IESO will obtain a written legal opinion as to the validity and enforceability of the transfer and sale of the regulatory asset.
4. Based on an assessment of control performed under the issue #2, IESO will not consolidate the OPG Trust. We understand that an assessment of control under International Financial Reporting Standards ("IFRS") has been performed by OPG and they have concluded that the OPG Trust will be consolidated by OPG; we note that the financial reporting framework used by OPG in preparing its financial statements for consolidation into the Province's books is IFRS.
5. The Electricity Act, OEB Act and other regulations will be amended to reflect the following *extracts from the proposed Act:*

   Section 11xx IESO to receive amounts

   (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*.

   (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.

   (5) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the accounts referred to in subsection (2), to or for the benefit of the investment interest owners in accordance with the regulations.

   Section 12xx 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.

   Section 22xx Transfer of regulatory asset

   (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.

   (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.

(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 investment interest.

Section 23xx Validity of transfer

(1) A transfer of a specified portion of the regulatory asset under section 22xx constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.

(2) Without limiting subsection (1), any transfer agreement that states an intention of the parties for IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.

(3) At the time a transfer of the regulatory asset is made under section 22xx, 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 transferee shall have priority over any liens in favour of those persons.

Section 25xx Investment asset established

(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 are 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.

Section 26xx Transfer of investment interest

(2) An investment interest owner may transfer all or a portion of 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.

Section 28xx Investment interest owner may grant security interest

(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.

(3) All provisions of the Personal Property Security Act shall apply to the investment asset and each investment interest on the basis that the investment asset and each investment interest is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by an 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.

6. The terms of the transfer agreement between the IESO and the OPG Trust that will be signed and executed upon transfer of the regulatory assets will be in compliance with the dispositions of the proposed Act.

Appropriate Accounting Principle for issue #3

The Derecognition Section of ASC 980-20-40 provides guidance on determining whether and when an entity should remove an item from the financial statements. For example, the entity would derecognize an asset because it no longer has rights to the asset or it would derecognize a liability because it no longer has any obligation. [ASC 980-20-40]

Failure of an entity's operations to continue to meet the criteria in paragraph 980-10-15-2 can result from different causes. Examples include the following:

(e) Deregulation.

(f) A change in the regulator's approach to setting rates from cost-based rate-making to another form of regulation.

(g) Increasing competition that limits the entity's ability to sell utility services or products at rates that will recover costs (as used in paragraph 980-10-15-2).

(h) Regulatory actions resulting from resistance to rate increases that limit the entity's ability to sell utility services or products at rates that will recover costs if the entity is unable to obtain (or chooses not to seek) relief from prior regulatory actions through appeals to the regulator or the courts. [ASC 980-20-15-2]

PS1000 *Financial statement concepts*:

- This Section is to be used by preparers and auditors of financial statements in exercising their professional judgment as to the application of generally accepted accounting principles and in establishing accounting policies in areas in which accounting principles are developing. [PS1000.03]
- Financial statements should communicate information that is relevant to the needs of those for whom the statements are prepared, reliable, comparable, understandable and clearly presented in a manner that maximizes its usefulness. [PS1000.24]
- An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph [PS3210.04]. 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. [PS1000.37]

PS3210 *Assets*:

- 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. [PS3210.03]
- 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. [PS3210.04]
- 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. [PS3210.22]

PS3430 *Restructuring transactions* [1]

- 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. [PS3430.21]
- 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. [PS3430.24]
- 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. [PS3430.25]

1 This Section applies to fiscal years beginning on or after April 1, 2018. […] Earlier adoption is permitted."

Issue #3: What is the accounting treatment for derecognition of the regulatory asset by the IESO upon transfer of the variance account to the OPG Trust?

Although ASC 980-20-40 states that

> *"Derecognition Section provides guidance on determining whether and when an entity should remove an item from the financial statements. For example, the entity would derecognize an asset because it no longer has rights to the asset or it would derecognize a liability because it no longer has any obligation."*

Subtopic 980-20 relates to discontinuation of rate-regulated accounting when an entity no longer meets the criteria in paragraph 980-10-15-2. ASC 980-20-15-2 provides examples of when an entity no longer meets the criteria, including deregulation and change of the form of regulation. Thus, ASC 980 does not provide clear guidance for the derecognition of a regulatory asset other than in connection with the discontinuation of rate-regulated accounting.

The above guidance in ASC 980-20-40 provides general principles for the derecognition of assets.

It should also be noted that PSASs provide limited guidance on derecognition of non-financial assets and liabilities. Section 3430 *Restructuring transactions,* which is applicable for fiscal years on or after April 1, 2018 with early application permitted, has guidance for the derecognition of assets and liabilities.

- Paragraph 21 states that 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.
- As stated in paragraph 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 derecognition of the asset and liability transferred would be appropriate and whether its continued involvement gives rise to a new asset or new liability that needs to be recognized.

Recognizing the proposed transaction is not a restructuring transaction, Section 3430, which has recently been issued by PSAB, provides current evidence of thinking in the application of the general PSAS principles in respect of the recognition and derecognition of assets and liabilities. Accordingly, the analysis as to whether the regulatory asset transferred to the OPG Trust can be derecognized is based on the foregoing guidance.

Criteria for the recognition of an asset

PS3210.03 states that 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. More generally, PSAS PS1000.37 suggests that an asset would no longer be recognized when it fails to meet the definition of an asset:

Criteria	Comment	Evaluation
Assets (PS3210.04/ PS1000.36): 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,	Based on the guidance, the regulatory asset does not qualify as an asset of IESO if it cannot obtain the future economic benefits. Upon transfer of the regulatory asset, IESO will have no further rights or obligations in connection with the asset transferred. - *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.* - *Upon receipt by IESO of the payment by the financing entity, IESO shall retain no further right, title or interest in the corresponding investment interest.*	Not Met

Criteria	Comment	Evaluation
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. *Financial statement concepts (PS1000.37):* An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph [see above]. 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.	- *A transfer of a specified portion of the regulatory asset under section 22xx constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.* - *Without limiting subsection (1), any transfer agreement that states an intention of the parties for IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.* - *At the time a transfer of the 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."* Upon transfer of the regulatory asset, the OPG Trust will have the right to sell the asset to another party or to grant a security interest in favour of any person to secure a funding obligation. - *Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest."* - *An investment interest owner may transfer all or a portion of 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.* - *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.* Based on the proposed Act, it is clear that IESO will have no rights to the benefits associated with the future cash inflows related to the regulatory asset as it will have transferred its right to recover the IESO funding shortfall to the OPG Trust. Further, it is also clear that IESO will have lost control over the regulatory asset once it is transferred to OPG Trust.	

Management conclusion:

IESO management has concluded that the regulatory asset will be derecognized upon transfer of the variance account to the OPG Trust.

The transfer of the variance account transfers the control and the benefits associated with the right to collect funds in the future against the variance amount to the OPG Trust. This will eliminate the IESO asset by the amount of the transfer as the IESO will no longer control an economic resource or have access to future economic benefits for that amount. The funds collected from the transfer will in turn reduce the associated debt held by the IESO, maintaining the IESO's net $ nil balance in the market accounts.

Our conclusion:

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.

Other Matters

The ultimate responsibility for the decision on the appropriate application of PSAS for the specific transactions rests with management as preparers of the financial statements. Our judgment on the appropriate application of PSAS for the specific transaction is based solely on the facts, circumstances and assumptions provided to us as described above. Should these facts and circumstances differ, our conclusion may change.

This letter has been prepared in draft form and will be updated upon receipt of the adopted legislation (including the amendments of the Electricity Act and the OEB Act) and finalized financial structure (including the bylaws and regulations of the OPG Trust) and other relevant agreements necessary for us to provide our final opinion, of which legislation and other relevant agreements are expected to be enacted/ finalized on or before June 30, 2017. This letter will not be updated as a consequence of pronouncements by the Public Sector Accounting Board, or any other authoritative bodies, that occur subsequent to the date of this letter.

This letter is intended solely for the information and use of the Board of Directors and management of the Company, and is not intended to be and should not be used, quoted, relied upon by, or otherwise referred to by anyone other than these specified parties or for any other purpose.

No one other than the Board of Directors and management of the Company is authorized by KPMG to rely upon any information or views expressed herein. KPMG shall have no responsibility or liability for loss or damages or claims, if any, to or by any third party as this letter has not been prepared for, and is not intended for, and should not be used by, any third party or for any other purpose.

Yours very truly,

per Michel Picard
Partner
(416) 777 8414
mpicard@kpmg.ca

Appendix A:

Draft of the Ontario Fair Hydro Plan Act, 2017

Version 6

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 Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario Fair Hydro Plan Act, 2017, 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 residential consumers. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of those 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.

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 residential consumers in the future pay their fair share for the benefits that they receive from the investments already made.

CONTENTS

[1] FLS: please see the preamble of the *Green Energy Act, 2009.*

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 and payable by specified consumers; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to 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 amounts to be paid or reflected by 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 or amounts 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 IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed,

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

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

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

(a) eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies,

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

(c) promoting conservation, demand management and energy efficiency, and

(d) investing in energy infrastructure to ensure a clean, modern and reliable system; (“French”)

“electricity vendor”[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) IESO in circumstances where it directly invoices a specified consumer for electricity used in Ontario, or

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

“fair allocation amount” means an amount calculated under section 15xx; (“French”)

“finance amount” means the finance amount determined in accordance with the regulations; (“French”)

“financing entity” means an entity established or caused to be established as described in subsection 17xx (3); (“French”)

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

“Financing Plan” means a plan prepared under section 16xx; (“French”)

“funding obligation” means a payment obligation incurred by or on behalf of an investment interest owner to fund its ownership of an investment interest or a payment obligation that meets such other criteria as may be prescribed; (“French”)

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

"funding rebate" means a payment obligation incurred by IESO as part of the transfer of the regulatory asset; ("French")

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

"IESO deferral" 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")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system within the meaning of the *Electricity Act, 1998*; ("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 July 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047 or ending on such later day as may be prescribed,

(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")

"transfer" includes, when used in relation to an investment interest, the assignment, conveyance, disposition or sale of the investment interest; ("French")

"true up amount" means a true up amount determined in accordance with the regulations; ("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")

"variance account" means the variance account established by IESO under subsection 20.1xx (1). ("French")

Specified consumer

(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.

Transfer of regulatory asset

(3) In this Act, a reference to the transfer of a specified portion of the regulatory asset is a reference to the following, as provided for in subsection 22xx (3):

1. A reduction in the balance in the variance account.

2. The adjustment of the regulatory asset.

3. The acquisition by a financing entity of the investment interest corresponding to the specified portion of the regulatory asset.

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

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

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 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 and clean energy benefits are fairly allocated among present and future specified consumers;

(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; and

(c) to align clean energy costs with clean energy benefits, in order to provide fairness for specified consumers.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) No action or omission by the Board, the Minister or the Crown shall be effective to reduce, impair, postpone or terminate the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or to impair or postpone the invoicing, collection or remittance of the clean energy adjustment.

Agreements

(2) The Minister and the Minister of Finance may together, 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

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

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

(a) authorize the Minister and the Minister of Finance, acting together 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 of the guarantee or indemnity and the maximum liability for the guarantee or indemnity;

(b) specify terms and conditions that must be included in any guarantee or indemnity given by the Minister and the Minister of Finance; and

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

PART II
FAIR ADJUSTMENT

Definitions

6xx. In this Part,

"regulated rate 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 would, if the consumer were not subject to this Act, be invoiced the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*. ("French")

Regulated rate consumer, first adjustments

6.1xx (1) Despite any order under subsection 78 (3.1) of the *Ontario Energy Board Act, 1998* and despite section 79.16 of that Act, the electricity rates payable by regulated rate consumers for the period beginning on July 1, 2017 and ending on April 30, 2018 are the rates, as determined by the Board, that would achieve the following outcome: a fictional regulated rate consumer who meets the prescribed criteria would be charged an invoice amount that is 25 per cent less than the invoice amount that would have been charged to that consumer under the comparison rates described in subsection (2).

Comparison rates

(2) The comparison rates are the rates that would have been effective May 1, 2017 if they had been 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 taking into account any forecasted impact of any other provisions of this Act.

Invoice amounts

(3) Each invoice amount mentioned in subsection (1) shall be determined in accordance with the regulations.

Other specified consumers, first adjustment

6.2xx (1) For the period beginning on July 1, 2017 and ending on April 30, 2018, the adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998* shall, with respect to specified consumers who are not regulated rate consumers, be further adjusted by electricity vendors in accordance with the determinations of the Board under subsection (2).

Board to make determinations

(2) The Board shall, in accordance with the regulations, determine the adjustments to be made by electricity vendors.

Same, regulations

(3) The regulations may specify different adjustments to be made in respect of prescribed classes of specified consumers who are not regulated rate consumers.

Determinations by Board

6.3xx The Board shall make the determinations mentioned in sections 6.1xx and 6.2xx no later than fifteen business days after the day this section receives Royal Assent and, regardless of whether the Board makes the determinations before or after July 1, 2017, the determinations shall be effective as of July 1, 2017.

Implementation by electricity vendors

6.4xx (1) As soon as possible after the Board makes determinations under section 6.3xx, each electricity vendor shall, in respect of electricity used on or after July 1, 2017, ensure that its invoices reflect the determinations of the Board.

Same

(2) The electricity vendor shall ensure that, if any of its specified consumers have been invoiced in a manner that does not reflect the determinations of the Board under section 6.3xx, the specified consumer receives the difference between the amounts shown on the invoice and the amounts reflecting the Board's determinations, provided as a lump sum credit on the first invoice issued after the electricity vendor has adapted its invoices or by such other means as may be prescribed.

Subsequent adjustments

7xx. (1) Despite clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998* and subject to subsection (2), the Lieutenant Governor in Council may prescribe the methodology to be applied by the Board after April 30, 2018 for the purpose of determining,

(a) electricity rates for specified consumers; or

(b) adjustments to be applied by electricity vendors to the adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998* in respect of prescribed classes of specified consumers.

Limitation

(2) Any prescribed methodology to be applied in respect of a period after June 30, 2021 shall have regard to the following:

1. The fair allocation amount in respect of the period.

2. Any clean energy adjustments payable in respect of the period.

3. Such other matters as may be prescribed.

Sub-metering

7.1xx (1) This section applies if a specified consumer provides to another person electricity in respect of which a determination of the Board referred to in section 6.3xx or section 7xx applies.

Same

(2) If an invoice for the electricity is issued to the person by the specified consumer or a unit sub-meter provider providing unit sub-metering for the specified consumer, the amount payable for the electricity by the person who is liable to pay the invoice shall be determined in accordance with the regulations.

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.

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 inconsistent with the Financing Plan, including in a manner that failed to provide for the reasonable alignment of the estimated finance amount with the fair allocation amount.

Terms

(3) The payment shall be made 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.

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.

Unit sub-metering

(6) A specified consumer who provides electricity through sub-metering may collect amounts in respect of the clean energy adjustment payable under this section in accordance with the regulations.

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 the invoice reflects a clerical, typographical or calculation-related error.

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 taking the following steps:

1. Calculate the sum of the following:

   i. The estimated finance amount in respect of the reference period.

   ii. The true up amount in respect of the reference period.

2. Divide the sum calculated under paragraph 1 by the number of months in the reference period.

Regulations re true up amount

(3) The Lieutenant Governor in Council shall, in making regulations with respect to the determination of the true up amount, 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 applicable 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 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 changing 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.

IESO to receive amounts

11xx. (2) 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 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 receiving those amounts:

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

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

3. Proceeds of amounts described in paragraphs 1 and 2.

Same, held in trust

(4) All amounts received by IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owners, be received and held in trust by IESO for the investment interest owners.

IESO to remit

(5) IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the accounts referred to 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 (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 IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such other 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 in respect of the clean energy adjustment and all proceeds of the payments shall, until paid to or for the benefit of the investment interest owners 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 in respect of the clean energy adjustment to IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this 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 providing information to IESO in respect of obligations under Part III and such other activities as may be prescribed.

Fees, etc.

(3) Subject to any prescribed limitations, the Financial Services Manager may establish and charge fees in relation to such matters as may be prescribed in accordance with the regulations.

Same, Board approval

(4) Before establishing fees under subsection (3), the Financial Services Manager shall submit them to the Board for approval in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Minister to calculate fair allocation amount

15xx. (1) Subject to subsections (2) and (3), before the first funding obligation is incurred, the Minister shall calculate a fair allocation amount in respect of each reference period, applying such method as the Minister considers appropriate and in accordance with the following steps:

1. Determine the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period.

2. Determine the estimated reduction in the amounts payable by specified consumers as a result of rates determined under Part II in respect of all previous reference periods, including the estimated reduction in clean energy costs described in clause (a) of the definition of "clean energy costs" in subsection 1 (1) that would otherwise have been payable by specified consumers in the absence of this Act.

3. Determine the amount, if any, by which the determination under paragraph 1 exceeds the determination under paragraph 2.

4. Calculate the sum of the amount determined under paragraph 3 and such other amounts as may be prescribed.

Principles

(2) In calculating the fair allocation amount, the Minister shall have regard to the following principles:

1. The purpose of calculating the fair allocation amount is to measure and allocate the estimated clean energy costs and estimated clean energy benefits fairly among the specified consumers in respect of each reference period.

2. Calculations should be made having regard to the need to align each fair allocation amount with the estimated finance amount payable during the reference period.

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

4. Such other principles as may be prescribed.

Assumptions

(3) In calculating the fair allocation amount, the Minister shall make such assumptions as the Minister considers to be reasonable regarding the following:

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

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

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

4. Such other assumptions as may be prescribed.

Minister to provide amount to Financial Services Manager

(4) The Minister shall provide the fair allocation amount in respect of each reference period to the Financial Services Manager.

Recalculation

(5) A calculation of the fair allocation amount under this Part may be changed by such person as may be prescribed in accordance with such requirements as may be prescribed.

Same

(6) No change under subsection (5) shall affect any clean energy adjustment that has already been determined under section 10xx or any funding obligations that have already been incurred before the change.

Information

(7) The Minister, IESO, the Financial Services Manager, the Board and electricity vendors shall provide such information as may be prescribed in accordance with the regulations for the purposes of facilitating a change to a calculation of the fair allocation amount.

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 and financing an investment asset in accordance with this Act or for the purposes of a refinancing.

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 funding obligations already incurred, the estimated finance amount that would, subject to any refinancing, become due and payable during a reference period will reasonably align with the fair allocation amount determined in respect of the reference period, in each case after reducing the fair allocation amount to reflect determinations of the Board under Part II 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

(4) In respect of each reference period from May 1, 2017 to April 30, 2021, no funding obligation shall be incurred that would result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) the amounts are payable in respect of a reference period in respect of which the Board has not made any determinations under Part II; or

(b) if the Board has made a determination 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 limit determined in accordance with the regulations.

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

(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 ensure that funding obligations incurred for the purposes of this Act are incurred in a manner that is consistent with the applicable Financing Plan.

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 to provide for the reasonable alignment of the estimated finance amount with the fair allocation amount.

Same

(2) For greater certainty, subsection (4) applies despite the failure of the Financial Services Manager to comply with subsection (1).

PART V
THE REGULATORY ASSET

IESO deferral

20xx. (1) The IESO deferral for each month, commencing May 1, 2017, shall be determined by IESO in accordance with the regulations.

Same, retrospective amounts

(1.1) For greater certainty, the regulations may provide for the IESO deferral to include an amount that was incurred by IESO on or after May 1, 2017 and before the day this Act comes into force.

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 deferral 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) IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

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

1. The IESO deferral for each month.

2. All payments received by 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, 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

(3) Subject to the correction of any obvious error by IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

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 acquired by the investment interest owner under the transfer.

Regulatory asset established

21xx. (1) Effective May 1, 2017, 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, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Limitation

(3) 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.

Same, limitations

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

Transfer of regulatory asset

22xx. (1) 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 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 IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by 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) IESO shall retain no further right, title or interest in the corresponding investment interest.

Validity of transfer

23xx. (1) A transfer of a specified portion of the regulatory asset under section 22xx constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.

Same

(2) Without limiting subsection (1), any transfer agreement that states an intention of the parties for IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.

Deemed perfection, etc.

(3) At the time a transfer of the regulatory asset is made under section 22xx, 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 transfer of a specified portion of the regulatory asset under section 22x creates an investment asset or, if it is not the first transfer, adds to the investment asset.

Same

(1.1) Upon transfer of a specified portion of the regulatory asset under section 22xx 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.

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 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 are 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.

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 any electricity vendor to recover payment 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, including any rights to receive funding rebates.

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, IESO, an agent of the investment interest owners or an owner in the Province of a distribution system within the meaning of the *Electricity Act, 1998*;

(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 owners to collect and enforce their 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 one 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 owners as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of 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 transferee a valid property right and interest in, to and under the applicable investment interest acquired 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 described 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.

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 the investment asset and each investment interest is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by an 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 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 VII
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, a person appointed under section 29xx is not an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Board's authority

30.1xx (1) Each electricity vendor, IESO and the Financial Services Manager 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.

No hearing required

(2) Despite anything to the contrary in the *Ontario Energy Board Act, 1998*, the Board may exercise any of its responsibilities under this Act without a hearing.

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 a transfer under this Act or the creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section 5XX 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.

Liability

35xx. (1) No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this Act, the regulations under this Act or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty.

Same

(2) Nothing in subsection (1) shall be read as limiting the effect of subsection 19 (1) of the *Electricity Act, 1998* or subsection 11 (1) of the *Ontario Energy Board Act, 1998*.

Same

(3) 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.

Regulations

38xx. (1) The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [5]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.

3. Prescribing types of payment obligations that constitute funding obligations.

4. Governing the determination of classes of specified consumers, which may include determination based on the manner in which rates are determined for different classes of specified consumers.

5. Governing the determination of the finance amount and the true-up amount and how those amounts are to be applied to the clean energy adjustment.

6. Governing the inclusion of information under this Act on or with invoices, which may include requiring notice to be provided by electricity vendors to specified consumers and other prescribed persons regarding the adjustments, including providing for different requirements in different circumstances and for different classes of specified consumers.

7. Governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on or with invoices issued to specified consumers, including the form that the information must take and the

[5] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

form of the invoices and the form of any notice to be provided to the specified consumer under this Act[6];

8. Governing the manner by which invoices or notices provided for under this Act are to be provided to specified consumers and other prescribed persons.

9. Governing the Financial Services Manager's power to establish and charge fees, including the ability to recover costs and expenditures and to earn a return.

9.1 Providing for a right of compensation for investment interest owners affected by a breach of section 25xx and the manner in which such a right may be enforced under this Act.

10. Prescribing the time within which any action required by this Act may be required to be done.

11. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

Limitation

(2) Despite subsection (1) or any other Act, no regulation under this Act shall have the effect of reducing, impairing, postponing or terminating the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or impairing or postponing the invoicing, collection, remittance or recovery of the clean energy adjustment.

PART VIII[7]
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,

[6] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

[7] 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 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 under section 22x 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 would be amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

(c) such amounts as may be prescribed that are paid or incurred by IESO in relation to the *Ontario Fair Hydro Plan Act, 2017*;

(1.1) Subsection 25.33 (2) of the Act would be amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

(c) such amounts as may be prescribed that are paid or incurred by IESO in relation to the *Ontario Fair Hydro Plan Act, 2017*;

(2) Subsection 25.33 (3) of the Act would be amended by adding the following paragraph:

4. A consumer who is a specified consumer within the meaning of the *Ontario Fair Hydro Plan Act, 2017* or such other consumer as may be prescribed.

(3) Clause 25.33 (4) (b) of the Act would be amended by adding "or as may be required by a regulation made under this Act or the *Ontario Fair Hydro Plan Act, 2017*" at the end.

(4) Subsection 25.33 (5) of the Act would be amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

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.

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, non-subsidiary

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act, if a financing entity is not a subsidiary of Ontario Power Generation Inc.,

(a) the assets and liabilities of the 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 the financing entity.

Deemed assets, subsidiary

(1.4) Despite any other provision of this Act, the *Business Corporations Act* or any other Act, if a financing entity is a subsidiary of Ontario Power Generation Inc.,

(a) the assets and liabilities of that financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its other subsidiaries; and,

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its other subsidiaries shall not form part of the assets and liabilities of that financing entity.

Definition, financing entity

(1.5) 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

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*.

205.1x Section 70 of the Act would be 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 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.

207xx. Subsection 79.16 (3) of the Act would be repealed.

PART IX
COMMENCEMENT AND SHORT TITLE

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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The Special Committee of the Board of Directors
Ontario Power Generation Inc. (the "Company")
700 University Avenue
Toronto, ON M5G 1X6

May 5 2017

Dear Sirs/Madames:

This letter is being issued to the Special Committee to assist them in their evaluation of management's analysis of the application of International Financial Reporting Standards ("IFRS") as adopted by the International Accounting Standards Board ("IASB")) to the specific transaction described in the Company's memorandum entitled *OPG Accounting Considerations of Ontario Fair Hydro* dated May 2 2017, herein referred to as "the Management Memorandum". We are issuing this letter in our role as auditors of the Company for the year ending December 31, 2017. As the Province consolidates OPG on an IFRS basis, this letter pertains solely to management's IFRS analysis as contained in the Management Memorandum.

We have read the Management Memorandum and we agree with management's analysis therein, subject to all of the assumptions and limitations identified therein. Specifically, we concur that the existing in draft legislation, along with the yet undrafted Regulation and special purpose vehicle (TRUST) documents, and various other agreements assuming they include the required criteria that Management has identified as outstanding in its Appendix A, would be sufficient to support consolidation of the TRUST with OPG Inc.

Additionally, we specifically refer you to the section entitled "Conclusion" in the Management Memorandum, which indicates that their analysis is based on draft legislation as well as their assumptions regarding the terms and conditions of certain contractual arrangements and other documentary evidence that is not yet drafted. Therefore, the Management Memorandum will be required to be updated to reflect the final contents of the legislation and other relevant contractual arrangements and documentary evidence. We will review the updated Management Memorandum once it is available, and update you on our viewpoints once our review of such updated Management Memorandum is completed.

The scope of this letter and any views expressed herein are limited to the transactions, facts, circumstances and assumptions provided to us by management or the Company as described in the Management Memorandum. If such facts, circumstances or assumptions differ, our conclusions may change.

We have not performed an audit or a review of the Management Memorandum. Additionally, we have not performed an audit as of any date or for any period subsequent to December 31, 2016.

The ultimate responsibility for the proper accounting treatment under IFRS and US GAAP rests with the Company.

We have not been asked for, nor do we express, an opinion on the tax consequences of the transactions described herein.

The accounting for such transactions could be affected by actions of the International Accounting Standards Board, the IFRS Interpretations Committee, the Ontario Securities Commission, or other regulatory bodies. Any such actions occurring prior to the finalization of the 2017 IFRS consolidated financial information will be required to be analyzed by management, and such analysis will be reviewed by us in the context of the audit procedures we will perform on the consolidated IFRS financial information for the year ending December 31, 2017.

Our work does not include the provision of legal advice and we make no representations regarding questions of legal interpretation of any possible structure or strategy. We make no representation regarding the sufficiency of our work for any purpose.

This report is intended solely for the information and use of the Special Committee, Board of Directors and management. We understand that a copy of this letter may be provided to the Province of Ontario, the Independent Electricity System Operator, and/or the Ontario Energy Board. It is not intended to be, and should not be, used by anyone other than these specified parties.

This analysis, or portions thereof, should not be referred to or distributed to any other person or entity, other than those noted in the paragraph directly above. It is not to be referred to or quoted, in whole or in part, in any registration statement, prospectus, public filing, loan agreement, or other agreement or document.

Yours sincerely

Ernst & Young LLP

Chartered Professional Accountants
Licensed Public Accountants

Tracy E Brennan
Partner
416-943-2615

May 2, 2017

ONTARIO POWER GENERATION

OPG ACCOUNTING CONSIDERATIONS OF ONTARIO FAIR HYDRO PLAN

Purpose:

The purpose of this document is to summarize the preliminary views of Ontario Power Generation (OPG) on the ability for OPG to consolidate the Financing Entity Trust associated with the Ontario Fair Hydro Plan.

This memo is assessed against the Legislation proposal 'Ontario Fair Hydro Plan Act, 2017, if enacted V6' sent by Carolyn Calwell on May 1, 2017. Note that this assessment is preliminary pending the finalization of the Legislation, the Trust indentures, Regulations, financing structure and other detailed terms, and all related documentary evidence. This assessment will be updated once final documentation is available.

Background:

On March 2, 2017, the Province of Ontario (the Province) announced Ontario's Fair Hydro Plan (the Plan) aimed at reducing electricity bills by 25 percent on average for all residential consumers in the province. As part of the Plan, the Province has proposed financing a portion of the Global Adjustment costs over a longer time period for Regulated Price Plan eligible customers (e.g., residential, farm, small businesses).

On April 13th, the Province requested that OPG consider administering the financing associated with the Plan, because of OPG's participation in the market, regulatory knowledge and the potential ability to consolidate the related financing activities. To undertake this financing, OPG will establish a Financing Entity Trust (the Trust) to finance and administer the Global Adjustment costs through a mixture of external financing and an equity injection from the Ontario Financing Authority. It is expected that OPG will control the Trust for accounting purposes and that its financial position and results will be consolidated within OPG's consolidated financial statements.

Assumptions made to perform accounting analysis which are not yet addressed in Legislation – it is expected that these matters will be addressed in Regulations, Trust documents, and various other agreements:

- The Regulation must require interest, carrying and administrative costs to be paid to the Trust in cash on a monthly basis, so that the Trust is able to recognize appropriate revenue to offset any ongoing costs.
- The Regulations, Trust documents and various agreements will provide that OPG will have significant variability and exposure from the activities of the Trust relative to the rate of return that OPG would recognize from its role as the Financial Services Manager of the Trust. The performance fee will be meaningful and allow OPG to make decisions that will significantly impact its returns.
- The Minister of Energy will have the ability to replace the Financial Services Manger (OPG) if there is a failure to perform. There will be a bifurcation of roles where the Province could not remove OPG as manager/administrator with respect to the existing debt placed by the Trust, but could remove OPG's responsibility/right to prepare the Financing Plan going forward. The ability for the Minister of Energy to remove OPG as the Financial Services Manager should not impact the recoverability of existing intangible assets.

- The calculation of the Fair Allocation Amount will be performed by the Minister of Energy.
- OPG has the ability to appoint and remove the Trustee (or Board of Trustees) and there are no veto rights by the Province. No party has the ability to remove OPG from its role and authority in the Trust.
- Neither the OEB nor any other party can discretionally reduce the management fee or performance fee except due to a calculation error.
- The margin on the interest rates associated with Tranche B and Tranche C which will be recovered from the ratepayers will be reflective of the risk profile of the debt and the associated market terms.
- The indemnification provided to the Trust by the Minister of Finance on behalf of the Province as described in *Part I – General - Section 5.3 Guarantee, indemnification Protection and assurances* will be subject to terms and conditions in a separate Provincial support agreement. The guarantee is expected to be in place only in the event of a Payment Guarantee Event, such as if the Legislative Assembly of Ontario repeals the Fair Hydro Act or amends the Act in a way that adversely impacts the ability of the Trust to fully recover an intangible asset in order to pay the obligations of the Trust.
- The approval by the Ontario Energy Board of the Financial Services Manager (i.e. OPG's) fees as described in *Part IV – Implementation - Section 14.4 Same, Board Approval* will not allow them to change or limit the management fee structure, but only ensure that it is prudent by ensuring it is calculated in accordance with the Regulations.
- In the event that a different Financial Services Manager is appointed by the Minister of Energy, the IESO is required to continue to make cash payments for interest to the Trust for the existing debt. Principal repayments on existing debt will continue to be repaid by ratepayers to the Trust in accordance with the terms of the issued debt.
- All other items as indicated in *Appendix A.*

Accounting Analysis:

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 Trust, or whether it has the ability to affect the returns of the Trust through its power over the Trust. Rather, all facts and circumstances are considered when assessing whether an entity has control over another entity.

In order to consolidate the Trust, OPG must be able to demonstrate that it controls the Trust.

Control

An investor controls an investee if and only if the investor has all the following:

a) power over the investee;
b) exposure, or rights, to variable returns from its involvement with the investee; and
c) *the ability to use its power over the investee to affect the amount of the investor's returns.* [IFRS 10, paragraph 7]

Purpose and design of the investee
When assessing control of an investee, an investor shall consider the purpose and design of the investee in order to identify the relevant activities, how decisions about the relevant activities are made, who has the current ability to direct those activities and who receives returns from those activities. [IFRS 10, paragraph B5]

Criteria	Analysis
Purpose and design of the Trust	The purpose of the Trust is to allow OPG to earn a return on the Intangible Asset from the IESO by effectively managing financing to earn a spread, earn management fees, and earn interest fees.

<table>
<tr><th colspan="2">Purpose and design of the investee
When assessing control of an investee, an investor shall consider the purpose and design of the investee in order to identify the relevant activities, how decisions about the relevant activities are made, who has the current ability to direct those activities and who receives returns from those activities. [IFRS 10, paragraph B5]</th></tr>
<tr><td></td><td></td></tr>
<tr><td>Relevant activities of the Trust and how decisions are made about those activities</td><td><u>Relevant activities:</u>

The relevant activities of the Trust are:
To evaluate and make decisions on financing alternatives, duration, and the strategy to minimize financing costs.
To effectively manage funding obtained through the capital markets and be able to make or lose any spread from financing
To provide funding to the IESO in return for an interest in a future cash flow stream
To obtain funding through the capital markets and other vehicles available to OPG to be able to provide the IESO funding.
To make capital and funding decisions required to meet the Fair Allocation Plan objectives as set out in Legislation
To finance the requirements associated with the short-fall amount
To raise debt, pay bond debt holders, and determine capacity for the Trust to raise additional financing
<u>Financing Plan (Legislation: Part IV – Implementation)</u>
OPG's plan for managing the assets of the Trust will be dictated through a 'Financing Plan'.
The Financial Services Manager (i.e. the Trust) shall provide the Financing Plan to the Minister. The Financing Plan is expected to follow Principles as stipulated in the Legislation which indicate that the assumptions must be reasonable and that the Trust has the power to determine what is reasonable and cost-effective. The Trust makes all the decisions in determining the relevant activities as listed above.
OPG can amend the Financing Plan at any time without the approval of the Minister.
<u>Fair Allocation Amount (Legislation: Part IV – Implementation)</u>
The 'Fair Allocation Amount' ("FAA") is the amount of the deferral for the reference period and includes finance amounts. The current Legislation dictates that the Minister of Energy is to calculate the FAA.
This does not impact OPG's relevant activities in the Trust as OPG's variable returns are based on financing decisions which are not dictated by the FAA. OPG can choose to accept or reject the purchase of the intangible asset which is based on the Fair Allocation Amount.</td></tr>
</table>

Purpose and design of the investee *When assessing control of an investee, an investor shall consider the purpose and design of the investee in order to identify the relevant activities, how decisions about the relevant activities are made, who has the current ability to direct those activities and who receives returns from those activities.* [IFRS 10, paragraph B5]	
	Decisions made and voting rights of the Trust: OPG has the ability to appoint and remove the Trustee (and if applicable Board of Trustees) and there are no veto rights by the Province. No party has the ability to remove OPG from its role and authority in the Trust. **[NOT YET ADDRESSED IN CURRENT LEGISLATION]** *Voting of members:* Except as otherwise stated, all decisions of the members (if applicable) shall be made by the Trustee who will be appointed by OPG. Termination Rights OPG cannot be removed from its role in the Trust. The Province has the right to remove OPG as the 'Financial Services Manager' for failure to perform. This will not impact debt that has already been issued for which OPG is already managing through the Trust or the recoverability of existing intangible assets. It the right is exercised, it serves to reduce or eliminate the scope of new business activities of the Trust but it does not affect OPG's ability to control the Trust. Should a new Financial Services Manager be appointed, a separate assessment would be made as to which party if any would control it.
Assessment	The purpose of the Trust is to allow OPG to earn a return on the Intangible Asset from the IESO by effectively managing financing to earn a spread, earn management fees, and earn interest fees. For the reasons noted above, OPG has control over the decisions to be made about the relevant activities.

Power over the investee	
Criteria	**Analysis**
Identify whether OPG's rights give it the current ability to direct the relevant activities of the Trust (Substantive rights)	See above for relevant activities of the Trust.
Assessment	OPG has the ability to direct the relevant activities of the Trust. OPG can amend the Financing Plan at any time, without approval from the Minister. Further, if the Minister of Energy chooses not to continue with OPG's current Financing Plan, OPG can withdraw its Financing Plan, without impacting the existing debt and related intangible assets that is already in the Trust. The Province would just appoint a new party to participate in future securitizations and OPG would continue to manage the debt that already exists in the Trust. If future financing transactions are with a different SPV, a separate consolidation analysis would be prepared at that time as to which party if any would consolidate the SPV.

Exposure or rights to variable returns	
Criteria	**Analysis**
Dividends, other distributions of economic benefits from an investee and changes in the value of the investor's investment in that investee [IFRS 10, paragraph B57(a)]	OPG is expected to realize management fees from its activities with the Trust.
Remuneration for servicing an investee's assets or liabilities, fees and exposure to loss from providing credit or liquidity support, residual interests in the investee's assets and liabilities on liquidation of that investee, tax benefits, and access to future liquidity that an investor has from its involvement with an investee [IFRS 10, paragraph B57(b)]	**[NOT YET ADDRESSED IN CURRENT LEGISLATION]** OPG has exposure and rights to variable returns from the Trust in the form of the following: • The Regulations, Trust documents and various agreements will provide that OPG will have significant variability and exposure from the activities of the Trust relative to the rate of return that OPG would recognize from its role as the Financial Services Manager of the Trust. The performance fee will be meaningful and allow OPG to make decisions that will significantly impact its returns. • OPG, through ownership of the most subordinated debt, is exposed to risk of non-collection. Given that the program is expected to run until 2047, this 30 year time period results in uncertainty about the future collection of OPG's amount at risk. OPG and the OFA (5% out of 44% contribution) would be the last parties to get paid in the event that the program stops running due to a change in Government, if electricity demand is not high enough to allow for collection from ratepayers in a timely manner, etc. The end date of 2047 that is prescribed in the Legislation results in uncertainty toward whether this program will continue and whether OPG will have collected its amount at risk at that time. • In the event that there is a market disruption whereby OPG is not able to obtain debt from the financial markets (e.g. due to a recession), the Province will provide funding in the event that OPG wishes to continue purchasing intangible assets from the IESO. This is considered to be a protective right as it does not impact the relevant activities of the Trust, but is designed to protect both parties and does not give either party more or less power over the Trust. It is designed to allow OPG to keep purchasing intangible assets if it wishes to. • Protective rights are typically held to prohibit fundamental changes in the activities of an investee that the holder does not agree with and usually apply only in exceptional circumstances (i.e., upon a contingent event). This is true for this right as it is only applicable if there is a market disruption and the Trust is not able to obtain financing from external markets. Further, the fundamental activities of the Trust would change if it were not able to obtain financing from external markets.
Returns that are not available to	• OPG will have synergistic benefits from combining operating

Exposure or rights to variable returns	
other interest holders. For example, an investor might use its assets in combination with the assets of the investee, such as combining operating functions to achieve economies of scale, cost savings, sourcing scarce products, gaining access to proprietary knowledge or limiting some operations or assets, to enhance the value of the investor's other assets [IFRS 10, paragraph B57 (c)]	functions with the Trust given its extensive knowledge on the market and current regulatory knowledge.
Assessment	To determine which party is the most 'at risk' in the event that the loans default, expected loss rates were obtained from Moody's and DBRS. Using the *Moody's Investors Service – Loss Given Default for Speculative Grade Companies* dated December 4, 2015, the 4-year Idealized Expected Loss ranges from 0.00% for a triple A rated bond to 0.30% for an A3 rated bond. DBRS Expected Loss Ratings give an indication of the expected loss of a loan portfolio. As per a November 2016 publication, the 10-year expected loss rates range from 0.1% for a AAA rated bond to 1.7% for an A (low) rated bond. Given that OPG's subordinated debt is equal to 5% of the total debt, which is higher than the default rates above, 100% of the risk is with both OPG and the OFA since they are the last parties to get paid should there be any default with the debt. OPG is also exposed to variable returns from the Trust from its performance on decisions made on financing alternatives, duration, and the strategy to minimize financing costs through the variable fee component of the management fee. Therefore, OPG has the exposure to variable returns from the Trust.

Ability to use power to affect returns	
Criteria	**Analysis**
Ability of investor to use its power to affect the investor's returns from its involvement with the investee	OPG needs to have both power over the Trust (i.e. as a Principal, not an agent), exposure or rights to the variable returns from the Trust, and the ability to use its power to affect OPG's returns from its involvement with the Trust OPG has the ability to use its power over the relevant activities of the Trust to affect its returns from its involvement with the Trust through the variable fee component.

Ability to use power to affect returns	
	Further, the Trust's ability to use its power to affect returns is in a manner that is consistent with being a principal. See *Appendix B* for Principal-Agent analysis.
Assessment	OPG has the ability to use its power to affect returns of the Trust.

Conclusion:

Based on the current **[May 1, 2017]** draft of the legislation, the conditions to ensure the ability of OPG to consolidate the operations of the Trust have not fully been reflected. As noted in Appendix A, several conditions must be evident in the Regulations, Trust documents, and various other agreements which are not yet drafted and therefore not yet available for our review and assessment. In OPG's assessment, while no current clause of the Legislation would hamper the ability to effect a consolidation within OPG Inc.'s financial statements, there are several key conditions for consolidation that are currently not present within the Legislation. On the assumption that future Regulations, Trust documents and various other agreements fully capture these operating conditions, and that no new conditions that would conflict with OPG's control of the trust are introduced, OPG believes that consolidation of the Trust is supportable.

APPENDIX A:

Terms necessary for OPG to consolidate the Global Adjustment Trust

Note that these are assessed against the Legislation proposal 'Ontario Fair Hydro Plan Act, 2017, if enacted V6' sent by Carolyn Calwell on May 1, 2017. These are subject to change as subsequent drafts of the Legislation are issued.

Legend:

✓ - Addressed by the Legislation drafted May 1, 2017

RT – Not addressed by Legislation and must be addressed in Regulations, Trust Documentation or various other agreements

Ω - Will not be addressed in Legislation/Regulations or Trust but is the intended plan

Issue	No.	Requirements
Directive	1 ✓	The Trust 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 Trust vehicle to administer, finance and operate the Global Adjustment plan and the operation of that Trust and the control, risk and rewards of that Trust will determine its consolidation into OPG as a business enterprise. ***MET - The Province will not direct OPG to participate in the Fair Hydro Plan. A letter was issued from the Minister of Energy to OPG on April 13th requesting OPG's involvement in the implementation of the Fair Hydro Plan. OPG's Board Chair responded to the Minister on April 18th committing OPG to work with the IESO and OEB to develop a plan. OPG will have the option to prepare, implement and amend a financing plan (in accordance with principles set out in legislation) and propose the adoption of such plan as the 'Financing Plan'. OPG will have the right to withdraw its financing plan at any time.***
Trust	2 **RT**	The Trust should not operate in a predetermined way such that OPG does not have decision-making authority over the Trust's ongoing activities after its formation (i.e. should not operate on 'autopilot'). ***OPG will be the sole unit holder of the Trust. All decisions over the relevant activities of the Trust (as described above) will be made by OPG.***
	3 **RT**	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 Trust. ***OPG will be the sole unit holder of the Trust. The Province will be involved in the Board of Trustees, but OPG is expected to have the majority vote.***

<table>
<tr><th>Issue</th><th>No.</th><th>Requirements</th></tr>
<tr><td></td><td></td><td></td></tr>
<tr><td></td><td>4
RT</td><td>The Province cannot have the right to veto OPG's decisions about the relevant activities of the Trust. OPG must have the power over the relevant activities of the Trust and be compensated. The relevant activities of the Trust 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 Trust.

OPG will have the ability to make decisions about the financing alternatives, duration, and the strategy to minimize financing costs. OPG will have the power to establish operating and capital budgets of the Trust with no veto right by the Province.</td></tr>
<tr><td></td><td>5
RT</td><td>OPG must have the power to determine or change operating and financing policies of the Trust, which will affect the variability of risks and returns.

The Regulations, Trust documents and various agreements will provide that OPG will have significant variability and exposure from the activities of the Trust relative to the rate of return that OPG would recognize from its role as the Financial Services Manager of the Trust. The performance fee will be meaningful and allow OPG to make decisions that will significantly impact its returns.</td></tr>
<tr><td></td><td>6
Ω</td><td>The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following:
a. The Trust
b. The most subordinated debt of the Trust

See below for financing structure.

<table>
<tr><th></th><th>Risk Profile</th><th>Source</th><th>% of Total Fundin Requirement</th></tr>
<tr><td>Tranche A Senior Debt</td><td>the least risky</td><td>Capital Markets</td><td>51%</td></tr>
<tr><td>Tranche B Sub Debt</td><td>In between A&C</td><td>OPG via OEFC</td><td>39%</td></tr>
<tr><td rowspan="2">Tranche C Sub Debt</td><td rowspan="2">the most risky</td><td>OPG via OEFC</td><td>5%</td></tr>
<tr><td>OPG via Capital Markets</td><td>5%</td></tr>
</table>
</td></tr>
<tr><td></td><td>7
Ω</td><td>OPG must own at least 50% of the most subordinated debt and must be no less than 5% of the debt of the Trust. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources.

See chart in Point 6 above.</td></tr>
</table>

Issue	No.	Requirements
	8 **RT**	OPG must have the ability to earn variable returns by exercising its authority, which shall be accomplished as follows: 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 ***The cash flow from the restructured asset will include interest income that is equal to the interest expense (i.e. interest expense is passed back to the ratepayers). The Trust will also receive a margin as discussed in the 'Exposure or rights to variable returns' section above.***
	✓	b. OPG shall have the authority to determine the financing strategy, which will vary the financing costs with the objective of enabling the Trust to achieve a more favourable return compared to the benchmark for interest on the restructured asset ***OPG will determine the financing strategy through the proposal of its 'Financing Plan'. The 'Financing Plan' will only be required to follow general Parameters and Principles as set forth in the Legislation but funding decisions will be made entirely by OPG. The Trust will also receive a margin as discussed in the 'Exposure or rights to variable returns' section above.***
	Ω	c. The Trust shall establish classes of liabilities (senior, subordinated and the most subordinated). The classes would allow the Trust 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. ***OPG's portion of the most subordinated debt will be limited to a reasonable level. If it is determined that OPG's portion is not at a reasonable level, OPG has the option to withdraw its Financing Plan.***
	RT	c. 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.

Issue	No.	Requirements
		OPG will be able to capture the pricing difference between cost of financing and benchmark for interest through the performance fee which is described in point 5) above and the 'Exposure or rights to variable returns' section above.
	Ω	d. OPG should participate in the detailed design of the above and the Trust 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. ***OPG will be involved in the Trust documentation.***
	RT	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), OFA may provide bridge financing beyond the designated percentage for a defined period. ***This will be structured through a separate indemnification agreement. This is not expected to impact consolidation of the Trust because this is seen as a protective right which is only in affect when a contingency arises and not as a result of the relevant activities of the Trust.***
Legislation	9 ✓	The Legislation must require interest, carrying and administrative costs to be paid to the Trust on a monthly basis, so that the Trust is able to recognize appropriate revenue to offset any ongoing costs. ***Under Part III – Clean Energy Adjustment – Section 8.3 Terms, of the Legislation, the expectation is that the Legislation will allow for interest payments to be paid to the Trust on a monthly basis in cash. The Trust will not accrue interest to the current intangible asset balances but this interest amount could form part of future intangible assets that are purchased from the IESO.***
	10 RT	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 Trustee. **The Regulations are expected to dictate the 'Fair Allocation Plan' which will be based on high level Principles and Parameters of the Plan, including the attribution methodology. The Legislation or Regulation determines the following principles:** • **25% Reduction (June 1, 2017) where the average bill will**

Issue	No.	Requirements
		reduce by 25% including of HST and social programs noted above • **Inflation Period (November 2017 – April 2022) where bill increases are capped at inflation** • **Straight-line Increase Period (May 2022 – April 2027) where bills increased at a straight-line rate (i.e., 8% per year) which is set so that borrowing will not exceed the Trust's capacity.** • **Amortization Period (May 2027 – April 2047) where debt built up over the previous periods is repaid by ratepayers.** **OPG will determine the manner in which the intangible asset, once purchased from the IESO will be collected and the period of collection.** **The recoverability of the existing intangible assets cannot be impacted by the Province.** **Although the Province may determine the Principles and Parameters around the 'Fair Allocation Plan', it does not impact the activities of the Trust once OPG has purchased the intangible asset.**
	11 **RT**	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. **See above.**
	12 **RT**	The spirit of the above terms should be reflected in the Trust Indenture Agreement as well as Legislation, wherever possible. ***Trust Indenture and Regulations still outstanding.***

APPENDIX B:

Link between power and returns: principal-agency situations

The third criterion for having control is that the investor must have the ability to use its power over the investee to affect the amount of the investor's returns. When decision-making rights have been delegated or are being held for the benefit of others, it is necessary to assess whether the decision-maker is a principal or an agent to determine whether it has control. This is because if the decision-maker has been delegated rights that give it power, the decision-maker must assess whether those rights give it power for its own benefit, or merely power for the benefit of others. As an agent cannot have control over the investee, it does not consolidate the investee. A principal may have control over the investee, and if so, would consolidate the investee.

A decision maker shall consider the overall relationship between itself, the investee being managed and other parties involved with the investee, in particular all the factors below, in determining whether it is an agent:

a) the scope of its decision-making authority over the investee

   As discussed above, OPG has decision-making authority over the Trust and its relevant activities. The Province has no right to determine what sort of funding decisions OPG should make to fund the intangible assets that they will purchase and OPG can choose not to purchase future intangible asset purchases.
   Terms and Conditions to support this point: 1, 2, 3, 4, 5

b) the rights held by other parties (paragraphs B64–B67).

   There are no substantive removal rights held by the Province for debt that already exists in the Trust.

   Terms and Conditions to support this point: 3, 4, 5

c) the remuneration to which it is entitled in accordance with the remuneration agreement(s) (paragraphs B68–B70).

   See section on 'Exposure or rights to variable returns' above.

   Terms and Conditions to support this point: 6, 7, 8, 9

d) the decision maker's exposure to variability of returns from other interests that it holds in the investee (paragraphs B71 and B72).

   See section on 'Exposure or rights to variable returns' above.

   OPG will receive a 44% equity injection from the Province of Ontario, indirectly through the Ontario Financing Authority. Given that currently, the majority (currently 51%) of the Trust debt will be from External Markets and not the Province, it can be argued that OPG did not receive the majority of its interest in the investee as a contribution or loan from the Province. This shows that OPG is a principal, not a de-facto agent.

   Terms and Conditions to support this point: 6, 7, 8, 9

Conclusion: OPG is not an agent for the Province as the arrangement does not provide for the Province to directly absorb any variability associated with the structure. If the Province decides to intervene at a later date due to evolving market conditions, an assessment would be made at that future date.

Analysis on whether OPG is an agent for ratepayers

OPG is not an agent for the ratepayers because OPG has substantive exposure to risk of loss of its own funds. The ratepayers do not have any of their own funds in any of the subordinated tranches and further, no decision making authority is delegated to the ratepayers relating to the relevant activities of the Trust.

Analysis on whether OPG is an agent for the IESO

OPG is not an agent of the IESO because the IESO faces no continuing risk of loss after sale of the intangible asset to OPG.