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UTILITY DEBT SECURITIZATION AUTHORITY
(A Component Unit of the Long Island Power Authority)

Basic Financial Statements

December 31, 2014 and 2013

(With Independent Auditors' Report Thereon)

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Overview of the Financial Statements

This report consists of three parts: management's discussion and analysis (unaudited), the basic financial statements, and the notes to the financial statements.

The financial statements provide summary information about the overall financial condition of the Utility Debt Securitization Authority (UDSA). The notes provide explanation and more details about the contents of the financial statements.

UDSA is considered a special-purpose government entity engaged in business-type activities and follows financial reporting for enterprise funds. UDSA's financial statements are prepared in accordance with generally accepted accounting principles (GAAP) as prescribed by the Governmental Accounting Standards Board (GASB).

Management's Discussion and Analysis (Unaudited)

The management's discussion and analysis of UDSA's financial performance provides an overview of UDSA's financial information for the year ended December 31, 2014 and the period ended December 31, 2013. The discussion and analysis should be read in conjunction with the financial statements and accompanying notes, which follow this section. UDSA's basic financial statements are presented as an enterprise fund following the accrual basis of accounting. Revenues are recognized in the period in which they are earned and expenses are recognized in the period in which they are incurred.

UDSA is subject to the provisions of GASB No. 62, *Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA Pronouncements*. GASB No. 62 addresses accounting rules for regulated operations. This statement recognizes the economic impact of regulation, through the ratemaking process, to create future economic benefits and obligations affecting rate-regulated companies. Accordingly, UDSA records these future economic benefits and obligations as regulatory assets and regulatory liabilities, respectively.

Nature of Operations

UDSA was created as a result of New York State legislation, signed into law on July 29, 2013, referred to as the LIPA Reform Act (the Reform Act). Part B of the Reform Act (referred to as the Securitization Law) which allowed for the retirement of certain outstanding indebtedness of the Long Island Power Authority (Authority) through the issuance of securitized restructuring bonds (Restructuring Bonds) by UDSA. The Authority is the owner of the transmission and distribution system located in the Counties of Nassau and Suffolk (with certain limited exceptions) and a small portion of Queens County known as the Rockaways (Service Area) and is responsible for facilitating the supply of electricity to customers within the Service Area.

UDSA is a special purpose corporate municipal instrumentality of the State of New York. UDSA has no commercial operations and is prohibited from engaging in any other activity except as specifically authorized by the Restructuring Cost Financing Order (Financing Order) described below. The Reform Act provides that UDSA is not authorized to be a debtor under any provision of the Bankruptcy Code. Under the Reform Act, the Restructuring Bonds are the only bonds which may be issued by UDSA. UDSA was formed solely to issue the Restructuring Bonds for the purpose of purchasing restructuring property to finance the cost of purchasing,

(Continued)

UTILITY DEBT SECURITIZATION AUTHORITY
(A Component Unit of the Long Island Power Authority)
Management's Discussion and Analysis
(Unaudited)
December 31, 2014 and 2013

redeeming, or defeasing a portion of the outstanding debt of the Authority. The Restructuring Property is defined as the right, title, and interest (a) in and to rates and charges to recover from customers the debt service requirements on the Restructuring Bonds (referred to as Restructuring Charges); (b) in and to all revenues, collections, claims, payments, money, or proceeds of or arising from the Restructuring Charges, regardless of whether such revenues, collections, claims, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, claims, payments, money, or proceeds; and (c) in and to all rights to obtain adjustments to the Restructuring Charges pursuant to the terms of the Financing Order adopted by the Authority's Board of Trustees (Board) on October 3, 2013. This nonbypassable consumption-based Restructuring Charge is billed to all existing and future retail electric customers taking electric transmission or distribution service within the Service Area from the Authority or any of its successors or assignees. The Restructuring Charge is established by UDSA and is not subject to oversight by the Department of Public Service or any other regulatory body. To pass the benefits of securitization to customers, the Authority has modified its rate structure to create a restructuring offset charge, which is an amount equal to and opposite the Restructuring Charge, so that the customer bill is no more than it would have been absent securitization. The securitization offset charge will be adjusted along with changes to the Restructuring Charge.

On December 18, 2013, UDSA issued $1.54 billion Restructuring Bonds Series 2013TE (Federally Tax Exempt) and $482.9 million Restructuring Bonds Series 2013T (Federally Taxable) and used the net proceeds to purchase the Restructuring Property from the Authority and pay expenses of issuance.

As of December 31, 2014, long-term debt consists of approximately $1.9 billion in remaining outstanding Restructuring Bonds as well as approximately $102 million in unamortized premium.

(Continued)

Below is summary-level information of UDSA's financial position:

Summary of Statement of Net Position
(Amounts in thousands)

	December 31	
Assets	2014	2013
Current assets:		
Restricted cash	$ 22,483	10,513
Accounts receivable	38,338	—
Prepaid assets	322	—
Total current assets	61,143	10,513
Noncurrent assets:		
Restructuring property	2,018,955	2,112,990
Regulatory asset – unamortized debt issuance costs	13,146	15,095
Total noncurrent assets	2,032,101	2,128,085
Total assets	$ 2,093,244	2,138,598
Liabilities and Net Position		
Current liabilities	$ 18,644	93,173
Long-term debt	2,019,340	2,048,196
Total liabilities	2,037,984	2,141,369
Net position – unrestricted	55,260	(2,771)
Total liabilities and net position	$ 2,093,244	2,138,598

(Continued)

UTILITY DEBT SECURITIZATION AUTHORITY
(A Component Unit of the Long Island Power Authority)
Management's Discussion and Analysis
(Unaudited)
December 31, 2014 and 2013

	Year ended December 31, 2014	July 29, 2013 (inception) through December 31, 2013
Operating revenue	$ 233,437	—
Operating expenses	96,730	—
Operating income	136,707	—
Other income	4	—
	136,711	—
Interest charges and credits	78,680	2,771
Change in net position	58,031	(2,771)
Net position – beginning of year	(2,771)	—
Net position – end of year	$ 55,260	(2,771)

Change in Net Position

The change in net position for the year ended December 31, 2014 resulted in income of $58 million as compared to a loss of $3 million for the period ended December 31, 2013. UDSA issued the Restructuring Bonds on December 18, 2013 and the Authority began imposing the Restructuring Charge on customer bills on March 1, 2014.

Operating Revenues

For the year ended December 31, 2014 compared to the period ended December 31, 2013, UDSA had higher revenues of $233 million due to the Restructuring Charge being imposed on the Authority's customer bills effective March 1, 2014.

Operating Expenses

For the year ended December 31, 2014, UDSA incurred operating expenses of $97 million. UDSA recognizes the amortization of the Restructuring Property on a proportionate basis annually based on the total principal payments due for the restructuring bonds. For the period ended December 31, 2013, no principal payments were due, and therefore, no amortization was recorded.

UDSA also recognized $1.6 million for servicing and administrative costs for the year ended December 31, 2014. The Authority, as Servicer, is required to manage and administer the UDSA bondable Restructuring Property and to collect the Restructuring Charge on UDSA's behalf. The Authority withholds from the Restructuring Charge collections, an annual servicing fee equal to 0.05% of the initial balance of bonds issued for such services. As the Restructuring Charge was not imposed until March 1, 2014, no such fees were charged to UDSA for 2013.

(Continued)

Interest Charges and Credits

Interest charges and credits increased $76 million. The period ended December 31, 2013 only included 13 days of interest and amortization of both upfront financing costs and premium recognized on the issuance of debt, which occurred on December 18, 2013.

Cash and Liquidity

The balance in the Reserve Subaccount was established at a reserve level of 0.5% of the initial principal amount of the Restructuring Bonds originally issued and must be maintained at a level of 0.5% of the Restructuring Bonds outstanding. UDSA's restricted cash totaled approximately $22 million and $11 million at December 31, 2014 and 2013, respectively.

Debt

UDSA's debt, including current maturities, is comprised of the following instruments (amounts in thousands):

		2014	2013
UDSA Restructuring Bonds:			
Series 2013T	$	482,934	482,934
Series 2013TE		1,449,390	1,539,390
		1,932,324	2,022,324
Unamortized premium		102,016	115,872
Less current maturities and short-term debt		(15,000)	(90,000)
Total long-term debt	$	2,019,340	2,048,196

Debt decreased during 2014 due to $90 million of scheduled maturities.

Investment Ratings

Below are UDSA's securities as rated by Moody's Investors Service (Moody's), Standard and Poor's Ratings Services (S&P), and Fitch Ratings (Fitch):

	Investment ratings		
	Moody's	S&P	Fitch
UDSA Restructuring Bonds	Aaa (sf)	AAA (sf)	AAA (sf)

Contacting the Utility Debt Securitization Authority

This financial report is designed to provide UDSA's bondholders, and other interested parties with a general overview of UDSA's finances and to demonstrate its accountability for the funds it receives. If you have any questions about this report or need additional information, contact the Authority at 333 Earle Ovington Blvd., Suite 403, Uniondale, New York 11553, or visit UDSA's website at www.lipower.org.

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345 Park Avenue
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Independent Auditors' Report

The Board of Trustees
Utility Debt Securitization Authority:

Report on the Financial Statements

We have audited the accompanying basic financial statements of the Utility Debt Securitization Authority (UDSA), a component unit of the Long Island Power Authority and the State of New York, which comprise the statement of net position as of December 31, 2014 and 2013, and the related statement of revenues, expenses, and changes in net position, and cash flows for the year ended December 31, 2014 and the period from inception (July 29, 2013) through December 31, 2013 and the related notes to the basic financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these basic financial statements in accordance with U.S. generally accepted accounting principles; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on these basic financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the basic financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the basic financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the basic financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the basic financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

KPMG LLP is a Delaware limited liability partnership, the U.S. member firm of KPMG International Cooperative ("KPMG International"), a Swiss entity.

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Opinion

In our opinion, the basic financial statements referred to above present fairly, in all material respects, the financial position of the Utility Debt Securitization Authority as of December 31, 2014 and 2013, and the changes in its net position and its cash flows for the year ended December 31, 2014 and for the period from inception (July 29, 2013) to December 31, 2013 in accordance with U.S. generally accepted accounting principles.

Other Matters

Required Supplementary Information

U.S. generally accepted accounting principles require that Management's Discussion and Analysis, as listed in the table of contents, be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Reporting Required by *Government Auditing Standards*

In accordance with *Government Auditing Standards*, we have also issued a report dated March 30, 2016, on our consideration of UDSA's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope and of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering UDSA's internal control over financial reporting and compliance.

KPMG LLP

March 30, 2015

UTILITY DEBT SECURITIZATION AUTHORITY
(A Component Unit of the Long Island Power Authority)

Statements of Net Position

(Amounts in thousands)

	December 31	
Assets	2014	2013
Current assets:		
Restricted cash	$ 22,483	10,513
Accounts receivable	38,338	—
Prepaid assets	322	—
Total current assets	61,143	10,513
Noncurrent assets:		
Restructuring property	2,018,955	2,112,990
Regulatory asset – unamortized debt issuance costs	13,146	15,095
Total noncurrent assets	2,032,101	2,128,085
Total assets	$ 2,093,244	2,138,598
Liabilities and Net Position		
Current liabilities:		
Current maturities of long-term debt	$ 15,000	90,000
Accrued interest	3,595	3,173
Accrued expenses	49	—
Total current liabilities	18,644	93,173
Noncurrent liabilities:		
Long-term debt, including unamortized premium	2,019,340	2,048,196
Net position – unrestricted	55,260	(2,771)
Total liabilities and net position	$ 2,093,244	2,138,598

See accompanying notes to basic financial statements.

UTILITY DEBT SECURITIZATION AUTHORITY
(A Component Unit of the Long Island Power Authority)

Statements of Revenues, Expenses, and Changes in Net Position

(Amounts in thousands)

	For the year ended December 31, 2014	Period from July 29, 2013 (inception) through December 31, 2013
Operating revenue	$ 233,437	—
Operating expenses:		
Amortization of restructuring property	94,035	—
Uncollectible expense	1,067	—
Servicing and administrative fees	1,628	—
Total operating expenses	96,730	—
Operating income	136,707	—
Other income	4	—
	136,711	—
Interest charges:		
Interest expense	88,129	3,173
Amortization of restructuring bond premium and issuance costs	(9,449)	(402)
Total interest charges	78,680	2,771
Change in net position	58,031	(2,771)
Net position, beginning of year	(2,771)	—
Net position, end of period	$ 55,260	(2,771)

See accompanying notes to basic financial statements.

UTILITY DEBT SECURITIZATION AUTHORITY
(A Component Unit of the Long Island Power Authority)

Statements of Cash Flows

(Amounts in thousands)

	For the year ended December 31, 2014	Period from July 29, 2013 (inception) through December 31, 2013
Cash flows from operating activities:		
Operating revenues received	$ 194,031	—
Paid to suppliers:		
Servicing and administrative fees	(1,939)	—
Net cash provided by operating activities	192,092	—
Cash flow from investing activities:		
Purchase of restructuring bonds	—	(2,112,990)
Earnings received	4	—
Net cash provided by (used in) investing activities	4	(2,112,990)
Cash flows from financing activities:		
Proceeds from issuance of restructuring bonds	—	2,138,683
Interest paid	(90,029)	—
Redemption of long-term debt	(90,000)	—
Bond issuance and bond administration costs	(96)	(15,180)
Net cash (used in) provided by financing activities	(180,125)	2,123,503
Net increase in cash and cash equivalents	11,970	10,513
Restricted cash and cash equivalents at beginning of year	10,513	—
Restricted cash and cash equivalents at end of the period	$ 22,483	10,513
Reconciliation to net restricted cash provided by operating activities:		
Operating income	$ 136,707	—
Adjustments to reconcile operating income to net restricted cash provided by operating activities:		
Amortization of restructuring property	94,035	—
Changes in operating assets and liabilities:		
Prepaid assets and accounts payable	(312)	—
Accounts receivable	(38,338)	—
Net restricted cash provided by operating activities	$ 192,092	—

See accompanying notes to basic financial statements.

(1) Basis of Presentation

The Utility Debt Securitization Authority (UDSA) was created as a result of New York State legislation, signed into law on July 29, 2013, referred to as the LIPA Reform Act (the Reform Act). Part B of the Reform Act (referred to as the Securitization Law) allowed for the retirement of certain outstanding indebtedness of the Long Island Power Authority (Authority) through the issuance of securitized restructuring bonds (Restructuring Bonds) by UDSA. The Authority is the owner of the transmission and distribution system located in the Counties of Nassau and Suffolk (with certain limited exceptions) and a portion of Queens County known as the Rockaways (Service Area), and is responsible for facilitating the supply of electricity to customers within the Service Area.

Under Governmental Accounting Standard Board Statement (GASB) No. 61, *The Financial Reporting Entity*, UDSA is considered a blended component unit of the Authority. The assets, liabilities, and results of operations are consolidated with the operation of the Authority for financial reporting purposes.

(2) Nature of Operations

UDSA is a special purpose corporate municipal instrumentality of the State of New York (the State). UDSA has no commercial operations and is prohibited from engaging in any other activity except as specifically authorized by a financing order. The Reform Act provides that UDSA is not authorized to be a debtor under any provision of the Bankruptcy Code. Under the Reform Act, the Restructuring Bonds are the only bonds which may be issued by UDSA. UDSA was formed solely to issue the Restructuring Bonds for the purchase of Restructuring Property to finance the cost of purchasing, redeeming, or defeasing a portion of the outstanding debt of the Authority. The Restructuring Property is defined as the right, title, and interest: (a) in and to rates and charges to recover from customers the debt service requirements on the Restructuring Bonds (referred to as Restructuring Charges); (b) in and to all revenues, collections, claims, payments, money, or proceeds of or arising from the Restructuring Charges, regardless of whether such revenues, collections, claims, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, claims, payments, money, or proceeds; and (c) in and to all rights to obtain adjustments to the Restructuring Charges. This nonbypassable consumption-based Restructuring Charge is billed to all existing and future retail electric customers taking electric transmission or distribution service within the Service Area from the Authority or any of its successors or assignees. The Restructuring Charge is established by UDSA, and is not subject to oversight by the Department of Public Service or any other regulatory body, including the Authority's Board of Trustees (Board). To pass the benefits of securitization to customers, the Authority has modified its rate structure to create a restructuring offset charge, which is an amount equal to and opposite the Restructuring Charge, so that the customer bill is no more than it would have been absent securitization. The securitization offset charge will be adjusted along with changes to the Restructuring Charge.

The Authority acts as the initial Servicer of the Restructuring Property pursuant to the terms of the Servicing Agreement with UDSA. However, pursuant to the Amended and Restated Operations Services Agreement (A&R OSA), PSEG-LI, among other things, performs the billing and collections, meter reading, and forecasting required of the Servicer under the Servicing Agreement. The Authority is responsible for taking all necessary action in connection with True-Up Adjustments (described below) and certain reporting requirements.

(Continued)

UTILITY DEBT SECURITIZATION AUTHORITY
(A Component Unit of the Long Island Power Authority)
Notes to Basic Financial Statements
December 31, 2014 and 2013

The Restructuring Charges will be adjusted (True-Up Adjustments) at least annually and, if determined by the Servicer in connection with a midyear review process to be necessary, semiannually or more frequently, to ensure that the expected collections of the Restructuring Charges are adequate to timely pay all scheduled payments of principal and interest on the Restructuring Bonds and all other ongoing financing costs when due.

(3) Summary of Significant Accounting Policies

(a) General

UDSA complies with all applicable pronouncements of GASB. The operations of UDSA are presented as an enterprise fund following the accrual basis of accounting in order to recognize the flow of economic resources. Revenues are recognized in the period in which they are earned and expenses are recognized in the period in which they are incurred. The basic financial statements and the notes to the financial statements cover the year ended December 31, 2014 and the period from July 29, 2013 (inception) through December 31, 2013.

(b) Use of Estimates

The accompanying financial statements were prepared in conformity with U.S. generally accepted accounting principles, which require management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

(c) Recent Accounting Pronouncements

In February 2015, GASB issued Statement No. 72, *Fair Value Measurement and Application*, which addresses accounting and financial reporting issues related to fair value measurements. The requirements of this Statement will enhance comparability of financial statements among governments by requiring measurement of certain assets and liabilities at fair value using a consistent and more detailed definition of fair value and accepted valuation techniques. This Statement will also enhance fair value application guidance and related disclosures in order to provide information to financial statement users about the impact of fair value measurements on a government's financial position. Statement No. 72 will take effect for periods beginning after June 15, 2015, and will not have a significant impact on the financial position or results of operations of UDSA.

(d) Accounting for the Effects of Rate Regulation

UDSA is subject to the provisions of GASB No. 62, *Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA Pronouncements*. GASB No. 62 addresses accounting rules for regulated operations. This statement recognizes the economic ability of regulators, through the ratemaking process, to create future economic benefits and obligations affecting rate-regulated companies. Accordingly, as UDSA's Board is its regulator and authorizes its ratemaking process, UDSA records these future economic benefits and obligations as regulatory assets or regulatory liabilities, respectively.

(Continued)

(e) Restricted Cash

Restricted cash consists of funds held in UDSA's restricted bank accounts to pay the principal, interest, and other expenses associated with the Restructuring Bonds. UDSA has specific investment guidelines that address the legal and contractual requirements of the transaction including that investments must be matched to meet the debt service obligations of the bonds.

The Trustee must maintain a segregated trust account for the bonds known as the Collection Account. The Collection Account for the bonds will consist of four subaccounts: a General Subaccount, an Excess Funds Subaccount, a Reserve Subaccount, and an Upfront Financing Costs Subaccount. For administrative purposes, the subaccounts may be established by the Trustee as separate accounts, which will be recognized collectively as the Collection Account. The balance in the Reserve Subaccount was established at a reserve level of 0.5% of the initial principal amount of the Restructuring Bonds originally issued and must be maintained at a level of 0.5% of the Restructuring Bonds outstanding.

Restricted cash, as of December 31, 2014 and 2013, included approximately $10.1 million in the Reserve Subaccount and approximately $0.4 million in the Upfront Financing Costs Subaccount, both held by the Trustee. As of December 31, 2014 and 2013, 100% of restricted cash is invested in money-market mutual funds with maturities of less than three months.

The Trustee shall have sole dominion and exclusive control over all money in the Collection Account and shall apply such money as provided in the Indenture. Each account shall remain at all times with a securities intermediary.

Only the Trustee shall have access to the Collection Account for the purpose of making deposits to and withdrawals from the Collection Account. Funds in the Collection Account shall not to be commingled with any other monies.

(f) Regulatory Assets – Unamortized Debt Issuance Costs

GASB Statement No. 65, *Items Previously Reported as Assets and Liabilities*, requires that debt issuance costs be expensed in the current financial period. As the UDSA charge provides recovery for debt issuance costs on a systematic basis over the life of the debt, UDSA has classified these costs as a regulatory asset, in accordance with GASB No. 62, to be collected over the life of the debt issuance to which they relate.

(g) Restructuring Property

The Restructuring Property consists primarily of the irrevocable contract right to impose, bill, and collect the nonbypassable consumption-based Restructuring Charge. The Restructuring Property is amortized on a proportionate basis annually based on the total principal payments due for the restructuring bonds as reflected in the Restructuring Charge, subject to the True-Up Adjustments.

UTILITY DEBT SECURITIZATION AUTHORITY
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Notes to Basic Financial Statements
December 31, 2014 and 2013

(h) Revenues

Beginning on March 1, 2014, the Authority implemented the nonbypassable Restructuring Charge on behalf of UDSA. UDSA records revenue for the charge under the accrual method. UDSA accrues unbilled revenues by estimating unbilled consumption at the customer meter. Unbilled revenue totaled $16 million as of December 31, 2014.

(i) Income Taxes

UDSA is a political subdivision of the State and, therefore, is exempt from federal, state, and local income taxes.

(j) Long-Term and Short-Term Debt

The Financing Order (Financing Order), adopted by the Authority's Board on October 3, 2013, authorized the creation of the Restructuring Property and issuance of Restructuring Bonds by UDSA to provide funds for the purchase of the Restructuring Property from the Authority. The Authority was authorized to use the proceeds from the sale of the Restructuring Property to purchase, redeem, repay, or defease certain of its outstanding debt.

The Restructuring Bonds are consolidated on the Authority's financial statements, however are not considered direct obligations of the Authority, PSEG-LI, or any of their affiliates. The Restructuring Bonds are also not a debt and do not constitute a pledge of the faith and credit or taxing power of the State or of any county, municipality, or any other political subdivision, agency, or instrumentality of the State other than UDSA. UDSA was formed for the sole purpose of issuing and servicing securitization bonds related to New York State Securitization Legislation.

On December 18, 2013, UDSA issued its Restructuring Bonds Series 2013TE (Tax Exempt), totaling $1.54 billion and Series 2013T (Federally Taxable) totaling $482.9 million and are displayed separately in the current and long-term liability section on the statements of net position.

The refunding of a portion of the Authority's outstanding debt produced an approximate $132 million of net present value savings. The Restructuring Bonds have an average life of 14.3 years and an all in cost of 4.22%.

Interest payments on the Restructuring Bonds are due semiannually, which began on June 15, 2014. Restructuring Charges are set to collect amounts sufficient to pay principal of and interest on the bonds on a timely basis and any ongoing financing costs.

Below is the UDSA's schedule of capitalization for the period ended December 31, (amounts in thousands):

	Year of maturity	Interest rate	2014	2013
UDSA Restructuring Bonds:				
Series 2013T	2017–2023	2.04%-3.44%	$ 482,934	482,934
Series 2013TE	2015–2039	5.00	1,449,390	1,539,390
			1,932,324	2,022,324
Unamortized premium			102,016	115,872
Less current maturities and short-term debt			(15,000)	(90,000)
Total long-term debt			$ 2,019,340	2,048,196

The debt service requirements for UDSA's bonds as of December 31, 2014 are as follows (amounts in thousands):

Due	Principal	Interest	Total
2015	$ 15,000	86,286	101,286
2016	60,000	84,786	144,786
2017	13,148	82,469	95,617
2018	46,433	82,032	128,465
2019	130,761	80,592	211,353
2020–2024	322,827	363,140	685,967
2025–2029	657,980	283,243	941,223
2030–2034	223,115	139,185	362,300
2035–2039	463,060	80,424	543,484
Total	$ 1,932,324	1,282,157	3,214,481

(4) Significant Agreements and Related-Party Transactions

Under the Servicing Agreement entered into by the Authority and UDSA, concurrently with the issuance of the Restructuring Bonds, the Authority, as Servicer, is required to manage and administer the UDSA bondable Restructuring Property and to collect the Restructuring Charge on UDSA's behalf. Under the Finance Order, the Authority withholds from the Restructuring Charge collections an annual servicing fee equal to 0.05% of the initial balance of bonds issued. Pursuant to the A&R OSA, PSEG-LI will perform the billing and collections, meter reading, and forecasting required of the Servicer under the Servicing Agreement.

(Continued)

UTILITY DEBT SECURITIZATION AUTHORITY
(A Component Unit of the Long Island Power Authority)
Notes to Basic Financial Statements
December 31, 2014 and 2013

(5) Subsequent Events

In connection with the preparation of the financial statements, management has evaluated subsequent events from December 31, 2014 through March 30, 2015, which was the date the financial statements were available for issuance, and concluded that no additional disclosures were necessary.

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Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*

The Board of Trustees
Utility Debt Securitization Authority:

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the basic financial statements of the Utility Debt Securitization Authority (UDSA), which comprise the statement of net position as of December 31, 2014 and the period from inception (July 29, 2013) through December 31, 2013, the related statements of revenues, expenses, and changes in net position, and cash flows for the period then ended, and the related notes to the basic financial statements, which collectively comprise UDSA's basic financial statements, and have issued our report thereon dated March 30, 2015.

Internal Control over Financial Reporting

In planning and performing our audit of the basic financial statements, we considered UDSA's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of UDSA's internal control. Accordingly, we do not express an opinion on the effectiveness of UDSA's internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

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Compliance and Other Matters

As part of obtaining reasonable assurance about whether UDSA's basic financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of UDSA's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering UDSA's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

KPMG LLP

March 30, 2015

Certification of Financial Report
Pursuant to Public Authorities Law § 2800 (3)

I, John D. McMahon, as Chief Executive Officer of the Utility Debt Securitization Authority (UDSA), do hereby certify in connection with the Financial Report, included in the Annual Report for the fiscal year ended December 31, 2014, that based upon information provided to me and my knowledge:

1. the information provided in the Financial Report is accurate, correct and does not contain any untrue statement of material fact;

2. the Financial Report does not omit any material fact which, if omitted, would cause the financial information to be misleading in light of the circumstances under which such reports are made; and

3. the Financial Report fairly presents in all material respects the financial condition and results of operations of the Authority as of, and for, the periods presented therein.

John D. McMahon
Chief Executive Officer

Dated: March 30, 2015

Certification of Financial Report
Pursuant to Public Authorities Law § 2800 (3)

I, Thomas Falcone, as Chief Financial Officer of the Utility Debt Securitization Authority (UDSA), do hereby certify in connection with the Financial Report, included in the Annual Report for the fiscal year ended December 31, 2014, that based upon information provided to me and my knowledge:

1. the information provided in the Financial Report is accurate, correct and does not contain any untrue statement of material fact;

2. the Financial Report does not omit any material fact which, if omitted, would cause the financial information to be misleading in light of the circumstances under which such reports are made; and

3. the Financial Report fairly presents in all material respects the financial condition and results of operations of the Authority as of, and for, the periods presented therein.

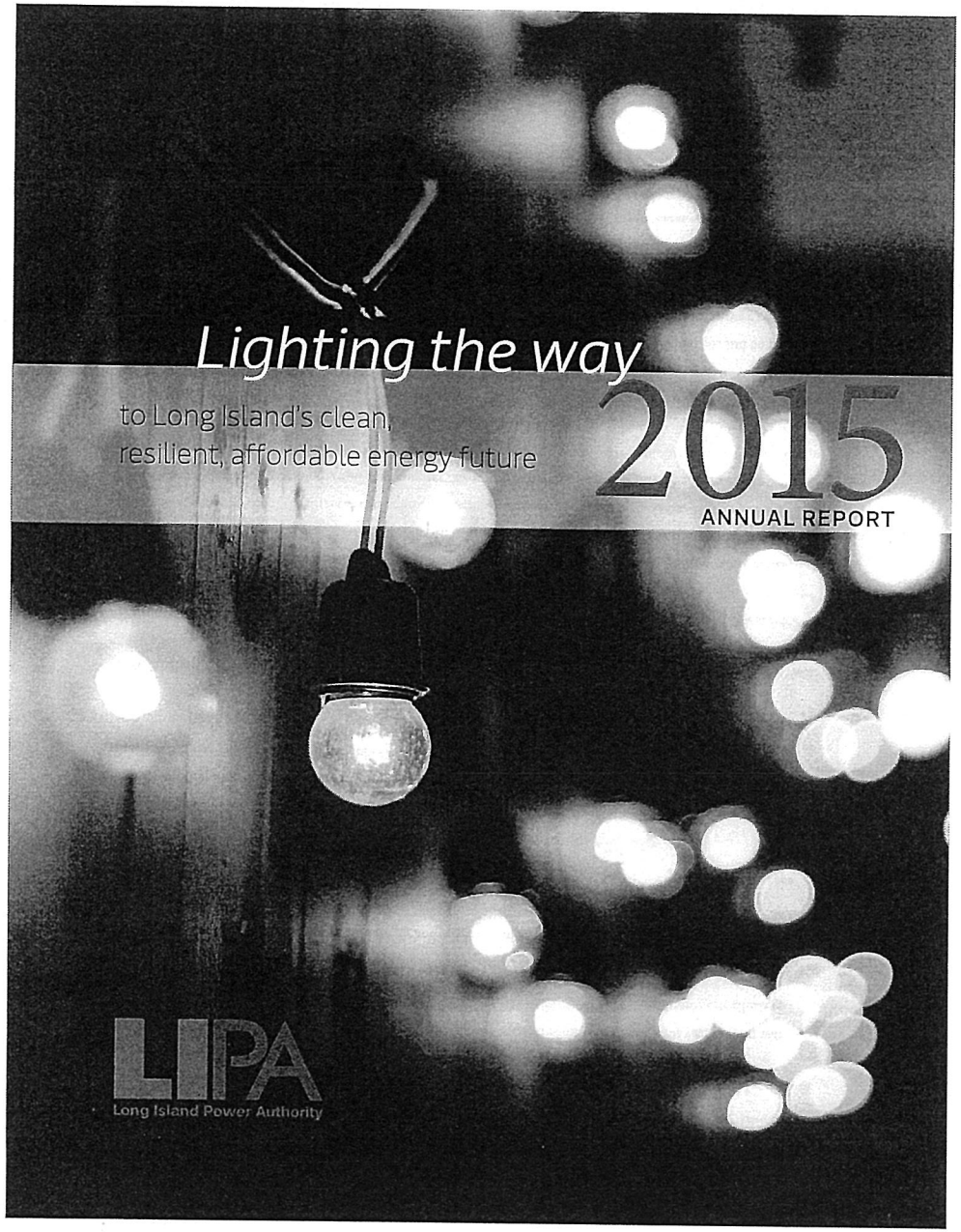
Thomas Falcone
Chief Financial Officer

Dated: March 30, 2015

require operations to maintain bond rating?

set threshold for review by OEB - see p. 29. "Late Movers"

set fixed obligation coverage targets



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CORPORATE STATISTICS	INSIDE BACK COVER

Dear Fellow Customers and Stakeholders:

Each year, the Long Island Power Authority ("LIPA") reports on the progress of your utility. This year's report will describe some of the significant developments at LIPA since the LIPA Reform Act of 2013, including our efforts to:

- improve customer service and satisfaction,
- maintain high electric system reliability and improve emergency response and storm resiliency,
- continue our investment in clean energy and energy efficiency,
- increase the transparency of LIPA's costs and electric rates, and
- reduce the legacy burden of debt and taxes on our customers.

LIPA has made progress in each of these areas over the last two years while maintaining our role as Long Island's not-for-profit, publicly owned electric utility — providing service to our customers at a system average electric rate as much as 30 percent below those of neighboring utilities.

Improving Customer Service and Satisfaction

The most important change for our customers over the last two years has been LIPA's transition to a new service provider — PSEG Long Island, who operates the Long Island electric system on LIPA's behalf under its own local brand. PSEG Long Island was formed from its sister company, PSE&G, one of the largest utilities in the nation and one with an outstanding record of customer service in its own service territory[1]. This new contractual arrangement provides transparency and the direct accountability of our service provider to our customers. LIPA and PSEG Long Island have put in place operational and customer service improvement goals for the first five years of our contract. These goals determine how PSEG Long Island allocates its time and resources and — importantly — the amount we pay PSEG Long Island for managing the LIPA electric system each year[2].

PSEG Long Island Is Delivering Customer Service Improvements

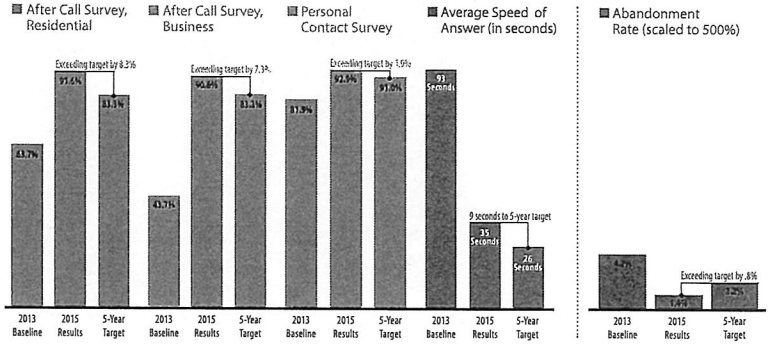
In the first two years of operations under our new contract, PSEG Long Island achieved 90 percent and 86 percent of our overall performance goals, respectively. The utility has renovated and opened new customer service offices, increased call center staffing at peak times, reduced average call waiting times, introduced new information technology to improve customer communication and outage tracking, and focused on serving our local Long Island community.

1 PSE&G is ranked #2 in the 2015 J.D. Power Residential Utility Customer Satisfaction Survey, East Large Segment, with a score of 680.

2 PSEG Long Island is reimbursed its prudently incurred costs for running the LIPA electric system and paid a management fee with performance incentives for its services.

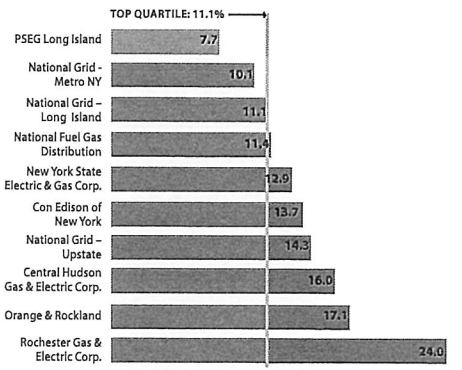
Our customers are noticing these initiatives. On four of the five key customer satisfaction indicators summarized in Chart 1 below, PSEG Long Island has not only significantly improved from the 2013 benchmark levels under our prior service provider, they actually moved to among the best performing utilities in the industry — meeting or exceeding their fifth-year performance targets in only the second year of operations.

Chart 1: Key Measures of Customer Service 2013 vs. 2015



Another broad measure of customer satisfaction is PSEG Long Island's initial customer complaint rate per 100,000 customers. Under the LIPA Reform Act, the New York State Department of Public Service ("DPS") now independently oversees customer complaints on Long Island to ensure the fair resolution of issues. Notably, during 2015, PSEG Long Island's initial customer complaint rate declined approximately 26 percent from the prior year and was the lowest of any of the New York utilities, as shown in Chart 2.

Chart 2: 2015 Initial Customer Complaint Rate Per 100,000 Customers



Source: Department of Public Service; rolling 12 months ending December 2015

Additionally, the surveys of electric utility customers conducted by J.D. Power and Associates have reflected these trends. In fact, PSEG Long Island is among the most improved utilities anywhere in the nation over the last two years — starting from a residential customer survey benchmark score of 519 in 2013 and rising to 532 in 2014 and 584 in 2015. Furthermore, PSEG Long Island and LIPA have agreed to target additional increases in customer satisfaction over the next three years. There is still more to do, but your Long Island electric utility is focused on improving customer service, and we are making progress.

Maintaining High Electric System Reliability and Improving Emergency Response and Storm Resiliency

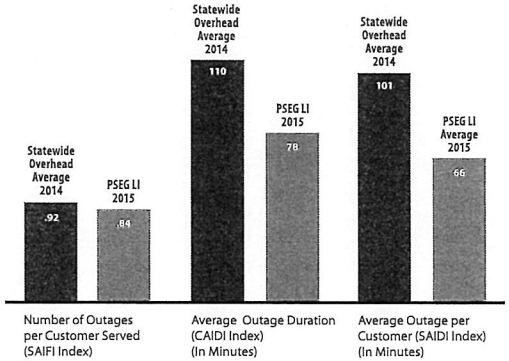
There are a number of factors that go into maintaining a reliable overhead electric system, including good system design, sound and well-funded maintenance programs, regular tree trimming and pole inspections, and adequate ongoing infrastructure investment. Work force levels, deployment of crews during electric outages, and geography also influence measures of reliability. Decisions made today can take several years to impact reliability, so it is important to avoid meeting near-term cost pressures in ways that could hurt long-term reliability. As one utility industry veteran said in another context, "someone is sitting in the shade today because someone planted a tree a long time ago."

Over the last two years, PSEG Long Island has maintained the highest level of day-to-day system reliability of any overhead New York utility[3] as measured by industry benchmarks,[4] levels that would place it among the top 25 percent of utilities in the country. In 2015, on average, each Long Island customer experienced less than a single electric outage (0.84 outages per year) (SAIFI Index), with outages lasting on average 78 minutes (CAIDI Index). Multiplying these two statistics, on average, each customer was without power for only 66 minutes (SAIDI Index) during 2015, compared to an average for New York overhead utilities in the most recently available report of 101 minutes per year, as shown in Chart 3 on the following page.

3 Sources: PSEG Long Island; New York Department of Public Service 2014 Electric Reliability Performance Report, June 2015.

4 The System Average Interruption Frequency Index ("SAIFI"), Customer Average Interruption Duration Index ("CAIDI"), and System Average Interruption Duration Index ("SAIDI") are commonly used reliability metrics for electric utilities.

Chart 3: PSEG Long Island is the Most Reliable Overhead Utility in New York

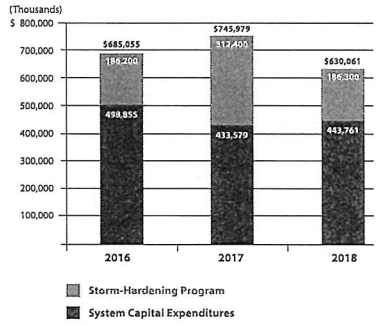


Source: PSEG Long Island 2015; Department of Public Service 2014 Electric Reliability Report, June 2015; excludes major storms

Record $2 billion 3-Year Infrastructure Investment and $730 Million Storm-Hardening Program

To maintain today's high levels of reliability, improve customer service, and enhance the resiliency of the electric system to severe storms, the LIPA Board of Trustees approved a record capital investment program for the next three years — $2+ billion, roughly double the historic level of investment (see Chart 4). The centerpiece of this plan is a $730 million storm-hardening program that will harden close to 1,000 miles of Long Island's electric circuits, raise ten at-risk substations above projected flood levels, and add nearly 1,300 new automated switches that allow service interruptions to be isolated and minimized. Importantly, with the help of Governor Cuomo, LIPA secured a federal grant to fund 90 percent of the cost of this $730 million storm-hardening investment — allowing LIPA to accelerate our investment for improved system resiliency while minimizing the cost to our customers.

Chart 4: $2 Billion 2016-2018 Infrastructure Investment Plan



PSEG Long Island Has Improved Emergency Response

Improving emergency response is another core goal of the LIPA Reform Act, and the best way to improve a utility's response to an emergency is to be prepared before the storm comes. Preparing for storms means investing in our electric system and maintaining adequate staffing levels to respond to an emergency but also includes the plans and processes in place long before a storm occurs.

In the last two years, PSEG Long Island has undertaken a number of efforts to improve emergency response. These include a new Emergency Response Plan ("ERP"), which is now reviewed annually by the DPS; and installation of a modern outage management system, improving the utility's ability to track customer outages and communicate with those who have lost power. During a major event, communication to all of our stakeholders is critical, and PSEG Long Island's ERP now deploys liaisons directly to county, city and state Emergency Operations Centers. In addition, PSEG Long Island has developed a Municipal Portal that allows local governments on Long Island to communicate directly with the utility on critical facilities and clearing road debris. The ERP also includes a Flood Assessment Command Center whose sole purpose is to coordinate all activities associated with flood assessment, disconnection and reconnection of electrical service due to severe widespread flooding, which was an issue after Superstorm Sandy.

No level of preparation will eliminate the effects of a truly devastating weather event. Mother Nature can overwhelm the best of plans. However, Long Island is more prepared today than two years ago and has significant additional storm-hardening investments planned over the next three years.

Continuing Our Investment in Clean Energy and Energy Efficiency on Long Island

Our customers want access to cleaner, more efficient, and renewable energy. LIPA has long-supported these goals in a number of ways, including offering rebates and incentives for customer-sited photovoltaic ("PV") solar systems, net metering self generation, instituting an ambitious ten-year energy efficiency program, and directly procuring energy from renewable sources. In 2014, LIPA transitioned from its own solar rebate program to the statewide NY-Sun program, which increased the funding available for solar rebates and accelerated the adoption of PV solar systems on Long Island. This change allowed Long Island to reach a milestone with the 10,000th PV solar system installed on our electric grid in 2014, a goal more than 14 years in the making. And the pace of change has accelerated — with LIPA reaching 20,000 solar systems a little more than a year later. Our Efficiency Long Island ("ELI") program, instituted in 2009, also remains on target to achieve its goals. ELI seeks to reduce peak load on Long Island by 520 megawatts — roughly the equivalent of one-and-a-half new power plants — by 2018.

Chart 5 below shows the progress of our PV solar and energy efficiency programs over the last two years. PSEG Long Island has met or exceeded our goals for load reduction — 71 megawatts in 2014, 16 percent over target, and 81 megawatts in 2015, 21 percent over target. And, as shown in Chart 6, we remain on track to achieve our 520 megawatt goal for peak load reduction by 2018.

Chart 5: Efficiency Long Island and Renewable Energy Load Reductions Since 2013

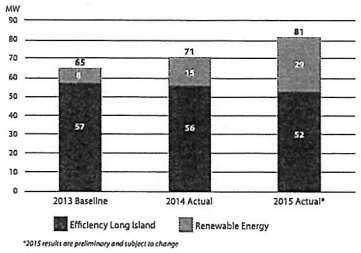
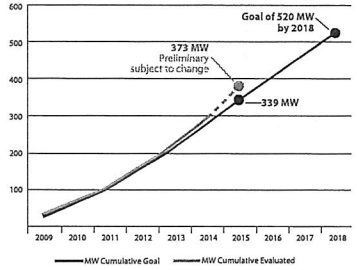


Chart 6: Efficiency Long Island and Renewable Energy Progress Toward 2018 Load Reduction Goal



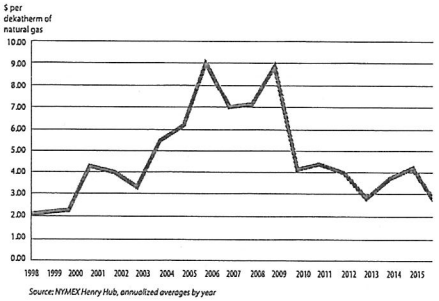
In addition, over the last two years, the LIPA Board of Trustees has approved the procurement of over 200 megawatts of renewable energy projects on Long Island, which are now in various stages of environmental permitting and construction. In late 2015, PSEG Long Island announced an additional solicitation for 210 megawatts of renewable energy, with proposals due in mid-2016 for commercial operation dates no later than 2022.

Innovation in the Electric Industry and on Long Island

New technology and the falling cost of renewable energy are offering electric utilities opportunities to be innovative in ways that enhance customer participation, utilize market forces, and promote system efficiency. The New York State Public Service Commission ("PSC") commenced the Reforming the Energy Vision ("REV") proceeding in April 2014 to encourage these developments among New York's investor-owned utilities, and similar experimentation and innovation is underway on Long Island. In 2015, LIPA and PSEG Long Island undertook several such initiatives, including:

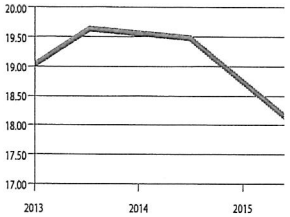
- a market solicitation to explore opportunities to cost-effectively defer transmission investment on the South Fork of Long Island using energy efficiency, demand response, and distributed energy solutions;

Chart 8: Natural Gas Prices are Back to 1998 Levels



Source: NYMEX Henry Hub, annualized averages by year

Chart 9: LIPA System Average Rates Have Declined Since 2013 (Delivery and Power Supply Charges)

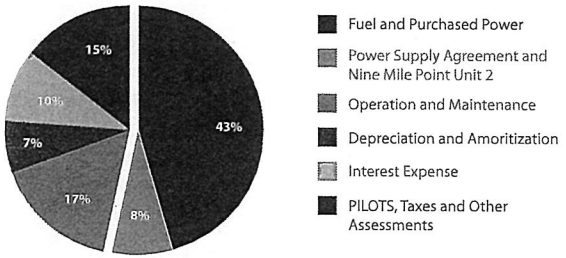


Reducing the Legacy Burden of Debt and Taxes on Customers

"In this world nothing can be said to be certain, except death and taxes."—Benjamin Franklin

Substitute the word "debt" and some on Long Island might think Benjamin Franklin's statement applies to their electric utility. Interest on debt and taxes are approximately 25 percent of every dollar LIPA spends — our third and fourth largest cost categories after fuel and purchased power expenses (51 percent, including the Power Supply Agreement and Nine Mile Point Unit 2), and operations and maintenance (17 percent) (see Chart 10 below). Since the LIPA Reform Act, LIPA is attempting to better manage these two costs, leaving more funds available for our customers' priorities like customer service, reliability, and clean energy.

Chart 10: Operating and Interest Expenses



Why LIPA Issues Debt

LIPA has a unique history as a not-for-profit public power utility, having acquired the for-profit LILCO for $6.295 billion in May 1998 in a transaction principally funded by tax-exempt municipal bonds. Together with assumed debt and debentures and the funding of credits and capital expenditures, LIPA closed its first year of operations with $7.95 billion of long-term debt. The bonds issued to acquire LILCO were scheduled to be repaid similar to a home mortgage, with principal and interest payments in each year over 35 years ending 2033. The purchase of LILCO provided an immediate benefit to Long Island customers — a 20 percent reduction from LILCO's electric rates — that was possible due to LIPA's not-for-profit status, lower cost of capital, exemption from corporate income taxes, and access to low cost tax-exempt bonds. The purchase of LILCO also left LIPA with a high debt burden compared to other utilities — one scheduled to be paid down over 35 years.

LIPA has periodically refinanced the debt issued to acquire LILCO to reduce cost, but the payment schedule remains the same. That debt will be entirely gone in 2033. However, in each year, LIPA funds a large investment plan — $685 million in 2016 and over $2 billion through 2018. Those investments are in physical assets that are necessary to deliver electricity to our customers over the next 50+ years. As a utility owned by the public, there are only two sources of funds for those investments — electric rates and debt[6]. Used prudently, debt is a tool that can appropriately spread the cost of infrastructure investments over the useful life of the assets, ensuring that today's customers pay some of the cost and that future customers, who also benefit from today's investments, pay an appropriate share of the cost too. Used imprudently, debt can burden future customers with higher costs than their fair share.

Recent Actions to Reduce the Cost of LIPA's Debt for Customers

LIPA's relatively high debt level has left it with lower "triple-B" credit ratings. Due to those lower credit ratings, investors expect LIPA to pay higher interest rates than other better-rated electric utilities. The LIPA Reform Act authorized a series of debt issues through a newly formed state agency to refinance roughly 60 percent[7] of LIPA's higher cost "triple-B"-rated debt with lower cost "triple-A" rated bonds. Our current estimate is that this refinancing, when complete, will save customers over $435 million in lower interest costs over the life of the refinanced bonds.

In addition to reducing the cost of already outstanding debt, the LIPA Board of Trustees adopted a new financial policy in December 2015 that was endorsed by the DPS in our Three-Year Rate Plan filing. As the new Board policy states:

> *"It is the policy of the Board of Trustees of the Long Island Power Authority to serve the long term interests of our Customers by adopting sound financial plans in each year... Such plans contain prudent levels of borrowing and lower the long-term cost of providing electric service to our Customers."*

6 As a public power utility, LIPA is also sometimes eligible for federal grants like those described above to fund 90 percent of the cost of our $730 million storm-hardening program.

7 The LIPA Reform Act authorized the sale of up to $4.5 billion of Utility Debt Securitization Authority bonds.

- a dynamic load management program using direct load control devices, advanced metering, and performance payments to cost effectively reduce distribution system investment otherwise needed to meet peak energy usage across Long Island[5];
- a community net metering program to allow small customers to share the output of larger distributed clean energy generation, thereby both expanding access to clean energy and reducing cost; and
- the expansion of our advanced metering network across Long Island, a prerequisite to providing customers with greater information, innovative pricing, and new opportunities to control their energy usage.

Increasing the Transparency of LIPA's Costs and Electric Rates

The LIPA Reform Act introduced a new transparent process to review LIPA's cost to provide safe and reliable utility service and thereby determine electric delivery rates. That process incorporates public participation as well as independent review and recommendations from the DPS, the staff arm of the state PSC. LIPA and PSEG Long Island initiated this new process for the first time on January 30, 2015 with the filing of a Three-Year Rate Plan for 2016-2018 (the "Rate Plan"). Under the guidance of two DPS administrative law judges over eight months, the Rate Plan was the subject of exhaustive data exchange, cross examination, and briefing by 11 parties — a process consistent with that used for the review of rate filings by New York's investor-owned utilities. The record in the rate case included over 1,500 transcript pages, 140 separately marked exhibits, and 1,850 comments from members of the public. This review, with the direct involvement of the utility professionals of the DPS staff, added a layer of third-party diligence in analyzing our costs and operating practices that should provide our customers and stakeholders with confidence that our electric rates are at the lowest levels consistent with sound fiscal and operating practices.

The Rate Plan recommended by the DPS and approved by our Board in December 2015 includes a 0.5 percent adjustment to total charges in 2016, 2.0 percent in 2017, and 2.0 percent in 2018. Importantly, these rate adjustments follow a three-year delivery rate freeze, and therefore result in average rate increases of less than one percent per year over the six-year period beginning in 2013, less than the rate of inflation.

rate adjustments

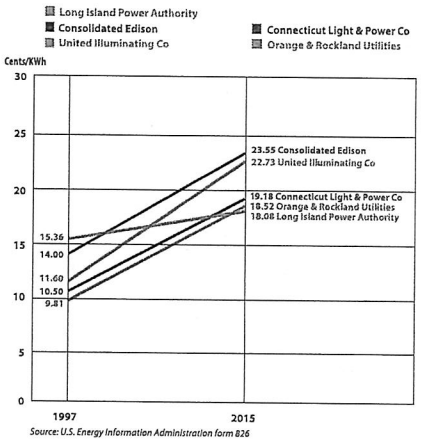
Record of Moderate Rate Adjustments for our Customers

As a publicly-owned electric utility, LIPA's electric rates reflect its costs to provide service with no profit margin. Since 1998, LIPA's electric rates have increased by approximately 18 percent, while the consumer price index has increased by 47 percent, and the rates of other regional electric providers have increased by as much as 96 percent.

5 Proposed in 2015 and approved by the LIPA Board of Trustees on March 21, 2016.

LIPA's goal is for its electric rates to remain competitive with those of the other regional utilities facing similar costs and fuel/power supply options. As shown in Chart 7, over the last 18 years since the LIPA acquisition of the Long Island Lighting Company ("LILCO"), LIPA has gone from having the highest electric rates in the region to among the lowest, albeit in a region with above average costs. Of note, as also shown in the chart, our electric rates are up to 30 percent below those of our neighboring utilities in southern New York and Connecticut, which are the utilities that face the most similar costs of doing business to those of LIPA.

Chart 7: Regional System Average Electric Rates Since 1997



Source: U.S. Energy Information Administration form 826

Falling Natural Gas Prices Reduced Customer Bills on Long Island in 2015

The Three-Year Rate Plan described above determined LIPA's charges for delivery service. However, like other New York utilities, LIPA's customers pay our actual fuel and purchased power costs — no more and no less — through a Power Supply Charge that adjusts each month.

LIPA's generation fuel is predominantly natural gas. An important trend in LIPA's costs, and therefore its electric rates, has been the dramatic decline in natural gas prices, which as shown in Chart 8 are now back to late 1990s levels — falling from a high of $9 per decatherm ("Dth") in 2005 to an average of $4.25/Dth in 2014 and $2.60/Dth in 2015. That decline has lowered electric bills for our customers. As shown in Chart 9, our system average rate in 2015, including delivery charges, was 18.0 cents per kilowatt-hour — 7% lower than 2014 and the lowest annual average since 2007.

The cornerstone of that new financial policy is to ensure that new bonds fund no more than 64 percent of LIPA's annual capital spending. That is accomplished by increasing the portion of LIPA's infrastructure investment that is funded by internal cash flow, while reducing the portion that is debt funded. This financial policy is designed to raise LIPA's credit ratings over a five-year period, thereby further reducing the cost of LIPA bonds for customers. According to recent credit reports by Fitch Ratings[8], this financial policy "provides sound long-term financial goals and policies," "should moderate future borrowings," and "is in-line with industry standards." Moody's Investor Service[9] commented that our financial policy was "supportive of LIPA's objective of gradually improving its credit quality." All three of the major credit rating agencies have recently recognized LIPA's progress in adopting sound fiscal practices by changing our bond rating outlooks from "negative" to "stable."

Taxes Have Grown to Be LIPA's Third Largest Cost

As a not-for-profit utility, LIPA is exempt from federal and state corporate income taxes but makes payments in-lieu-of taxes ("PILOTs") on its transmission and distribution ("T&D") system property[10] and reimburses the property taxes paid by the private owners of power plants under contract to serve our customers. LIPA also pays revenue taxes and assessments. The combined total of these PILOTs, taxes, and assessment was $540 million or 15 percent of LIPA's customer bills in 2015, (see Chart 10). This compares to a national average of 5.5 percent for public power utilities and 4.2 percent for investor-owned utilities[11] — meaning that Long Island electric rates would be 10 percent lower compared to national averages simply by lowering the hidden tax burden on LIPA's customers to the national average. Taxing the electric utility could be viewed as a way to pay for necessary and valuable local government services; however, some taxing jurisdictions have succeeded in transferring far more of their costs to island-wide electric customers than others.

The LIPA Reform Act provided much needed tax relief to LIPA customers in several ways, including eliminating a gross receipts tax, eliminating sales taxes, and incorporating, beginning in 2015, a 2 percent cap on annual increases in LIPA's T&D system property PILOTs[12]. Prior to the 2 percent property PILOT cap, these PILOTs grew at the rate of 7 to 8 percent annually for many years. With the 2 percent PILOT cap and these other changes, LIPA's customers will save more than $200 million over the next three years. Notably, in 2015, the first year of the 2 percent PILOT cap, a number of municipalities billed LIPA in excess of the 2 percent cap, and LIPA defended the cap in court on behalf of our customers.

8 See Fitch Ratings reports November 2015 and February 2016.

9 See Moody's Investor Service rating report November 2015.

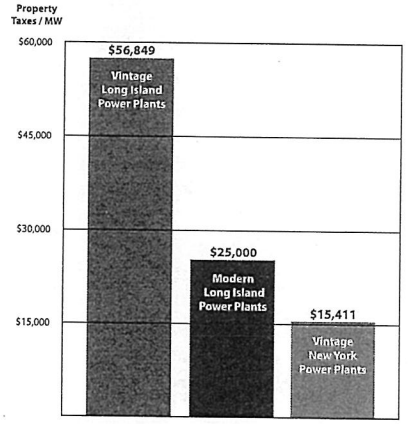
10 LIPA is one of the few publicly owned utilities to pay property tax PILOTs; most public power utilities are exempt from the property tax system while some pay a percentage of revenue to host governments in lieu of property taxes.

11 Source: Payments and Contributions by Public Power Distribution Systems to State and Local Governments, American Public Power Association, March 2014.

12 The 2 percent cap does not apply to privately owned power plants under contract to LIPA.

LIPA is also pursuing property tax relief on four local power plants it has under contract that were formerly owned by LILCO. The over-taxation of these four local power plants can readily be seen in Chart 11. In dollar terms, the current rate of taxation on these vintage plants averages nearly $57,000 per megawatt. By comparison, the property taxes on modern power plants on Long Island are about $25,000 per megawatt and vintage power plants located elsewhere in New York pay approximately $15,000 per megawatt, which is about a quarter of the taxes paid by LIPA's customers, a difference of more than $110 million per year. LIPA has filed tax grievances for these four power plants for every year since 2010. We have sought through negotiation to find an amicable solution for all of our customers, but to date that has proved elusive, and litigation may continue for quite some time.

Chart 11: Property Taxes on Power Plants Per Megawatt of Installed Capacity



Looking Forward to 2016

The completion of PSEG Long Island's Integrated Resource Plan ("IRP") is among our most important goals for 2016. This IRP will provide an updated roadmap for Long Island's energy future, including the transition from aging fossil-fueled power plants to a modern, clean, distributed system of power generation. PSEG Long Island has been

soliciting public participation into the IRP planning process, and I encourage interested parties, if you have not done so already, to reach out to PSEG Long Island with your thoughts. PSEG Long Island is expected to present its initial IRP analysis this Spring, followed by a refined analysis in the Fall, and LIPA and DPS will carefully review the alternatives presented.

LIPA is also closely monitoring developments at the state PSC in the REV proceeding. Of particular note, we expect the PSC will address a number of electric rate design issues during 2016 to encourage greater choice and efficiency, and thereby reduce cost for all customers. We look forward to presenting the LIPA Board of Trustees with similar proposals.

.....

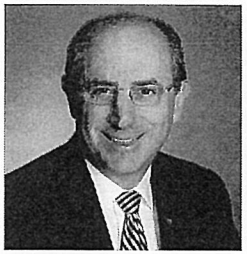
I feel extraordinarily privileged to work at LIPA, a not-for-profit utility run for the benefit of our customers. The 42 men and women who work with me at our public authority do outstanding work on behalf of Long Island — often dealing with highly complex issues on which not everyone will agree, and always acting transparently and in the public interest. This letter outlines our progress in executing our plans and addressing some long-standing challenges. We still have much to do, however we are on the right path to meeting the goals articulated by Governor Cuomo and the Legislature in the LIPA Reform Act a little over two years ago.

Thomas Falcone

Thomas Falcone
Chief Executive Officer

March 31, 2016

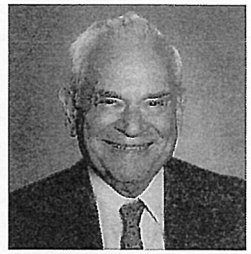
BOARD OF TRUSTEES



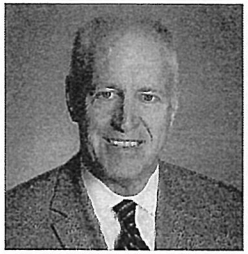
Ralph V. Suozzi
Chair, Board of Trustees



Thomas J. McAteer
Vice-Chair, Board of Trustees
Committee Chair, Personnel & Compensation



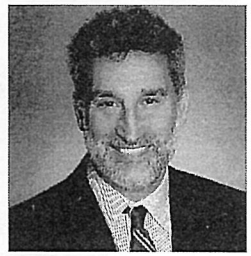
Elkan Abramowitz
Committee Chair,
Contract Oversight



Sheldon L. Cohen
Committee Chair,
Finance & Audit



Matthew Cordaro
Trustee



Mark Fischl
Committee Chair, Governance
Committee Chair, Reforming the Energy Vision



Jeffrey H. Greenfield
Trustee



Suzette C. Smookler
Trustee

EXECUTIVE STAFF



Thomas Falcone
Chief Executive Officer &
Chief Financial Officer[1]



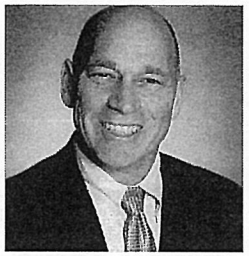
Jon Mostel
General Counsel and Secretary



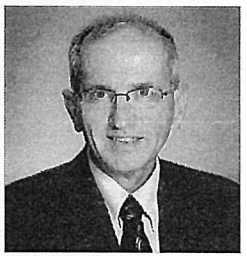
Rick Shansky
Managing Director of
Contract Oversight



Bobbi O'Connor
Deputy General Counsel and
Assistant Secretary



Kenneth Kane
Managing Director of Finance



John Little
Managing Director of Planning
and Strategy



Donna Mongiardo
Controller



Kathleen Mitterway
Director of Audit



Barbara Ann Dillon
Director of Human Resources
and Administration

1 Mr. Falcone will continue to serve as Chief Financial Officer until a successor is named.

LONG ISLAND POWER AUTHORITY
(A Component Unit of the State of New York)
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(Amounts in thousands, unless otherwise stated)

Management's Discussion and Analysis of Financial Condition and Results of Operations

Introduction

The Long Island Power Authority (the Authority) is a component unit of New York State (State). The Authority became the retail supplier of electric service in the Counties of Nassau and Suffolk (with certain limited exceptions) and a portion of Queens County known as the Rockaways (Service Area), on May 28, 1998 by acquiring the transmission and distribution (T&D) system of the Long Island Lighting Company (LILCO) as a wholly-owned subsidiary of the Authority. As part of the acquisition, the Authority also acquired an undivided 18% interest in the Nine Mile Point Unit 2 (NMP2) generating facility, located in upstate New York, which is operated and managed by Exelon Corporation.

Since the acquisition, LILCO has conducted business under the names LIPA and Power Supply Long Island, referred to collectively as the Authority. The Authority provides electric delivery service in the Service Area, which includes approximately 1.1 million customers. The population of the Service Area is approximately 2.9 million.

In order to assist the Authority in providing electric service to its customers, the Authority entered into operating agreements, the purpose of which was to provide the Authority with the operating personnel and a significant portion of the power supply resources necessary for the Authority to provide electric service in the Service Area. From 1998 through 2013, the service providers were generally National Grid plc, certain National Grid Subsidiaries and their predecessors (collectively, National Grid Subs), with some exceptions. A National Grid Sub was the T&D System manager pursuant to a Management Services Agreement (MSA), which expired at the end of 2013. T&D System management services included, among other functions, the day-to-day operation and maintenance of the T&D System, customer service, billing and collection, meter reading and forecasting.

Effective January 1, 2014, the Authority's role significantly changed as a result of the LIPA Reform Act (Reform Act). The Reform Act was passed and codified as Chapter 173, Laws of New York on June 21, 2013 by the New York State Assembly and Senate. The Reform Act is divided into two parts, Part A and Part B. Part A addresses the reorganization of the Authority and substantially changed its operating responsibilities. Under the Authority's new business model, PSEG Long Island was selected as the Authority's service provider pursuant to the Amended and Restated Operations Services Agreement (A&R OSA). Under the A&R OSA, the PSEG Long Island management company is the contracting entity with the Authority. PSEG Long Island is a wholly owned subsidiary of Public Service Enterprise Group (PSEG). The A&R OSA provides for the operation, maintenance and related services for the T&D system. PSEG Long Island is paid a management fee and may earn incentives related to specified performance metrics. Essentially all costs of operating and maintaining the Authority's T&D system incurred by PSEG Long Island are passed through to and paid for by the Authority.

The Authority also has a fuel management contract with PSEG Energy Resources and Trade LLC (PSEG ER&T) to provide for services related to fuel and power supply management and certain commodity activities. Separately from its fuel management contract with PSEG ER&T, the Authority maintains several power purchase agreements with third party power merchants.

Part B of the Reform Act created the Securitization Law which established the Utility Debt Securitization Authority (UDSA). The Securitization Law's sole purpose was to provide a legislative foundation for the UDSA's issuance of restructuring bonds to allow the Authority to retire a portion of its outstanding indebtedness, providing savings to the Authority's customers on a net present value basis. The restructuring bonds are to be repaid by an irrevocable, nonbypassable restructuring charge on all the Authority's customers. The UDSA has a governing body separate from that of the Authority and has no commercial operations.

Overview of the Consolidated Financial Statements

The Authority is engaged in business type activities and follows financial reporting for enterprise funds. The Authority's financial statements are prepared on an accrual basis in accordance with generally accepted accounting principles (GAAP) as prescribed by the Governmental Accounting Standards Board (GASB).

The management's discussion and analysis of the Authority's financial performance provides an overview of the Authority's financial information for the years ended December 31, 2015 and 2014. The discussion and analysis should be read in conjunction with the Basic Financial Statements and the accompanying notes, which follow this section. The notes are an integral part of the Authority's Basic Financial Statements and provide additional information on certain components of these statements.

The Authority's Consolidated Statements of Net Position as of December 31, 2015, 2014 and 2013 are summarized below:

	2015	2014	2013
ASSETS & DEFERRED OUTFLOW OF RESOURCES			
Capital assets	$ 7,548,163	6,727,057	6,683,026
Current assets	1,786,878	1,884,739	1,686,216
Regulatory assets	1,373,147	1,553,135	936,431
Other noncurrent assets	2,072,100	2,867,380	2,423,154
Deferred outflow of resources	254,352	163,341	236,337
Total assets & deferred outflow of resources	13,034,640	13,195,652	11,965,164
LIABILITIES & DEFERRED INFLOW OF RESOURCES			
Long-term debt, net	7,432,468	7,551,891	6,984,635
Current liabilities	1,405,757	1,236,358	1,577,635
Regulatory liabilities	30,027	40,245	-
Other noncurrent liabilities	3,168,580	3,458,049	3,012,687
Deferred inflow of resources	516,309	474,517	12,106
Total liabilities & deferred inflow of resources	12,553,141	12,761,060	11,587,063
Total net position	481,499	434,592	378,101
Total liabilities, deferred inflows of resources & net position	$ 13,034,640	13,195,652	11,965,164

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2015 Compared to 2014

The primary change in the Authority's combined financial condition as of December 31, 2015 and 2014 were as follows:

Assets and deferred outflows of resources

Assets and deferred outflows or resources decreased $161 million compared to 2014 due to decreases of $795 million in noncurrent assets, $180 million in regulatory assets, and $98 million in current assets, partially offset by increases of $821 million in capital assets and $91 million in deferred outflow of resources.

Capital assets increased $821 million compared to 2014 primarily due to the reclassification of the accumulated depreciation reserve imbalance as calculated by a new depreciation study totaling $718 million. The Authority's Three Year Rate Plan for 2016, 2017 and 2018, as approved by the Authority's Board in December 2015, authorized reducing the unamortized balance of the Acquisition Adjustment by this same amount. The remaining increase was due to construction projects totaling $386 million partially offset by asset retirements and annual depreciation expense.

Current assets decreased by $98 million compared to 2014 primarily due to a lower receivable as the Authority received payment of $80 million for a Community Development Block Grant. This was partially offset by increased commodity derivative collateral posted by the Authority as of December 31, 2015.

Regulatory assets decreased by $180 million primarily due to a $130 million decrease in retirement benefit obligations related to the workforce of the Authority's service provider, reflecting an updated actuarial valuation plus the annual amortization of prior service costs. Also contributing to the decrease was the elimination of deferred transition costs totaling $46 million, as approved by the Authority's Board in December 2015, and the collection of the Shoreham property tax settlement receivables of $12 million. The remaining decrease was due to the normal annual collection of certain long term regulatory assets. Partially offsetting these decreases was the recognition of a regulatory asset related to the revenue decoupling mechanism, totaling $17 million. For a full discussion of the Authority's regulatory assets and liabilities, see notes 3 and 4 to the Authority's Basic Financial Statements.

Noncurrent assets decreased by $795 million primarily due to the reclassification of the accumulated depreciation reserve imbalance from capital assets to an offset to the unamortized balance of the Acquisition Adjustment, as discussed above. The remaining decrease was due to the change in the deferred mark to market on certain of the Authority's financial derivatives.

Deferred outflow of resources increased by $91 million primarily due to the deferred loss incurred on the refunding of a portion of the Authority's debt with the issuance of the 2015 UDSA Restructuring Bonds. The deferred loss represents the difference between the reacquisition price and the carrying amount of the refinanced debt. Although the refinancing recognized a deferred loss on refunding as provided for under the accrual method of accounting, the refunding produces net present value savings of $128 million over the life of the UDSA Restructuring Bonds due to lower interest costs.

Liabilities and deferred inflows of resources

Liabilities and deferred inflows of resources decreased $208 million due to decreases of $119 million in long-term debt-net, $10 million in regulatory liabilities, and $289 million in noncurrent liabilities, partially offset by increases of $169 million in current liabilities and $42 million in deferred inflow of resources.

Net long-term debt decreased $119 million primarily due to scheduled maturities of $180 million offset by the accretion of the capital appreciation bonds, amortization of bond discounts and premiums, and the issuance of long-term debt. The Authority issued $200 million Electric System General Revenue Bonds Series 2015A to refinance outstanding variable rate demand bonds with expiring bank facilities. The Authority issued $117 million Electric System General Revenue Bonds Series 2015B, which generated premiums of approximately $13 million, to fund construction projects. The Authority issued $149 million Electric System General Revenue Bonds Series 2015C to refinance outstanding variable rate bonds with expiring bank facilities.

In addition, the UDSA issued $1.022 billion of Restructuring Bonds, Series 2015, which generated premiums of approximately $177 million, and allowed the Authority to retire approximately $1.045 billion of its existing debt with the proceeds from the UDSA transaction.

Regulatory liabilities decreased $10 million due to the return to customers of 2014 excess collections of fuel and purchased power costs totaling $40 million offset by the recognition of 2015 excess collections of $30 million. In accordance with the Authority's tariff any over/under collection of fuel and purchased power costs are returned/collected in the subsequent month.

Noncurrent liabilities decreased $289 million primarily due to the $191 million related to the current portion of the Authority's capital lease obligations and an $87 million decrease in retirement benefit obligations related to the workforce of the Authority's service provider resulting from an updated actuarial valuation plus the cash funding of pension obligations made by the Authority in 2015.

Deferred inflows of resources increased $42 million due to additional advanced funds received from the Federal Emergency Management Agency (FEMA) totaling $61 million partially offset by the change in market to market value of certain of the Authority's derivatives instruments.

2014 Compared to 2013

The primary change in the Authority's combined financial condition as of December 31, 2014 and 2013 were as follows:

Assets and deferred outflows of resources

Assets and deferred outflows of resources increased $1.23 billion compared to 2013 due to increases of $44 million in capital assets, $199 million in current assets, $444 million in noncurrent assets and $617 million in regulatory assets partially offset by the decrease of $73 million in deferred outflows of resources.

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Capital assets increased $44 million due to net construction work in process increases of $443 million. Offsetting this increase were asset retirements, reductions caused by accumulated depreciation and reclasses to regulatory assets for certain projects not owned by the Authority but generated for the sole benefit of the Authority.

Current assets increased $199 million compared to 2013 primarily due to an increase in cash and cash equivalents resulting from bond proceeds. Bond proceeds of $511 million funded past and future capital expenditures while $150 million was to refinance variable rate notes callable on January 2, 2015, and therefore held as available cash at year-end.

Regulatory assets increased $617 million compared to 2013 primarily due to an increase of the costs associated with A&R OSA employee retirement benefits totaling $598 million; PSEG Long Island implementing new enterprise resource planning and outage management systems totaling $42 million and $27 million, respectively; and power supply management transition costs totaling $19 million. These increases were partially offset by a decrease of $13 million related to the Shoreham Property Tax Settlement Agreement (discussed in note 4 to the Basic Financial Statements); $46 million of 2013 deferred under recovery of fuel and purchased power costs that were fully recovered during 2014; and the amortization of various deferred costs totaling $10 million.

Noncurrent assets increased $444 million compared to 2013 primarily due to an increase in restricted cash and cash equivalents. During 2014, the Authority received $774 million in grant proceeds from FEMA. The grant proceeds included $301 million from FEMA related to reimbursements for Superstorm Sandy, $441 million related to advance funding from FEMA of an ongoing storm hardening program and $32 million from other grants. The balance of the FEMA funds are held as noncurrent restricted as they are held for storm hardening capital projects to strengthen the Long Island Electric grid to the effects of severe weather.

Deferred outflow of resources decreased $73 million due to the $30 million annual amortization of the deferred loss incurred on the refunding of a portion of the Authority's debt with the issuance of the 2013 UDSA Restructuring Bonds. Also contributing to the decrease was the $43 million change in the market to market value of the Authority's hedging commodity derivatives.

Liabilities and deferred inflows of resources

Liabilities and deferred inflows of resources increased $1.17 billion due to increases of $567 million in long-term debt-net, $445 million in noncurrent liabilities, $40 million in regulatory liabilities, and $462 million in deferred inflows of resources. These increases were partially offset by a decrease of $341 million in current liabilities.

Net long-term debt increased due to the issuance of $615 million of Electric System General Revenue Bonds, including an issuance premium of $37 million. The Authority also issued $150 million of floating rate notes to refinance $150 million of its variable rate bonds; however, the existing variable rate bonds were not callable until January 2, 2015, and therefore were outstanding at year-end. Offsetting this was a decrease in unamortized discounts and premiums and scheduled maturities of outstanding debt instruments.

Current liabilities decreased $341 million primarily due to reimbursements made to the Authority's prior service provider during 2014 for Superstorm Sandy costs.

Regulatory liabilities increased $40 million resulting from the deferral of the over collection of fuel and purchased power costs. The Authority's power supply charge is reset monthly based on actual and forecast costs. The over collection reduced the power supply charge in 2015.

Other noncurrent liabilities increased $445 million primarily due to the costs associated with A&R OSA employee retirement benefits totaling $578 million partially offset by the annual amortization of the Authority's capital lease obligations.

Deferred inflows of resources increased $462 million due to a grant received from the FEMA totaling $448 million. The remaining increase is due to the change in mark to market value of certain of the Authority's derivatives instruments.

Results of Operations

The Authority's Consolidated Statements of Revenues, Expenses and Changes in Net position for the years ended December 31, 2015, 2014 and 2013 are summarized as follows:

	2015	2014	2013
Electric revenue	$ 3,505,209	3,613,982	3,755,832
Operating expenses	(3,187,383)	(3,351,379)	(3,434,973)
Interest expense	(361,725)	(358,490)	(334,881)
Total expenses	(3,549,108)	(3,709,869)	(3,769,854)
Revenue less operating and interest expenses	(43,899)	(95,887)	(14,022)
Grant income	54,329	114,521	27,315
Other income	37,744	37,857	34,134
Total other income	92,073	152,378	61,449
Change in net position	$ 48,174	56,491	47,427
Beginning net position	434,592	378,101	330,674
Cumulative effect of change in accounting principle	(1,267)	-	-
Net position, beginning of year, as restated	433,325	378,101	330,674
Net position, end of year	$ 481,499	434,592	378,101

2015 Compared to 2014

Operating revenues

Electric revenue for 2015 totaled $3.50 billion, a decrease of $109 million compared to 2014 due to lower fuel and purchased power costs, which were passed through to customers in lower electric rates, partially

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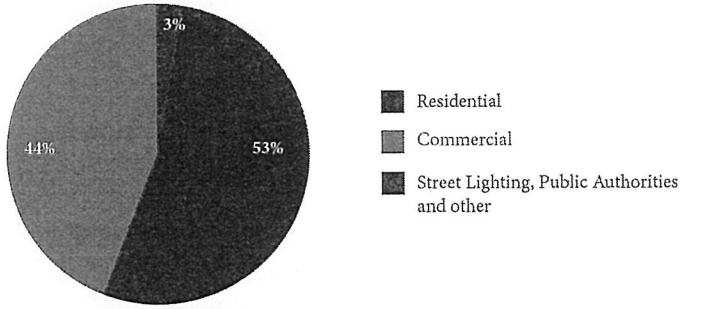
offset by higher delivery revenues due to higher sales during the winter of 2015. For the year ended December 31, 2015, approximately 53% of LIPA's annual retail revenues were received from residential customers, 44% from commercial customers and 3% from street lighting, public authorities and certain others. The largest customer in the service area (the Long Island Rail Road) accounted for less than two percent of total sales and less than two percent of revenue. In addition, the ten largest customers in the service area accounted for approximately seven percent of total sales and less than seven percent of revenue.

Revenue from Sales of Electricity by Customer Class



	2015	2014	2013
Revenues from Sales of Electricity*			
Residential	$ 1,860,865	$ 1,883,319	$ 1,966,898
Commercial	1,537,844	1,618,297	1,681,406
Street Lighting, Public Authorities and Other	106,500	112,366	107,528
Totals	**$ 3,505,209**	**$ 3,613,982**	**$ 3,755,832**

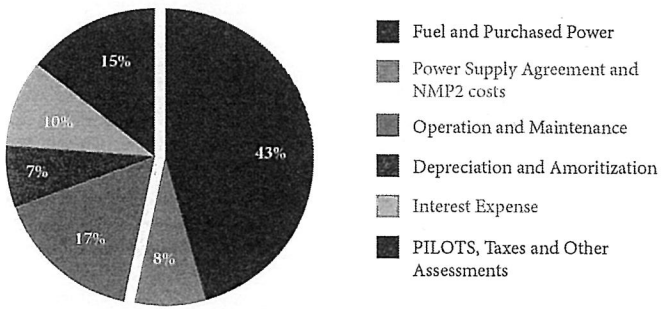
** Amounts related to deferral mechanisms have been allocated to each class as shown.*

Operating and interest expenses

Operating expenses for 2015 totaled $3.19 billion a decrease of $164 million compared to 2014 primarily due to lower fuel and purchased power costs of $149 million. The remaining decrease was primarily due to lower costs incurred for finance and information technology expenses after the transition to the Authority's new service provider for these services in 2015. Interest expenses for 2015 totaled $362 million, an increase of $3 million compared to 2014 primarily due to higher debt balances outstanding during 2015.

The Authority's operating and interest expenses are comprised of costs associated with operating and maintaining the Authority's T&D system and financing the capital projects related to maintaining the reliability of electric service. For the year ended December 31, 2015, approximately 51% of the Authority's expenses were associated with providing generated and purchased power, including fuel and purchased power expenses of 43%, the Amended and Restated Power Supply Agreement (A&R PSA) with National Grid of 7%, and the Authority's share of operating costs associated with the NMP2 nuclear generating station of 1%. Operations and maintenance expenses associated with the T&D system comprised 17% of expenses in 2015. Payments made in lieu of taxes (PILOTs), taxes paid pursuant to contract on the A&R PSA generating units, and other taxes and assessments were 15% of expenses. Interest expenses were 10% of expenses in 2015 while depreciation and amortization was 7%.

2015 Operating and Interest Expenses



Other income

Grant income decreased $60 million compared to 2014 primarily due to an $80 million Community Development Block grant recognized in 2014 to pay for the costs not reimbursed by FEMA related to Superstorm Sandy and other FEMA declared weather events.

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Net position, Cumulative effect of change in accounting principle

During 2015, the Authority adopted GASB No. 68, *Financial Reporting for Pension Plans-an amendment of GASB No. 27.* GASB No. 68 changed how the Authority calculates and reports the costs and obligations associated with pensions. For the Authority, this Statement became effective January 1, 2015. This resulted in a reduction to the Authority's net position of $1.3 million for the opening balance of the Authority's allocated share of the net pension liability. For a full discussion of the Authority's net pension liability, see note 13 to the Basic Financial Statements.

2014 Compared to 2013

Operating revenues

Revenue for 2014 decreased $142 million compared to 2013 primarily due to lower sales as a result of the mild summer weather experienced in 2014. Also contributing to the decrease were lower fuel and power supply charges totaling $91 million, which were passed through to customers in lower electric rates, including $56 million due to lower commodity costs and $35 million due to lower sales.

Operating and interest expenses

Total operating expenses for 2014 decreased $84 million compared to 2013. Fuel and purchased power expenses decreased $91 million due to lower sales and lower commodity costs. Also contributing to the decrease was $64 million lower depreciation expense resulting from the implementation of a new depreciation study during 2014. Offsetting these decreases were higher operations and maintenance costs related to the operating structure with the Authority's new service provider, which became effective on January 1, 2014.

Interest charges increased $24 million compared to 2013 primarily due to noncash charges associated with the deferred loss amortizations on the 2013 UDSA refinancing transaction. The deferred loss represents the difference between the reacquisition price and the carrying amount of the refinanced debt. The refinancing provided net present value savings of $132 million over the life of the UDSA Restructuring Bonds due to lower interest costs.

Other income

Grant income increased $87 million compared to 2013 million primarily due to an $80 million Community Development Block grant to pay for the costs not reimbursed by FEMA related to Superstorm Sandy and other declared weather events, plus a $10 million increase in the grant received from the New York State Energy Research and Development Authority (NYSERDA) to offset a portion of the costs of the Authority's energy efficiency and renewable programs.

Other income increased $4 million compared 2013 primarily due to gains realized on the Authority's NMP2 trust account.

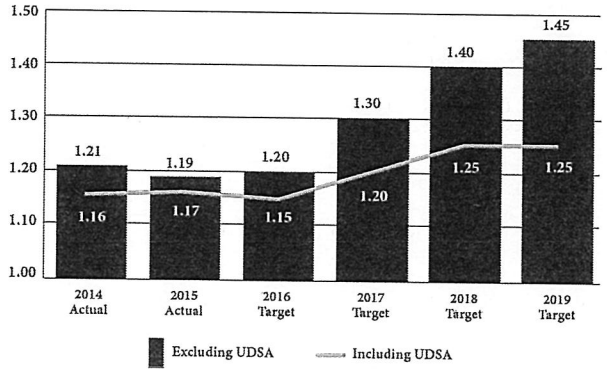
Fixed Obligation Coverage Ratios

The Authority's fixed obligation coverage ratios for the years ended December 31, 2015 and 2014 were 1.19x and 1.21x, respectively. Inclusive of UDSA restructuring bonds, the fixed obligation coverage ratios were 1.17x and 1.16x.

In December 2015, the Authority's Board approved a Three Year Rate Plan, as recommended by the New York Department of Public Service. The Three Year Rate Plan incorporated a new Board-adopted financial policy that seeks to reduce the portion of the Authority's capital plan funded by debt to 64% or less and raise the Authority's credit ratings to A2 by Moody's Rating Service, A by Standard and Poor's, and A by Fitch Ratings over five years. To achieve these goals, the Rate Plan adopted the "public power model" of budgeting and rate setting proposed by PSEG Long Island and Authority staff, which makes use of the debt service coverage method of determining revenue requirements. For the Authority, this entails transitioning from the historic use of a $75 million budget for net income to budgeting to achieve fixed obligation coverage targets (including capitalized leases) on Authority issued debt of a minimum 1.20x, 1.30x, and 1.40x in 2016, 2017, and 2018 (and 1.45x in 2019 after the Three Year Rate Plan). When the UDSA restructuring bonds are included, these coverage ratio targets are a minimum of 1.15x, 1.20x, and 1.25x in 2016, 2017, and 2018. The Authority's methodology for calculating fixed obligation coverage ratios excludes certain specified non-cash items from expenses. The Authority cannot predict whether any of the targets or goals of the Three Year Plan will be realized.

For a full discussion for the fixed obligation coverage ratio calculation, see notes 3 and 11 to the Basic Financial Statements. The Authority's historic and projected fixed obligation coverage ratios are shown below.

Historic and Target Fixed Obligation Coverage Ratios



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(Amounts in thousands, unless otherwise stated)

Financing Activities

The Authority's consolidated debt at December 31, 2015, 2014 and 2013, including current maturities, is comprised of the following instruments:

	2015	2014	2013
Long-term debt:			
General Revenue Bonds	$ 4,380,595	5,246,726	4,594,248
Subordinated Revenue Bonds	—	350,000	350,000
UDSA Restructuring Bonds	2,919,439	1,932,324	2,022,324
Total long-term debt	$ 7,300,034	7,529,050	6,966,572
Short-term debt:			
General Revenue Notes	—	65,000	263,000
General Revenue Commercial Paper Notes	50,000	—	—
Subordinated Commercial Paper Notes	300,000	215,000	
Total short-term debt	$ 350,000	280,000	263,000
Total debt	$ 7,650,034	7,809,050	7,229,572

Financing Transactions for Years 2015 and 2014

The table below summarizes the financing activity for the Authority and the UDSA for the years ended December 31, 2015 and 2014:

	Bonds to Fund Capital Projects	Refinancing of Fixed-Rate Bonds for Savings	Refinancing of Variable-Rate Bonds
2015:			
General Revenue Bonds	$ 117,230	-	349,000
UDSA General Revenue Bonds	-	1,002,115	-
2014:			
General Revenue Bonds	$ 555,750	22,270	150,000

The Authority issued new long-term debt to fund capital improvements in 2015 and 2014. The Authority also refinanced certain long-term variable-rate bonds that had bank facilities subject to periodic renewal in 2015 and 2014. Additionally, in 2014, the Authority issued $22.3 million of bonds to refinance existing fixed-rate debt for interest savings.

On March 30, 2015, the Securitization Law was amended allowing for a total issuance of up to $4.5 billion of UDSA restructuring bonds, inclusive of the $2.0 billion of restructuring bonds issued pursuant to Financing Order No. 1 in December 2013. On October 16, 2015, the UDSA through Financing Order No.2, issued $1.0 billion Series 2015 Restructuring Bonds, thereby creating $128 million of net present value savings.

For a full discussion on the Authority's debt activities during 2015 and 2014, see note 11 to the Basic Financial Statements.

Liquidity and Capital Resources

The Authority's Board adopted a policy in December 2015 that the Authority should at all times maintain cash on hand and available credit equivalent to at least 120 days of operating expenses. The Authority's available sources of liquidity for operating purposes and capital program funding at December 31, 2015 and 2014, included the following resources:

		2015	2014
Operating liquidity			
Unrestricted cash and cash equivalents	$	578,619	760,161
OPEB account cash, cash equivalents & investments		51,579	22,305
Restricted cash - Working capital requirements		208,099	148,280
Total operating liquidity		838,297	930,746
Available Credit			
General Revenue Notes - Revolving Credit Facility		337,500	435,000
General Revenue Commercial Paper		275,000	-
Subordinated Revenue Commercial Paper		-	385,000
Total available credit		612,500	820,000
Total cash, cash equivalents, investments & available credit	$	1,450,797	1,750,746
Restricted cash			
FEMA - restricted		501,990	447,621
UDSA		33,518	22,483
Total restricted cash	$	535,508	470,104

LONG ISLAND POWER AUTHORITY
(A Component Unit of the State of New York)
Management Discussion and Analysis (Unaudited)
December 31, 2015 and 2014
(Amounts in thousands, unless otherwise stated)

The Authority's unrestricted cash, cash equivalents and investments totaled $630 million and $782 million, inclusive of the Other Postemployment Benefits (OPEB) Account balances, at December 31, 2015 and 2014, respectively.

The Authority also had approximately $208 million and $148 million at December 31, 2015 and 2014, respectively, of restricted cash and cash equivalents dedicated to prefunding PSEG Long Island's working capital needs. These accounts are owned by the Authority and are available solely for the Authority's costs. The funds are restricted due to the contractual obligation to pre-fund the accounts from which PSEG Long Island, acting as agent for the Authority, pays expenses related to operating the Authority's electric system. The Authority considers these to funds to be part of its working capital to meet operating and capital expenditures.

In December 2014, the Authority established an OPEB Account to prefund certain future cash out-lays of post-employment health and life insurance expenses. The Authority had on deposit in the OPEB Account $52 million and $22 million as of December 31, 2015 and 2014, respectively. The OPEB Account is primarily invested in assets typically associated with these long-life liabilities; however, the funds are available in the event that revenues are insufficient to pay reasonable and necessary operating expenses or to make payments on bonds or parity obligations, and therefore are part of unrestricted cash and investments.

Included in restricted cash and equivalents as of December 31, 2015 and 2014 was $502 million and $448 million, respectively of advance funding provided by FEMA for storm restoration and storm hardening capital projects. The storm hardening projects are intended to strengthen the Long Island electrical grid to the effects of severe weather, and the Authority expects the storm hardening program to continue through 2018. The Authority expects this storm mitigation program to continue through 2018. The Authority also had restricted cash and equivalents related to UDSA debt service payments and required debt service and operating reserves of $34 million and $22 million as of December 31, 2015 and 2014, respectively.

In 2014, the Authority's Board authorized short-term borrowing programs of up to $1 billion. These short-term borrowing programs provide the resources to meet interim working capital needs, fund the Authority's capital program between long-term debt offerings, and meet any cash flow requirements from severe weather events. Among other factors, the Authority's operating and capital needs vary during the year given the summer peaking seasonal nature of its sales.

In 2015, the Authority established a $325 million Senior Lien Series 2015 General Revenue Notes program (GR Notes), of which $50 million was outstanding at December 31, 2015. In December 2014, the Authority established a $300 million Series 2014 Commercial Paper Program (CP Program), none of which was outstanding at December 31, 2015. The Series 2014 CP Program replaced a prior $300 million commercial paper program that expired in January 2015. The prior CP Program had $215 million outstanding at December 31, 2014. During 2013, the Authority established a $500 million Revolving Credit Agreement (Revolver) with a syndicate of banks, of which $0 and $65 million was outstanding as of December 31, 2015, and 2014, respectively. During 2015, the Authority extended the term by one year and reduced the authorized size of the Revolver from $500 million to $337.5 million.

The short-term borrowing programs are supported by various bank agreements that expire during 2017, 2018, and 2020, and management expects to renew or replace the agreements as needed prior to their expiration.

The Authority believes it will have sufficient liquidity throughout 2016 to meet its planned operating, maintenance, and capital programs.

Risk Management

The Authority is exposed to commodity and interest rate risk during the conduct of its operations. To mitigate commodity risk, the Authority established a power supply risk management program designed to mitigate a portion of the exposure to fluctuations in commodity prices on behalf of its customers. The Authority also hedges its interest rate exposure through certain interest rate derivatives based on established interest rate swap guidelines.

In accordance with GASB No. 53, *Accounting and Financial Reporting for Derivative Instruments*, the Authority records its hedging and investment derivatives at fair value and records deferred inflows and outflows for changes in fair values on hedging derivatives. The Authority defers, as unrealized gains and losses, changes in fair value for investing derivatives consistent with its rate-making practices.

For a further discussion on these matters, see note 7 to the Basic Financial Statements.

Bond Ratings

Below are the long-term ratings of the Authority's and the UDSA's securities as rated by Moody's Investors Service (Moody's), Standard and Poor's Ratings Services (S&P), and Fitch Ratings (Fitch):

	Investment ratings		
	Moody's	S&P	Fitch
Senior Lien Bonds	Baa1	A-	A-
Subordinate Lien Bonds	Baa2	--	A-
UDSA Restructuring Bonds	Aaa (sf)	AAA (sf)	AAA (sf)

Certain bonds and notes of the Authority are supported by either a bank letter of credit or are insured against default. Such debt carries the higher of the ratings of the credit support provider or that of the Authority.

Contacting the Long Island Power Authority

This financial report is designed to provide the Authority's bondholders, customers, and other interested parties with a general overview of the Authority's finances and to demonstrate its accountability for the funds it receives. If you have any questions about this report or need additional information, contact the Authority at 333 Earle Ovington Blvd., Suite 403, Uniondale, New York 11553, or visit the Authority's website at www.lipower.org.

KPMG LLP
345 Park Avenue
New York, NY 10154-0102

Independent Auditors' Report

The Board of Trustees
Long Island Power Authority:

Report on the Financial Statements

We have audited the accompanying basic financial statements of the Long Island Power Authority (the Authority), a component unit of the state of New York, which comprise the statements of net position as of December 31, 2015 and 2014, and the related statements of revenues, expenses, and changes in net position, and cash flows for the years then ended, and the related notes to the basic financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these basic financial statements in accordance with U.S. generally accepted accounting principles; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on these basic financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the basic financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the basic financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the basic financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the basic financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion on the Financial Statements

In our opinion, the basic financial statements referred to above present fairly, in all material respects, the financial position of the Authority as of December 31, 2015 and 2014, and its changes in net position, and cash flows for the years then ended in accordance with U.S. generally accepted accounting principles.

KPMG LLP is a Delaware limited liability partnership, the U.S. member firm of KPMG International Cooperative ("KPMG International"), a Swiss entity.

KPMG

Other Matters

Required Supplementary Information

U.S. generally accepted accounting principles require that the information in the Management's Discussion and Analysis and Required Supplementary Information be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audits of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Supplementary and Other Information

Our audits were conducted for the purpose of forming an opinion on the basic financial statements as a whole. The Consolidating Statements of Revenues, Expenses, and Changes in Net Position is presented for purposes of additional analysis and is not a required part of the basic financial statements.

The Consolidating Statements of Revenues, Expenses, and Changes in Net Position is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the Consolidating Statements of Revenues, Expenses, and Changes in Net Position is fairly stated in all material respects in relation to the basic financial statements as a whole.

The Schedule of the Authority's Proportionate Share of the Net Pension Liability has not been subjected to the auditing procedures applied in the audits of the basic financial statements, and accordingly, we do not express an opinion or provide any assurance on it.

Other Reporting Required by *Government Auditing Standards*

In accordance with *Government Auditing Standards*, we have also issued our report dated March 21, 2016 on our consideration of the Authority's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Authority's internal control over financial reporting and compliance.

KPMG LLP

New York, NY
March 21, 2016

LONG ISLAND POWER AUTHORITY
(A Component Unit of the State of New York)

Statements of Net Position

December 31, 2015 and 2014

(Amounts in thousands)

Assets and Deferred Outflows of Resources	2015	2014
Current assets:		
Cash and cash equivalents	$ 600,698	782,466
Restricted cash – working capital requirements	208,099	148,280
Restricted cash	33,518	22,483
Investments	29,500	—
Counterparty collateral – posted by the Authority	48,357	4,500
Accounts receivable (less allowance for doubtful accounts of $38,036 and $38,817 at December 31, 2015 and 2014, respectively)	489,757	528,937
Other receivables	85,988	145,796
Fuel inventory	117,616	128,201
Material and supplies inventory	47,808	41,538
Unrealized charges	75,574	56,735
Regulatory assets due within one year:		
Operations Services Agreement – employee retirement benefits	54,199	—
Shoreham property tax settlement	43,498	42,462
Employee benefit plan settlement	21,634	—
Revenue decoupling mechanism	17,297	—
New York State assessment	1,708	4,672
Transition costs – Operations Services Agreement	—	4,596
Debt issuance costs	4,100	4,000
Enterprise resource planning system	4,860	3,870
Fuel and purchased power costs	3,108	2,988
Outage management system	2,424	2,430
Transition costs – power supply management	1,692	1,690
Southampton visual benefit assessment	888	948
Prepayments and other current assets	49,963	25,803
	1,942,286	1,952,395
Noncurrent assets:		
Restricted cash and cash equivalents	501,990	447,621
Utility plant and property and equipment, net	7,548,163	6,727,057
Nuclear decommissioning trust	110,436	110,669
Other long-term receivables	38,082	28,325
Unrealized charges	197,227	224,365
Prepayments	12,231	14,533
Regulatory assets:		
Operations services agreement – employee retirement benefits	413,978	597,592
Shoreham property tax settlement	447,414	460,419
Employee benefit plan settlement	194,705	216,339
Transition costs – operations services agreement	—	45,974
Debt issuance costs	38,498	39,140
Enterprise resource planning system	43,670	38,710
Fuel and purchased power costs	34,086	37,311
Outage management system	21,757	24,297
Transition costs – power supply management	15,224	16,918
Southampton visual benefit assessment	8,407	8,779
Acquisition adjustment (net of accumulated amortization)	1,212,134	2,041,867
Total noncurrent assets	10,838,002	11,079,916
Deferred outflows:		
Deferred loss on debt refunding	254,157	159,162
Accumulated decrease in fair value of financial derivatives	—	4,179
Pensions	195	—
Total deferred outflows	254,352	163,341
Total assets and deferred outflows	$ 13,034,640	13,195,652

See accompanying notes to basic financial statements.

LONG ISLAND POWER AUTHORITY
(A Component Unit of the State of New York)
Statements of Net Position
December 31, 2015 and 2014
(Amounts in thousands)

Liabilities and Net Position	2015	2014
Current liabilities:		
Short-term debt	$ 350,000	280,000
Current maturities of long-term debt	178,295	164,505
Current maturities of UDSA debt	60,000	15,000
Current portion of capital lease obligation	190,955	178,997
Accounts payable and accrued expenses	456,649	422,222
Counterparty collateral – held by the authority	—	1,150
Regulatory liability – fuel and purchased power costs refundable	30,027	40,245
Commodity derivative instruments	73,599	45,097
Accrued payments in lieu of taxes	10,008	45,678
Accrued interest	47,832	44,443
Customer deposits	38,419	39,266
Total current liabilities	1,435,784	1,276,603
Noncurrent liabilities:		
Long-term debt	4,305,146	5,532,551
Long-term UDSA debt	3,127,322	2,019,340
Capital lease obligations	2,188,295	2,379,250
Borrowings	87,064	91,779
A&R Operations Services Agreement-employee retirement benefit	491,678	578,437
Financial derivative instruments	173,199	192,881
Commodity derivative instruments	44,086	31,062
Asset retirement obligation	62,906	66,414
Long-term liabilities and unrealized credits	93,530	97,291
Claims and damages	27,822	20,935
Total noncurrent liabilities	10,601,048	11,009,940
Deferred inflows:		
Regulatory credits – grants	502,213	441,088
Accumulated increase in fair value of financial derivatives	1,257	—
Accumulated increase in fair value of commodity derivatives	3,257	19,296
Pensions	417	—
Accumulated increase in fair value of Nine Mile Point 2 trust	9,165	14,133
Total deferred inflows	516,309	474,517
Net position:		
Net investment in capital assets	(158,313)	(361,245)
Restricted	142,026	90,615
Unrestricted	497,786	705,222
Total net position	481,499	434,592
Total liabilities, deferred inflows and net position	$ 13,034,640	13,195,652

See accompanying notes to basic financial statements.

LONG ISLAND POWER AUTHORITY
(A Component Unit of the State of New York)
Statements of Revenues, Expenses, and Changes in Net Position
Years ended December 31, 2015 and 2014
(Amounts in thousands)

	2015	2014
Operating revenues – electric sales	$ 3,505,209	3,613,982
Operating expenses:		
Operations – fuel and purchased power	1,510,725	1,659,272
Operations and maintenance	814,177	851,101
Operations and maintenance – amortizations	11,403	11,422
Storm restoration	63,210	30,462
General and administrative	22,092	29,064
Depreciation and amortization	223,607	215,544
Pass through taxes under certain long-term operating agreements	192,729	184,356
Payments in lieu of taxes and assessments	349,440	370,158
Total operating expenses	3,187,383	3,351,379
Operating income	317,826	262,603
Nonoperating revenues and expenses:		
Other income, net:		
Investment income	5,878	6,989
Grant income – FEMA	13,472	1,707
Grant income – other	40,857	112,814
Carrying charges on regulatory assets	27,594	28,565
Other	4,272	2,303
Total other income, net	92,073	152,378
Interest charges and (credits):		
Interest on long-term debt, net	355,125	338,976
Other interest	13,713	28,475
Allowance for borrowed funds used during construction	(7,113)	(8,961)
Total interest charges and (credits)	361,725	358,490
Change in net position	48,174	56,491
Net position, beginning of year	434,592	378,101
Cumulative effect of change in accounting principle (see note 2)	(1,267)	—
Net position, beginning of year, as restated	433,325	378,101
Net position, end of year	$ 481,499	434,592

See accompanying notes to basic financial statements.

LONG ISLAND POWER AUTHORITY
(A Component Unit of the State of New York)
Statements of Cash Flows
Years ended December 31, 2015 and 2014
(Amounts in thousands)

	2015	2014
Cash flows from operating activities:		
Operating revenues received	$ 3,667,377	3,740,144
Paid to suppliers and employees:		
Operations and maintenance	(846,041)	(1,156,135)
Pass through taxes under certain long-term operating agreements	(192,729)	(184,356)
Fuel and purchased power	(1,477,789)	(1,624,682)
Payments in lieu of taxes	(437,063)	(461,989)
Collateral on commodity derivative transactions, net	(45,007)	(22,894)
Pension funding	(30,000)	(66,900)
Net cash provided by operating activities	638,748	223,188
Cash flows from investing activities:		
Earnings received on investments	1,143	406
Restricted cash	(125,223)	(344,869)
Purchase of investment securities	(29,500)	—
Other	2,426	2,559
Net cash used in investing activities	(151,154)	(341,904)
Cash flows from noncapital financing related activities:		
Grant proceeds	186,952	777,565
Proceeds from credit facility draws and commercial paper program	500,000	637,000
Redemption of credit facility draws and commercial paper program	(430,000)	(620,000)
Net cash provided by noncapital related activities	256,952	794,565
Cash flows from capital and related financing activities:		
Capital expenditures	(396,286)	(441,007)
Outage management system and enterprise resource planning system	—	(70,318)
Proceeds from insurance recoveries and settlements	—	3,064
Proceeds from the issuance of long-term debt	1,659,264	765,310
Debt issuance costs	(8,658)	(3,724)
Interest paid, net	(344,464)	(333,239)
Redemption of long-term debt	(1,836,170)	(192,290)
Net cash used in capital and related financing activities	(926,314)	(272,204)
Net (decrease) increase in cash and cash equivalents	(181,768)	403,645
Cash and cash equivalents at beginning of year	782,466	378,821
Cash and cash equivalents at end of year	$ 600,698	782,466
Reconciliation to net cash provided by operating activities:		
Operating income	$ 317,826	262,603
Adjustments to reconcile operating income to net cash provided by operating activities:		
Depreciation and amortization	235,010	215,544
Nuclear fuel burned	14,119	12,365
Shoreham surcharges	38,990	40,507
Accretion of asset retirement obligation	3,802	4,230
Other, net	37,492	5,424
Changes in operating assets and liabilities:		
Accounts receivable, net	3,011	(3,170)
Regulatory assets and liabilities	98,184	115,124
Fuel and material and supplies inventory	4,316	(41,378)
Accounts payable, accrued expenses and other	(114,002)	(388,061)
Net cash provided by operating activities	$ 638,748	223,188

See accompanying notes to basic financial statements.

LONG ISLAND POWER AUTHORITY
(A Component Unit of the State of New York)
Notes to Basic Financial Statements
December 31, 2015 and 2014
(Amounts in thousands, unless otherwise stated)

(1) Nature of Operations

The Long Island Power Authority (the Authority) is the owner of the transmission and distribution (T&D) system located in the Counties of Nassau and Suffolk (with certain limited exceptions) and a portion of Queens County known as the Rockaways (Service Area), and is responsible for supplying electricity to customers within the Service Area. The Authority was established as a corporate municipal instrumentality of the State of New York (State), constituting a political subdivision of the State, created by Chapter 517 of the Laws of 1986 (the LIPA Act). As such, it is a component unit of the State and is included in the State's annual financial statements.

The Authority is subject to the LIPA Act and the LIPA Reform Act (Reform Act). Part A of the Reform Act addressed the reorganization of the Authority and changed its operating responsibilities, and Part B, referred to as the Securitization Law, created the Utility Debt Securitization Authority (UDSA). The Securitization Law provided a legislative foundation for the UDSA to issue restructuring bonds to allow the Authority to retire a portion of its outstanding indebtedness, providing savings to the Authority's customers on a net present value basis. The restructuring bonds are to be repaid by an irrevocable, nonbypassable restructuring charge on all the Authority's customers. The UDSA has a governing body separate from that of the Authority and has no commercial operations.

The Reform Act also made certain areas of the operations and rate setting of the Authority and PSEG Long Island subject to the recommendations of the New York Department of Public Service (DPS).

For a further discussion on the UDSA and the DPS, see note 3.

The Authority has operating agreements with service providers to provide the majority of services necessary to serve the Authority's customers. Below is a summary of the Authority's primary operating agreements:

Amended and Restated Operations Services Agreement: Effective January 1, 2014, PSEG Long Island, a wholly owned subsidiary of Public Service Enterprise Group (PSEG) fully dedicated to the Authority's Long Island operations, provides operations, maintenance and related services for the T&D system under the Amended and Restated Operations Services Agreement (A&R OSA). The A&R OSA shifted major operational and policy-making responsibilities for the T&D system, including significant responsibilities relating to capital expenditures and emergency response, from the Authority to PSEG Long Island. The A&R OSA expires December 31, 2025 and includes a provision that if PSEG Long Island achieves certain levels of performance based on criteria during the first 10 years, the parties will negotiate an eight year extension on substantially similar terms and conditions. PSEG Long Island is paid a management fee and may earn incentives related to specified performance metrics. In addition, essentially all costs of operating and maintaining the Authority's T&D system incurred by PSEG Long Island are passed through to and paid for by the Authority.

Amended and Restated Power Supply Agreement (A&R PSA): National Grid (NGRID) provides capacity and energy from its oil and gas fired generating plants located on Long Island (herein referred to as GENCO) under the A&R PSA, which provides for the purchase of generation (including capacity and related energy) from these fossil fired generating plants. The A&R PSA commenced May 28, 2013 and expires April 30, 2028.

Fuel Management Agreement (FMA) and Power Supply Management Agreement (PSM): PSEG Energy Resources and Trade LLC (PSEG ER&T) provides fuel management services for both the GENCO generating facilities and the non-GENCO units for which the Authority is responsible for providing fuel. Certain other services related to power supply management and commodity activities are also provided by PSEG ER&T. The agreements with PSEG ER&T expire December 31, 2025 and are also subject to extension.

(2) Summary of Significant Accounting Policies

(a) Reporting Entity

The Authority complies with all applicable pronouncements of Governmental Accounting Standards Board (GASB). In accordance with GASB No. 62, *Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA Pronouncements.* The operations of the Authority are presented as an enterprise fund following the accrual basis of accounting in order to recognize the flow of economic resources.

The Authority's reporting entity is comprised of itself and (i) its operating subsidiary the Long Island Lighting Company (LILCO), a wholly owned subsidiary of the Authority doing business as "LIPA" and Power Supply Long Island, and the (ii) UDSA. All significant transactions between the Authority, LIPA and the UDSA have been eliminated. The Authority and its blended component units are referred to collectively as the "Authority" in the financial statements.

(b) Estimates

The accompanying financial statements were prepared in conformity with U.S. generally accepted accounting principles, which require management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

(c) Reclassifications

To achieve conformity and comparability, the Authority has reclassified certain amounts in prior year financial statements where applicable.

(d) Immaterial correction of prior period classification of restricted cash and net position

The classification of restricted cash related to grants received in advance ($448 million) has been corrected on the statement of net position as of December 31, 2014 from restricted current assets to

LONG ISLAND POWER AUTHORITY
(A Component Unit of the State of New York)
Notes to Basic Financial Statements
December 31, 2015 and 2014
(Amounts in thousands, unless otherwise stated)

restricted non-current assets. In addition, net position has been corrected to reclassify $528 million from restricted to unrestricted net position and $15 million has been reclassified from net investment in capital to unrestricted net position. These reclassifications do not impact total net position as of December 31, 2014 and are not considered material to any previously issued financial statements.

(e) Cash, cash equivalents, restricted cash and investments

Cash, cash equivalents and restricted cash include all highly liquid financial instruments with a maturity of three months or less when purchased.

Funds held by the Authority are administered in accordance with the Authority's investment guidelines pursuant to Section 2925 of the New York State Public Authorities Law. These guidelines comply with the New York State Comptroller's investment guidelines for public authorities. Investments' carrying values are reported at fair market value.

Certain amounts have also been restricted for specific purposes. For a further discussion, see note 10.

(f) Counterparty Collateral

The Authority and its counterparties require collateral posting for mark-to-market valuations that exceed established credit limits. At December 31, 2015 and 2014, the Authority was required to post $48.4 million and $4.5 million, respectively, of collateral to various counterparties, which is recorded as a current asset. One of the Authority's counterparties was required to post $1.1 million of collateral at December 31, 2014 to the Authority, which is recorded in current liabilities.

(g) Fuel Inventory

The Authority owns the fuel oil used in the generation of electricity at the facilities under contract to it. Fuel inventory represents the value of low sulfur and other liquid fuels that the Authority had on hand at each year-end in order to meet the demand requirements of these generating stations. Fuel inventory is valued using the weighted average cost method. At the time of consumption, an expense is recorded at the weighted average cost.

(h) Material and Supplies Inventory

The materials and supplies inventory supports the operations of maintaining the T&D system. The inventory is accounted for on a first in first out (FIFO) basis of accounting. During the year there were no significant write-downs for obsolescence.

The Authority owns 18% of the material and supplies inventory needed to support the operation of the Nine Mile Point Unit 2 (NMP2) nuclear power station. As of December 31, 2015 and 2014, the value of the NMP2 inventory totaled approximately $12 million and $9 million, respectively.

The following estimated useful lives as determined by the updated depreciation study are used for utility property:

Category	Useful life
Generation – nuclear	46–54 years
Transmission and distribution	40–75 years
Common	5–55 years
Nuclear fuel in process and in reactor	6 years
Generation assets under capital lease	10–25 years

(s) Asset Retirement Obligation

The Authority, as an 18% owner of NMP2, has a legal obligation to fund its share of the decommissioning costs of the nuclear power plant. The legal obligation associated with the retirement of a tangible, long lived asset resulting from the acquisition, construction, development and/or normal operation of the asset is referred to as an ARO. The obligation to perform the asset retirement activity is unconditional even though uncertainty exists about the timing and method of settlement. The ARO is continually reviewed for adequacy and was updated in 2015 based on a third party engineering study performed in 2014.

The Authority also has an ARO related to certain of its T&D utility assets. Although no legal requirement exists to remove such assets from service, a "conditional" obligation is present based on the premise that eventually these assets will be removed from service as a result of deterioration. Accordingly, the Authority established a liability for the portion of the costs that are attributable to the "conditional" obligation. This ARO is also continually reviewed for adequacy and was updated during 2015.

A summary of the ARO activity of the Authority for the years ended December 31, 2015 and 2014 is included below:

		2015	2014
Asset retirement obligation:			
Beginning balance	$	66,414	84,828
Change due to updates		(7,310)	(22,952)
Accumulated depreciation		—	155
Accretion expense		3,802	4,383
Balance at December 31	$	62,906	66,414

(t) Long-Lived Assets

Long-lived assets and purchased intangibles subject to amortization are reviewed for impairment whenever events or changes in circumstances indicate that there is a significant unexpected decline in

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the service utility of a capital asset. Impairment, if any, would be measured using one of three approaches that best reflect the decline in service utility.

(u) Payments-in-Lieu-of-Taxes

The Authority makes payments-in-lieu-of-taxes (PILOTS) for certain taxes previously paid by LILCO, including gross income, gross earnings, property, Metropolitan Transportation Authority, and certain taxes related to fuels used in utility operations. In addition, the Authority has entered into various PILOT arrangements for property it owns, upon which merchant generation and transmission is built. Effective January 1, 2014, the Reform Act eliminated the Authority's obligation to pay gross earnings tax.

(v) Allowance for Borrowed Funds Used During Construction

The allowance for borrowed funds used during construction (AFUDC) is the net cost of borrowed funds used for construction purposes. AFUDC is computed monthly on a portion of construction work in progress, and is shown as a net reduction in interest expense. The AFUDC rates were 4.84% and 4.67% for the years ended December 31, 2015 and 2014, respectively.

(w) Income Taxes

The Authority is a political subdivision of the State and, therefore, is exempt from Federal, state, and local income taxes.

(x) Recent Accounting Pronouncements

In February 2015, GASB issued Statement No. 72, Fair Value Measurement and Application, which addresses accounting and financial reporting issues related to fair value measurements. The requirements of this Statement will enhance comparability of financial statements among governments by requiring measurement of certain assets and liabilities at fair value using a consistent and more detailed definition of fair value and accepted valuation techniques. This Statement also will enhance fair value application guidance and related disclosures in order to provide information to financial statement users about the impact of fair value measurements on a government's financial position. GASB No. 72 will take effect for periods beginning after June 15, 2015.

In June 2015, GASB issued Statement No. 73, Accounting and Financial Reporting for Pensions and Related Assets That Are Not within the Scope of GASB No. 68, and Amendments to Certain Provisions of GASB No. 67 and 68. GASB No. 73 (the Pension Statements) generally aligns the reporting requirements for pensions and pension plans not covered in GASB No. 67 and 68 with the reporting requirements in GASB No. 68. This Statement is effective for fiscal years beginning after June 15, 2015—except those provisions that address employers and governmental nonemployer contributing entities for pensions that are not within the scope of GASB No. 68, which are effective for fiscal years beginning after June 15, 2016.

In June 2015, GASB issued Statement No. 74, Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans (OPEBs). This Statement will take effect for periods beginning after

(i) Other Receivables and Long-Term Receivables

The current portion of other receivables, as of December 31, 2015 and 2014, included $10 million and $80 million, respectively, for a Community Development Block Grant (CDBG), both of which were received in their respective subsequent year.

The long-term portion of other receivables represents the net present value related to the reimbursable costs to construct the interconnection facilities related to the Neptune cable, which is to be paid to the Authority over a 20-year period.

(j) Unrealized Charges

Unrealized charges consist primarily of the ineffective balance of interest rate and commodity derivative instruments.

(k) Acquisition Adjustment

The Acquisition Adjustment, an intangible asset, represents the difference between the purchase price paid and the net assets acquired from LILCO and is being amortized and recovered through rates on a straight-line basis through 2026.

(l) Borrowings

Borrowings represent the unamortized balance of cash premiums received at the time of entering into certain financial derivative instruments. The Authority is amortizing such premiums over the life of the instrument in accordance with GASB No. 53, *Accounting and Financial Reporting for Derivative Instruments* (GASB No. 53).

(m) Commodity and Financial Derivative Instruments

Represents the amount that the Authority believes it would be required to pay in order to terminate its commodity and financial derivative instruments as of December 31, 2015 and 2014, which approximates fair value.

(n) Capitalized Lease Obligations

Capitalized lease obligations represent the net present value of various contracts for the capacity and/or energy of certain generation and transmission facilities. Upon satisfying the capitalization criteria, the net present value of the contract payments is included in both Utility Plant and Capital Lease Obligations.

The Authority recognizes in fuel and purchased power expense an amount equal to the contract payment of the capitalized leases, as allowed through the ratemaking process. The value of the asset and the obligation is reduced each month so that the statements of net position properly reflect the remaining net present value of the asset and obligation at each month end.

For a further discussion on the capitalization of capacity and/or energy contracts, see note 14.

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(o) Long-Term Liabilities and Unrealized Credits

Long-term liabilities and unrealized credits consists primarily of the Authority's unfunded other post-employment benefit obligation for Authority employees and unsettled insurance reimbursements.

(p) Claims and Damages

Losses arising from claims including workers' compensation claims, property damage, and general liability claims are partially self-insured. Reserves for these claims and damages are based on, among other things, experience and expected loss.

(q) Revenues

Operating revenues are comprised of cycle billings for electric service rendered to customers based on meter reads and the accrual of revenues for electric service rendered to customers not billed at month-end. The Authority accrues unbilled revenues by estimating unbilled consumption at the customer meter. Unbilled revenue totaled $196 million and $220 million as of December 31, 2015 and 2014, respectively.

(r) Depreciation and Amortization

The provisions for depreciation for utility plant result from the application of straight-line rates determined by an age life studies of assets in service. The rates are applied to groups of depreciable properties. The average composite depreciation rate is 1.63% and 1.65% for December 31, 2015 and 2014, respectively.

Leasehold improvements are being amortized over the lesser of the life of the assets or the term of the lease, using the straight-line method. Property and equipment are being depreciated over its estimated useful life using the straight-line method.

During 2014, the Authority completed a depreciation study that identified an excess accumulated reserve imbalance and implemented depreciation rates that amortize that imbalance over the remaining life of the assets. At year-end 2015, in accordance with the Three Year Rate Plan adopted by the Authority's Board in December 2015 (as discussed in note 3), the unamortized excess reserve balance was reclassed from the accumulated depreciation reserve and recorded as a regulatory liability in accordance with the DPS Rate Plan Recommendation. This regulatory liability was then netted against the Acquisition Adjustment Asset to reduce the remaining unamortized balance of the Acquisition Adjustment by $718 million. Effective January 1, 2016, the Authority will adopt depreciation rates that reflect the remaining net book value and useful lives of the plant assets.

revenues, including power supply costs, would increase by approximately 0.8%, 2.1%, and 2.1%, respectively.

The Three Year Rate Plan incorporated a new Board-adopted financial policy that seeks to reduce the portion of the Authority's capital plan funded by debt to 64% or less and raise the Authority's credit ratings to A2 by Moody's Rating Service, A by Standard and Poor's, and A by Fitch Ratings over five years. To achieve these goals, the Rate Plan adopted the "public power model" of rate-setting proposed by PSEG Long Island and the Authority staff, and recommended by the DPS, which makes use of the debt service coverage method of determining revenue requirements. For the Authority this entails transitioning from the historic use of a $75 million budget for net income to budgeting to achieve fixed obligation coverage targets (including capitalized leases) on Authority issued debt of 1.20x, 1.30x, 1.40x in 2016, 2017, and 2018, respectively (and 1.45x in 2019 after the Three Year Rate Plan). When the UDSA restructuring bonds are included, these coverage ratio targets are a minimum of 1.15x, 1.20x and 1.25x in 2016, 2017, and 2018, respectively. The Authority's methodology for calculating the fixed obligation coverage ratio excludes certain specified non-cash items from expenses. Depreciation expense, amortization of the Acquisition Adjustment and of other regulatory assets, as well as the difference between accrual expense and actual required cash contributions to PSEG Long Island pension and OPEBs, are non-cash expenses excluded from the revenue requirements calculation. The Authority cannot predict whether any such targets will be realized.

The DPS Recommendation also includes an update process, referred to as Staged Updates, in December 2015, 2016 and 2017 to adjust delivery rates higher or lower to reflect measurable changes in certain specified projected costs, and a cost reconciliation mechanism, referred to as the Delivery Service Adjustment, to reconcile certain specified projected costs to actual costs in each year.

The Staged Updates provide for updating electric rates at the beginning of each year for items that are subject to variability due to external factors including, among others: debt service (variances in interest rates, capital expenditures and savings derived from the UDSA financings) (also subject to the Delivery Service Adjustment); certain components of the costs of the A&R PSA with NGRID (variances in property taxes and pensions and benefits settlements (also subject to the Delivery Service Adjustment); property-based PILOTs; and certain other legal or regulatory changes. Projections will be updated each autumn, subject to DPS review, and presented to the Authority's Board as part of the annual budget process. The Authority's 2016 budget process resulted in proposed rates implemented through the initial Staged Update that lowered the increase in revenues from what is set forth in the DPS Recommendation by $10.3 million in 2016 (from $30.4 million to $20.1 million), $12.4 million in 2017 (from $77.6 million to $65.2 million) and $15.3 million in 2018 (from $79.0 million to $63.7 million), which lowered customer bills by a cumulative $38.0 million as a result of more up-to-date assumptions regarding future expenses.

The Delivery Service Adjustment provides cost recovery for certain items that can vary due to external factors, which items include, among others: debt service (variances in interest rates, capital expenditures and savings derived from the UDSA financings); all components of the Authority's A&R PSA with NGRID and operating costs related to the Authority's ownership of NMP2; and storm expenditures (variances from the approximately $50 million per year budgeted for storm expenses in base rates). The Delivery Service Adjustment is expected to be calculated through the end of September each year, which allows for the bill

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impact to be known in advance of annual budget approval. Any adjustment would be reviewed by DPS and implemented on the following January 1st.

The DPS Recommendation affirmed the Authority's use of a revenue decoupling mechanism (RDM). The Authority's Board initially modified its tariff to establish a RDM in March 2015. All six of the major New York state electric utilities have RDMs within their tariffs for delivery service. Mechanically, RDMs function by comparing actual revenues with authorized revenues and crediting (or collecting) any differences to (or from) customers in a subsequent period; it is intended to cover all sources of variances in delivery service revenues including, among other things, any net lost revenues attributable to the implementation of energy efficiency or net metering programs, any revenue variances caused by hotter or colder than normal weather, and revenue variations that result from changes in economic conditions.

The Authority's Board met on December 16, 2015 and adopted a resolution implementing the DPS Recommendation by, among other things, approving the proposed 2016 Operating and Capital Budgets, approving revisions to the base rates for delivery service within the tariff designed to recover the level of revenue with the budgets that is consistent with the DPS Recommendation, establishing the Delivery Service Adjustment within the tariff, and adopting the financial policy that was applied in the Three Year Rate Plan described above.

In addition to the items discussed above, the Authority's tariff also includes: (i) the Fuel and Purchased Power Cost Adjustment (FPPCA), referred to as the Power Supply Charge, to allow for adjustments to customers' bills to reflect changes in the cost of fuel and purchased power and related costs; (ii) a PILOTS recovery rider to allow rate adjustments to accommodate changes in revenue-based PILOTS; (iii) a rider providing for the recovery of costs associated with the Shoreham Property Tax Settlement; (iv) a rider for the Authority's distributed energy resources program; (v) a rider providing for the collection of the Temporary State Assessment and New York State assessment imposed by the New York State Legislature; and (vi) a visual benefit assessment for certain customers in the Town of Southampton.

Utility Debt Securitization Authority Restructuring Charges

Part B of the Reform Act created the Securitization Law, which established the UDSA to permit the issuance of restructuring bonds to allow the Authority to retire a portion of its outstanding indebtedness in order to provide savings to the Authority's customers as measured on a net present value basis. The Securitization Law, as amended, allows for a total issuance of up to $4.5 billion of UDSA restructuring bonds.

Each issuance of restructuring bonds is separately secured by distinct collateral pursuant to a new financing order. Each such financing order authorizes restructuring bonds to be repaid pursuant to that financing order by an irrevocable contract right to impose, bill, and collect a nonbypassable consumption-based Restructuring Charge from all existing and future retail electric customers taking electric transmission or distribution service within the Service Area from the Authority or any of its successors or assignees.

On December 18, 2013, pursuant to Financing Order No. 1 adopted on October 3, 2013, the UDSA issued approximately $2.02 billion of restructuring bonds. On June 26, 2015, the Authority's Board adopted Financing Orders No. 2, No. 3 and No. 4, which allow the UDSA to issue additional restructuring bonds

June 15, 2016. GASB also issued Statement No. 75, Accounting and Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans. This Statement will take effect for period beginning after June 15, 2017. GASB No. 74 and No. 75 (the OPEB Statements) address (1) financial reports of defined benefit OPEB plans that are administered through trusts that meet specified criteria and (2) reporting by governments that provide OPEB to their employees and for governments that finance OPEBs for employees of other governments.

In June 2015, GASB issued Statement No. 76, The Hierarchy of Generally Accepted Accounting Principles for State and Local Governments. The objective of this Statement is to identify the hierarchy of generally accepted accounting principles (GAAP). The "GAAP hierarchy" consists of the sources of accounting principles used to prepare financial statements of state and local governmental entities in conformity with GAAP and the framework for selecting those principles. This Statement reduces the GAAP hierarchy to two categories of authoritative GAAP and addresses the use of authoritative and nonauthoritative literature in the event that the accounting treatment for a transaction or other event is not specified within a source of authoritative GAAP. This Statement is effective for reporting periods beginning after June 15, 2015.

In December 2015, GASB issued Statement No. 78, Pensions Provided through Certain Multiple-Employer Defined Benefit Pension Plans. This Statement amends the scope and applicability of GASB No. 68 to exclude pensions provided to employees of state or local governmental employers through a cost-sharing multiple-employer defined benefit pension plan that (1) is not a state or local governmental pension plan, (2) is used to provide defined benefit pensions both to employees of state or local governmental employers and to employees of employers that are not state or local governmental employers, and (3) has no predominant state or local governmental employer. This Statement establishes requirements for recognition and measurement of pension expense, expenditures, and liabilities; note disclosures; and required supplementary information for pensions that have the characteristics described above. This Statement is effective for reporting periods beginning after December 15, 2015.

In December 2015, GASB issued Statement No. 79, Certain External Investment Pools and Pool Participants. This Statement permits certain external investment pools to use amortized cost to measure pool investments. This Statement is effective for reporting periods beginning after June 15, 2015, except for certain provisions on portfolio quality, custodial credit risk, and shadow pricing. Those provisions are effective for reporting periods beginning after December 15, 2015.

In January 2016, GASB issued Statement No. 80, Blending Requirements for Certain Component Units—an amendment of GASB No. 14. This Statement changes how certain component units incorporated as not-for-profit corporations should be presented in the financial statements of the primary state or local government. Specifically, such component units must be "blended into the primary state or local government's financial statements in a manner similar to a department or activity of the primary government." This Statement is effective for reporting periods beginning after June 15, 2016.

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The Authority is currently evaluating the impact of these statements on our consolidated financial statements, and does not expect a material impact upon adoption.

(3) **Rate Matters**

The LIPA Act requires that any bond resolution of the Authority contain a covenant that it will at all times maintain rates, fees, or charges sufficient to pay the costs of: operation and maintenance of facilities owned or operated by the Authority; PILOTS; renewals, replacements, and capital additions; and the principal of, and interest on, any obligations issued pursuant to such resolution as the same become due and payable. In addition, the Authority must establish or maintain reserves or other funds or accounts required or established by or pursuant to the terms of such resolution.

The Authority's Board is empowered under its enabling statute to set rates for electric service in the Service Area without obtaining the approval of the Public Service Commission (PSC) or its staff arm, the DPS, or any other State regulatory body. Under the Reform Act, on or before February 1, 2015, the Authority and PSEG Long Island were required to submit to the DPS a three-year rate proposal for rates and charges to take effect on or after January 1, 2016. After the 2016-2018 period, the Authority and PSEG Long Island are only required to submit a proposed rate increase for DPS review if it would increase the rates and charges by an amount that would increase the Authority's total annual revenues by more than 2.5%. In addition, the Authority may place rates in effect on an interim basis, and such interim rates are subject to prospective adjustment only. The Authority's Board retains final rate setting power.

On January 30, 2015, a Three Year Rate Plan for the period 2016-2018 was submitted by PSEG Long Island and the Authority for review by DPS. Evidentiary hearings were held and other parties had the opportunity to present evidence and cross-examine the Authority, PSEG Long Island, and DPS witnesses. All of this information was available to the DPS for their review. Following the review of the Rate Plan by DPS, approval was required by the Authority's Board. On September 28, 2015, DPS submitted its rate recommendation to the Authority's Board (the DPS Recommendation). The Authority's Board met on October 19, 2015 to consider the DPS Recommendation and did not make a preliminary determination of inconsistency; therefore, the Reform Act required that the Board implement the Three Year Rate Plan set forth in the DPS Recommendation.

PSEG Long Island and the Authority's original submission proposed rate increases of $72.7 million, $74.3 million, and $74.3 million for the years 2016, 2017 and 2018, respectively, for a cumulative revenue requirement increase of $441.0 million over the three year period. At those proposed levels, the Authority's overall electric revenues, including power supply costs, would have increased by approximately 2.0% each year or a cumulative 6.0% over the three year period. Throughout the proceeding, PSEG Long Island, the Authority, the DPS staff, and other parties proposed and updated revenue requirement positions. PSEG Long Island and the Authority's incremental rate request as of the time of the DPS Recommendation in September 2015 was $58.2 million, $72.2 million, and $68.1 million for the years 2016, 2017 and 2018, respectively, for a cumulative increase of $387.2 million or 5.4%. The DPS Recommendation was for the Authority to set rates designed to increase revenues by $30.4 million, $77.6 million, and $79.0 million, respectively, for a cumulative increase of $325.4 million or 5.0%. At those proposed levels, the Authority's overall electric

prior to December 31, 2016. All such financing orders are substantively the same, and each financing order permits the UDSA to issue additional restructuring bonds in an aggregate amount not to exceed the amount authorized by the Securitization Law.

On October 27, 2015, pursuant to Financing Order No. 2, the UDSA issued approximately $1.002 billion of 2015 Restructuring Bonds. The issuance of the 2015 Restructuring Bonds reduced the available amount of restructuring bonds permitted to be issued by the Securitization Law and pursuant to Financing Orders No. 3 and No. 4 to approximately $1.476 billion.

To pass through the benefits of securitization to customers, the Authority has modified its rate structure to create a restructuring offset charge, which is an amount equal to and opposite the Restructuring Charge, so that the customer bill is less than it would have been absent the sale of restructuring bonds. The restructuring offset charge will be adjusted coincident with changes to the Restructuring Charge to maintain that equality.

(4) Regulatory Accounting

Below are the summary of the Authority's regulatory assets and liabilities:

(a) A&R OSA – Employee Retirement Benefits

The Authority is responsible for reimbursing PSEG Long Island for their retirement benefit costs associated with the PSEG Long Island workforce. The retirement benefit plans are owned, sponsored, and the legal obligation of PSEG Long Island. However, in most cases, PSEG Long Island employee compensation costs are a contractual cost of the Authority under the A&R OSA, including the cost for these retirement benefits (and any required pre-funding of such benefits).

The PSEG Long Island workforce includes both former NGRID employees that were electric-servicing employees under the expired Management Services Agreement (MSA) (approximately 1,950 employees) (referred to as "transitioned employees") and newly hired employees. PSEG Long Island recognizes the assets and liabilities associated with the retirement benefit plans; however, they also recognize a receivable from the Authority for the unfunded portion of any liabilities due to the Authority's contractual obligation to fund these employee costs.

A significant portion of this contractual liability resulted from the transitioned employees being protected against benefit losses from the Authority's change in service providers from NGRID to PSEG Long Island. The PSEG Long Island retirement plans ensure that transitioned employees earn a retirement benefit that, when combined with their accrued NGRID benefits, will be equal to the benefit they would have received had the transitioned employees remained employees of NGRID. This provision created a prior service cost liability totaling $442 million at the beginning of the A&R OSA on January 1, 2014.

The balance of the A&R OSA – Employee Retirement Benefits regulatory asset as of December 31, 2015 and 2014, represents those costs which have been incurred but not yet collected from customers. This amount will be different from the Authority's liability to PSEG Long Island due to differences between funding and recovery levels. Additionally, the Authority set aside certain funds in an OPEB

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Account (see footnote 10) to pay future retirement benefit costs to PSEG Long Island, such amounts have been recovered from customers but not yet paid to PSEG Long Island.

These retirement benefit obligations are for future cash outlays that will be incurred as the PSEG Long Island employees receive retirement benefits and are therefore estimates of such costs. Differences between the amounts collected from customers and the amounts owed to PSEG Long Island for these benefits may arise from changes in asset values, plan amendments, interest rates, and actuarial assumptions, among other factors, which would be reflected in the balance of the regulatory asset.

(b) Shoreham Property Tax Settlement (Settlement)

In January 2000, the Authority reached an agreement with Suffolk County, the Town of Brookhaven, the Shoreham-Wading River Central School District, the Wading River Fire District and the Shoreham-Wading River Library District (which was succeeded by the North Shore Library District) (collectively, the Suffolk Taxing Jurisdictions) and Nassau County regarding the over assessment of the Shoreham Nuclear Power Station. Under the terms of the agreement, the Authority was required to issue $457.5 million of rebates and credits to customers over a five-year period which began May 29, 1998. In order to fund such rebates and credits, the Authority used the proceeds from the issuance in May 1998 of its Capital Appreciation Bonds, Series 1998A Electric System General Revenue Bonds totaling $146 million and the issuance in May 2000 of approximately $325 million of Electric System General Revenue Bonds, Series 2000A.

As provided under the Settlement, beginning in June 2003, Suffolk County customers' bills include a surcharge (the Suffolk Surcharge) to be collected over the succeeding approximate 25-year period to repay the debt service and issuance costs on the bonds issued by the Authority to fund the Settlement as well as the cost of pre-funding certain rebates and credits.

As rates are established at a level sufficient to recover all such costs identified above, the Authority recorded a regulatory asset. The balance of the Shoreham Property Tax Settlement regulatory asset as of December 31, 2015 and 2014 was approximately $491 million and $503 million, respectively. The balance represents rebates and credits issued to customers, costs of administering the program plus annual debt service costs on the bonds identified above, less surcharges collected since 2003.

(c) Employee Benefit Plan Settlement

The MSA between the Authority and NGRID provided, among other things, that upon termination of the MSA, when a third party succeeded NGRID as the service provider, the successor would assume the rights and obligations of NGRID regarding certain employee benefit plan liabilities. The A&R OSA with PSEG Long Island, however, did not require PSEG Long Island to assume the employee benefit plan assets and liabilities related to the MSA, which were co-mingled with those of other NGRID employees.

On December 31, 2013, the Authority signed an Employee Benefit Plan Settlement with NGRID and its affiliates. The Settlement provided for a $91.5 million cash payment and the release of NGRID's payment obligations for an approximate $155 million promissory note due to the Authority. The settlement resolved the parties' respective employee benefit plan funding obligations for NGRID's electric-serving employees. The balance subject to recovery after applying carrying charge accruals, totaled $216 million. The Authority's Board approved deferred recovery of such costs from customers which began on January 1, 2016 over a 10-year period, the remaining term of the A&R OSA, as virtually all former employees of NGRID covered by these plans have been transitioned to PSEG Long Island and continue to serve electric customers.

(d) Revenue Decoupling Mechanism (RDM)

The RDM, which was implemented on April 1, 2015, ensures that only approved revenues for delivery service are collected from customers. The RDM compares actual revenues with authorized revenues and credits (or collects) any differences to (or from) customers in a subsequent period. It is intended to cover all sources of variances in delivery service revenues including, among other things, any net lost revenues attributable to the implementation of energy efficiency or net metering programs, any revenue variances caused by hotter or colder than normal weather, and revenue variations that result from changes in economic conditions.

As of December 31, 2015, the delivery service booked revenues were lower than the approved level resulting in a collection totaling approximately $17 million to be collected from customers over a six-month period beginning in March 2016.

(e) New York State Temporary Energy and Utility Conservation Assessment

As a result of an amendment to the Public Service Law effective April 1, 2009, the Authority was required to collect from all customers a special assessment to be paid directly to the State for a five year period that began in 2009. Subsequent legislation extended the assessment at its full rate through March 2015 and at declining percentages each subsequent year such that it phases out by the end of calendar year 2017.

(f) Transition Costs – Operations Services Agreement

The Authority deferred costs incurred in 2012 and 2013 related to the transition of operations services from NGRID to PSEG Long Island, which costs were to be amortized over the term of the A&R OSA. PSEG Long Island performed a variety of specified activities in order to position itself to assume responsibility to provide operations services upon assuming the responsibility on January 1, 2014. The costs related to those activities were classified as a regulatory asset.

During 2015, the Authority's Board approved eliminating such deferred transition costs and any further recovery from customers.

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(g) Debt Issuance Costs

GASB No. 65 requires that debt issuance costs be expensed in the current financial period. As the Authority's rates provide recovery for debt issuance costs as a component of the Authority's revenue requirement on a systematic basis over the life of the debt, the Authority's Board approved reclassifying the unamortized balance of debt issuance costs incurred to a regulatory asset to be collected over the life of the debt issues to which they relate.

(h) Enterprise Resource Planning (ERP system) Costs and Outage Management System (OMS)

PSEG Long Island implemented a long term ERP solution in 2015 to allow the PSEG Long Island T&D business to separate from the NGRID ERP system and financial functions. The Authority chose to leverage the existing PSEG ERP system, incorporating PSEG Long Island functions into the PSEG platform rather than creating a new standalone PSEG Long Island ERP system. Utilizing the existing platform allowed PSEG Long Island to transition to a new ERP solution significantly earlier than planned, reduce cost, and minimize business risk.

PSEG Long Island also completed a transition to the PSEG OMS system to track and manage repair of electric system outages. Transition to the established PSEG OMS system allowed for an expedited implementation of 13 months. This new system improves the ability to identify and manage outage conditions and communication of outage information to customers. In the event the A&R OSA is terminated early and PSEG Long Island is no longer the service provider, the OMS system will be available for use for up to 2 years after such termination to permit transition to an alternative system.

As these assets are not owned by the Authority or PSEG Long Island, but the costs incurred are solely for the benefit of PSEG Long Island, the costs of these projects are recognized as regulatory assets for recovery over the remaining life of the A&R OSA beginning in 2015, which is consistent with their expected useful lives.

As of December 31, 2015 and 2014, deferred costs remaining for the transition to the PSEG ERP and PSEG OMS systems totaled $73 million and $69 million, respectively.

(i) Fuel and Purchased Power Costs Recoverable

The Authority's tariff includes a fuel recovery provision – the FPPCA or Power Supply Charge – that provides for the recovery of fuel and purchased power costs on a monthly basis. In no event, however, may the Authority recover an amount that exceeds fuel and purchased power costs incurred. For the year ended December 31, 2015 and 2014, actual fuel and purchased power costs were below amounts recovered in the FPPCA. As a result, a regulatory liability totaling $30 million and $40 million, respectively were recorded and such amounts were returned to customers during 2016 and 2015, respectively, as prescribed by the monthly collection method.

Also recorded as recoverable fuel and purchased power costs are amounts incurred related to various energy projects, the amortization of which is charged to fuel and purchased power costs over the period

of benefit (the life of the power purchase agreement) totaling $37 million and $40 million as of December 31, 2015 and 2014, respectively.

(j) Transition Costs - Power Supply Management

The Authority's Board approved deferral of the transition costs associated with transitioning to the power supply management contract with PSEG ER&T. Collection of these costs totaling $19 million will be recovered over an eleven-year period, beginning January 1, 2015, coincident with the contract beginning January 1, 2015 and expiring December 31, 2025, as approved by the Authority's Board. As of December 31, 2015, the remaining balance of such costs totaled $17 million.

(k) Southampton Visual Benefit Assessment

The Authority has recorded the incremental costs incurred to bury a portion of a transmission cable routed through the Town of Southampton (Town), which will be recovered from certain customers of the Town over a period of 20 years that began in 2009.

(5) Deferred Outflow and Deferred Inflow of Resources

GASB No. 65, *Items Previously Reported as Assets and Liabilities*, establishes accounting and financial reporting standards that reclassify certain items that were previously reported as assets and liabilities, and recognizes them as deferred outflows of resources (expenses or expenditures) and deferred inflows of resources (revenues). The following items are classified as deferred outflows of resources or deferred inflows of resources:

(a) Losses on Refunding Debt

Losses on refunding debt represent the difference between the reacquisition price and the carrying amount of the refunded debt. Prior to GASB No. 65, these losses were a contra-liability to debt. This deferred outflow is amortized as a component of interest expense over the shorter of the life of the old or new debt.

(b) Change in Fair Market Value of Derivative Instruments

The accumulated changes in the fair value of hedging derivative instruments which are deemed effective are reported as deferred outflows or deferred inflows. Under hedge accounting, the changes in the fair value of a hedging derivative instrument, in asset or liability positions, are reported as a deferred inflow of resources or deferred outflow of resources, respectively, on the Statements of Net Position.

As the Authority follows GASB No. 62, any changes in ineffective investment derivative instruments are reported as unrealized charges. The change in fair value of investment derivative instruments are reported as unamortized charges, as the Authority's Board has authorized the deferral of these unrealized gains and losses until realized, which corresponds to the period when they are recovered in rates.

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(c) Regulatory Credits - grants

The Authority has received grants for storm restoration and storm hardening in excess of that which it has paid to date. This advance has been recorded as a deferred inflow, as these funds will be used to pay vendors for storm restoration once all disputed amounts are finalized and for T&D storm hardening expected to be completed over the next several years. In 2014, the Board authorized the deferral of grant income as a regulatory credit for grants related to capital expenditures for storm hardening. Thus, this regulatory credit will be deferred to match the depreciable lives of the related capital assets so that the grant income is recognized over the same time period as the depreciation expense on the future capital assets.

(d) Change in Fair Market Value of NMP2 Decommissioning Trust

The Authority maintains a Trust for the decommissioning of NMP2. The decommissioning funds are reported at their fair market value and any unrealized gains or losses are recognized as a component of deferred inflows in accordance with the Authority's ratemaking process and have no impact to the Authority's net position. For a further discussion on the Authority's NMP2 decommissioning obligations and related funding see note 9.

(e) Amounts related to pension expense

In accordance with GASB No. 68, the Authority reports the difference between expected and actual experience, the net difference between projected and actual investment earnings on pension plan investments, changes in proportion and differences between employer contributions and proportionate share of contributions, changes in proportion, and the Authority's contributions to the pension system subsequent to the measurement date as a deferred inflow or outflow of resources.

(6) FEMA Grants

In 2012, Superstorm Sandy caused significant damage to predominantly all of the Authority's Service Area resulting in the declaration of a federal major disaster area and making the Authority eligible for FEMA grants for recovery. The Authority's total costs for restoration, which included labor, material, equipment, travel and incidental expenses associated with assistance from utilities across the nation, totaled $677 million. Any amounts not recovered through insurance including the deductible, will be analyzed for reimbursement eligibility under the FEMA claim. Substation work is expected to be completed in 2018 and is being capitalized as incurred.

During 2014, the Authority and FEMA signed a Letter of Undertaking (LOU) that provides for a Public Assistance (PA) grant authorized under Section 428 of the Stafford Act (428 Grant Agreement). Funds from the 428 Grant Agreement will reimburse the Authority for 90% of its eligible repair/restoration costs and certain storm hardening and future mitigation projects to strengthen the electric grid on Long Island, for a total eligible reimbursement of $1.29 billion (90% of $1.43 billion LOU).

As of December 31, 2015, the Authority has received $1.11 billion under the 428 Grant Agreement, of which the Authority reimbursed its treasury for funds expended to date totaling $637 million, and transferred the

balance of $474 million to a segregated account to be used to pay remaining unpaid storm restoration costs and to fund future storm hardening and mitigation efforts.

In September 2014, the Authority signed a Community Development Block Grant (CDBG) agreement for $143.2 million representing an amount equal to the 10% nonfederal match of the FEMA grants associated with Superstorm Sandy. Under the terms of this CDBG grant, funds are provided to compensate for the nonfederal match of certain declared weather events including Superstorm Sandy, Hurricane Irene, and Snowstorm Nemo as well as certain storm mitigation protective measures. This grant is funded by the United States Department of Housing and Urban Development (HUD). In January 2015, the Authority received $80 million, $51 million related to Superstorm Sandy damages and $29 million relating to Hurricane Irene damages incurred in 2011. In January 2016, the Authority received an additional $10.3 million related to damages incurred as a result of Hurricane Irene.

(7) Derivative Instruments

The Authority uses derivative instruments in its normal course of business to attempt to manage the impact to its customers of interest rate changes and market price fluctuations for the purchase of fuel oil, natural gas and electricity. The Authority does not use derivative instruments for trading or speculative purposes. These contracts are evaluated pursuant to GASB No. 53 to determine whether they meet the definition of derivative instruments, and if so, whether they effectively hedge the expected cash flows associated with interest rate and commodity price risk exposures. The fair values of the Authority's derivatives as defined by GASB No. 53 are reported on the Statements of Net Position as either Commodity Derivative Instruments or Financial Derivative Instruments.

The Authority applies hedge accounting for derivative instruments that are deemed effective under GASB No. 53. Under hedge accounting, changes in the fair value of such hedging derivative instrument is a component of deferred inflow or deferred outflow on the Statements of Net Position until the contract is settled or hedge accounting is terminated. Derivative instruments that do not meet the definition of a hedging derivative instrument are economic hedges, intended to mitigate exposure to fluctuations in interest rates or commodity prices and are referred to as investment derivative instruments. Changes in the fair value of investment derivative instruments are deferred until settled or terminated in accordance with the Authority's ratemaking process.

All settlement payments or receipts for hedging derivative instruments are recorded as either fuel and purchased power expense or interest expense for interest rate derivatives on the Statements of Revenues, Expenses and Changes in Net Position in the period settled. All settlement payments or receipts related to investment derivative instruments are recorded as interest expense or as fuel and purchased power expense in the Statements of Revenues, Expenses and Changes in Net Position in the period incurred.

The Authority's interest rate derivative contracts are transacted over-the-counter and are valued based on exchange-traded contracts with readily available quoted market prices. For the interest rate derivatives where there is no external source or observable market price quotation, values are based on various valuation techniques, including, but not limited to models internal to the Authority's financial advisor and based on extrapolation of observable market data with similar characteristics. The Authority's fuel and purchased power derivative contracts are transacted both over-the-counter and through clearing exchanges and the

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valuations are based upon price quotes from exchanges and third party brokers. For both the interest rate derivative contracts and the fuel and purchased power derivative contracts, the Authority's practice is to not discount the fair value of each contract using an interest rate which represents default risk associated with a particular counterparty.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) expanded the Commodity Futures Trading Commission's (CFTC) jurisdiction to regulate swaps under the Commodity Exchange Act. The Authority has implemented several compliance measures, including the Authority's Board approved revisions to its commodity and interest rate policies to recognize the obligations and requirements of the Authority under the Dodd-Frank Act. The Authority will continue to evaluate CFTC rules and regulations to determine if there would be any potential impacts to the Authority's risk management strategies and practices.

The Authority's derivative instruments are as follows:

Derivative instrument description		Fair value December 31, 2015	Net change in fair value	Fair value December 31, 2014	Type of hedge	Financial statement classification for changes in fair value
Hedging derivative instruments:						
Financial derivatives:						
Synthetic Fixed-B	$	—	4,179	(4,179)	Cash flow	Deferred outflow
Total Return		1,257	1,257	—	Cash flow	Deferred inflow
Total	$	1,257	5,436	(4,179)		
Commodity derivatives:						
Purchased Power Swaps	$	5,867	(25,307)	31,174	Cash flow	Deferred inflow
Natural Gas Basis Swaps		(2,610)	9,268	(11,878)	Cash flow	Deferred inflow
Total	$	3,257	(16,039)	19,296		
Investment derivative instruments:						
Financial derivatives:						
Synthetic Fixed-A	$	(245,317)	4,581	(249,898)	N/A	Unrealized charges
Basis Swap-A		(7,473)	7,818	(15,291)	N/A	Unrealized charges
Basis Swap-B		(3,736)	3,910	(7,646)	N/A	Unrealized charges
Basis Swap-C		(3,736)	3,910	(7,646)	N/A	Unrealized charges
Total	$	(260,262)	20,219	(280,481)		
Commodity derivatives:						
Power Options	$	(63)	(63)	—	N/A	Unrealized charges
Power - Financial Basis		(3,963)	(3,963)	—	N/A	Unrealized charges
Purchased Power Swaps		(1,149)	(1,149)	—	N/A	Unrealized charges
Natural Gas Options		34,126	182	33,944	N/A	Unrealized charges
Natural Gas Swaps		(149,892)	(20,493)	(129,399)	N/A	Unrealized charges
Total	$	(120,941)	(25,486)	(95,455)		

The terms of the Authority's commodity derivative instruments that were outstanding at December 31, 2015 and 2014 are summarized in the tables below:

	Notional amount (in thousands)	Units	Beginning date	Ending date	Authority pays per unit	Authority receives
2015:						
Natural Gas Swaps	107,930	Dthms	1/1/2016	12/1/2018	$ 2.495 to $ 4.725	Natural Gas at Henry Hub
Natural Gas Basis Swaps	45,548	Dthms	1/1/2016	3/1/2018	$ (1.200) to $ 3.850	Gas Basis between Henry Hub & Transco Z6, NY
Natural Gas Options	43,315	Dthms	1/1/2016	12/1/2018	$ 3.000 to $ 5.550	Natural Gas at Henry Hub
Purchased Power Swaps [1]	5,814	Mwhs	1/1/2016	12/1/2018	$ 29.250 to $ 56.310	Power at PJM West or
Purchased Power Basis	1,010	Mwhs	7/1/2016	12/1/2018	$ (2.100) to $ (1.550)	Power Basis between PJM
Purchased Power Options [2]	168	Mwhs	10/1/2016	11/1/2016	$ 34.000 to $ 34.000	Power at PJM West
2014:						
Natural Gas Swaps	63,515	Dthms	1/1/2015	12/1/2017	$ 3.785 to $ 4.754	Natural Gas at Henry Hub
Natural Gas Basis Swaps	4,692	Dthms	1/1/2015	3/1/2015	$ 0.600 to $ 10.00	Gas Basis between Henry Hub & Transco Z6 NY
Natural Gas Options	82,150	Dthms	1/1/2015	11/1/2017	$ 3.550 to $ 5.55	Natural Gas at Henry Hub
Purchased Power Swaps [1]	7,958	Dthms	1/1/2015	11/1/2017	$ 28.020 to $ 89.49	Power at PJM JCPL
Purchased Power Options [2]	699	Mwhs	5/1/2016	10/1/2017	$ 35.070 to $ 104.36	Power at PJM JCPL

(1) Purchased Power Swaps are executed as either a swap or synthetically, as a combination of a Power Heat Rate swap and a Natural Gas Swap

(2) Purchased Power Options are executed synthetically, as a combination of a Power Heat Rate swap and a Natural Gas Option

The terms of the Authority's interest rate derivative instruments that were outstanding at December 31, 2015 are summarized in the tables below:

Financial derivative	Effective date	Termination date	Authority pays	Authority receives	Original notional	Upfront cash payment
Synthetic Fixed-A	6/1/2003	12/1/2029	5.120%	69.47% of 1-month LIBOR	$ 587,225	106,400
Basis Swap-A	7/1/2004	8/15/2033	SIFMA	70.50% of 1-month LIBOR	502,090	17,500
Basis Swap-B	7/1/2004	8/15/2033	SIFMA	70.50% of 1-month LIBOR	251,045	8,750
Basis Swap-C	7/1/2004	8/15/2033	SIFMA	70.50% of 1-month LIBOR	251,045	8,750
Total Return	6/29/2015	6/29/2020	69.4% 1-month LIBOR+.40%	MMD +1.10%[a]	200,000	—

a Based on lowest long-term rating of the Authority, currently Baa1 .

During 2015, the Authority entered into a five year basis agreement for its direct placement $200 million Electric System General Revenue Bonds Series 2015A Municipal Market Data (MMD) floating rate notes (FRN). Under this agreement, the counterparty pays the Authority an amount equal to the floating MMD FRN coupon, and the Authority pays the counterparty 69.4% of the one month London Interbank Offered Rate (LIBOR) plus 40 basis points. As the coupon payment made by the Authority on the MMD FRNs and its receipts under the basis agreement offset, the Authority's net cost of funds during the five year term of the basis agreement is 69.4% of one month LIBOR plus 40 basis points. At the five year expiration or the

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early termination of the basis agreement, the counterparty pays the Authority 90% of any increase in the market value of the MMD FRN and the Authority pays the counterparty 100% of any decrease in the market value of the MMD FRN, provided however, that if the Authority exercises its right to call or remarket the MMD FRN, the value of the basis agreement will be zero and neither party will have a payment obligation.

The Authority is exposed to the following risks related to derivative instruments as defined by GASB No. 53:

Termination Risk: Termination risk is the risk that a derivative could be terminated by a counterparty prior to its scheduled maturity due to a contractual event with the Authority owing a termination payment. As long as the Authority fulfills its obligations under the contracts, the counterparties do not have the right to terminate these agreements. The Authority believes that termination risk is low because the counterparties may terminate the agreements only upon the occurrence of specific events such as, payment defaults, other defaults which remain uncured for 30 days after notice, bankruptcy or insolvency of the Authority (or similar events), or a downgrade of the Authority's and its insurers', if any, credit rating below investment grade. If, at the time of termination, the mark-to-market of the derivative was a liability of the Authority, the Authority could be required to pay that amount to the counterparty. Termination risk associated with all of the Authority's derivatives is limited to the fair market value.

Basis Risk: The Authority is exposed to basis risk on certain of its interest rate swaps because the variable-rate payments received by the Authority and those paid either pursuant to the terms of the swap or on the associated variable rate debt may differ. The terms of the interest rate swap transactions are summarized in the charts above.

The Authority is exposed to other basis risk on a portion of its commodity swaps when the commodity swap payment received is based upon a reference price in a market (e.g., natural gas priced at Henry Hub) that differs from the market in which the hedged item is expected to be bought (natural gas priced at New York City gate). If the correlation between these market prices should change substantially, the Authority may incur costs as a result of the hedging derivative instrument's inability to offset the price of the related commodity.

Collateral Posting: Under certain conditions, the Authority may be required to post collateral related to its interest rate derivative instruments. Under the terms of its interest rate derivative agreements, collateral may be required if the Authority's credit ratings and, in the case of insured swaps, the credit ratings of any related interest rate swap insurer, fall below minimum levels as provided in each swap agreement, and the Authority fails to provide alternative credit enhancements. Collateral for its financial derivatives, if required, would approximate fair value. The Authority has never been required to post collateral under its interest rate derivative instruments.

The Authority has collateral requirements with commodity derivative counterparty in the Credit Support Annexes (CSA) of the International Swap Deal Agreements (ISDA). Collateral is required to be posted with the counterparty when the negative fair value of the commodity derivative instrument exceeds the unsecured line of credit established with each counterparty as listed in the counterparty table below. In the event of collateral being posted, the value will equal the difference between the fair value and the amount of the unsecured line of credit. For exchange broker cleared derivative transactions, there is an initial margin requirement on day one of a trade that is calibrated to cover the expected cost of closing out the position in the event of a default. Collateral postings between the exchange clearing broker and the Authority each day thereafter are based on the fair value of the derivative instrument.

Credit Risk: The risk that the counterparty (or its guarantor) will default on its obligations under the agreement. Currently, counterparty risk for the Authority is limited as the termination values of the transactions are generally negative. Additionally, the Authority has sought to limit counterparty risk by contracting only with highly rated counterparties or requiring guarantees of the counterparty's obligations. The Authority has also made use of exchange cleared transactions for a portion of its commodity derivatives. The exchange uses a central clearing counterparty structure along with risk based margin requirements that limits credit risk exposure. Below is a table with the credit-ratings of the Authority's counterparties as of December 31, 2015 (amounts in millions):

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Counterparty	Moody's	S&P	Counterparty's unsecured line of credit ($M)
Interest rate derivative instruments:			
Bear Stearns Capital Markets, Inc. [1]	A3	A-	—
Citibank, N.A. New York	A1	A	—
Merrill Lynch Capital Services, Inc. [2]	Baa1	BBB+	—
UBS AG, Stamford Branch	A2	A	—
Wells Fargo Bank, N.A.	Aa2	AA-	—
1 Ratings reflect the rating of its parent company, JP Morgan Chase & Co.			
2 Ratings reflect the rating of Bank of America Corp.			
Commodity derivative instruments:			
Barclays Bank PLC	A2	A-	$25
BP Energy Company	Baa1	A	$10
Cargill, Incorporated	A2	A	$15
Citigroup Energy, Inc.	Baa1	BBB+	$10
J. Aron & Company	A3	BBB+	$40
JPMorgan Chase Bank, N.A.	Aa2	A+	$35
Macquarie Energy LLC	A2	A	$10
Merrill Lynch Commodities, Inc.	Baa1	BBB+	$10
Morgan Stanley Capital Group Inc.	A3	BBB+	$40
Next Era Power Marketing	Baa1	A-	$10
Societe Generale	A2	A	$25
Bank of Nova Scotia	Aa2	A+	$25

(8) Utility Plant and Property and Equipment

Additions to and replacements of utility plant are capitalized at original cost, which includes material, labor, indirect costs associated with an addition or replacement, plus an allowance for borrowed funds used during construction. The cost of renewals and betterments relating to units of property is added to utility plant. The cost of property replaced, retired, or otherwise disposed of is deducted from utility plant and, generally, together with dismantling costs less any salvage, is charged to accumulated depreciation. The cost of repairs and minor renewals is charged to maintenance expense. Mass properties (such as poles, meters, and wire) are accounted for on an average unit cost basis by year of installation.

The following schedule summarizes the utility plant and property and equipment of the Authority as of December 31, 2015:

		Beginning Balances	Increases	Decreases	Ending Balances
Utility plant	$	6,342,423	456,942	(8,250)	6,791,115
Office equipment, furniture, and leasehold improvements		18,409	—	(729)	17,680
Long lived assets-asset retirement cost		15,542	—	—	15,542
Accumulated depreciation		(2,588,307)	(129,086)	766,343	(1,951,050)
Total utility plant - net		3,788,067	327,856	757,364	4,873,287
Generation and transmission assets under capital lease		3,751,349	—	—	3,751,349
Accumulated depreciation		(1,193,103)	(178,997)	—	(1,372,100)
Total assets under capital lease - net		2,558,246	(178,997)	—	2,379,249
Construction work in progress		359,381	358,221	(431,985)	285,617
Retirement work in progress		21,363	27,417	(38,770)	10,010
		380,744	385,638	(470,755)	295,627
Totals	$	6,727,057	534,497	286,609	7,548,163

The following schedule summarizes the utility plant and property and equipment of the Authority as of December 31, 2014:

		Beginning Balances	Increases	Decreases	Ending Balances
Utility plant	$	6,019,817	425,593	(102,987)	6,342,423
Office equipment, furniture, and leasehold improvements		17,684	738	(13)	18,409
Long lived assets-asset retirement cost		15,542	—	—	15,542
Accumulated depreciation		(2,520,685)	(116,522)	48,900	(2,588,307)
Total utility plant - net		3,532,358	309,809	(54,100)	3,788,067
Generation and transmission assets under capital lease		3,751,349	—	—	3,751,349
Accumulated depreciation		(1,025,260)	(167,843)	—	(1,193,103)
Total assets under capital lease - net		2,726,089	(167,843)	—	2,558,246
Construction work in progress		385,183	429,789	(455,591)	359,381
Retirement work in progress		39,396	13,504	(31,537)	21,363
		424,579	443,293	(487,128)	380,744
Totals	$	6,683,026	585,259	(541,228)	6,727,057

(9) Nine Mile Point Nuclear Power Station, Unit 2

The Authority has an 18% undivided interest in NMP2 in Oswego County, New York. The other 82% interest is owned by Constellation Energy Nuclear Group, LLC (CENG), a joint venture of Exelon Corporation and EDF, a large electric-power company headquartered in France. The unit is operated by Exelon.

NMP2 has a maximum net capacity of 1,293 MW, and it operated at an average net power of 1,261 MW in 2015. The Authority is entitled to 18% of the unit's capacity and energy, and is obligated to pay 18% of its operating and maintenance costs, nuclear-fuel costs, and costs of capital additions. The Authority's net utility-plant investment in NMP2, excluding nuclear fuel, was $374 million and $353 million as of December 31, 2015 and 2014, respectively. Nuclear-fuel costs are amortized monthly and distributed over its share of the electric energy generated by the unit.

An operating agreement between Exelon and the Authority provides for a management committee comprised of one representative from each co-tenant, with the co-tenants having joint approval rights for the annual

business plan, the annual budget, and material changes to the budget. However, as the operator, Exelon has ultimate authority for all operating and maintenance decisions.

On October 31, 2006, the Nuclear Regulatory Commission granted a 20-year extension to the operating license for NMP2, which now expires on October 31, 2046.

(a) Nuclear Plant Decommissioning

The estimate of the decommissioning-cost obligation for NMP2 is based on a site-specific decommissioning study performed in 2014 with updates performed by Exelon in 2015. As of December 31, 2015 and 2014, the Authority's share of the estimated costs for both the contaminated and non-contaminated portions of the unit was $57 million and $58 million, respectively, and is included in the Statements of Net Position as a component of the ARO. The Authority maintains a nuclear-decommissioning trust fund (NDT) for its share of the decommissioning costs. As of December 31, 2015 and 2014, respectively, it had an approximate value of $110 million and $111 million. Based on deposits and assumed investment returns of these funds, the Authority believes that their value will be sufficient to meet its decommissioning obligations.

(b) Radioactive Waste

CENG contracted with the Department of Energy (DOE) for permanent disposal of high level radioactive waste (spent fuel) from NMP2. A permanent nuclear-waste repository was supposed to be operational by January 31, 1998. However, plans for the repository at Yucca Mountain in Nevada were ultimately abandoned, and the DOE has not indicated where or when an alternate site will be in operation. Consequently, an independent spent fuel storage installation (ISFSI) was constructed at the Nine Mile Point site in 2013 to store spent fuel from both Units 1 and 2 until such time as a permanent DOE repository is open. The costs of this facility are being reimbursed by DOE from funds paid to it for final fuel disposal by nuclear-plant licensees. The requirement for continuation of these payments was suspended after the Yucca Mountain Project was cancelled.

(c) Liability for Nuclear Accidents

The federal Price-Anderson Act limits the liability of reactor licensees for public claims resulting from any single nuclear accident. This limit currently stands at $13.6 billion. To cover this liability, the Act requires all licensees to participate in a two-tier insurance system. Under the first tier, each licensee is required to carry the maximum limit of primary insurance available from private sources. This limit currently stands at $375 million. Exelon maintains this coverage, and the Authority reimburses a share of its cost. Inasmuch as the coverage involves both Units 1 and 2, the Authority's share of costs is not necessarily 18%.

To provide the second tier of coverage, all licensees are required to participate in a program under which all participants will be charged a retrospective premium to cover injuries and damage in excess of the limit of a licensee's primary insurance. This premium is currently limited to $127 million per reactor per incident. With 104 reactors participating, this tier provides $13.2 billion of surety. The

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Authority's maximum potential retroactive assessment is $22.9 million, payable at $3.4 million annually.

In addition to the coverages described above, the Authority maintains its own insurance for replacement-power expenses incurred during prolonged [accidental] outages. Under this program, coverage would commence twelve weeks after any covered [accidental] outage, with reimbursement at the rate of approximately $630,000 per week for the first 52 weeks, reduced to $504,000 per week for an additional 110 weeks for the purchase of replacement power, with a maximum limit of $88.2 million.

(d) Other

On March 12, 2012, the NRC issued three safety-enhancement orders to NMP2 as a result of lessons learned from the 2011 disaster at the Fukushima Daiichi facility in Japan. One of those orders, has been complied with and the remaining plant modifications will be completed during the 2016 refueling outage, which is scheduled to begin in April 2016.

(10) Cash, Cash Equivalents and Investments

The majority of the Authority's cash and equivalent investments are managed by an external investment manager. The Authority's investments primarily consist of five accounts: the Operating Fund, the Rate Stabilization Fund, the Grant Proceeds Fund and the Construction Fund. The Operating Fund is managed to meet the liquidity needs of the Authority, the Rate Stabilization Fund is managed to maximize the return on investment, the Grant Proceeds Fund holds proceeds from FEMA designated for future storm mitigation projects, and the Construction Fund is used to fund capital expenditures from the proceeds of bonds. In accordance with its agreements with banks issuing letters of credit to secure the Authority's bonds, the Authority has agreed that the amount held in the Rate Stabilization Fund will not be less than $150 million.

The Authority's investment policy places limits on investments by issuer and by security type and addresses various risks described below. The Board may also specifically authorize, as it deems appropriate, other investments that are consistent with the Authority's investment objective. The Authority regularly reviews its investment policy to ensure continued effectiveness.

(a) Risks

Credit Risk: The Authority's permissible investments and related minimum credit ratings include U.S. Treasury and Federal Agency obligations (AA- or Aa3), repurchase agreements (A-1 or P-1), commercial paper (A-1 or P-1), corporate notes and master notes (A- or A3), asset backed securities (AAA), certificates of deposit (A- or A3), money-market mutual funds (AAAm), investment contracts (AA- or Aa3), municipal obligations (A- or A3), and variable rate notes (based on the specific asset type noted above). The Authority's investment policy prohibits investments involving complex derivatives, reverse repurchase agreements, auction rate securities, home equity asset backed securities, short selling and arbitrage related investment activity.

Concentration of Credit Risk: To address concentration of credit risk, the Authority's investment policies have established limits such that no more than 5% of the investment portfolio may be invested in the securities of any one issuer except as follows: (i) U.S. Treasury Obligations up to 100%; (ii) each Federal agency up to 20%; (iii) repurchase agreements up to 10% or $50 million; and, (iv) money-market mutual funds up to 75% maximum.

Custodial Credit Risk: The Authority believes that custodial credit risk related to its investments is minimal, as it is the Authority's policy and practice, as stipulated in its Investment Guidelines, that investments be held by a third-party custodian who may not otherwise be a counter-party to the transactions, and that all securities are free and clear of any lien and held in a separate account, in the name of the Authority.

Custodial credit risk for cash deposits (including demand deposits, time deposits and certificates of deposit issued by a commercial bank) is the risk that in the event of a bank failure, the Authority's deposits may not be returned, either in part or in whole. The Authority's policy to address this risk requires that all demand deposits, time deposits and certificates of deposits issued by a commercial bank not having a long-term credit rating of A3 or higher by Moody's, or A- or higher by Standard and Poor's, be fully collateralized above the Federal Deposit Insurance Corporation coverage. Commercial banks with long-term credit ratings at or above A3/A- do not require collateralization unless otherwise required by the Authority's Chief Financial Officer.

As of December 31, 2015 and 2014, the Authority had deposits of $239 million and $180 million, respectively, which are included in both restricted and unrestricted cash.

Interest Rate Risk: The Authority's investment policy states that investments generally have maturities of 12 months or less. Investment maturities may exceed 12 months provided that the maturity does not exceed the expected disbursement date of those funds, the total average portfolio maturity is one year or less and no individual maturity exceeds three years, with the exception of U.S. government obligations and investment contracts. As of December 31, 2015 and 2014, all of the Authority's investments had maturities of less than 12 months.

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(b) Unrestricted cash, cash equivalents and investments

As of December 31, 2015 and 2014, the Authority had the following cash, cash equivalents and investments:

Deposit/investment type	2015 Fair value	Percent of portfolio	Cash and cash equivalents	Investments
Short-term discount notes:				
Commercial paper	$ 157,211	24%	$ 157,211	—
Federal agencies	29,551	4%	29,551	—
Money-market funds	403,461	66%	403,461	—
Cash and collateralized deposits	10,475	2%	10,475	—
Mutual Fund Investments	29,500	4%	—	29,500
Total	$ 630,198	100%	$ 600,698	29,500

Deposit/investment type	2014 Fair value	Percent of portfolio	Cash and cash equivalents	Investments
Short-term discount notes:				
Commercial paper	$ 91,646	12%	$ 91,646	—
Federal agencies	9,041	1%	9,041	—
Treasury bills	84,649	11%	84,649	—
Money-market funds	565,142	72%	565,142	—
Cash and collateralized deposits	31,988	4%	31,988	—
Total	$ 782,466	100%	$ 782,466	—

Included in amounts above are deposits made to the OPEB Account. To meet the Authority's obligation for certain future PSEG Long Island employee post-employment health and life insurance benefit plan expenses that are pass-through expenditures payable by the Authority (during the term of the A&R OSA and at the termination of the agreement), the Authority has funded an OPEB Account and invested such funds as permitted by the Authority's investment guidelines, which are similar to investments commonly made in accounts dedicated to prefunding OPEB obligations. The Authority also incurs similar liabilities for the post-employment health and life insurance benefits for its own employees. As of December 31, 2015, the Authority has approximately $30 million held in investments and approximately $21.7 million held in cash and cash equivalents. Approximately $48.4 million is related to the PSEG Long Island employee benefit obligation and $3.3 million is related to the Authority employee benefit obligation.

In the event that the Authority's Chief Executive Officer (CEO) or Chief Financial Officer (CFO) determine there are insufficient revenues to pay reasonable and necessary operating expenses or to make payments on bonds or parity obligations, the CEO or CFO is authorized after notifying the Finance and Audit Committee of the Board to release funds from the OPEB Account for such purposes. As such, the OPEB Account is not restricted and is included in the tables above.

(c) Restricted cash and cash equivalents

Restricted Cash for Working Capital Requirements
In accordance with the A&R OSA, the Authority is required to advance fund an operating account available to PSEG Long Island to pay for operating and capital expenditures that PSEG Long Island incurs as the Authority's agent in the management of the Authority's T&D system. The Authority is required to maintain in this account three months of anticipated T&D operating and capital costs plus separate storm and tax funding accounts. These accounts totaled $208 million and $148 million, as of December 31, 2015 and 2014, respectively, and were held in a collateralized deposit account. These funds are determined to be restricted due to the contractual obligation of the Authority to pre-fund the account but are considered part of the Authority's working capital.

FEMA Grant Proceeds
The Authority received from FEMA approximately $502 million for storm hardening work as well as initial repair costs for certain Authority assets. These amounts exceed the expenditures of the Authority for such projects to date, and the Authority has segregated those funds for future use as required by the FEMA grant agreement.

UDSA
Restructuring charges are held by the bond Trustee in the Collection Account to satisfy debt service on the Restructuring Bonds. The Collection Account for the bonds consists of four subaccounts: a General Subaccount, an Excess Funds Subaccount, a Reserve Subaccount, and an Upfront Financing Costs Subaccount. The Collection Account (other than the Upfront Financing Costs Subaccount) secures the Restructuring Bonds. For administrative purposes, the subaccounts may be established by the Trustee as separate accounts which will be recognized individually as subaccounts and collectively as the Collection Account.

Restricted cash held by the Trustee, as of December 31, 2015, includes $3 million in the General Subaccounts, and $30.3 million in the Reserve Subaccounts and Upfront Financing Costs Subaccounts.

The UDSA has a separate set of investment guidelines that are specifically designed to address its legal and contractual requirements. These guidelines mandate that such investments be matched to meet the obligations of the bond and interest payments.

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As of December 31, 2015 and 2014, the Authority had the following in restricted cash and cash equivalent balances:

Deposit/investment type	2015 Fair value	Percent of portfolio	Cash and cash equivalents	Investments
Short-term discount notes:				
Commercial paper	$ 127,118	18%	$ 127,118	—
Federal agencies	33,536	5%	33,536	—
Money-market funds	354,718	46%	354,718	—
Cash and collateralized deposits	228,235	32%	228,235	—
Total	$ 743,607	100%	$ 743,607	—

Deposit/investment type	2014 Fair value	Percent of portfolio	Cash and cash equivalents	Investments
Short-term discount notes:				
Commercial paper	$ 63,200	10%	$ 63,200	—
Federal agencies	22,718	4%	22,718	—
Treasury bills	48,369	8%	48,369	—
Money-market funds	335,810	54%	335,810	—
Cash and collateralized deposits	148,287	24%	148,287	—
Total	$ 618,384	100%	$ 618,384	—

(d) Nuclear Decommissioning Trusts (NDT)

The Authority maintains a separate investment policy applicable to the long-term investments in the NDT which is held to meet the Authority's obligation with respect to the eventual decommission of the Authority's 18% interest in the NMP2 nuclear facility. The NDT guidelines detail permissible investments and portfolio restrictions. This investment policy is reviewed regularly to ensure that the value in the trusts in 2046 (the year in which decommissioning activities are scheduled to begin), will be sufficient to meet decommissioning obligations.

Credit Risk: The guidelines attempt to minimize risk by limiting permissible investments to include: obligations of the U.S. government and its agencies; corporate or other obligations with an BBB-/Baa3 or better rating; mortgage obligations rated AA/Aa or higher; commercial paper with a rating of A-1 or P-1; certificates of deposit; Yankee certificates of deposit and bankers acceptances of domestic banks with A-/A3 rating or better, short-term money market investment accounts that conform to the aforementioned permissible investments; and with respect to the long-term NDT investment portfolio

only, equity investments limited to portfolio funds of securities designed to replicate the overall market measured by benchmark market indices such as the S&P 500 Index. Within the NDT investment portfolio, the use of equity investments in an S&P 500 index mutual fund is a permissible investment and is limited to a target exposure of 35% with a quarterly rebalancing within plus or minus 5%. The fixed income portion of the NDT investment portfolio must maintain an average credit rating of A or better with no more than 30% of the portfolio invested in notes and bonds rated in the BBB and A categories and no more than 20% of the portfolio invested in municipal securities.

Concentration of Credit Risk: To address this risk, the investment policies have established limits such that no more than 5% of the portfolio may be invested in the securities of any one issuer with the exception of U.S. government and its agencies securities. In addition, no more than 25% of the portfolio may be invested in securities of issuers in the same industry.

Custodial Credit Risk: The NDT does not have a policy relative to custodial credit risk of its deposits, however, as a practical matter, it defers to the policies of the Authority.

Interest Rate Risk: Due to the long-term nature of the NDT asset, interest rate risk is managed to track the Barclays Capital U.S. Float Adjusted Aggregate Bond Market Index. The portfolio's duration is required to fall within a range of 20% below the duration of the index and 10% above the duration of the index.

As of December 31, 2015 and 2014, the NDT had the following investments:

Investment type		2015 Fair value	Percent of portfolio
U.S. government and its agencies obligations	$	48,847	44%
Corporate Notes/Bonds		20,724	19%
Commingled equity fund		40,865	37%
Total	$	110,436	100%

Investment type		2014 Fair value	Percent of portfolio
U.S. government and its agencies obligations	$	48,254	44%
Corporate Notes/Bonds		21,835	20%
Commingled equity fund		40,580	36%
Total	$	110,669	100%

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The overall duration of the three individual accounts averaged 5.7 years and 5.9 years at December 31, 2015 and 2014, respectively.

(11) Long-Term and Short-Term Debt

(a) Electric System General Revenue Bonds and Subordinated Revenue Bonds

The Authority financed the cost of acquiring the T&D system from LILCO with Electric System General Revenue Bonds and Electric System Subordinated Revenue Bonds (collectively, the Bonds). Ongoing capital improvements are funded through the issuance of debt, except where grants or excess cash flow provide the ability to cash fund such expenditures. LIPA and the Authority entered into a Financing Agreement, whereby LIPA transferred to the Authority all of its right, title and interest in and to the revenues generated from the operation of the T&D system, including the right to collect and receive the same.

All of the Authority's bonds are secured by a Trust Estate as pledged under the Authority's Bond Resolution (the Resolution). The Trust Estate consists principally of the revenues generated by the operation of the T&D system and has been pledged to the Authority.

Below are the bond transactions completed during the year ended December 31, 2015:

Revenue Obligations:	2015A-1, A-2 General Revenue Bonds	Par Amount: $	200,000
Purpose:	Re-finance Series 2012D variable-rate bonds plus a portion of Series 2001-1A & Series 2001-2B due to expiring bank facilities	Date Closed:	June 16, 2015
Comments:	Direct placement Floating Rate Notes	Deferred Loss: $	151
Revenue Obligations:	2015B General Revenue Bonds	Par Amount: $	117,230
Purpose:	Fund system improvements & pay issuance costs	Date Closed:	November 18, 2015
Comments:	New money fixed rate issue		
Revenue Obligations:	2015C General Revenue Bonds	Par Amount: $	149,000
Purpose:	To re-finance the remaining balance of the Series 2001-1A and 2B variable-rate bonds due to expiring bank facilities	Date Closed:	November 18, 2015
Comments:	LIBOR Floating Rate Notes		
Revenue Obligations:	2015A General Revenue Notes	Par Amount: $	325,000
Purpose:	Supplement liquidity after downsizing revolver	Date Closed:	March 30, 2015
Comments:	$50 million outstanding as of December 31, 2015		

Below are the bond transactions completed during the year ended December 31, 2014:

Revenue Obligations:	2014A General Revenue Bonds	Par Amount: $	413,070
Purpose:	Fund system improvements & refund the remaining balance of the 2004A bonds & pay issuance costs	Date Closed:	December 4, 2014
Comments:	Refunding and new money		
Revenue Obligations:	2014B General Revenue Bonds	Par Amount: $	164,950
Purpose:	Fund system improvements & pay issuance costs	Date Closed:	December 4, 2014
Comments:	Federally taxable new money fixed rate debt		
Revenue Obligations:	2014C General Revenue Bonds	Par Amount: $	150,000
Purpose:	Refund $50 million Series 2001-1B & $100 million Series 2001-3A	Date Closed:	December 4, 2014
Comments:	LIBOR Floating Rate Notes		
Revenue Obligations:	Subordinated Revenue Commercial Paper Notes	Par Amount: $	215,000
Purpose:	Fund various system improvements, supplement liquidity & refund existing commercial paper	Date Closed:	December 22, 2014
Comments:	$0 outstanding as of December 31, 2014		

(b) UDSA

The Authority's Board adopted the Financing Orders authorizing the issuance of Restructuring Bonds by the UDSA to allow the Authority to retire a portion of its outstanding indebtedness and provide savings to the Authority's customers as measured on a net present value basis. The Restructuring Bonds are not obligations of the Authority, PSEG Long Island or any of their affiliates; however, the UDSA is a component unit of the Authority and consolidated into these financial statements.

Below is the UDSA bond transaction completed during the year ended December 31, 2015. The UDSA had no bond market transactions during 2014.

Revenue Obligations:	2015 Restructuring Bonds	**Par Amount: $**	1,002,115
Purpose:	Retire certain higher cost Authority bonds	**Date Closed:**	October 16, 2015
		NPV Savings:	127,978
Comments:	Issued by UDSA	**Deferred Loss:**	116,516

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The Authority's short-term and long-term debt at December 31, 2015 consisted of the following:

	Beginning balance	Accretion/ additions	Maturities	Refundings	Ending balance	Years of Maturity	Interest Rate (%)	
General revenue bonds/notes:								
Series 1998A	$ 113,622	6,089	—	—	119,711	2016-2028	5.05-5.30	(a)
Series 2000A	361,014	20,330	33,065	—	348,279	2016-2029	5.54-5.95	(a)
Series 2003C	36,645	—	—	—	36,645	2029	5.25	(b)
Series 2006A	564,125	—	—	64,925	499,200	2016-2026	4.00-5.25	(b)
Series 2006B	95,655	—	—	95,655	—	2035	NA	(b)
Series 2006C	194,105	—	—	194,105	—	2035	NA	(b)
Series 2006D	195,870	—	110,715	29,795	55,360	2016-2025	4.11-5.00	(b)
Series 2006E	391,085	—	—	80,845	310,240	2017-2022	4.00-5.00	(b)
Series 2006F	271,005	—	20,115	11,840	239,050	2016-2033	4.00-5.00	(b)
Series 2008A	598,720	—	—	352,410	246,310	2030-2033	5.50-6.00	
Series 2008B	146,725	—	—	95,725	51,000	2019-2033	5.25-5.75	
Series 2009A	331,220	—	—	108,610	222,610	2016-2033	3.50-6.25	
Series 2010B	210,000	—	—	—	210,000	2020-2041	4.85-5.85	(c)
Series 2011A	245,590	—	—	11,365	234,225	2016-2038	4.00-5.00	(b)
Series 2012A	250,000	—	—	—	250,000	2037-2042	5.00	(b)
Series 2012B	189,325	—	610	—	188,715	2016-2029	3.00-5.00	
Series 2012C	175,000	—	—	—	175,000	2033	0.01	(b)(d)
Series 2012D	149,000	—	—	149,000	—	2033	NA	(b)(d)
* Series 2013A	65,000	—	—	65,000	—	2016	NA	(d)
Series 2014A	413,070	—	—	—	413,070	2034-2044	4.00-5.00	
Series 2014B	164,950	—	—	—	164,950	2018-2026	2.36-4.13	
Series 2014C FRN	150,000	—	—	—	150,000	2033	0.82	(b)(d)
Series 2015A1	—	51,000	—	—	51,000	2033	3.80-4.09	(b)(d)
Series 2015A2	—	149,000	—	—	149,000	2029	3.49-3.86	(b)(d)
Series 2015B	—	117,230	—	—	117,230	2019-2045	3.00-5.00	
Series 2015C	—	149,000	—	—	149,000	2033	1.051	(b)(d)
* Series 2015GR1-3CP	—	50,000	—	—	50,000	2016	0.20-0.33	(d)
Subtotal	5,311,726	542,649	164,505	1,259,275	4,430,595			
Subordinate revenue bonds/notes:								
Series 1-3	350,000	—	—	350,000	—	2033	NA	(b)(d)
* Series 2000 CP 1-3	215,000	—	—	215,000	—	2015	NA	(d)
* Series 2014 CP 1AB	—	200,000	—	—	200,000	2017	0.15-0.30	(d)
* Series 2014 CP 2AB	—	100,000	—	—	100,000	2017	0.21-0.44	(d)
Subtotal	565,000	300,000	—	565,000	300,000			
UDSA restructuring bonds:								
Series 2013T	482,934	—	—	—	482,934	2017-2023	2.04-3.44	
Series 2013TE	1,449,390	—	15,000	—	1,434,390	2016-2039	5.00	
Series 2015TE	—	1,002,115	—	—	1,002,115	2021-2035	3.00-5.00	
Subtotal	1,932,324	1,002,115	15,000	—	2,919,439			
	7,809,050	1,844,764	179,505	1,824,275	7,650,034			
Plus: Net premium	202,346	190,919	22,536	—	370,729			
* Less: Short term debt	(280,000)				(350,000)			
Less: Current maturities	(179,505)				(238,295)			
Total long term debt	$ 7,551,891				7,432,468			

a Capital Appreciation Bonds
b Certain bonds of this series are subject to interest rate exchange agreements
c Taxable Build America Bonds subject to federal subsidy, rate shown is pre-subsidy level
d Variable rate (rate presented as of the fourth quarter of 2015)
* Short term debt

The Authority's short-term and long-term debt at December 31, 2014 consisted of the following:

	Beginning balance	Accretion/ additions	Maturities	Refundings	Ending balance	Years of Maturity	Interest Rate (%)	
General revenue bonds/notes:								
Series 1998A	$ 107,842	5,780	—	—	113,622	2015-2028	5.05-5.30	(a)
Series 2000A	372,651	20,968	32,605	—	361,014	2015-2029	5.54-5.95	(a)
Series 2003B	28,690	—	28,690	—	—	2014	5.25	
Series 2003C	36,645	—	—	—	36,645	2029	5.25	(b)
Series 2004A	22,270	—	—	22,270	—	2029-2034	5.00-5.10	(b)
Series 2006A	564,125	—	—	—	564,125	2016-2026	4.00-5.25	(b)
Series 2006B	95,655	—	—	—	95,655	2035	4.50-5.00	(b)
Series 2006C	194,105	—	—	—	194,105	2035	5.00	(b)
Series 2006D	211,785	—	15,915	—	195,870	2015-2025	4.11-5.00	(b)
Series 2006E	391,085	—	—	—	391,085	2017-2022	4.00-5.00	(b)
Series 2006F	271,005	—	—	—	271,005	2015-2033	4.00-5.00	(b)
Series 2008A	598,720	—	—	—	598,720	2030-2033	5.50-6.00	
Series 2008B	146,725	—	—	—	146,725	2019-2033	5.25-5.75	
Series 2009A	331,220	—	—	—	331,220	2016-2033	3.50-6.25	
Series 2010B	210,000	—	—	—	210,000	2020-2041	4.85-5.85	(c)
Series 2011A	245,590	—	—	—	245,590	2016-2038	4.00-5.00	
Series 2012A	250,000	—	—	—	250,000	2037-2042	5.00	
Series 2012B	192,135	—	2,810	—	189,325	2014-2029	3.00-5.00	(b)
Series 2012C	175,000	—	—	—	175,000	2033	0.02-.0.05	(b)(d)
Series 2012D	149,000	—	—	—	149,000	2033	0.01-0.05	(d)
* Series 2013A	263,000	337,000		535,000	65,000	2016	1.01-3.25	
Series 2014A	—	413,070	—	—	413,070	2034-2044	4.00-5.00	
Series 2014B	—	164,950	—	—	164,950	2018-2026	2.36-4.13	
Series 2014C FRN	—	150,000	—	—	150,000	2033	1.10	(b)(d)
Subtotal	4,857,248	1,091,768	80,020	557,270	5,311,726			
Subordinate revenue bonds/notes:								
Series 1-3	350,000	—	—	—	350,000	2033	0.02-0.11	(b)(d)
* Series 2000 CP 1-3	—	215,000	—	—	215,000	2015	0.12-.018	(b)(d)
Subtotal	350,000	215,000	—	—	565,000			
UDSA restructuring bonds:								
Series 2013T	482,934	—	—	—	482,934	2017-2023	2.04-3.44	
Series 2013TE	1,539,390	—	90,000	—	1,449,390	2015-2039	5.00	
Subtotal	2,022,324	—	90,000	—	1,932,324			
	7,229,572	1,306,768	170,020	557,270	7,809,050			
Plus: Net premium	188,083	37,291	23,028	—	202,346			
* Less: Short term debt	(263,000)				(280,000)			
Less: Current maturities	(170,020)				(179,505)			
Total long term debt	$ 6,984,635				7,551,891			

a Capital Appreciation Bonds
b Certain bonds of this series are subject to interest rate exchange agreements
c Taxable Build America Bonds subject to federal subsidy, rate shown is pre-subsidy level
d Variable rate (rate presented as of the fourth quarter of 2014)
* Short term debt

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The debt service requirements for the Authority's consolidated bonds outstanding (excluding short-term debt such as general revenue notes, commercial paper notes, and revolving credit facility but including the UDSA Restructuring Bonds) as of December 31, 2015 are as follows:

Due	Principal*	Interest	Net swap payments	Total
2016	$ 238,295	310,070	23,606	571,971
2017	194,648	302,231	18,321	515,200
2018	212,783	298,553	15,385	526,721
2019	267,281	291,034	15,385	573,700
2020	272,532	284,036	15,385	571,953
2021–2025	1,514,515	1,269,687	76,926	2,861,128
2026–2030	1,716,070	947,597	46,705	2,710,372
2031–2035	1,599,930	553,108	—	2,153,038
2036–2040	1,128,675	241,464	—	1,370,139
2041–2045	369,410	35,708	—	405,118
Total	$ 7,514,139	4,533,488	211,713	12,259,340

*Future interest on Capital Appreciation Bonds are included in principal maturities.

Future debt service on the variable rate bonds and floating rate portion of any floating-to-fixed rate swaps use an assumed rate of 1.10% for 2016, 2.00% and 2.50% for 2017 and thereafter, respectively. For bonds subject to floating-to-fixed rate swap agreements, the "net swap payments" represent the fixed swap rate payment net of the assumed future variable rate swap receipts for each agreement.

(c) Interest Rate Swap Agreements

The Authority has entered into several interest rate swap agreements with various counterparties to modify the interest rate on outstanding debt. For a further discussion, see note 7.

(d) Short-Term Debt

General Revenue Notes - Revolving Credit Agreement
In 2013, the Authority secured a three-year senior lien revolving credit agreement, Series 2013A, that allowed for borrowing for up to $500 million. During 2015, the Authority amended this agreement reducing extending the term by one year to March 2017 and reducing the facility to $337.5 million, of which none was outstanding at December 31, 2015. As of December 31, 2014, the Authority had $65 million outstanding.

General Revenue Notes - Commercial Paper
In 2015, the Authority issued Electric System General Revenue Notes, Series GR-1, GR-2 and GR-3, each in two sub series: A Taxable; and B Tax-Exempt. The GR-1 Notes shall not exceed $200 million outstanding at any time. The GR-2 Notes shall not exceed $75 million outstanding at any time. The

GR-3 Notes shall not exceed $50 million outstanding at any time. At December 31, 2015, the Authority had $50 million GR-1A notes outstanding under this program. The Letter of Credit supporting the GR-1 Notes expires in June 2020 while the Letters of Credit supporting the GR-2 and GR-3 Notes expire in March 2018.

Subordinated Revenue Notes - Commercial Paper
In December 2014, the Authority established the Series 2014 Commercial Paper (CP) Notes, CP-1 and CP-2, in two subseries, A taxable and B tax-exempt. Series 2014 CP-1 Notes shall not exceed $200 million outstanding at any time. Series 2014 CP-2 Notes shall not exceed $100 million outstanding at any time.

As of December 31, 2015, $300 million of the Authority's 2014 CP Notes, Series CP-1 and CP-2, were outstanding and are included in short term debt on the Statements of Net Position. As of December 31, 2014, no 2014 CP Notes were outstanding. In connection with the issuance of the Series 2014 CP Notes, the Authority has entered into Letter of Credit agreements. The Letters of Credit supporting the Series 2014 CP-1 and CP-2 Notes are scheduled to expire in December 2017.

The Series 2014 CP Notes replaced a prior commercial paper program consisting of Series CP-1, CP-2 and CP-3 with a not to exceed $300 million authorization upon the expiration of the Letter of Credit agreements supporting that prior program on January 27, 2015. As a result, in January 2015, the Authority redeemed all of its outstanding Notes under the prior program, Series CP-1 through CP-3, with funds from its 2014 CP Notes program.

(e) *Fixed obligation coverage ratio*

Effective January 1, 2016, the Authority adopted the "public power model" of rate-setting which makes use of the debt service coverage method in determining revenue requirements. The Authority's methodology for calculating the fixed obligation coverage ratio excludes certain specified non-cash items from expenses. Depreciation expense, amortization of the Acquisition Adjustment and other regulatory assets, as well as the difference between accrual expense and actual cash required cash contributions to PSEG Long Island pension and OPEBs are non-cash expenses excluded from the coverage calculation. Also, adjusted in the revenue section of this calculation are the revenues received from certain customers that are used to satisfy the regulatory asset that were established when the Authority issued debt to fund such projects. For calculating the coverage ratios, these cash receipts are available to meet the Authority's fixed obligation requirements, although such receipts are excluded from revenues for accrual accounting purposes.

Certain interest related costs such as interest rate derivative costs, letters of credit and remarketing fees, bond administration costs, and interest related to customer deposits are not required to have coverage and are therefore, deducted as an ordinary expense from operating income. Included for coverage are the Authority and the UDSA principal and interest payments, including interest payments on the Authority's commercial paper program and short-term debt.

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The Authority applied this method to the year ended December 31, 2015 and 2014 results for information purposes as shown below:

Years ended December 31,		2015	2014
Operating revenues	$	3,505,209	3,613,982
Other income		92,073	152,378
Receipts related to regulatory assets		11,969	12,540
Total revenues and income		3,609,251	3,778,900
Operating expenses		(3,187,383)	(3,351,379)
Add non cash expenses/(deduct cash funding)			
Depreciation and amortizations		235,010	226,966
Capital lease allowance		310,882	309,011
PSEG Long Island retirement benefit accrual expense[1]		-	-
PSEG Long Island retirement benefit funding[1]		-	-
Other interest expense		(43,900)	(46,709)
Total expenses		(2,685,391)	(2,862,111)
Funds available for debt service	**$**	**923,860**	**916,789**
Principal and interest - Authority		378,783	298,791
Principal and interest - UDSA		101,286	180,029
Capital lease obligation		310,882	309,011
Total fixed obligation debt service	**$**	**790,951**	**787,831**
Fixed Obligation Coverage Ratio:			
Excluding UDSA		1.19	1.21
Including UDSA		1.17	1.16

[1] The public power model as adopted by the Authority's Board in 2015 for 2016 and beyond, adds back the retirement benefits accrual expense and deducts the cash funding of the pension benefits related to operating expense. OPEB contributions are not deducted, as they are funded through coverage, consistent with the DPS recommendation. For 2014 and 2015, which are prior to the rate case methodology, these adjustments are not reflected in the calculation.

(f) Changes in noncurrent liabilities

The Authority's other long term liabilities as of December 31, 2015 are comprised of the following:

	Beginning Balance	Increases	Decreases	Ending Balance
Other long-term liabilities:				
Long term liabilities and unrealized credits	$ 97,291	—	(3,761)	93,530
Borrowings	91,779	—	(4,715)	87,064
Claims and damages	20,935	8,547	(1,660)	27,822
Capital lease obligations	2,379,250	—	(190,955)	2,188,295
Total other long term liabilities	$ 2,589,255	8,547	(201,091)	2,396,711

The Authority's other long term liabilities as of December 31, 2014 are comprised of the following:

	Beginning Balance	Increases	Decreases	Ending Balance
Other long-term liabilities:				
Long term liabilities and unrealized credits	$ 79,289	25,025	(7,023)	97,291
Borrowings	96,390	—	(4,611)	91,779
Claims and damages	21,183	1,200	(1,448)	20,935
Capital lease obligations	2,558,247	—	(178,997)	2,379,250
Total other long term liabilities	$ 2,755,109	26,225	(192,079)	2,589,255

(12) Operations Services Agreement Employee Retirement Benefit Obligations

In accordance with the terms of the A&R OSA, the costs to employ PSEG Long Island's workforce, including employee pension and other post-employment benefits (OPEB), are a "pass through expenditure" to the Authority, and therefore a contractual liability of the Authority. PSEG Long Island employee pension and OPEB obligations are legal obligations of PSEG Long Island, and the employees covered by these plans are PSEG Long Island employees, not Authority employees.

To ensure that the NGRID workforce serving the Authority was neither better nor worse off by the transition from NGRID to PSEG Long Island, the PSEG Long Island benefit plans credited NGRID transitioned employees for service prior to the A&R OSA effective date for purposes such as eligibility, participation, vesting, company match levels, subsidies (including any type of early retirement subsidy) and attainment of retirement dates. In addition, those employees who immediately prior to the A&R OSA effective date could have become eligible to participate in the NGRID postretirement health and life insurance benefit plans, are entitled to receive substantially equivalent postretirement health and life insurance benefits under a

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postretirement health and life insurance plan established by PSEG Long Island. This arrangement created a prior service cost obligation totaling $126 million for pensions and $316 million for OPEBs. The following table provides a roll-forward of the changes to the benefit obligations and the fair value of the plan assets during each of the years in the periods ended December 31, 2015 and 2014. The liability decreased during 2015 due to the update of certain assumptions regarding the census data, claims costs, excise taxes, and the discount rate. These changes resulted in a net actuarial gain of $17 million for pensions and $118 million for OPEBs, of which $17 million and $25 million, respectively, are attributable to the increase in the market prevailing interest rates, which resulted in an increase in the assumed discount rate. Updated claims assumptions contributed $48 million and updated excise tax assumptions contributed $29 million to the actuarial gain.

The table also provides the funded status of the PSEG Long Island plans and the amounts recognized as the long term contractual liability on the Statements of Net Position at the end of both years. The table does not reflect the balance of the Authority's OPEB Account.

	Pension benefits		Postretirement benefits	
	2015	2014	2015	2014
Change in benefit obligation:				
Benefit obligation at beginning of year	$ 194,971	—	452,072	—
Service cost	26,229	20,300	18,801	12,816
Interest cost	8,767	6,938	22,584	17,004
Actuarial loss (gain)	(17,351)	41,591	(117,793)	106,808
Benefits paid	(221)	(39)	(767)	(66)
Plan amendment	774	126,181	—	315,510
Benefit obligation at end of year	213,169	194,971	374,897	452,072
Change in plan assets:				
Fair value of assets at beginning of year	68,606	—	—	—
Actual return on plan assets	(1,997)	1,745	—	—
Employer contribution	30,000	66,900	767	66
Gross benefits paid	(221)	(39)	(767)	(66)
Fair value of assets at end of year	96,388	68,606	—	—
Funded status (Plan assets less benefit obligation):				
Authority unfunded obligation	$ (116,781)	(126,365)	(374,897)	(452,072)

In December 2014, the Authority's Board authorized the creation of an OPEB Account to allow the Authority to segregate funds to meet future OPEB obligations. During 2015 and 2014, the Authority deposited approximately $28 million and $20 million, respectively into its OPEB Account to meet future PSEG Long Island OPEB obligations. For a further discussion, see note 10.

The actuarial valuations related to pension and OPEB benefits involve estimates and assumptions regarding the probability of events in the future. Below are the weighted average assumptions used to calculate actuarial present values of benefit obligations at December 31, 2015 and 2014:

	Pension benefits		Postretirement benefits	
	2015	2014	2015	2014
Discount rate	4.92%	4.50%	4.97%	4.60%
Rate of compensation increase	3.25	3.25	3.25	3.25

Plan Assets

During 2015 and 2014, the Authority funded approximately $30 million and $67 million, respectively, to PSEG Long Island for deposit in its pension plan trust fund. The trust is sponsored, overseen and managed by the PSEG Thrift & Pension Investment Committee. The benefit plan assets are maintained separately by PSEG Long Island and are not commingled with other PSEG plans. The benefit plan assets are not assets of the Authority; and therefore, are not reflected on the Statements of Net Position. These assets, however, reduce the Authority's contractual obligation to PSEG Long Island for the benefit obligations of the PSEG Long Island employees. The following table outlines the PSEG Long Island pension assets as of December 31, 2015 and 2014:

	2015		2014	
Investment type	Amount	Allocation	Amount	Allocation
Equity	$ 67,877	70	36,914	54
International	—	—	11,110	16
Fixed income	28,370	29	20,224	30
Other	141	1	—	—
	$ 96,388	100%	68,248	100%

(13) Authority Employee Benefits

All full-time Authority employees must participate in one of two employee benefit plans offered by the Authority, either (i) the New York State or Local Retirement System (the Retirement System) or (ii) the New York State Voluntary Defined Contribution Plan (VDC).

(a) Pension Plans

Plan Description

The Retirement System is a cost-sharing multiple-employer defined benefit retirement system. The net position of the Retirement System is held in the New York State Common Retirement Fund (the Fund), which was established to hold all net assets and record changes in fiduciary net position

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allocated to the Retirement System. The Comptroller of the State of New York serves as the trustee of the Fund and is the administrative head of the Retirement System. Retirement System benefits are established under the provisions of the New York State Retirement and Social Security Law (NYSRSSL). Once a public employer elects to participate in the Retirement System, the election is irrevocable. The New York State Constitution provides that pension membership is a contractual relationship and plan benefits cannot be diminished or impaired. Benefits can be changed for future members only by enactment of a State statute. The Authority also participates in the Public Employees' Group Life Insurance Plan (GLIP), which provides death benefits in the form of life insurance. The Retirement System is included in the State's financial report as a pension trust fund. That report, including information with regard to benefits provided, may be found at www.osc.state.ny.us/retire/publications/index.php or obtained by writing to the New York State and Local Retirement System, 110 State Street, Albany, NY 12244.

The Retirement System uses a tier concept to distinguish membership classes (i.e. tiers 1 through 6) with tier membership based on the date an employee joins the System. The Retirement System is non-contributory for tiers 1 and 2 employees who joined on or prior to July 27, 1976. Tiers 3 and 4 employees, who joined between July 28, 1976 and December 31, 2009 and have less than ten years of service, contribute 3% of their salary. Tier 5 employees who joined on or after January 1, 2010 contribute 3 % of their salary during their entire length of service. Tier 6 employees who joined on or after April 1, 2013 contribute 3% of their salary through March 31, 2013 and up to 6% thereafter, based on their annual salary, during their entire length of service. Members become vested in the plan after ten years of service and generally are eligible to receive benefits at age 55. The benefit is generally 1.67 percent of final average salary (FAS) times the number of years of service, for members who retire with less than 20 years of service, and 2 percent of FAS for members who retiree with 20 or more years of service. The Retirement System provides an annual automatic cost of living adjustment to members or surviving spouses based on certain eligibility criteria.

Ordinary Disability Benefits

Generally, ordinary disability benefits, usually one-third of salary, are provided to eligible members after ten years of service; in some cases, they are provided after five years of service.

Accidental Disability Benefits

For all eligible Tier 1 and Tier 2 members, the accidental disability benefit is a pension of 75 percent of final average salary, with an offset for any Workers' Compensation benefits received. The benefit for eligible Tier 3, 4, 5 and 6 members is the ordinary disability benefit with the years-of-service eligibility requirement dropped.

Ordinary Death Benefits

Death benefits are payable upon the death, before retirement, of a member who meets eligibility requirements as set forth by law. The first $50,000 of an ordinary death benefit is paid in the form of group term life insurance. The benefit is generally three times the member's annual salary. For most members, there is also a reduced post-retirement ordinary death benefit available.

Post-Retirement Benefit Increases
A cost-of-living adjustment is provided annually to: (i) all pensioners who have attained age 62 and have been retired for five years; (ii) all pensioners who have attained age 55 and have been retired for ten years; (iii) all disability pensioners, regardless of age, who have been retired for five years; (iv) Retirement System recipients of an accidental death benefit, regardless of age, who have been receiving such benefit for five years and (v) the spouse of a deceased retiree receiving a lifetime benefit under an option elected by the retiree at retirement. An eligible spouse is entitled to one-half the cost-of-living adjustment amount that would have been paid to the retiree when the retiree would have met the eligibility criteria. This cost-of-living adjustment is a percentage of the annual retirement benefit of the eligible member as computed on a base benefit amount not to exceed $18,000 of the annual retirement benefit. The cost-of-living percentage shall be 50 percent of the annual Consumer Price Index as published by the U.S. Bureau of Labor, but cannot be less than 1 percent or exceed 3 percent.

Contributions
The Retirement System is noncontributory except for employees who joined the New York State and Local Employees' Retirement System after July 27, 1976, who contribute 3 percent of their salary for the first ten years of membership, and employees who joined on or after January 1, 2010 who generally contribute 3 percent of their salary for their entire length of service. Under the authority of the NYSRSSL, the Comptroller annually certifies the actuarially determined rates expressly used in computing the employers' contributions based on salaries paid during the Retirement Systems' fiscal year ending March 31. The Authority's contributions for the year ended December 31, 2015, 2014 and 2013, were equal to 100 percent of the contributions required, and were zero (due to credit provided), $0.9 million and $2 million, respectively.

Adoption of GASB No. 68 and No. 71

The Authority, effective January 1, 2015, adopted GASB Statement No. 68, *Accounting and Financial Reporting for Pensions*. Statement No. 68 requires governments, that provide defined benefit pension plans to their employees, to recognize their long term obligation for pension benefits as a liability and to more comprehensively and comparably measure the annual costs of pension benefits. Statement No. 68 also enhances accountability and transparency through revised and new note disclosures and required supplemental information. As a result of the implementation of Statement No. 68, net position as of January 1, 2014 was decreased by $1.3 million and is reflected as a cumulative effect of change in accounting principle in the statements of revenues, expenses and changes in net position. In addition, the Authority recognized approximately $195 thousand, as deferred outflows and $417 thousand as deferred inflows in the statement of net position at December 31, 2015, related to this implementation.

Also, effective January 1, 2015, the Authority adopted GASB Statement No. 71, *Pension Transition for Contributions Made Subsequent to the Measurement Date*, which is applied simultaneously with Statement No. 68. Statement No. 71 addresses the transition provisions of Statement No. 68, relating to amounts contributed by state or local government employers to a defined benefit pension plan after the

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measurement date of the government employer's beginning net pension liability. As the Authority had no contributions subsequent to March 31, 2015, this statement did not have an impact on the deferred outflows in the statement of net position at December 31, 2015.

Pension Liabilities, Pension Expense, and Deferred Outflows of Resources and Deferred Inflows of Resources Related to Pensions
At December 31, 2015, the Authority reported a liability of $0.9 million for its proportionate share of the net pension liability. The net pension liability was measured as of March 31, 2015, and the total pension liability used to calculate the net pension liability was determined by an actuarial valuation as of that date. The Authority's proportion of the net pension liability was based on a projection of the Authority's long-term share of contributions to the pension plan relative to the projected contributions of all participating members, actuarially determined.

At December 31, 2015 and 2014, the Authority's proportion was 0.03%.

For the year ended December 31, 2015, the Authority recognized pension expense of $0.8 million. At December 31, 2015, the Authority reported deferred outflows of resources and deferred inflows of resources related to pensions from the following sources:

	Deferred Outflows of Resources	Deferred Inflows of Resources
Differences between expected and actual experience	$ 30	-
Changes of Assumptions	-	-
Net difference between projected and actual earnings on pension plan investments	165	-
The Authority's contributions subsequent to the measurement date	-	417
	$ 195	417

The net amount of the Authority's balances of deferred outflows of resources and deferred inflows of resources related to pensions will be recognized in pension expense as follows:

Plan Years Ended December 31:		
2016	$	(56)
2017		(56)
2018		(55)
2019		(55)
2020		-
Thereafter		-
	$	(222)

Actuarial Assumptions
The total pension liability as of the measurement date was determined using an actuarial valuation as noted in the table below, with update procedures used to roll forward the total pension liability to measurement date. The actuarial valuation used the following assumptions:

Measurement date:	March 31, 2015
Actuarial valuation date:	April 1, 2014
Actuarial cost method:	Entry age normal
Inflation:	2.70%
Salary Scale:	4.90%
Investment rate of return, including inflation (compounded annually, net of expenses):	7.50%
Cost of living adjustments, annually:	1.40%
Decrement tables:	April 1, 2005- March 31, 2010 Retirement System's Experience
Mortality improvement:	Society of Actuaries Scale MP-2014

The long-term expected rate of return on pension plan investments was determined in accordance with Actuarial Standard of Practice (ASOP) No. 27, Selection of Economic Assumptions for Measuring Pension Obligations. ASOP No. 27 provides guidance on the selection of an appropriate assumed investment rate of return. Consideration was given to expected future real rates of return (expected returns, net of pension plan investment expense and inflation) for equities and fixed income as well as historical investment data and plan performance.

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Best estimates of arithmetic real rates of return for each major asset class included in the target asset allocation as of March 31, 2015 and 2014 are summarized below:

Asset class	Target allocation	Long-term expected real rate of return
Domestic equity	38%	7.30%
International equity	13	8.55
Private equity	10	11.00
Real estate	8	8.25
Absolute return strategies	3	6.75
Opportunistic portfolio	3	8.60
Real assets	3	8.65
Bonds and mortgages	18	4.00
Cash	2	2.25
Inflation-Indexed bonds	2	4.00
	100%	

Discount Rate
The discount rate used to calculate the total pension liability was 7.5 percent. The projection of cash flows used to determine the discount rate assumes that contributions from plan members will be made at the current contribution rates and that contributions from the State will be made at statutorily required rates, actuarially. Based upon the assumptions, the Retirement System's fiduciary net position was projected to be available to make all projected future benefit payments of current plan members. Therefore the long term expected rate of return on pension plan investments was applied to all periods of projected benefit payments to determine the total pension liability.

Sensitivity of the Net Pension Liability to the Discount Rate Assumption
The following presents the current-period net pension liability of the Authority's proportionate share of the net pension liability calculated using the current-period discount rate assumption of 7.5 percent, as well as what the net pension liability would be if it were calculated using a discount rate that is 1-percentage-point lower (6.5 percent) or 1-percentage-point higher (8.5 percent) than the current assumption:

	1% Decrease (6.5%)	Current Assumption (7.5%)	1% Increase (8.5%)
Authority's proportionate share of the net pension liability (asset)	$6 million	$947 thousand	$(4) million

(b) Deferred Compensation and Savings Plans

The Authority offers certain full-time employees participation in a Voluntary Defined Contribution Plan, which is an alternative to the State's existing defined benefit pension systems. This defined contribution plan option is available to all unrepresented State, New York City, and local public employees who are hired on or after July 1, 2013 and are paid at a rate of $75,000 or more on an annual basis. For those employees choosing this option, the Authority is required to contribute 8% of their gross salary. An independent trustee is responsible for the administration of this plan.

(c) Deferred Savings Plans

The Authority also offers employees a deferred compensation plan created in accordance with the Internal Revenue Code, Section 457. This plan permits participants to defer a portion of their salaries until future years. Amounts deferred under the plan are not available to employees or beneficiaries until termination, retirement, death or unforeseeable emergency. An independent trustee is also responsible for the administration of this plan.

(d) Other Postemployment Benefits

The Authority is a participating employer in the New York State Health Insurance Program (NYSHIP), which is administered by the New York State Department of Civil Service, as an agent multiple employer defined benefit plan. Through NYSHIP, the Authority provides certain health care for eligible retired employees and their dependents. Article XI of the New York State Civil Service Law assigns the authority to NYSHIP to establish and amend the benefit provisions of the plans and to establish maximum obligations of the plan members to contribute to the plan. The Authority's Board is authorized to establish the contribution rates of its employees and retirees below those set by Civil Service Law. Participation in the NYSHIP program provides for employees and/or their dependents to continue eligibility for these benefits in retirement if the employee had at least one year of full-time service with the Authority, and satisfied the requirements for retiring as a member of the Retirement System or is enrolled in the VDC. Eligible retirees contribute 10% of the cost of single coverage and 25% of the cost of dependent coverage for health insurance benefits. Participants included approximately 80 Authority employees and retired and/or spouses of retired employees who were

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eligible to receive these benefits at December 31, 2015. NYSHIP does not issue a stand-alone financial report and NYSHIP's agent activities are included within the financial statements of the State.

The Authority accounts for its OPEB obligations, in accordance with GASB No. 45, *Accounting and Financial Reporting for Post-Employment Benefits Other Than Pensions*. Actuarial valuations involve estimates of the value of reported amounts and assumptions about the probability of events in the future. Examples include assumptions about employment mortality and the healthcare cost trend. Amounts determined regarding the annual required contributions of the employer are subject to continual revision as actual results are compared to past expectations and new estimates are made about the future.

The Authority's annual OPEB cost for the plan is calculated based on the Annual Required Contribution (ARC), an amount actuarially determined in accordance with the parameters of GASB No. 45. GASB No. 45 does not require that an employer actually fund its ARC, but allows for the financing of these benefits on a pay-as-you-go basis. The ARC in future periods represents a level of funding that, if paid on an ongoing basis, is projected to cover normal cost each year, actuarial assumptions and plan changes, and interest on the unfunded actuarial liability. Amounts "required" but not actually set aside to pay for these benefits are accumulated as part of the net OPEB obligation.

The following table shows the components of the Authority's annual OPEB cost and the changes in the Authority's net OPEB obligation as recorded in long term liabilities:

		2015	2014	2013
Annual OPEB cost:				
Annual required contribution (ARC):				
Normal cost	$	984	937	1,175
Amortization payment		24,726	23,444	23,451
Interest to the end of the year		-	-	-
Total		25,710	24,381	24,626
ARC adjustment		(24,726)	(25,007)	(25,303)
Interest on net OPEB obligation		755	764	772
Annual OPEB cost	$	1,739	138	95
Net OPEB obligation:				
Net OPEB obligation at beginning of year	$	23,971	24,243	24,530
Annual required contribution:				
Annual OPEB cost		1,739	138	95
Employer contribution:				
Retiree benefit payments during year		(501)	(410)	(382)
Net OPEB obligation at year end	$	25,209	23,971	24,243

The funding of the Authority's net OPEB obligation is at the discretion of management and the Board. The net OPEB obligation is paid on a pay-as-you-go basis. However, during 2015, the Board authorized the creation of an OPEB Account to fund in advance the OPEB obligations of both the Authority and the PSEG Long Island employees (as discussed above). As such as of December 31, 2015 and 2014, the Authority deposited $1.2 million and $2.1 million, respectively, into this account to meet the OPEB obligations of Authority employees, which deposits are not reflected in the table above.

Projections of benefits for financial reporting purposes are based on the substantive plan (the plan as understood by the employer and plan members) and include the types of benefits provided at the time of each valuation. The actuarial methods and assumptions used include techniques that are designed to reduce short-term volatility in actuarial accrued liabilities and the actuarial value of assets, consistent with the long-term perspective of the calculations. For 2015 and 2014 actuarial valuation, the projected unit credit actuarial cost method was used. For 2015 and 2014, the actuarial assumptions included an investment rate of return (net of administrative expenses) of 3.15%. The medical trend assumption begins at 8.25% and decreases to a 4.75% long-term trend rate after eight years. The drug

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trend assumption begins at 6.75% and decreases to a 4.75% long-term trend rate after eight years. The Medicare Part B trend assumption begins at 5.50% and decreases to a 4.75% long-term trend rate after six years.

(14) Commitments and Contingencies

(a) Amended and Restated Power Supply Agreement

The A&R PSA, which became effective on May 28, 2013, is the successor agreement to the original PSA between NGRID and LIPA. The A&R PSA provides for the sale to the Authority by NGRID of all the capacity, energy and, ancillary services from the oil and gas fired generating plants on Long Island formerly owned by LILCO. Sales are made at cost based wholesale rates regulated by the Federal Energy Regulatory Commission (FERC). The rates may be modified in accordance with the terms of the A&R PSA for: (i) agreed upon labor and expense indices applied to the base year; (ii) a return of and return on net capital additions, which require approval by the Authority; and (iii) certain reasonably incurred expenses that are outside of the control of NGRID. The annual capacity charge in 2015 and 2014 was $456 million and $440 million, respectively. The variable charge under both the PSA and A&R PSA is constant at $0.90/MWH of electric energy generated by the plants.

The A&R PSA has provisions for penalties in the event that annual guarantees for heat rate and unforced capacity (UCAP) are not met. No penalties were assessed in either 2015 or 2014 under the A&R PSA.

Included in the annual capacity charge are pension and other post-employment benefit (P&OPEB) expenses of NGRID employees. Each contract year, the annual capacity charge is adjusted through a single purpose filing with FERC, in mid-year, to reflect the actuarially determined amounts of P&OPEB expense for that contract year. Although the Authority has consistently funded the annual plan costs through the PSA and the A&R PSA annual capacity charge, NGRID has asserted that the pension and OPEB obligations are underfunded. The nature and extent of the Authority's potential obligation for these underfunded plans is being assessed and the Authority, at this preliminary stage, cannot predict or estimate any possible liability.

(b) Power Purchase and Transmission Agreements

The Authority has entered into power purchase agreements (PPAs) with several private companies to develop and operate generating units at sites throughout Long Island. Generally, the PPAs provide for the Authority to purchase 100% of the capacity, (and associated energy and ancillary services as needed), for the term of each contract, which vary in duration up to 30 years from commercial operation date. Additionally, the Authority has entered into PPAs with several private companies for capacity and/or energy from facilities that are not located on Long Island but which are delivered to Long Island via undersea cables. These undersea cables are under long term firm transmission capacity purchase agreements (FTCPAs) with the Authority. These PPAs and FTCPAs have been accounted for as capitalized lease obligations on the Statements of Net Position.

The Authority has also entered into several agreements to purchase renewable energy from on and off Long Island sources. Certain of these power producing facilities have also been accounted for as capitalized lease obligations. The Authority also had various firm, noncancelable purchase power commitments that do not meet the criteria for capitalization and are being accounted for as operating leases.

The following table presents estimated future payments pertaining to purchase power commitments with remaining terms greater than one year for both capital and operating leases:

	Capital leases	Operating leases
Minimum lease/rental payments:		
2016	$ 312,944	277,310
2017	302,529	244,598
2018	277,367	197,366
2019	256,886	183,535
2020	251,144	159,259
2021 through 2025	1,196,512	428,909
2026 through 2030	589,203	423,824
2031 through 2035	58,300	77,002
2036 through 2038	—	38,402
Total	3,244,885	2,030,205
Less imputed interest	865,635	—
Net present value	$ 2,379,250	2,030,205

As provided by the Authority's tariff, the costs of all of the facilities noted above are includable in the calculation of Fuel and Purchased Power Cost. As such, these costs are expected to be recoverable through the FPPCA.

(c) *Office Lease*

The Authority's office lease agreement includes scheduled base rent increases and rent "holidays" over the term of the lease. The total amount of the base rent payments is charged to expense on the straight-line method over the term of the lease. The termination date of the new lease agreement is April 30, 2024. The Authority recorded a deferred credit to reflect the excess of rent expense over cash payments since inception of the lease.

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The future minimum payments under these leases are as follows for the years ended:

For the period ended,		
2016	$	1,629
2017		1,682
2018		1,736
2019		1,792
2020		1,851
2021 through 2025		6,608
Total	$	15,298

(d) *Insurance Programs*

The Authority's insurance program is comprised of a combination of policies, from major insurance companies, self-insurance, and contractual transfer of liability, including naming the Authority as an additional insured and indemnification.

The Authority has purchased Workers' Compensation insurance from the New York State Insurance Fund to provide coverage for claims arising from employee injuries. In addition, the Authority carries Employment Practices Liability Insurance from a major insurance company and the Authority's office property and liability coverage is administered by New York State Office of General Services Bureau of Risk & Insurance Management through a master policy the State procures for various State entities, including the Authority. Liability related to construction projects and similar risks is transferred through contractual indemnification and compliance with Authority insurance requirements. The Authority also has insurance coverage on its interest in NMP2 as disclosed in detail in note 8.

The Authority has commercially available excess general liability and property insurance for claims above its self-insurance provisions. For general liability, including automobile liability, the Authority is self-insured up to $3 million. For property damage and extra expense combined, the Authority is self-insured up to $1.5 million per occurrence. In addition, for substation assets valued at $50 million or greater, the Authority is self-insured up to $2.5 million per occurrence. For property damage or loss due to a named windstorm and flood, 2% of the value at risk is self-insured per occurrence with a minimum of $1.5 million and up to a maximum self-insured level of $7.5 million.

The Authority has no general property insurance for damage to its poles and wires and is self-insured.

(15) Legal Proceedings

(a) PSEG Long Island

In accordance with the A&R OSA, PSEG Long Island is not entitled to payment from the Authority for any losses attributable to a third party claim arising from any negligent act, omission or willful misconduct by PSEG Long Island in performing its obligations to operate and maintain the Authority's T&D system. Other than losses attributable to PSEG Long Island's gross negligence or willful misconduct for which there is no limitation on PSEG Long Island's liability, PSEG Long Island's liability for third party claims is generally limited to amounts above $2.5 million in the aggregate in one year up to a maximum aggregate amount of $2.5 million in any contract year. PSEG Long Island is not responsible for any liabilities that occurred prior to January 1, 2014.

(a) Superstorm Sandy

Four purported class actions were filed against the Authority and NGRID related to Superstorm Sandy that contain common allegations of wrongdoing and/or gross negligence relating to the Authority's and NGRID's preparedness for and response to the storm. All of these actions seek monetary damages, fees and other relief. 12 more individual actions have been filed on behalf of the owners of approximately 100 properties in the Breezy Point, Belle Harbor and Rockaway Park neighborhoods of the Rockaway Peninsula, in the Queens portion of the Service Territory. These suits allege generally that the failure to de-energize the electrical system in the Rockaways in advance of the tidal surges experienced during the storm resulted in fires that caused various types of property damage, ranging from all or partial loss of customers' homes. The class action cases and the fire cases are being defended, and although the amounts sought in damages are material, the outcome of these matters cannot be predicted with certainty at this time. The Authority does not believe that they will have a material impact on the operating results or financial condition of the Authority.

(b) Environmental

NGRID and the Authority are parties to the Liabilities Undertaking and Indemnification Agreements which, when taken together, provide, generally, that environmental liabilities will be divided between NGRID and the Authority on the basis of whether they relate to assets transferred to NGRID or retained by the Authority as part of the 1998 LIPA/LILCO Merger (Merger). In addition, to clarify and supplement these agreements, NGRID and the Authority also entered into an agreement to allocate between them certain liabilities, including environmental liabilities, arising from events occurring prior to the Merger and relating to the business and operations to be conducted by the Authority after the Merger (the Retained Business) and to the business and operations to be conducted by NGRID after the Merger (the Transferred Business).

NGRID is responsible for all liabilities arising from all manufactured gas plant operations on Long Island (MGP Sites), including those currently or formerly operated by NGRID or any of its predecessors, whether or not such MGP Sites related to the Transferred Business or the Retained Business. In addition, NGRID is liable for all environmental liabilities traceable to the Transferred Business and certain scheduled environmental liabilities. Environmental liabilities that arise from the

LONG ISLAND POWER AUTHORITY
(A Component Unit of the State of New York)
Notes to Basic Financial Statements
December 31, 2015 and 2014
(Amounts in thousands, unless otherwise stated)

nonnuclear generating business may be recoverable by NGRID as part of the capacity charge under the A&R PSA. The Authority is responsible for all environmental liabilities traceable to the Retained Business and certain scheduled environmental liabilities.

Environmental liabilities other than those related to MGP sites that existed as of the date of the Merger that are untraceable, including untraceable liabilities that arise out of common and/or shared services have been allocated to the Authority and NGRID, as provided for in the Merger.

The A&R PSA addresses the terms by which the Authority will continue to purchase electricity from certain NGRID facilities. Generally, NGRID's liabilities under this contract are limited to losses due to gross negligence or willful misconduct or violations of environmental laws not consistent with prudent utility practices.

(c) Environmental Matters Retained by the Authority

Superfund Sites – Under Section 107(a) of the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, also commonly referred to as Superfund), parties that generated or arranged for disposal of hazardous substances are liable for costs incurred by the Environmental Protection Agency (EPA) or others that are responding to a release or threat of release of the hazardous substances.

Port Washington Landfill – LILCO is a Potentially Responsible Party (PRP) at this 54-acre municipal solid waste landfill located in the Town of North Hempstead. The landfill operated from 1973 to 1983. The New York State Attorney General is seeking to recover Environmental Quality Bond Act funds advanced to the Town of North Hempstead so it could properly close out the site with oversight by the New York State Department of Environmental Conservation (DEC). The landfill has been remediated and this matter is only concerned with cost recovery. Beginning in January 2001, LILCO and 11 other parties signed a series of tolling agreements with the Attorney General to extend the statute of limitations under CERCLA. Six of the 11 tolling agreement PRPs, including LILCO, have formed a Joint Defense Group (JDG) that acts as one with respect to dealing with the Attorney General. In August 2013, the Attorney General accepted JDG's settlement offer of $1.8 million. A consent decree was subsequently executed by the JDG and the Attorney General and accepted by the federal court (EDNY). The Authority's contribution to the settlement is approximately $260 thousand, which will not have a material impact on the Authority's operating results or financial condition. JDG's third and final settlement payment, due in March 2016, has been made and the JDG's monitoring obligation is concluded.

Metal Bank – Cottman Avenue is a site with PCB contamination on the Delaware River in Philadelphia Pennsylvania. In 2005, EPA sued and subsequently settled with a number of utility companies as PRPs – including LILCO – for allegedly sending used transformers to the site during the 1960s and 1970s. The remediation has been completed and monitoring at the site continues. The Authority's contribution toward the settlement and monitoring costs has not been material. The National Oceanic and Atmospheric Administration (NOAA) notified the PRP group that it (NOAA) will be initiating discussions about natural resource damages for marine resources. After NOAA performs a preliminary

assessment study to determine whether injury to natural resources has occurred, and if so, the severity, NOAA will quantify that injury, and then consider possible restoration projects, such as replanting wetlands and restoring fish. The PRP group is currently evaluating NOAA's claims regarding alleged natural resource damages. The Authority is unable to estimate potential liability, but believes that it would not have a material impact on the operating results or financial condition of the Authority. EPA has notified the PRP group of concerns about PCB contamination at another former Metal Bank facility located on State Road in Philadelphia. The PRP group is currently evaluating EPA's claims regarding the State Road site. At this preliminary stage the Authority is unable to estimate potential liability, but believes that it would not have a material impact on the Authority's operating results or financial condition.

(d) Asbestos Proceedings

Litigation is pending in State Court against the Authority, LILCO, NGRID and various other defendants, involving thousands of plaintiffs seeking damages for personal injuries or wrongful death allegedly caused by exposure to asbestos. The cases for which the Authority may have financial responsibility involve employees of various contractors and subcontractors engaged in the construction or renovation of one or more of LILCO's six major power plants. These cases include extraordinarily large damage claims, which have historically proven to be excessive. The actual aggregate amount paid to plaintiffs alleging exposure to asbestos at LILCO power plants over the years has not been material to the Authority. Due to the nature of how these cases are litigated, it is difficult to determine how many of the remaining cases that have been filed (or of those that will be filed in the future) involve plaintiffs who were exposed to asbestos at any of the LILCO power plants. Based upon experience, it is likely that the Authority will have financial responsibility in a significantly smaller percentage of cases than are currently pending (or which will be filed in the future) involving plaintiffs who allege exposure to asbestos at any of the LILCO power plants.

(16) Subsequent Events

On March 1, 2016, the UDSA issued approximately $636.8 million of 2016A Restructuring Bonds to refund a portion of the Authority's existing debt. This refunding will produce a net present value savings of approximately $115 million and is expected to be completed in April 2016.

In March 2016, the Authority reached a settlement agreement with its insurer for losses related to the damage to the Authority's T&D system caused by Superstorm Sandy. A portion of the approximate $80 million gross insurance claim settlement will be duplicative to the grant funding from FEMA for Superstorm Sandy costs. The Authority is currently unable to estimate the amount to be considered as a duplication of benefits.

The Board has authorized the Authority staff to net the book value gain of the insurance settlement, once finalized, against the regulatory assets previously approved by the Board for the installation of an outage management system and enterprise resource planning system.

LONG ISLAND POWER AUTHORITY
(A Component Unit of the State of New York)
Consolidating Statement of Revenues, Expenses, and Change in Net Position
Year ended December 31, 2015
(Amounts in thousands)

	Authority	UDSA	Eliminations	Consolidated
Operating revenues – electric sales	$ 3,432,051	73,158	—	3,505,209
Other revenues	1,161	—	(1,161)	—
Total revenues	3,433,212	73,158	(1,161)	3,505,209
Operating expenses:				
Operations – fuel and purchased power	1,510,725	—	—	1,510,725
Operations and maintenance	813,331	846	—	814,177
Operations and maintenance-amortizations	11,403	—	—	11,403
Storm restoration	63,210	—	—	63,210
General and administrative	21,663	1,590	(1,161)	22,092
Depreciation and amortization	223,607	—	—	223,607
Amortization of restructuring property	(15,672)	15,672	—	—
Pass through taxes under certain long-term operating agreements	192,729	—	—	192,729
Payments in lieu of taxes	349,440	—	—	349,440
Total operating expenses	3,170,436	18,108	(1,161)	3,187,383
Operating income	262,776	55,050	—	317,826
Nonoperating revenue and expenses:				
Other income, net:				
Investment income	5,845	33	—	5,878
Grant Income – FEMA	13,472	—	—	13,472
Grant Income – other	40,857	—	—	40,857
Carry charges on regulatory assets	27,594	—	—	27,594
Other	4,272	—	—	4,272
Total other income, net	92,040	33	—	92,073
Interest charges and (credits):				
Interest on long-term debt, net	260,177	94,948	—	355,125
Other interest	13,713	—	—	13,713
Allowance for borrowed funds used during construction	3,094	(10,207)	—	(7,113)
Total interest charges and (credits)	276,984	84,741	—	361,725
Change in net position	$ 77,832	(29,658)	—	48,174

See paragraph on Supplementary and Other Information included in independent auditor's report.

LONG ISLAND POWER AUTHORITY
Required Supplementary Information

SCHEDULE OF THE AUTHORITY'S PROPORTIONATE SHARE OF THE NET PENSION LIABILITY

NYSLRS Pension Plan
Last 10 Fiscal Years*

	2023	2022	2021	2020	2019	2018	2017	2016	2015	2014
The Authority's proportion of the net pension liability (asset)									0.02803625%	0.02803625%
The Authority's proportionate share of the net pension liability (asset)									$ 947,131	$ 1,266,916
The Authority's covered-employee payroll									$ 4,787,173	$ 5,472,436
The Authority's proportionate share of the net pension liability (asset) as a percentage of its covered-employee payroll									19.78%	23.15%
Plan fiduciary net position as a percentage of the total pension liability									97.95%	97.20%

*The amounts presented for each fiscal year were determined as of the measurement date of the plans.

This schedule is presented to illustrate the requirement to show information for 10 years. However, until a full 10-year trend is compiled, the Authority has presented information for those years for which information is available.

See paragraph on Supplementary and Other Information included in independent auditor's report.

KPMG LLP
345 Park Avenue
New York, NY 10154-0102

Independent Auditors' Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance With *Government Auditing Standards*

The Board of Trustees
Long Island Power Authority:

We have audited, in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the basic financial statements of the Long Island Power Authority (the Authority), which comprise the statements of net position as of December 31, 2015 and 2014, and the related statements of revenues, expenses, and changes in net position, and cash flows for the years then ended, and the related notes to the basic financial statements, and have issued our report thereon dated March 21, 2016.

Internal Control Over Financial Reporting

In planning and performing our audit of the basic financial statements as of and for the year ended December 31, 2015, we considered the Authority's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the basic financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Authority's internal control. Accordingly, we do not express an opinion on the effectiveness of the Authority's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that have not been identified. However, as described below, we identified certain deficiencies in internal control that we consider to be a significant deficiency.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis.

A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. We consider the deficiency described below to be a significant deficiency.

PSEG Long Island manages and hosts the Authority's billing and customer information technology systems (CAS & EBO). A significant deficiency was identified over the monitoring controls of access to the development and production environments resulting in the risk that certain individuals could develop changes to the system configuration and put those changes into production without appropriate monitoring or detective controls in place.

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KPMG

Management's Response

During KPMG's audit, a separation of duties deficiency was identified. It is PSEG Long Island's position that the current System Administrator access is a standard practice and required to perform maintenance activities in CAS/EBO. Entitlement reviews within Customer Operations control all CAS/EBO access and validates each user's need with appropriate management. In addition, there are mitigating financial controls that PSEG Long Island's Finance team performs including analytical reviews of monthly revenue variances by customer segment to review variances to plan as well as reviews of customer usage and revenue within Customer Operations.

PSEG Long Island did internally review and confirm that all file access and changes performed by the System Administrators who do have access to both development and production environments are being logged. PSEG Long Island already monitors the daily "RACF Violation" and "Special Access" reports which are captured in the PageCenter tool. Also, all moves from development to production are approved and tracked through the PSEG Long Island change management process.

As a result of the above limited exposure, Information Technology monitoring, and mitigating financial controls, PSEG Long Island views this control deficiency as a low risk to the Authority, however PSEG Long Island has agreed to institute an additional control to monitor System Administrator activity. Our mainframe security team is in the process of documenting a procedure for further monitoring and we are estimating that it will take 30-60 days to have the custom security report in place to support the monitoring of System Administrator activities.

Response to Finding

Management's response to the significant deficiency identified in our audit is described previously. The response was not subjected to the auditing procedures applied in the audit of the basic financial statements and, accordingly, we express no opinion on the response.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Authority's basic financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the result of that testing, and not to provide an opinion on the effectiveness of the Authority's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Authority's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

KPMG LLP

New York, NY
March 21, 2016

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CORPORATE STATISTICS

Customers

	Number	GWh Sales
Residential	1,002,942	9,611
Commercial	114,648	9,730
Street Lighting	5,383	144
Other Public Authorities	131	441
Total	**1,123,104**	**19,926**

System Data

Transmission system	1,378 miles
Distribution system	13,846 miles
Number of transmission substations	28
Number of distribution substations	149

	2015	2014
Total Retail Energy Requirements (GWhs)	21,061	20,785
Generation (MWs)		
Capacity	5,835	5,883
Peak Demand (Summer)	5,049	4,859
Weather Normalized Peak	5,285	5,338
Financial (Thousands)		
Total Assets and Deferred Outflows	13,034,640	13,195,652
Utility Plant, Property and Equipment	7,548,163	6,727,057
Par Amount of Debt	7,650,034	7,809,050
Capital Lease Obligations	2,379,250	2,558,247
Total Debt and Capital Lease Obligations	10,029,284	10,367,297
Net Position	481,499	434,592
Debt/Capitalization Ratio	95.4%	96.0%
Fixed Obligation Coverage Ratio		
Excluding UDSA	1.19x	1.21x
Including UDSA	1.17x	1.16x

Long Island Power Authority
www.lipower.org

LIPA
Long Island Power Authority

Overview of Securitization

Presentation to the Ministry of Energy

March 7, 2017

Blakes

beneficial interest nominal
trust isolates the property → market convention
tax implications → match inflow/outflow

OEB as protector of bond holders

1. Securitization – Basic Parameters

ABS - "asset-backed securities"

a. Discrete cash flows capable of "true sale"
b. Cash flows service (match) the ABS payments
c. Underlying financial assets (independent; non-contingent)
d. Typically, "pools" of financial assets
e. "Structured Finance" (economic sharing with transferor; tranching; credit enhancements)
f. No immediate change in the "servicing" of the underlying assets

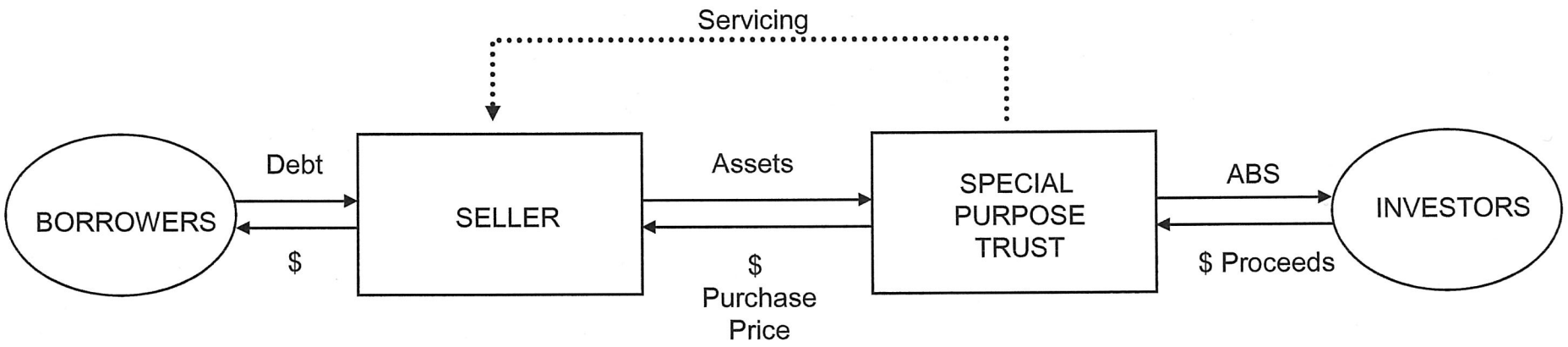
Blakes

1. Securitization – Basic Parameters *(cont'd.)*

Use of SPVs

a. Legal separation; isolation ("bankruptcy remoteness"; independent governance)
b. Reliance on third parties (agents; servicer)
c. "Off-balance sheet" status
d. Choice of entity type
e. Entity-level taxation
f. Securities law implications

Basic Model - Single Seller



Blakes

1. Securitization – Basic Parameters *(cont'd.)*

Ratings

a. Statistical approach to credit assessment
b. Legal criteria; legal opinions
c. "Weak link" analysis
d. Gating issue for some institutional investors
e. "sf" demarkation

Blakes

1. Securitization – Basic Parameters *(cont'd.)*

Approaches to Offerings

a. Private (OM private placements, CP conduits, direct bulk sales to institutions, etc.)
b. Canadian "public" offerings (prospectus; shelf rules; capital markets platforms)
c. Cross-border structures; foreign law compliance (Reg AB; DFA)

2. Underlying Asset

a. Statutory payment entitlements (defined class of payors; legislative authority)
b. Assignment (restrictions; prerequisites)
c. Allocation of "Global Adjustment" portion only; prioritization of receipts
d. Servicing (third party collections; transferability of systems)
e. Duration matching; sufficiency for repayment
f. Contingencies (disruptions; repudiation; legal challenge)
g. "Credit enhancements; fallback indemnity
h. Hedges (interest rate; currency; or basis risk)

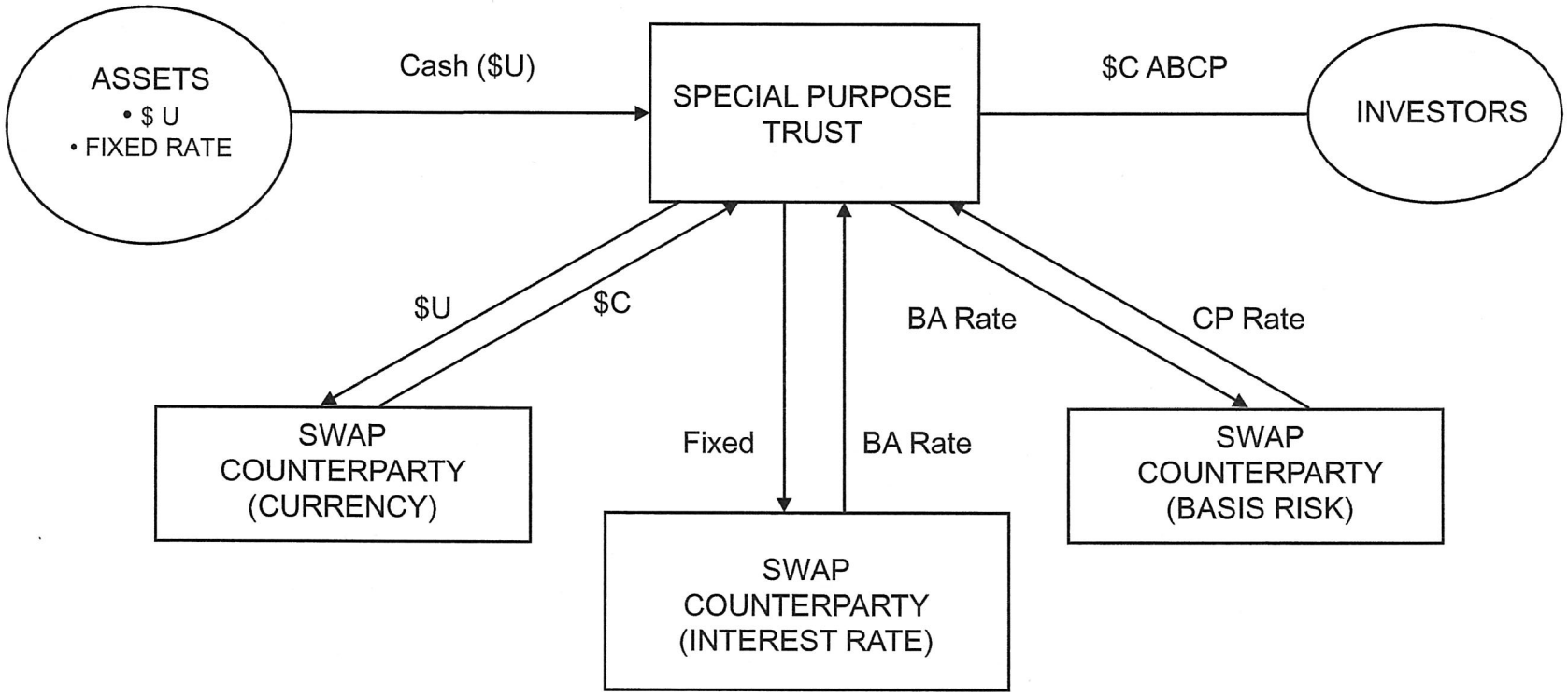
Blakes

3. Structural Features

a. SPV governance, covenants and administration
b. Tranching of cash flows
c. Program changes ("RAC")
d. Hedging (interest rates; currency; basis risk)
e. Change of Circumstances (redemption rights)
f. Enforcement through intermediaries

Blakes

Incidental Hedging Transactions



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4. Analogous (somewhat) Offering Formats

a. "Revenue bonds"
b. Infrastructure bonds
c. Streaming/tracking transactions
d. Tax lien bonds (U.S.)
e. NHA Mortgage Backed Securities / Canada Mortgage Bonds

Moody's Credit Rating Assessments

Summary of Duke Energy and Long Island Power

SUMMARY RATIONALE

Why did we use Duke and Long Island?

- No similar precedence in Canada
- Most recent transactions of sufficient size
- Clear rating methodology by Moody's establishing structural requirements to support the rating
- Allows us to identify the Legislative Parameters
    - Need for strong legal and structural elements as reflected in legislation, financing order and state pledge, mandatory uncapped true-up mechanism

Where has it also been done in the US?

- Florida and other states (approximately 18 in total) have passed similar securitization legislation to authorize recoveries by utilities of specified costs, such as hurricane recovery costs, environmental control costs, or costs associated with deregulation of the electricity market, and some of those laws have been challenged by judicial actions or utility commission proceedings. To date, none of those challenges has succeeded.
- Structure including property right supported by legislation and financing orders which are irrevocable and nonbypassable. Property right protected under federal and state constitutions which would require compensation from state if any action impaired the recovery.

Challenges of financing in the Canadian Market

- Nothing similar in Canada
- Federal and Provincial constitutions do not contain similar support to property rights
- Mitigate some of the risks through uncapped true-up mechanism, committed Provincial liquidity support to IESO to handle temporary shortfall in recovery, term of recovery substantially exceeds longest maturity of SPV debt, and true-up mechanism that captures currency, interest rate and duration mismatch between debt and recovery mechanism
- Restrict maturity of debt to no more than 30 years from inception of program

Challenges of taking it to the US markets

- US investors are familiar with existing structure as it is fairly consistent across the states that have implemented this approach
- Canadian structure and protections to debt holders will be different and unfamiliar to investors
- Canadian structure does not provide the same protection to property rights as established under federal and state constitutions

DESCRIPTION OF BOTH TRANSACTIONS

	Duke	Long Island Power	Comments
Description of Sponsor	Duke Energy Corporation is a utility holding company with operations in the Carolinas, Florida, Ohio and Indiana. Duke Energy Florida Project Finance LLC is recovering costs associated with the early retirement of the Crystal River nuclear plant in Florida which ceased operation in 2013.	Long Island Power Authority (LIPA) is a utility with operations in Long Island and parts of New York City. Utility Debt Securitization Authority is recovering costs associated with the retirement of debt of LIPA.	Similarities – special purpose entity established to be "bankruptcy remote" from sponsor to enhance debt holder security and restrict impact of other operations on this entity. Differences – all debt for the GA plan is new and will not be replacing existing debt
Objective	Recover the remaining capital and early retirement costs along with interest and other financing costs. Intent of structure is to lower the cost to customers of early retirement or abandonment of nuclear generating units by using secure long term financing.	Recover the refinanced principal and early debt retirement costs along with interest and other financing costs. Intent of structure is to provide savings to customers on a net present value basis of the cost of existing utility debt being retired compared to lower cost securitized debt.	Costs recoverable from customers have been incurred. Structure intended to minimize cost to customer of financing and recovering those costs. Compares cost of debt for utility financing the debt versus the special purpose vehicle. For GA plan the customer savings would be difference in cost of debt between OPG and the SPV.
Asset	Ability to impose irrevocable, binding, nonbypassable charge on all future and existing customers provided by a valid and enforceable security interest in property. Amount of charge is sufficient to pay principal, interest and administrative expenses of the financing. Regulator governs the amount and terms for charges through financing orders. However, once bonds issued regulator cannot reduce, impair, postpone, terminate or otherwise adjust the charge other than pursuant	Ability to impose irrevocable, final, nonbypassable charge on all future and existing customers provided by enforceable restructuring property. Amount of charge is sufficient to pay principal, interest and administrative expenses of the financing. Letter from LIPA to regulator specifies estimated customer savings, estimated ongoing financing cost, initial restructuring cost and final terms of bonds. Designee	Approximately 18 states have enacted similar securitization legislation authorizing the recovery of specified costs. Property right protected by federal and state constitutions. Any action by legislature which adversely affects the recovery would require state to pay just compensation. Structure provides protection to debt holders. Similar protection not established

should legisl. authorize? to provide a guarantee? → Carve out s. 28 approval.

	Duke	Long Island Power	Comments
	to the true-up mechanism.	of regulator issues final and incontestable approval that letter is consistent with financing order.	in Canada.
Size & Term	USD$1.3B 5 tranches that amortize over 20 years	Total 2016 USD$1.1B through 2 issuances Numerous tranches that amortize over 20 years	US market average $1B per year. Recent years up to $2B
Credit Strength	Strong legislative structure supported by non-impairment pledge of the state and irrevocable, non-appealable financing order Uncapped true-up adjustment mechanism with mandatory semi-annual adjustment to recovery charge Low recovery charge of about 2.5% of customer's bill Large, stable and diverse ratepayer base Strong and experienced servicer (Duke Energy)	Strong legislative structure supported by non-impairment pledge of the state and irrevocable, final, non-appealable financing order Uncapped true-up adjustment mechanism with mandatory annual adjustment to recovery charge Large, stable and diverse ratepayer base Strong and experienced servicer (LIPA)	Legislation may not be viewed as strong given the differences between Canada and US constitutions.
Credit Weakness	Challenges to securitization law and financing order viewed as remote Collections from customers could fall short of debt servicing requirements – true-up mechanism mitigates those concerns	Challenges to securitization law and financing order viewed as remote Collections from customers could fall short of debt servicing requirements – true-up mechanism mitigates those concerns High cumulative recovery charge of about 7.8% of customer's bill that also include charges from 3 previous securitizations	Rating agency concerned if recovery charge approaches 10% of customer bill as the larger charge increases potential legal challenges to charge. GA scheme could threaten that level and impact the rating and cost of financing

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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 2 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 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

Tracy E Brennan
Partner
416-943-2615

WORKING DRAFT #3

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*

NOTICE OF NON RELIANCE

This Notice is regarding our 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").

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Yours very truly,

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May 2, 2017

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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 to this letter). This letter is being issued to the Independent Electricity System Operator ("IESO" or the "Company") for assistance in evaluating 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 for such engagements. 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, the finalization of the legislation, regulations, financing structure and other agreements may impact the comments and conclusions set out herein.

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 the derecognition of the regulatory asset 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. IESO is classified as an Other Governmental Organization and 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.

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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

   (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. The amount of the IESO funding shortfall for each month.
      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) The IESO shall establish and maintain a variance account for the purposes of this section.

   (2) The IESO shall record the following in the variance account:
      1. The amount of the IESO funding shortfall for each month.
      2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.
      3. Such other adjustments as may be prescribed, 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, a recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

(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) 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.

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

Section 30xx 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 applies guidance from US GAAP Topic 980, *Regulated Operations,* as PSAS does not have any 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 the 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 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 next 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. 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 by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.* • *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.* • *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. As required, 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 regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.	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. It is important to note that both Hydro One and OPG are classified as a government business enterprise and are reporting under IFRS for consolidation purpose, 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.	Met
(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 annual reviews by the OEB. - 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 by the IESO in the variance account of*	Met

Criteria	Comment	Evaluation
	the balance is, as of the time of the recording, determinative of the balance at the time. (no prudence review by the OEB) - *Right to recover the balance recorded in the variance account.* - *Obligation from 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 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 purchase energy costs and the revenue as IESO will be allowed to recover the costs incurred. - *A recording in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time (no prudence review).* - *Right to recover the balance recorded in the variance account.* - *Obligation from the OEB to allow IESO to 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 a right to fully recover the funding shortfall recorded in the variance account, there is no risk of disallowance of the purchase power costs. Based on the analysis of the above factors, there are no indication that this criterion would not be met. It is clear that there would 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 issue is whether 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 mentions 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 *The 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 at this time and projected in the future it is reasonable to conclude that sufficient demand to result in recovery will exist.	Met

Management conclusion:

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

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 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:

In our opinion, the variance account created by the proposed Act would 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 a basis for structured financing/securitization.
2. In connection with the proposed Act, the proposal is for 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.

- *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]
- 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?

In determining whether or not the OPG Trust should be consolidated by IESO, it must first be determined if the IESO exercises control over their financial and operating policies resulting in expected benefits to the IESO of the risk of loss from its activities.

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".

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 potential indicia of control. Several of these indicia have been categorized as more persuasive of a finding of control (see Indicators 1 to 4 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 next 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 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 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 control the appointment or replacement of the Board of Trustees.
	-
		No

Government has ongoing	- Section 23 of the proposed Act states:	No

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INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses	- *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 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

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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. - 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 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 of this Act are incurred in a manner that is consistent with the applicable Financing Plan.* - OPG is responsible for the borrowing, not IESO.	No
Restrict the revenue-generating capacity of the organization, notably the	- N/A	No

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INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
sources of revenue		
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

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Management Conclusion:

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

Based on the 11 indicators of control as defined in Section PS 1300 *Government Reporting Entity*, there is no evidence of control by the IESO for the OPG Trust either collectively or individually. 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:

Based on the Proposed Act, none of the persuasive indicators of control are considered to be met, and none of the 7 non-persuasive indicators are met. Based on a collective assessment of these indicators, the IESO does not control the OPG Trust under the proposed Act.

Although the above analysis discusses in detail IESO's assessment of each of the indicators of control it is important to note that, under PS 1300.20 -.21, these are indicators of control and the degree of importance of the indicators depends on the particular circumstances in each case. Accordingly, the degree of government influence in respect of that would determine the importance of that particular indicator as evidence of control.

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 and other agreements (including the bylaws and regulations of the OPG Trust) will take several weeks. Accordingly, 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 issue #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 recognize as a regulatory asset.
2. The IESO does not currently have the financial capability to finance the regulatory asset and will transfer it to an investment asset owner (i.e. OPG Trust) on a monthly basis.
3. The IESO will obtain a legal opinion as to the validity of the transfer 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 IFRS has been performed by OPG and they have concluded that the OPG Trust will be consolidated by OPG.
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 corresponding 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 it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

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 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 the derecognition of the regulatory asset 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.

In the absence of clear guidance for the derecognition of regulatory asset under ASC 980, guidance from PSAS should be analyzed for the criteria for derecognition of assets.

It should also be noted that PSASs have 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 thinking in the application for the recognition and derecognition of assets and liabilities which is consistent with derecognition guidance in other aspects of GAAP. Accordingly, the analysis as to whether the regulatory asset transferred to the OPG Trust can be derecognized is based on the guidance in paragraph 21.

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
PS3210.03 Assets: 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. *PS1000.37 Financial statement concepts:* 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	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. - *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.* - *Upon receipt by the IESO of the payment by the financing entity, the IESO shall retain no further right, title or interest in the corresponding investment interest.* - *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 more future cash inflows related to the regulatory asset	Not Met

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government cannot obtain it.	as it will have transferred its right to recover the IESO funding shortfall. 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 right to collect funds in the future against the variance amount to the OPG Trust. Through asset definition this will eliminate the IESO asset by the amount of the transfer as they 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:

In our opinion, the regulatory asset should be derecognized on transfer to the OPG Trust as IESO no longer has rights or obligations to the asset.

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Other Matters

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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.

We will assume no responsibility to update our accounting advice for any changes subsequent to the finalization of the legislation, regulations, financing structure and other agreements relating to the Ontario Fair Hydro Plan Act or in PSAS 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, unless an update is agreed by both parties in writing through a separate engagement 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. However, this letter is a matter of public record and its distribution is not limited. We do not accept or assume responsibility for any other purpose or to any other person to whom this letter is shown or into whose hands it may come save where expressly agreed by our consent in writing.

Yours very truly,

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

Appendix A:

Draft of the Ontario Fair Hydro Plan Act, 2017

Ontario Fair Hydro Plan Meeting
Wednesday, April 5, 2017
10:00 am – 4:00 pm
199 Bay St. – Blakes Office

Agenda

- Legislative timeline and sequencing
- Building block concepts
- Detailed discussion
- Plan for next meeting - Friday, April 7

Calwell, Carolyn (ENERGY/MEDEI/MRI)

1.Introductions
2. Walk through of the GA proposal
3. Roles of IESO, OPG and OEB
4. Legislation process and timetable
5. Next steps

KPMG papers
EY/Hartwick papers

creation of asset
→ have to be able to sell. > consultation?
→ underwriters will want assurance that this is not a tax.

Torys/Blakes discuss.

return of consultant → expert evidence

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trust session
~~regular meeting~~
~~Bond a implementation meeting~~
~~Torys/OPG meeting.~~
Vs models.
~~meeting w/ accountants~~
contact street.

Action Items – March 23rd, 2017

1) GA Refinancing
    - AG briefing on April 19, 2017
    - Legislative Drafting
        - Legislation to be complete by April 17 , drafting instructions are in circulation
        - OPG to undertake modelling on assets / determine whether rating agency risk to proposed structure
        - OPG / IESO to determine who will finance / hold the asset until it goes to the market
    - OPG Update
        - OPG / LSB continue to work on shareholder direction / resolution
        - OPG continues to work on indemnification of Board issue
        - OPG to embed OFA/ENERGY (as necessary) in their ongoing internal discussions
        - OPG, ENERGY and IESO to continue discussions around refining refinancing modelling
    - IESO Update
        - IESO to discuss LDC issues with OEB
        - IESO to work through legislation / accounting opinion
    - OEB Update
        - OEB decision this week on removing OESP from bill as of May 1st
        - OEB to work with ENERGY to finalize RPP comfort letter
2) Affordability Fund
    - No follow ups, except that everything is on track to be finalized for this week
3) RRRP / OESP / FN Rate
    - OESP reg to continue to track to April 10th LRC
    - MOF / OEB / ENE continues to work with CRA on "wet signature"
    - OEB has not posted FN rate report just yet as conversations are ongoing between Ministry on a letter from the Minister to the OEB acknowledging receipt of the report and outlining the plan for implementation
4) ICI
    - ICI to continue to track to April 10th LRC / materials being finalized
    - TPA being finalized with OCC / discussions ongoing with CME
    - ESP to continue to meet with MEDG / MOECC / MOL on broader issues for business
5) Other items
    - Ministry to begin work on bill presentment / add as agenda item for next week

Blakes Call - March 14/17

Calwell, Carolyn (ENERGY/MEDEI/MRI)

Subject: FW: Tomorrow

1. Reports back on meetings/sub-groups (JA Prestage and Steve Ashbourne- Hydro One trust issue and meeting re:securitization with Torys)

2. Discussion of critical legislative issues (All- I will talk to OPG to get their comments in before the meeting)

3. Update on constitutional review (Cathy Beagan Flood and Peter Hogg).

OFA - legislative authority to find future govts?

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pure constitutional arguments
1) valid regulatory charge → courts to give leeway
why this changes how people pay, it's not the
govt raising $ for general purpose
2) constitution allows govt to raise money for sites
& facilities in province for generation of electricity
→ reflect in purpose clause 92(a)(iv)
3) do as a direct tax.
creates problem under Tax Payer Protection Act

frailties of Binnie opinion
his opinion assumes close alignment btwn amt of revenue
and benefit → cases have never req'd matching "as closely
as practical"
Only reg's scheme be relevant to the person regulated
courts have been content w/ generalities
must be relationship (alignment) btwn levy & regulatory
scheme - levy can't exceed regulatory cost (govt can't profit)
V. comfortable that this would be upheld as valid regulatory
scheme.
helpful that this isn't a sneaky way to raise revenues
scrutiny will come from the market
could bring a reference → govt goes to ON CA & has right
of appeal to SCC - would take a couple of years
Blakes will produce an opinion [think of IPO strategies]

Rate Mitigation Implementation Follow Ups / Next Steps: Wednesday March 15, 2017

1) GA Financing

a) OPG
   a. OPG to continue to work with lead banks / rating agencies / OFA on financing issues
   b. OPG to confirm accounting if OFA were to act as lead on borrowing
   c. ESPD and IESO work with OPG in the development of OPG's detailed financial model, by providing details related to modeling/forecasting assumptions, customer data, etc
   d. OPG special Board committee to meet on March 17, 2017
   e. OPG to work through requirements / help draft a shareholder resolution / declaration and consider requirements for enhanced indemnification for Board members

b) IESO
   a. IESO to work through technical aspects with IT (i.e., operationalizing the back-office functions)
   b. IESO to work with KPMG in the development of a formal opinion once first draft of legislation is available

c) OEB
   a. OEB to draft comfort letter regarding May 1 – Regulated Price Plan (RPP) and OESP
   b. OEB to draft RPP communique to be released publicly by April 20, 2017
   c. OEB to issue OESP orders in early April

d) Legislative drafting
   a. LSB / Blakes will continue to work through legislative drafting issues
   b. LSB to consider contempt of legislature issue

2) Affordability Fund

   a. Blakes to review draft TPA and Trust deed
   b. Tracking to have TPA / other documents finalized by end of next week
   c. CRED to work with Hydro One on appropriate representation for the Trust Board, including social serve agency representation

Calwell, Carolyn (ENERGY/MEDEI/MRI)

May 4 – Introduction

May 3- Cabinet

May 1 – LRC / TB

April 21 – pens down

April 20 – final comments following final review

April 19 – Leg Counsel turns draft for final review by stakeholders

April 18 – instructions from you to Leg Counsel based on stakeholder input

April 17 – deadline for substantive input from all stakeholders (agencies, accountants, bankers)

April 13 – substantial draft legislation (with most substantive issues resolved) for review and input by stakeholders

April 10 – deadline for substantive instructions from you to Leg Counsel

April 7 – TBD drafting instructions:

April 6 – TBD drafting instructions: possible focus on true up mechanism, role of the OEB, other

April 5 – TBD drafting instructions: possible focus on "collectability" issues, other

April 4 – instructions on Fair Allocation Plan, Treasury Plan, Regulatory Asset

- thank you
- common goal – FHP
- many elements

From Blake - discussed Mtg. 10/17
OEB, IESO, OPG

Draft: Feb 10, 2017

FAIR HYDRO ACT
ALLOCATION OF RESPONSIBILITIES

Action	Responsibility	Alternative Responsibility
Fair Allocation Plan		
Designate and adopt a Fair Allocation Plan by written declaration in accordance with Article 7 of the Act (art. 7(1))	The Delegate (Ministry of Energy)	
[Confirmation][Review] of the Fair Allocation Plan (art. 7(5))	[OEB]	
Financing Plan		
Prepare and propose adoption of a Financing Plan in compliance with declaration of the Delegate (Ministry of Energy) (art. 9(1)); amendments of Financing Plan as required following review (art. 9(3))	[OPG] (as Financial Services Agent) [1] Note that if the Financial Services Agent is unwilling or unable to prepare and propose the Financing Plan, the Delegate may by written declaration designate one or more persons to prepare and implement the Financing Plan	Assess → Fire as Third of Governance Agt.
Review and approval of Financing Plan (art. 9(3))	One or more persons designated by the Delegate (Ministry of Energy) Note that the Delegate may specify the requirements of such review	
Approval of Financing Plan (art. 9(4))	[OEB]	
Implementation of Financing Plan once approved (art. 9(4))	[OPG] (as Financial Services Agent)	
Written confirmation that a Disposition by IESO	OPG (as Financial Services Agent)	

[1] The "Financial Services Agent" is [OPG] or, following any Replacement Event, such other person or persons who may be appointed as the Financial Services Agent of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2 of the Act.

is permitted under a Financing Plan (art. 8(2))		
Calculation of Transition Charges		
Recording of Actual costs, expenses or payments in respect of Funding Obligations during a Reference Period (art. 2, definition of "Actual")	[OPG] (as Financial Services Agent)	
Informing IESO or IESO Successor of Actual costs, expenses or payments in respect of Funding Obligations during a Reference Period (*not in the Act*)	[OPG] (as Financial Services Agent)	
Provide the Servicer (IESO, or IESO Successor, as agent of the Regulatory Asset Owners) with written notice of each Estimate of a Finance Amount payable by it in respect of the Reference Period (art. 4(2))	Each Absolute Assignee, or [OPG] (as Financial Services Agent) on its behalf	
Specification of the IESO Retained Interest Amount and any IESO Financing Costs that remain unpaid (art. 4(2))	IESO or IESO Successor	
Calculation of Period Transition Charge (art. 4(2))	IESO or IESO Successor (the Servicer), or the Alternative Servicer,[2] as agent of the Regulatory Asset Owners	Info from OPG →
Application of Attribution Methodology to determine the Allocation Factor for each Retail Consumer (art. 4(3))	IESO or IESO Successor (the Servicer), or the Alternative Servicer, as agent of the Regulatory Asset Owners	95/05 ?
Inform the Electricity Distributors (or any Alternative Servicer) of the Transition Charges to be specified on Electricity Invoices of Retail Consumers (art. 4(4))	IESO or IESO Successor (the Servicer), or the Alternative Servicer, as agent of the Regulatory Asset Owners	OEB

[2] Under section 4(8), an "Alternative Servicer" is appointed by the Absolute Assignees on a Replacement Event with respect to an Electricity Distributor to perform some or all of the invoicing/charging of Transition Charge obligations required to be undertaken by an Electricity Distributor under Article 4 of the Act.

$
OPG → IESO → OEB → LDCs

Charging of Transition Charges on Electricity Invoices		
Specification of Transition Charge to be charged to Retail Consumers on Electricity Invoices (art. 4(1))	Electricity Distributors or Alternative Servicer, as agent of the Regulatory Asset Owners	✓
Issuance of Electricity Invoices (art. 4(1))	Electricity Distributors or Alternative Servicer	✓
Collection of Transition Charges		
Undertake [diligent] [reasonable] efforts to collect Transition Charges owing by Retail Consumers (art. 5(1));	Electricity Distributors or Alternative Collection Agent,[3] as agent of the Regulatory Asset Owners	
Undertake [diligent] [reasonable] efforts to collect Transition Charges from Retail Consumers that pay Electricity Invoices directly to IESO (art. 5(3))	IESO or Alternative Collection Agent, as agent of the Regulatory Asset Owners	current standard accoc
Segregate and deposit Transition Charge Collections into its Regulatory Asset Account (art. 5(2))	Electricity Distributors or Alternative Collection Agent	
Remittance of Transition Charge Collections to IESO or the Alternative Collection Agent on each Remittance Date (art. 5(3))	Electricity Distributors	
Undertake [diligent] [reasonable] efforts to accept and collect Electricity Distributor Remittances (art. 5(3))	IESO or Alternative Collection Agent	

[3] Under section 5(11), an "Alternative Collection Agent" is appointed by the Absolute Assignees on a Replacement Event with respect to an Electricity Distributor or IESO to perform some or all of the collection, segregation and remittance obligations required to be undertaken by the Electricity Distributor or IESO, as applicable, under Article 5 of the Act.

Segregate and deposit Electricity Distributor Remittances into Regulatory Asset Account (art. 5(4))	IESO or Alternative Collection Agent	
Remitting amounts on deposit in its Regulatory Asset Account to the Absolute Assignees and IESO on each Settlement Date (art. 5(6))	IESO or Alternative Collection Agent	
Ensure that amounts transferred to [OPG] (as Financial Services Agent) as agent of the Absolute Assignees under Article 5 are only applied to pay Finance Amounts (art. 9(7))	[OPG] (as Financial Services Agent)	
Compliance		
Power to investigate compliance with the Act and examine books and records of persons who have duties under the Act or under a Funding Obligations (art. 10(1)-(2))	OEB	

CC notes to file – from discussions with Blakes - consolidated (April 2017)

1) How to ensure OPG has cash flow for interest payments during 1st 5 years

Problem – OPG records a loss on P&L statement because the asset gets behind on principle payments

Options

1. IESO provides loan – creates an adverse P&L effect
2. Sale of asset at a discount
3. Include a property right as part of the right of recovery - payment from IESO embedded in purchase of regulatory asset
4. Deferred purchase price / rebate – OPG Trust pays $100 for the asset, IESO rebates or pays back $3

2) How OPG profits (discussed with Scott)

- Credit arbitrage
- OPG poll dealers for price of debt (from investors) and sub-debt (that will come from equity infusion and OFA)
- OPG will receive sub-debt from OFA at lower rate (e.g. 2%) than dealers will price (e.g. 5%)
- OPG trust will issue coupon at dealer rate, rather than at OFA rate
- Trust will carry the difference between these rates on its balance sheet – allows OPG to monetize the coupon stream
- This becomes an unregulated stream of income for the trust
- Mitigation – see the financing plan;

DM/GS - Ap. 24/17

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ONTARIO'S FAIR HYDRO PLAN

OUTSTANDING BUSINESS ISSUES – APRIL 24, 2017

- OPG role in the fair allocation calculation - discuss
- Accountability of OPG as Financial Services Manager (FSM)
  - Removal of OPG as FSM likely not tenable
  - Requirement that funding obligations are in material conformity with Financing Plan
  - Minister may require reports and information
- Treatment of OPG income from role as FSM
  - Exemption from PILs for all amounts related to FSM role
  - Exclusion of revenues from Board's determination of regulated prices under OEBA s. 78.1

- Scope of Provincial undertaking and agreements for compensation (s. 5)
- Financial Administration Act, s. 28 exemption - keep it

- Timing of bill reduction – May 1, 2017 or later - need to work through to deal w/ inflation
- Implementation by LDCs – August 1, 2017 or later } just adjustment
- Feasibility of LDCs tracking pro rata payments
- Treatment of RPP-eligible consumers - ORECA people
  - Calculation of GA modifier
  - Timing
  - True ups
- Treatment of RPP-eligible Class A consumers - form
- Calculation of adjustment amounts beyond Year 5
- OEB role in enforcement

Action Items – April 13, 2017

1) GA Refinancing
    - LSB / Blakes / OPG to ask dealers about whether a rate class can be named as the backstop in legislation instead of individual ratepayers
    - LSB to circulate legislation for review and comment over the weekend
    - OPG Board to meet on May 1 for approval (Committee meetings to occur in advance)
    - TB / MBC to meet at 9am on May 1
    - OEB working to finalize RPP rates and release by April 20
    - OPG to develop note on why we can't revisit the financing structure (51/49)
    - KPMG, E&Y opinions to be provided by May 1
    - Constitutional Law opinion to be provided at a later date
    - 'Navigant Report' tracking for a later date; Ministry and OPG to work together to ensure alignment with internal OPG report for their Board
    - Ministry to work with OFA / TD to support report back to TB / MBC on overall structure and financibility

2) OPG Letter
    - Ministry to turn around comments on letter for end of day April 13

3) Other Items
    - RRRP / OESP / FN Rate
        - Ministry to meet with COO on April 26 re: FN Rate implementation
        - Ministry to develop briefing note on why LDCs with RRRP continue to track to OEB for rate increases
    - ICI
        - CME / OCC outreach continues

4) Other: Ministry to develop deck on bill presentment with high level slides on legislation

Ap. 24/17

Blakes

✓ funding rebate concept

✓ will Feldman be ok w/ Peter's approach to the regulatory asset / Steve continues to be concerned about artificial disconnection btwn CA, IA.

✓ s. 22, 23, 24, 28 security interest

✓ Crown undertaking - Tamer, CLOC, MCF

✓ Torys addition - s. 38 - standing ✓ remedies

✓ redemption/refinancing

✓ Financial Services Mgr / Fair allocation

✓ conflict - s. 33

✓ guarantees - MCF wants cap
only provide for repayment of principal and interest.

liquidity covenant
recommendation not to resolve now
govt to undertake to find buyer for notes, if it can't find a buyer the govt will purchase the notes
make whole or a punctuation buy out scenario - grossed up rate differential → opportunistic

the question will be value at time of purchase - we want market price

For call w/ Osters. Ap. 27/17

thanks for comments

wanted to get back to you on points raised

process - iterative, balancing
translation
commercial language doesn't work
different framework for interpretation

major notes
✓ -25% - based on proxy consumer
non RPP consumers → GA modifier
✓ rates after yr. 5
25.33 amendments - give IESO parallel structure
- prevents double counting!
for certainty

page turn?

concern about impact on investors

issues addressed (not complete)

immediate cash flow → funding rebate
is added to next month's investment asset
would show in transfer eqmt
won't affect fair allocation amt
OPG's need is $ from 3rd party

dealers liked OPG doing fair allocation
→ update on

discussion re: proxy →

discussed 4 years

discussed "deemed trust" → check to make

14xx (1) FSM "may administer" →
was included b/c of bifurcation of FSM
role / concern Min. could remove FSM.

Blakes Ap. 27

① Calculation of fair allocation amt (s15(1.2))
no revision to fair allocation

② limitation 16(4)

③ dealing w/ Osters. - incl. Δ to section 5.

④ funding rebate → ok w/ OPG?

⑤ Torys standing / remedies section

M.S. 5 - legislation will set floor for negotiation
we're better pulling back on the
undertaking and allow broad contracting rights

as soon as we issue under this program, the
whole infrastructure will continue until the
debt is repaid
getting out of this won't be as easy as triggering guarantee
make whole on bond deal is punative

15xx(1.2)

= clean energy costs in a ref. period.

fair allocation amount (the curve)

= CEAs that can be incurred in ref period.

IESO needs the GA that isn't part of clean energy costs

} amt to market

amt to IESO = funding shortfall

day 1 → debt → only way to push cost out is refinancing → only when you can't refinance, then you have a CEA.

Calwell, Carolyn (ENERGY/MEDEI/MRI)

From: Rehob, James (ENERGY)
Sent: May-11-17 7:42 PM
To: STOKES, BRYSON (BRYSON.STOKES@blakes.com); ASHBOURNE, STEPHEN (STEPHEN.ASHBOURNE@blakes.com); JACKSON, ADAM (ADAM.JACKSON@blakes.com)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); Huang, Jackson (MEDG/MRIS); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Rehob, James (ENERGY)
Subject: True-up Amount

Confidential/Solicitor & Client Privileged

May 11, 2017.

Hello, Bryson and Steve. I'm creating a very rough, initial draft of the General Regulation to be made under the new OFHPA, if approved, and need your assistance with fleshing out what is necessary to include in the regulations. I hope you won't mind my starting with just a few key concepts that I want to get your assistance with. What follows are questions that I'm hoping you can help me with. Having your thoughts on any of them sooner rather than later would be very helpful. Obviously, there's a lot here and I realize that you may all be considering these matters and developing your thinking as we are on our end. Happy to have a call with you if you think that that would be a good way to start, but I would like to get your responses, eventually, in writing as I'll want to refer back to them time and time again as I / we put together the draft of the regulation.

What follows is an ultra-simplified version of the steps as I see them. To this end, I've likely reduced complexity and sacrificed important details (such as the continuity of each of the concepts with the "reference periods" to which they relate – lets bear that in mind as we work our way through the drafting process).

Overview

I conceive the General Regulation as providing for any prescribed criteria or methods, calculations and principles (in the commercial context), that must be provided to give the reader of the law the necessary detail to support the implementation of the legislation.

While the entire regulation is likely to be re-organized throughout the iterative drafting process, I see the sequencing of the steps in the transaction as follows (let me know where you disagree or where you find my explanation needs to be augmented):

1. Minister to establish Fair Allocation Amount (the "Curve") per s.20 against which most if not all of the FSM's activities are to be [in general terms] based – e.g. see 21(3) 1"...reasonably align with Fair Allocation Amount...". Please provide your input to any principles to be prescribed here?

2. The Minister's Fair Adjustment Amount is modified by the Fair Adjustments per ss. 6-8, 11 and 12). I think the Regulation to be made under Part II, along with the provisions of the Act itself, will inform the Fair Adjustment so I didn't' anticipate our General Regulation having to deal with these elements. Let me know if you agree.

3. The FSM (OPG) then creates their initial Financing Plan (per s.21) and provides the plan to the Minister, but the Minister has no authority to amend, alter or revoke the plan.

4. The FSM would commence incurring funding obligations (per s.21(1), 22(1), respecting the limitation provided for in s.21(4) but please see clause 21(4)(b) relating to prescribing a "limit" – any thoughts on how that limit should be set or the method for establishing? Is it relevant for the next long while?)

Do you see any elements to be added to the regulation to support these events or transactions?

5. **S. 23 IESO Monthly Deferral:** IESO begins experiencing a funding shortfall that stems from the difference between the amounts it must provide to generators/contract counter-parties, etc. per EA .25.33, and the amounts provided by distributors from consumers (due to RPP rates set to recapture less than the Global Adjustment liability calculation would provide for).
   a. Regs to capture and record as part of the RA the deferral referable to the period May 1, 2017 through day prior to RA of the Bill
   b. **The section 24 variance account** (established by the IESO and approved as to its establishment by the OEB) records the amounts of IESO monthly deferrals, as well as the other adjustments as may be prescribed – these form the basis of the regulatory asset (see s.25), specified portions of which are to be transferred under s.26. Just to begin with, do we have any information on the "other adjustments" to be prescribed (see para 24(1) 3) ?
   c. **Per s.25(2) – The OEB to set rates payable by specified consumers to allow the IESO to recover the balance recorded in the s.24 variance account**. We'll have to create criteria for the or methodology for the OEB to follow here as well. Do you see any elements that we should capture in the regulation to support these steps?
   d. **Timing:** The creation of the RA appears to be pretty immediate and occurs prior to any funding obligations being incurred by the FSM or is there a different sequence you see unfolding? I think others may have a much more sophisticated view about the steps that OPG as FSM is going to take immediately to fund the IESO monthly deferrals than do I, so if you could fill in any of the blanks for me on this (to the extent they'll form the basis of regulation drafting) that would be most appreciated.

6. IESO transfers the specified portion of the RA (which turns into the Investment asset/ subsequent investment interests) to FSM per s.26 and any commercial agreement supporting the conclusive transfer. I am not certain that I see anything I can create in terms of supportive prescribe criteria or methodology for these steps, any input here?

7. FSM purchases investment interest per s. 28 (informed by the attributes provided for in s.29) (note the initial transfer creates the Investment Asset and on subsequent transfers, the value of the IA is added to by additional investment interests purchased by the FSM). The IA (which grows) resides in the SPV/Trust. (Section 29 (1) 2 refers to "other prescribed parties" – any thoughts on this at this time?

8. FSM then incurs the funding obligations in accordance with the Financing Plans referred to in step 4 above. This is, I gather, the real securitization activity that will be supported primarily or almost entirely by commercial agreements. However, given our regulation-making authority (s.38), do you see anything that we should deal with in the General Regulation to support these steps?

9. **Recovery:** Clean Energy Adjustments are dealt with in sections 13 through 17 and frankly I've got to spend a lot more time pouring over those provisions against my initial smatterings on the screen before posting any being able to pose coherent questions (hoping I've posed at least some in this email).

Timing: Assuming I have captured the sequence of steps in a manner which you generally agree with, I could benefit from some clarification around the timing around steps 1 through 4 versus the things that happen under steps 5 through 8.

General assistance with criteria / methods to be included in the general regulation: Having regard to sections 23 through 29, Do you see any specific requirements that we need to provide for in the regulations to further articulate the steps or methodologies to support these steps?

Definitions, etc: Foundational Concepts that I really need your help to flesh out:

- **"Finance Amount"(in all its variants – estimated, actual and just plain old "finance amount")** - Can you help me better understand how we want to use these terms and how they should be expressed in the regulation (e.g. either by just describing them in plain language and / or describing the series of transactions that you see occurring on a monthly basis (i) at the IESO level; (ii) between IESO and FSM/SPV or Trust.

- **"True-up Amount":** Would you provide me with some instruction as to how the regulations can describe this concept? Are the regulations to create a method for calculating the true-up amount and, if so, how do you see this calculation being expressed in a manner that supports, without duplicating, the legislation. See s.15(2) of the Bill which reads:

Regulations re true up amount

(2) 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

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

Miscellaneous: What other things need to be in the proposed regulations?

For example, having regard to Article 6 of the April 14th/17 version of the Blakes Document, here are some things I was considering when reviewing the Blakes document at Article 6:

- Definitions: e.g. for true-up period (e.g. referring to the reference period *prior to* the current reference period)?
- Semi annual review and adjustment of CEAs by FSM?
- Inclusions of LDC-level shortfalls (do you mean line-losses? What is meant by this.
- Exclusions of FE-level leakage (tax, litigation expense, losses):
- Tie-in with "Period Finance Amount" concept.

Thanks for considering the foregoing and please do send me what you can as soon as you are comfortable, given we really only have a two or so week period to do most of the drafting.

Best,

James

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May 11/2017
ESP, SNAP, CSA

motion recommendation - template
voting recommendation chart
clause by clause (explanation boxes)

Andrea Pastori is the pt person
expect motions Friday, May 26

Regs - Part II, Social Programs
↳ June 14 (Cab)
Everything else - June 27 (Cab)

Work streams

1. Committee
   - Clause by Clause
   - Government Motions
   - Opposition Motions

2. Regulations
   - Postings
   - Staging / Timing (i.e., tranche 1 and 2)
   - Cabinet/LRC Dates

3. Navigant Report / Fair Allocation Amount
   early June

4. Weekly Rate Mitigation
   - Agencies
   - TB Reports Backs → they want a report back before Regs.

5. Miscellaneous items
   - IESO / OPG Summaries of Accounting - timing tbd
   - OFA / IESO line of credit
   - s28 approval + indemnity
   - Commercial agreements / Rating agencies

6. Agency relations
   - Agency timelines to enable July 1st effective date, agencies reviewing draft regulations.

7. Working Groups
   - Confirm LDC WG needed from now until July, need to meet others?

Agenda for next Thursday
- OFA/IESO line of credit
- Guarantee
- Creation of the entity
- Steps memo
- Rating agency

Energy/Blakes Discussion May 17/17

motions - due May 25th
chart
need to add
s. 7
replacement of FSM.

motions → need to share w/ IESO, OPG, OEB, Osters.

regulations - June 14, June 27

James' initial instructions → early next week
listing priorities > triage
focus on more advanced instructions

Part II Reg
Dan will loop in OEB, IESO

rating agencies will care about
true up
CEAs

* ask OPG for Financing Plan → we'll draft reg
@ this

---

clause by clause

Financing Plan →

fair allocation will only be positive when it goes above clean energy costs

→ IESO does funding rebates until then need to make sure IESO can deal w/ its financing costs, etc.

1st 4 yrs no CERs

thereafter CERs + rates can't go above fair allocation

⟹ need further refinement to s. 21

emphasize to Tim → need for consistency.

OPG
June 1/17

Fair Hydro Financing Program

Weekly Working Group Call - Deliverables Resulting from May 31st Call

Item	*Description*
Regulations Table	• Torys to provide collective comments on table to Province / MOE
True-up Provision	• Torys to provide collective comments on draft to Province / MOE
Finance Amount Definition	• Torys to provide collective comments on draft to Province / MOE
Billing & Collection Process	• OPG to arrange a meeting with the IESO to discuss billing, collection and remittance process with the LDCs. Required to assist in Credit Rating process • Confirming IESO availability
Provincial Support Agreement	• Province to call Tory's to discuss agreement and will provide markup of term sheet
Financing Order	• Torys / Oslers to discuss Goldman's list of items typically covered in Financing Orders to determine whether proposed content for regulations needs to be augmented
Payment of Interest and Costs During Moratorium Period	• OPG to confirm accounting / tax impact of proposed "funding rebate" proposal
Financial Services & Management Agreement	• Oslers/dealers to provide comments on draft agreement
Administrative Agreement	• Oslers/dealers to provide comments on draft agreement
Sales & Servicing Agreement	• Comments have been provided by Oslers/dealers and Hunton on draft agreement • Document provided to IESO for comments • Torys will circulate next draft after "funding rebate" mechanism confirmed • Draft agreement provided to IESO for comment.
Master Trust Indenture	• Draft in progress - first draft to be circulated to OPG
Declaration of Trust	• Draft in progress - first draft to be circulated to OPG

CIBC Goldman Sachs RBC RBC Capital Markets®

Date 29/01/2018.

CVLD – Accessibility practice group.

- Accessability Sub group
  - ↳ identify barriers.
  - ↳ what can we accomplish in terms of recommendation
  - ↳ education & outreach

30/01/2018

called by Judy Wilson
- explained issue w/ invoice covering work of people who are not on the ~~agree~~ retainer
- she will be sending a request that to add to Schedule A of the retainer
- we will then update the system and get client approval

Michelle S.
FTE

Judy Wilson

very important to receive an economic report that supported the curve of the fair hydro plan

Principle 1 — cost of infrastructure should be spread out over multiple generations usually over the life of the asset

* current tax payers have paid more than enough =
* the curve justifies the
* constitutional issue & of rate charge not a tax.
* needed to get Naugant report fast so Blakes brought them
* did current rate payers got too much of a break for policy reasons then it is looking more like a ~~tax~~ tax not a rate charge - constitutional issues

Date 3/10/2017

issue is how good was the Navigant report does it really support it or was it so lacking that you can make any argument -

- are you setting the curve forever or is it only valid for next years #'s

* ~~dash~~ whether the report justifies the economic analysis behind the fair hydro plan

Report Solicitor Client Privilege.?
↳ supports the legal structure.

→ have to be careful about not waiving privilege

→ Navigant → have we said in emails that the Report is Solicitor Client Privilege

* today's generating assets have future life

① * procurement issue (Blakes retained them so sole source).
② * Navigant report itself & whether it supports the structure.
③ *
④ * Steve edited but Steen's group.

→ retainer reporting - is it ready?

Date 3/10/2017

issue is how good was the Navigant report does it really support it or was it so lacking that you can make any argument -

- ~~[illegible]~~ are you setting the curve forever or is it only valid for next years #'s

* ~~[illegible]~~ whether the report justifies the economic analysis behind the fair hydro plan

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③ *
④ * Steve edited but Steen's group.

- retainer reporting - is it ready.?

Date 5/10/2017

communication b/w Blakes & Nangant

Cathy (Blakes) → phone calls b/w Steve Ashbourne & Nangant.
↳ to ensure the model achieved the alignment
↳ possibly litigation privilege (
↳ significant amount of time b/w when Blakes
* they don't have a current draft

[either to prepare for the litigation
or integral to the firm's advice to the Ministry

Cathy was told from the beginning that a legal challenge →

→ ~~[illegible]~~ mid next week → (Wednesday) will send

~~will~~ will include the

Nov. 16. 2017 OFHP Ministers Briefing

- possible technical briefing ~~bg~~ ~~once~~ once OPG has gone to Market.
- Financing Plan → may change the $ #s that we have given - the 20 billion.
- Regs are tracking as category 2. not to be discussed.

- OEB ruling - when will they rule again

OESP transition of program to the ministry
↳ regs to move program from MCSS to Energy.

[redacted]

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

Confidential Draft

A proposal to create Legislation.

Ontario 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.

Confidential Draft

Preamble

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

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is 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.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

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

"clean energy adjustment" means the amount determined under section 10xx 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,

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(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")

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

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"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.

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

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or 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*

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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.

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(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

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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.

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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,

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(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.

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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.

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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

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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.

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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:

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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.

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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,

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(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.

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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.

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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,

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(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.

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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.

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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

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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

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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.

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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*.

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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.

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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).

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(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.

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(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.

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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.

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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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A proposal to create Legislation.

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

A proposal to create Legislation.

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

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

Preamble

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

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

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to 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.

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

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

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

"clean energy adjustment" means the amount determined under section 10xx and payable by specified consumers; ("French")

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

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

(a) the amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts 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 the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed,

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

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

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

"fair allocation amount" means, in respect of a reference period, an amount determined 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 under subsection 17xx (3); ("French")

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

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

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

"funding obligation" means a 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")

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

"IESO deferral" means the amount determined under section 20xx; ("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 24xx; ("French")

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

"investment interest" means,

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

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

"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")

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"monthly global adjustment rate" means the rate determined by the IESO in respect of a month under section 25.33 of the *Electricity Act, 1998* and the regulations made under that section; ("French")

"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")

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"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 the IESO under subsection 20.1xx (1). ("French")

Specified consumers

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

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

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

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

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

    i. a dwelling,

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

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

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

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

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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 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 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; and

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

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

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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,

(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 and the amount on which the guarantee or indemnity will be given;

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

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

PART II
FAIR ADJUSTMENT

Definitions

6xx. In this Part,

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

"regulated rate consumer" means a fictional specified consumer who meets the following criteria:

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

2. The consumer 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*.

3. Such other criteria as may be prescribed. ("French")

Determination of invoice amount
Electricity provided by licensed distributor, retailer

6.01xx. (1) For the purposes of this Part, in circumstances where electricity would be provided to a regulated rate consumer by a licensed distributor or a licensed retailer, the invoice amount in respect of that consumer shall be determined as follows:

1. Calculate the sum of the following:

    i. The commodity price of the electricity.

    ii. Unless excluded by the regulations and subject to subsection (3), the charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

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

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

    v. Any other amounts as may be prescribed.

2. Subtract, from the amount determined under paragraph 1,

    i. the amount of the financial assistance provided to the consumer under the *Ontario Rebate for Electricity Consumers Act, 2016* in respect of the amounts mentioned in subparagraphs 1 i, ii and iii, and

    ii. such other amounts as may be prescribed, which may include amounts of the financial assistance referred to in subparagraph i in respect of the amounts mentioned in subparagraphs 1 iv and v.

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Same, rate order

(2) For the purposes of subparagraph 1 ii of subsection (2), in respect of charges that relate to any compensation required under subsection 79.2 (10) of the *Ontario Energy Board Act, 1998*, the applicable rate order is the rate order in effect on April 30, 2017.

Invoice amount, exclusions

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

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

2. Penalties or interest.

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

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

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

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

    iii. A rate rider, other than a rate rider that has been prescribed.

5. Any other prescribed amounts.

Regulated rate consumer, first fair 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 the effective date and ending on April 30, 2018 are the rates necessary to achieve the following outcome: the regulated rate consumer would be charged an invoice amount that is 25 per cent less than the invoice amount that would be charged to that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause

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79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, without regard to any other provisions of this Act.

Other specified consumers, first fair adjustment

6.2xx (1) For the period beginning on the effective date and ending on April 30, 2018, the monthly global adjustment rate for a specified consumer who is not a regulated rate consumer is the rate determined by applying the following steps:

1. Determine the monthly global adjustment rate that would be payable effective May 1, 2017 by the specified consumer, determined without regard to any other provisions of this Act.

2. Subtract the following from the rate determined under paragraph 1:

    i. The comparison rate referred to in subsection 6.1xx (2).

    ii. The rate determined under subsection 6.1xx (1).

Determination by Board

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

Implementation of rates

6.4xx Each electricity vendor shall, no later than seven business days after the day on which the Board determines rates under section 6.3xx, adapt its invoices accordingly.

Effective date

6.5xx The Board's determination under section 6.3xx is effective on July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven business days between the day of the Board's determination under section 6.3xx and July 1, 2017.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor shall adapt its invoices as soon as possible and, in any event, no later than August 1, 2017.

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Same

(3) The electricity vendor shall ensure that, if any of its specified consumers have been invoiced in a manner that does not reflect the rates determined under section 6.3xx as a result of the failure to comply with section 6.4xx, the specified consumer receives the difference between the amounts shown on the invoice and the amounts payable under the rates.

Same

(4) Any amount that a specified consumer is eligible to receive under subsection (3) shall be provided as a lump sum credit on the first invoice received after the electricity vendor has adapted its invoices or by such other means as may be prescribed.

Subsequent fair adjustments

7xx. (1) Subject to subsection (2), the Lieutenant Governor in Council may prescribe the methodology to be applied by the Board to determine electricity rates payable by prescribed classes of specified consumers after April 30, 2018.

Limitation, fair adjustments after ~~April 30,~~ 2021

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

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

2. Any clean energy adjustments payable in respect of the reference 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 rate is determined under this Part.

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 rate for the electricity that is payable by the person who is liable to pay the invoice is the rate that reflects the rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice from an electricity vendor that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the

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amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

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

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan, including any failure to provide for the reasonable alignment of the estimated finance amount with the fair allocation amount.

Indebtedness of specified consumer

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

Same

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

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may collect amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis 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 there is a clerical, typographical or calculation-related error by the electricity vendor.

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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.

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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) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

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

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

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

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

Same, held in trust

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

IESO to remit

(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.

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 the IESO the total amount invoiced to its specified consumers in respect of the

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clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

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

Pro rating of payments

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

Held in trust

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

Remittance to IESO

(5) Each electricity vendor shall remit amounts in respect of the clean energy adjustment to the 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.

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Same

(2) The administration of the investment asset may include providing information to the 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 to recover,

(a) the costs of doing anything the Financial Services Manager is required or permitted to do under this or any other Act; and

(b) any other type of expenditure, the recovery of which is permitted by 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 amounts that would have been payable by specified consumers in respect of clean energy costs under the monthly global adjustment rate in the absence of this Act being enacted.

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 amounts determined under paragraphs 3 and 4 and such other amounts as may be prescribed.

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Principles

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

1. The purpose of calculating a 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 each 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 fair allocation amounts under this Part may be changed by such person as may be prescribed in accordance such requirements as may be prescribed.

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Same

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

Information

(7) The Minister, the IESO, the Financial Services Manager, the Board and electricity vendors shall provide such information as may be prescribed and 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 refinancing a funding obligation.

Plan to be provided to Minister

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

Principles

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

1. 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 reasonable align with the fair allocation amount determined in respect of the reference period, in each case after reducing the fair allocation amount to reflect rates determined 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.

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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) no rates determined under Part II have been applied in respect of the reference period; or

(b) if a rate has been determined under Part II in respect of the reference period, the funding obligations incurred would not result in amounts payable in respect of the clean energy adjustment during the reference period in an amount that exceeds the difference between the fair allocation amount in respect of the reference period and the amount of the reduction in the amount payable by specified consumers in respect of the reference period as a result of the determination under Part II.

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.

Same

(2) For greater certainty, subsection XX (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

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

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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.

PART V
THE REGULATORY ASSET

IESO deferral

20xx. (1) The IESO deferral for each month, commencing May 1, 2017, shall be determined by the 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 the IESO on or after May 1, 2017 and before the 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) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

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

1. The amount of the IESO deferral for each month.

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

3. Such other adjustments as may be prescribed, 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, a recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

Rights of investment interest owner

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

Regulatory asset established

21xx. (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (2), 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) 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.

Same, limitations

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

Transfer of regulatory asset

22xx. (1) The IESO may from time to time, 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.

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Agreement

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.

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.

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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.

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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 owner or an owner of a distribution system, within the meaning of the *Electricity Act, 1998*, in the Province;

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

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

Exercise of rights

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

Collective action required

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

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of 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.

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

Proceeds

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

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Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any account of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

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

Not Crown agent

30xx. (1) 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, the 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.

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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 XX 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 the 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.

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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.

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

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

10. 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 or remittance of the clean energy adjustment.

PART VII[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,

(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;

[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).

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(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) prescribed amounts that are paid or incurred by the 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) prescribed amounts that are paid or incurred by the 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:

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Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities 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.*

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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.

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PART VII
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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Version 4

STIKEMAN COMMENTS/EDITS – APRIL 26/17

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

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A proposal to create Legislation.

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

A proposal to create Legislation.

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

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

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Preamble

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

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

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

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

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

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

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

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

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

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

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

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

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

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

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

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

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

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

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

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

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

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

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

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

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

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

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

"funding obligation" means,

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

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

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

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

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

"investment asset" means the rights and interests described in section ~~22~~24xx; ("French")

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

"investment interest" means,

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

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

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

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

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

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

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

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

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

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"reference period" means,

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

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

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

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

"refinancing" means, subject to the regulations, the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation; ("French")

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

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

"specified consumer" means,

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

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

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

"transfer" means [TBD]; ("French")

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

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

Specified consumers

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

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

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

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

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

   i. a dwelling,

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

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

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

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

Invoice amount

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

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

   i. The commodity price of the electricity used.

   ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

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

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

v. Any other amounts as may be prescribed.

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

Same, exclusions

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

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

2. Penalties or interest.

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

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

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

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

   iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

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

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

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Same, funding obligation

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

Purpose

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

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

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

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

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

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

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

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

Clarification with respect to regulations

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

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act,

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

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including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

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

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

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

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

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

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

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

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

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

OLC's not, not stikeman △

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

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

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

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a

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specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*. **[NTD: Is it necessary to more explicitly tie this to what the rate would have been in the absence of the govt's fair hydro plan since the OEB will set reduced RPP rates on May 1 under the current statute/regs]**

Same

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

Specified consumers (non-RPP), first fair adjustment

6.2xx The rate for electricity payable by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1). **[NTD: It is not clear what reduction is contemplated by this provision. It sounds like whereas RPP specified consumers are to receive a rate that will effect a 25% reduction to their total bill, non-RPP specified consumers will only be entitled to a rate that will effect a 25% reduction to the GA component of their bill. Or is the intent to reduce non-RPP specified consumers GA component by the $/kWh difference between the comparison rate and rate determined under subsection 6.1xx(1), i.e. a rate reduction factor?]**

Determination by Board

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

Implementation of rates

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

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Effective date

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

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

2. July 1, 2017.

Transition

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

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

2. Technical or operational reasons.

Same

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

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

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

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022. **[NTD: we understand that the intent is to gradually smooth increases after 2022 by continuing the IESO's under-recovery/shortfall after 2022, albeit at a reduced level. If correct, this part of the Act would need to be further amended to provide authority to do this. Would also need to be reflected in the IESO funding shortfall provisions.]**

agree

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Sub-meter customers

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

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, [which may include terms relating to late payment fees and interest charges.]. **[NTD: query whether such late payment/interest fees would be applicable to the CEA amount and/or whether would be better to leave to regs]**

Same

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

(a) whether the clean energy adjustment was determined in a manner that was ~~inconsistent~~consistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(~~4~~3) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's ~~respective~~ interest in the investment asset.

Same

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

Recovery from sub-meter consumers

(~~6~~5) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

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Irrevocability of amount

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

Exception

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

Determination of clean energy adjustment
Financial Services Manager to determine

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

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount, which may be a positive or negative value, shall be determined in accordance with the regulations.

Regulations re true up amount

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

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

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

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

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

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

Financial Services Manager to notify Board

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

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Board to determine rates

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

IESO to receive amounts

11xx. (~~2~~1) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(~~3~~2) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

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

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

Same, held in trust

(~~4~~3) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners ~~or a secured party to whom a security interest in an investment interest is granted under this Act~~.

IESO to remit

(~~5~~4) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the accounts referenced in subsection (2) to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

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

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean

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energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

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

Pro rating of payments

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

Held in trust

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

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

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

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

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

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Same

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

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

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

3. Such other matters as may be prescribed.

Review of costs

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

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

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

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

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

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

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

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Principles

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

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

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

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

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

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

Method

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

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

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

Publication

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

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FINANCING PLAN

Financial Services Manager to prepare Financing Plan

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

Plan to be provided to Minister

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

Principles

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

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

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

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

Limitation, first five year period

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

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

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

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allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

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

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(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

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

Same

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

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

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

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power

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Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

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

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month commencing May 1, 2017 shall be determined by the IESO in accordance with the regulations. **[NTD: Does Act need to provide for recovery retroactive to May 1/17 prior to effective date of the new rate]**

Electricity vendors to provide information

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

Same

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

Variance account to be established, maintained

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

Recording in variance account

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

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

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

3. Such other adjustments as may be prescribed.

Recording determinative

(3) Subject to any finding of [manifest error], a recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

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Rights of investment interest owner

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

Regulatory asset established

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

Limitation

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

Board to set rates

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

Same, limitations

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

Transfer of regulatory asset

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

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

~~**Same**~~

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

[NTD: suggest moving to s 24xx(2)]

Validity of transfer

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

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Same

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

Deemed perfection, etc.

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

Priority of transfer

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

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. **(1)** ~~The first~~**Each transfer of** ~~the~~**a regulatory asset or a portion of it either creates** ~~the~~**or adds to an investment asset. [NTD: does not make sense to refer to a first transfer as may transfer to multiple entities, so there is more than one first transfer]**

Same

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

Investment asset established

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

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

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including

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any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

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

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

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

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

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

Not affected by failure to impose etc. clean energy adjustment

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

No set off, etc.

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

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

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

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

Exercise of rights

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

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Collective action required

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

Transfer of investment interest

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

Validity of transfer

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

Same

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

Deemed perfection, etc.

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

Priority of transfer, assignment, etc.

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

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

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Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

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

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ccount of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

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PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

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

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

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

Choice of law

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

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

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Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

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

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

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

Regulations

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

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

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[5] FLS - see s. 51 of the Electricity Act, 1998

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

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

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

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

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

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

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

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

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

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

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

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

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts ~~paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under]~~, as may be prescribed, paid or incurred by the IESO related to the *Ontario Fair Hydro Plan Act, 2017* ~~and any related amounts; and~~; **[NTD: we understand the purpose of this section is to provide another avenue of recovery for amounts that would not otherwise be recovered as part of the IESO funding shortfall under Part V]**

(d) ~~amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.~~

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

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

4. A consumer who is,

i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017,* or

ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998].*

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(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

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

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

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

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

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

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

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

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017.*

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

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

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017.*

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205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

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

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

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A proposal to create Legislation.

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

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A proposal to create Legislation.

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

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

Preamble

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

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

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

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

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

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

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

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

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

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

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

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

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

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

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

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

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

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

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

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

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

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

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

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

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

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

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

"funding obligation" means,

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

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

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

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

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

"investment asset" means the rights and interests described in section 22xx; ("French")

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

"investment interest" means,

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

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

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

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

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

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

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

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

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

"reference period" means,

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

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

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

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

"refinancing" means, subject to the regulations, a redemption, repayment or repurchase of a funding obligation; ("French")

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

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

"specified consumer" means,

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

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

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

"transfer" means [TBD]; ("French")

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

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

Specified consumers

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

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

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

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

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

   i. a dwelling,

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

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

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

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

Invoice amount

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

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

   i. The commodity price of the electricity used.

   ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

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

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

v. Any other amounts as may be prescribed.

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

Same, exclusions

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

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

2. Penalties or interest.

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

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

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

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

   iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

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

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

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Same, funding obligation

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

Purpose

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

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

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

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

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

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

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

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

Clarification with respect to regulations

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

Agreements for compensation

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

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

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Guarantee, indemnification

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

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

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

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

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

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

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

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

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

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

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

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

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice

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amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2).

Comparison rate

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

Same

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

Specified consumers (non-RPP), first fair adjustment

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

Determination by Board

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

Implementation of rates

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

Effective date

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

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

2. July 1, 2017.

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Transition

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

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

2. Technical or operational reasons.

Same

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

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

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

Subsequent fair adjustments

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

Sub-meter customers

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

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

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

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Same

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

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

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

Same

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

Recovery from sub-meter consumers

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

Irrevocability of amount

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

Exception

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

Determination of clean energy adjustment
Financial Services Manager to determine

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

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Estimated finance amount, true up amount

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

Regulations re true up amount

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

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

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

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

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

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

Financial Services Manager to notify Board

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

Board to determine rates

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

IESO to receive amounts

11xx. (2) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

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

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

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

Same, held in trust

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

IESO to remit

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

Electricity vendor to invoice specified consumers

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

Electricity vendor to report

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

Electricity vendor to collect

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

Pro rating of payments

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

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Held in trust

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

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

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

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

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

Same

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

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

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

3. Such other matters as may be prescribed.

Review of costs

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

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FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

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

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

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

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

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

Principles

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

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

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

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

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

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

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

Method

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

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

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

Publication

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

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

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

Plan to be provided to Minister

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

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Principles

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

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

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

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

Limitation, first five year period

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

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

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

Other reports

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

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

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1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

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

Same

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

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

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

Prohibition

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

Effect of amendment to fair allocation amount

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

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PART V
THE REGULATORY ASSET

IESO funding shortfall

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

Electricity vendors to provide information

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

Same

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

Variance account to be established, maintained

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

Recording in variance account

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

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

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

3. Such other adjustments as may be prescribed.

Recording determinative

(3) Subject to any finding of [manifest error], a recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

Rights of investment interest owner

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

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Regulatory asset established

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

Limitation

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

Board to set rates

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

Same, limitations

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

Transfer of regulatory asset

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

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

Same

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

Validity of transfer

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

Same

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

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Deemed perfection, etc.

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

Priority of transfer

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

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) The first transfer of the regulatory asset or a portion of it creates the investment asset.

Same

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

Investment asset established

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

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

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

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

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

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

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

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

Not affected by failure to impose etc. clean energy adjustment

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

No set off, etc.

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

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

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

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

Exercise of rights

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

Collective action required

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

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Transfer of investment interest

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

Validity of transfer

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

Same

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

Deemed perfection, etc.

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

Priority of transfer, assignment, etc.

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

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

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

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

Proceeds

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

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ccount of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

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

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Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

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

Choice of law

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

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

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Same

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

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

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

Regulations

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

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

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

[5] FLS - see s. 51 of the Electricity Act, 1998

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

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the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

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

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

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

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

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

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

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

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

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

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

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

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

4. A consumer who is,

   i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017,* or

   ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998].*

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

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

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

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Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

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

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

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

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

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017.*

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

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

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017.*

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017.*

206x. Section 78.1 of the Act is amended by adding the following subsection:

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Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

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

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

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Version 3 [IESO comments]

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A proposal to create Legislation.

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

confirm: assets accounted treatment

A proposal to create Legislation.

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

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

[Insert explanatory note.]

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

Preamble

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

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities ~~in the Province~~ for the generation of electrical energy and the production therefrom for Ontario,[2] and conservation and demand management. **[NTD: small point, but there are two IESO procurement contracts for hydro facilities located in Quebec but that are connected to and supply energy to Ontario.]**

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

[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".

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

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

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[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

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

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs; ("French")

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

(a) the estimated ~~costs~~amounts to be ~~incurred~~paid by the IESO ~~under~~referred to in section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to ~~contracts for~~, **[NTD: if the intent is to reference the costs associated with the following procurement contracts, and payments under section 78.5 of the OEB Act, we would suggest that the highlighted language above is unnecessary. The IESO does not incur costs**

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under section 25.33. Note we have proposed defining "procurement contract" by reference to the Electricity Act definition.]

a. procurement contracts for:

a. ~~(i)~~ renewable energy generation or capacity,

b. ~~(ii)~~ conservation and demand management, including storage, **[NTD: should storage be included as CDM, or as a separate item? Is intent to include only storage procured by OPA as procurement contract, or also storage procured by IESO under market rules?]**

c. ~~(iii)~~ energy efficiency,

d. ~~(iv)~~ natural gas generation and capacity, excluding ~~contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such others~~such contracts as may be prescribed, or **[NTD: if these are the only "procurement contracts" do not need to exclude 78.2 since OEFC contracts would by definition not be included.]**

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

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

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

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

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

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

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"electricity vendor"[4] means ~~the IESO,~~ a licensed distributor, a licensed retailer or such other person as may be prescribed, and shall include the IESO to the extent that the IESO directly invoices a specified consumer; ("French")

"fair adjustment" means the ~~determination of the~~ rate payable for electricity in accordance with Part II; ("French") **[NTD: isn't the fair adjustment the rate, not the act of creating the rate?]**

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French")

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

"funding obligation" means a payment obligation incurred by or on behalf of ~~the regulatory asset owner or~~ an investment asset owner under section x in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation; ("French")

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

"IESO funding shortfall" means~~, in respect of a reference period,~~ the amount determined under section 20xx ~~for the reference period~~; ("French") **[NTD: The funding shortfall is the amount IESO records in the variance account monthly. Monthly recording of shortfall is consistent with section 20xx. We suggest this definition does not need to reference a time period.]**

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

"investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

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

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

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other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

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

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor.

Determination of clean energy adjustment

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

1. ~~Calculate~~The Financial Services Manager shall estimate the ~~estimated~~ finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. ~~Add~~ The Financial Services Manager shall calculate the true up amount for the reference period, as determined in accordance with the prescribed method~~, to~~. **[NTD: the true up amount may be either positive or negative.]**

3. The Financial Services Manager shall, not less than xx days prior to the applicable reference reriod, inform the Board of the estimated finance amount ~~calculated under paragraph 1.~~and the true up amount.

Rate determination

(2) The Board will determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period in accordance with the regulations.

Dan - does this work?

True up amount

(~~2~~3) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

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

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

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

   ii. aggregate variations in billings due to variations in electricity consumption~~.~~, and

   iii. the variations between the estimated finance amount for a reference period and the actual finance amount for that period.

[NTD: the IESO does not need and should not be required to issue an invoice or statement to electricity vendors. The IESO will not know the amount to be invoiced and electricity vendors have an obligation under 12xx to remit amounts collected to the IESO which in turn will collect and remit to the investment asset owner. The investment asset owner will then record the variance between the clean energy adjustment determined in 10xx(1) and the amount remitted by the IESO which it will then factor into the true up.]

IESO to ~~issue remittance notice to electricity vendors~~receive

~~**11xx.** (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period.~~

~~**IESO to collect**~~

(2) The IESO shall, as an agent of the investment asset owners, ~~collect~~ receive the clean energy adjustment ~~from~~paid to it by electricity vendors [in accordance with the regulations and the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998*]. **[NTD: the IESO's obligation will be to collect and remit from electricity vendors what is paid. We understand from prior discussions the obligation is not to collect everything that is invoiced by electricity vendors (other than IESO). Any underpayment will be recorded in a variance by the investment asset owner/financial services manager and recovered in a future reference period.]**

[NTD: The IESO does not object to describing the electricity vendors as sub-agents of the IESO. However, if the electricity vendors are so described exculpatory language of the sort we have provided earlier should be added so that the IESO is not responsible for the acts or defaults of the electricity vendors].

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Collection account

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

1. Amounts described in subsection 12 (4).

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

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be held in trust by the IESO for the investment asset owners ~~or a secured party to whom a~~. **[NTD: see sections with security interest** ~~in an investment interest is granted under this Act.~~**language.]**

IESO to remit

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

~~**Collection of outstanding amounts, regulatory asset**~~

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

Electricity vendor to invoice specified consumers

12xx. (1) ~~The~~Each electricity vendor shall issue an invoice to each specified consumer with an account with such electricity vendor for the amount payable by such consumer~~'s amount~~ in respect of the clean energy adjustment ~~in accordance with the regulations~~, determined by applying the rate set by the Board under section 10xx(2) and as further prescribed.

Electricity Vendor to Report

(2) Each electricity vendor shall promptly report to the IESO the aggregate amount invoiced to its customers in respect of the Clean Energy Adjustment, the amount collected and such further information as may be prescribed.

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Electricity vendor to collect

(~~2~~3) Each electricity vendor shall, as an agent of ~~the IESO and~~ the investment asset owners, collect the clean energy adjustment ~~from~~paid by specified consumers [in accordance with the ~~monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*~~. regulations.] **[NTD: deletion to be consistent with 8xx(1). LDCs do not collect from consumers in accordance with market rules. LDC collection is governed by Board codes.]**

Pro rating of payments

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

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be held in trust for the investment asset owners ~~or a secured party to whom a security interest in an investment interest is granted under this Act~~:

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

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

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

Remittance to IESO

(5) Each electricity vendor ~~other than the IESO~~ shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset owners ~~or secured parties~~ in accordance with the regulations. **[NTD: deletion to be consistent to our proposed change to the definition of electricity vendor.]**

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

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Transfer of regulatory asset

22xx. (1) The IESO may, from time to time, transfer all or a portion of the regulatory asset to any financing entity ~~under~~. **[NTD: not necessary and unhelpful to refer to the Financing Plan**~~, which transfer creates the investment asset~~ **in relation to transfers]**.

Same

(2) Upon receipt by IESO of ~~any~~ payment in consideration ~~for the~~of a transfer~~, (a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account;~~ of all or a portion of the regulatory asset, the transfer shall be valid and enforceable as against the IESO. The IESO shall retain no right, title or interest in the portion of the regulatory asset transferred and ~~(b) unless otherwise provided for in this Act, the IESO~~ shall have no ~~further~~ right, title or interest in~~, or any obligations in respect of, the regulatory asset or in the~~ any investment asset ~~created by the transfer.~~arising under this Act.

~~**Same**~~

Vesting, deemed Perfection

(3) Each ~~Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest.~~ **~~Validity~~**transfer of ~~**transfer**~~

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

~~**Same**~~

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

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

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims against IESO or the regulatory asset have received notice of the transfer ~~and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons~~or have registered or otherwise perfected their interest.

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PART VI
THE INVESTMENT ASSET

~~Interpretation, investment~~Investment asset

~~24xx.~~

24xx. (1) Upon any transfer of all or a portion of the regulatory asset to a financing entity, ~~an investment asset is created,~~ the investment asset created by the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment asset owner and acquires an investment interest.

(2) The IESO shall retain no right, title or interest in the portion of the regulatory asset transferred and shall have no right, title or interest in any investment asset arising under this Act.

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

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

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

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

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

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

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

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

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

No set off, etc.

(2) The investment asset shall not be set off ~~or reduced by any person in any circumstance, including, (a)~~ by a consumer, an electricity vendor, an agent of the investment asset owner or an owner of distribution system assets in the Province;

~~(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); or (c)~~ or by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

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

Collective action required

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

Transfer of investment interest

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

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the

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investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

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

Deemed perfection, etc.

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

Priority of transfer, assignment, etc.

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

Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to

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the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

(7) The secured party shall be entitled to exercise the rights of an investment asset owner under the Act only after it has given notice of the enforcement of its security interest to the IESO.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

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

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, defaults on any required remittance of the clean energy adjustment, collections or remittances.

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Same

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

~~**Same**~~

~~(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order.~~

Choice of law

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

~~**Conflict**~~

~~**33xx.** The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.~~ **[NTD: the earlier provisions provided that the PPSA does apply]**

No further approvals, etc.

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

Immunity

35xx. (1) No action or other proceeding ~~for damages~~ shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

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

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or

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undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

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

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

Regulations

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

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

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

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

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

[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

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

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

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

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

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(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities; **[NTD: enhance this object if IESO paying financing entity's interest costs during first 5 years.]**

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

a. ~~(iv)~~ incurring liabilities in relation to the regulatory asset;

b. ~~(v)~~ transferring the regulatory asset for consideration;

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

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

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

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

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

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

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

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

Subsidiaries, etc.

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

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

Exception

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

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

Exception

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

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

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

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

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

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

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

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

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

SCHEDULE 1
~~ESTIMATED~~ FINANCE AMOUNT

~~Estimated finance~~Finance amount

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

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

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

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

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

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

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

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

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

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Funding costs

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

Finance reserve balance

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

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

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

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

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	Count
Insertions	157
Deletions	162
Moved from	4
Moved to	4
Style change	0
Format changed	0
Total changes	327

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

A proposal to create Legislation.

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

- discussed

A proposal to create Legislation.

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

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

[Insert explanatory note.]

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

Preamble

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

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

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

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

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

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

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

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs; ("French")

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

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

(i) renewable energy generation or capacity,

(ii) conservation and demand management, including storage,

(iii) energy efficiency,

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

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

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

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

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

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

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

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

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

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French")

Comment [CV1]: OPG to confirm whether ability for Minister to replace FSM causes any issues with consolidation of Trust

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

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner under section x; ("French")

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

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

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

"investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

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

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

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

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

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

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

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

"reference period" means,

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

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

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

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

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

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

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

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

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

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

Specified consumers

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

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

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

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

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

    i. a dwelling,

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

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

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

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

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

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

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

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

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

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

    v. Any other amounts as may be prescribed.

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

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

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

2. Penalties or interest.

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

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

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

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

iii. A rate rider.

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

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

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

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

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

Transfer

(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the IESO purports to dispose of its interest in the regulatory asset with the result of a named person becoming the owner of an investment interest.

Effect of invalidity, etc.[5]

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

Same, funding obligation

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

Purpose

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

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

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

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

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

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

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

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

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

Clarification with respect to regulations

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

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding financial commitments, financial arrangements, indemnities or similar transactions.

Comment [CV2]: As financial indemnification section 28 of the FAA sh by the Minister of Financ

Cunder discus

PART II
FAIR ADJUSTMENT

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

Fair adjustment, May 1, 2017 to April 30, 2018
Definition
6xx. (1) In this section,

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

"average baseline rate" means the average rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French")

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

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

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

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

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

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

Comment [CV3]: Does it need to be clear that this calculation is prior to the impact of this legislation – given the OEB has already set the rate for May 1 this past week?

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

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

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

Fair adjustment, May 1, 2018 to April 30, 2022
7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

Comment [CV4]: Wh OEB during this period? this does not put at risk II account for a regulatory a

PART III
CLEAN ENERGY ADJUSTMENT

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

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

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

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

Indebtedness of specified consumer

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

Same

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

Irrevocability of clean energy adjustment

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

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor.

Determination of clean energy adjustment

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

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

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

True up amount

Comment [CV5]: What is the role of the OEB in the determination of the True up amount?

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

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

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

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

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

IESO to issue remittance notice to electricity vendors

Comment [CV6]: H apply to IESO funding IESO does not finance

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period.

IESO to collect

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

Collection account

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

1. Amounts described in subsection 12 (4).

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

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

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

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the

applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect the difference from specified consumers.

Electricity vendor to invoice specified consumers

12xx. (1) The electricity vendor shall issue an invoice to each specified consumer for the consumer's amount of the clean energy adjustment in accordance with the regulations.

Electricity vendor to collect

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

Pro rating of payments

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

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act:

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

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

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

Remittance to IESO

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

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

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

Termination

Comment [CV7]: OP whether this clause and tl impact on consolidation c

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

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

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

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

Replacement

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

Duties and powers

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

Same

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

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

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

3. Such other matters as may be prescribed.

Review of costs

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

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

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

Comment [CV8]: Why is this duty now with the Financial Services Manager?

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

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

Amount

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

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].

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

Principles

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

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

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

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

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

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

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

Allocation of fair adjustment

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

Amendments to the fair allocation calculation

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

Submission of fair allocation to Minister

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

Effective date

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

Publication

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

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

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

Principles

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

1. Any incurrence of a funding obligation should reasonably align the expected finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period.

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

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

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

Amendments to approved plan

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

Limitation, first five year period

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

Comment [CV9]: How does this allow the recovery of financing costs during the first five years?

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

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

Confidentiality of plan

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

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations and make transfers in material conformity with the applicable Financing Plan.

Same

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

Financing entities

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

Prohibition

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

Effect of amendment to Fair Allocation Plan

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

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

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

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

Variance account

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

1. Create a variance account for the purposes of this Act.
2. Record the IESO funding shortfall in the variance account from time to time.
3. Recover the IESO funding shortfall in accordance with section X and the regulations.

No hearing

(2) The order of the Board shall be made in writing and without holding a hearing.

No appeals, etc.

(3) No appeal lies from the order of the Board.

IESO funding shortfall

20xx. (1) The IESO shall determine the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts issued to specified consumers for the month if Part II of this Act did not apply.
2. Calculate the sum of all invoice amounts issued to specified consumers for the month.
3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Comment [CV10]: Is this where the financing costs will be dealt with should IESO hold the shortfall for a period of time before selling it?

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity used by specified consumers, the IESO shall record an

adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers.

Recording of IESO funding shortfall

(3) IESO shall record the IESO funding shortfall from time to time, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall in the variance account is determinative of the amount of IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect the IESO funding shortfall from specified consumers before May 1, 2022.
2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].
3. Such other restrictions as may be prescribed.

Comment [CV11]: financing costs will be first 5 years?

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan, which transfer creates the investment asset.

Same

(2) Upon receipt of any payment in consideration for the transfer,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) unless otherwise provided for in this Act, the IESO shall have no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment asset owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

No set off, etc.

(2) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment asset owner or an owner of distribution system assets in the Province;

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

Collective action required

(4) If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.]

Transfer of investment interest

26xx. An investment asset owner may transfer all or a portion of its rights and interests in an investment interest to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment asset owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment asset owner shall have priority over any liens in favour of such other persons.

Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[7]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act....

(b) prescribing types of payment obligations that constitute funding obligations;

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[7] Note - see s. 51 of the Electricity Act, 1998

[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017*.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.*** ***]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1)]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

SCHEDULE 1
ESTIMATED FINANCE AMOUNT

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

   i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

   ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

   iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

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This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

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A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

Discussed - Ap 24

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL TO ANY FINAL BILL PRIOR TO INTRODUCTION.

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom,[2] and conservation and demand management.

The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and expected future generations of consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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[1] Note: please see the preamble of the *Green Energy Act, 2009*.
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".
[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 1 0xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs; ("French")

Comment [NP1]: How impact value of benefits d current reference period, or present costs can impac future costs.

"clean energy costs" means, in respect of a reference period, the value of the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

Comment [NP2]: As a how future (expected) cos allocated in the current ref

(a) the estimated costs to be incurred by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management, including storage,

(iii) energy efficiency,

(iv) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(v) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

Comment [NP3]: See al

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(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[4] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"fair adjustment" means the determination of the rate payable for electricity in accordance with Part II; ("French")

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French")

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner under section x; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section 20xx for the reference period; ("French")

"investment asset" means the investment asset created as described in section 22xx; ("French")

"investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

[4] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

Comment [NP4]: Are the examples and limitations noted?

Comment [NP5]: Does there need to be a tie to the generation produced?

no

Comment [NP6]: A portion of the amount payable for electricity vs. whole amount?

Comment [NP7]: Or the Trust?

Old page

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"investment interest" means an ownership interest in the investment asset, which entitles an investment asset owner to the rights and benefits specified in the agreement under which the ownership interest is transferred;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

Comment [NP8]: clar

Comment [NP9]: IES wording.

Comment [NP10]: Pe be worded 'reference' cus 'representative'

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(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means an assignment, conveyance, disposition or sale; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

   i. The commodity price of the electricity used during the invoice period.

   ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

   iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

   iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);

   v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

Comment [NP11]: CE

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider.

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Comment [NP12]: Should this term be reconsidered (might it be challenged?)

Transfer

(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the IESO purports to dispose of its interest in the regulatory asset with the result of a named person becoming the owner of an investment interest.

Comment [NP13]: Trust is a person

Effect of invalidity, etc.[5]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Comment [NP14]: OK for OPG facts considerations

Purpose

3xx. (1) The purposes of this Act are,[6]

[5] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

(a) to ensure that clean energy costs are fairly allocated for recovery among specified consumers over time and that the process by which the Province raises money to fund the costs reflects the fair allocation; and

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and expected future electricity consumers in the Province.

Comment [NP15]: borrowing vs. recover address the process by are recovered through the fair allocation? (W raising money, but rath collecting the amounts investment asset owns.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an existing investment asset or an existing funding obligation.

Comment [NP16]: impt - important for acc perspective

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding financial commitments, financial arrangements, indemnities or similar transactions.

PART II
FAIR ADJUSTMENT

[6] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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Fair adjustment, May 1, 2017 to April 30, 2018

Definition

6xx. (1) In this section,

"average baseline invoice amount" means the average monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

Comment [NP17]: See comment above about this term (consider 'reference' customer)

"average baseline rate" means the average rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs ~~and~~ associated with clean energy benefits among present and expected future generations of specified consumers,] the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive a monthly invoice amount that is 25 per cent less than the average baseline invoice amount.

Comment [NP18]: See above

Comment [NP19]: "

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate mentioned in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination.

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

Comment [NP20]: adapt their invoices?

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

Comment [NP21]:

(b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs ~~and~~ associated with clean energy benefits among present and expected future generations of specified consumers,] make regulations prescribing the rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

Comment [NP22]: I year?

CRI

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

8xx. (1) Upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the investment asset owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Comment [NP23]: IE that LDCs are responsible amounts owed. Should Le although ultimate liability consumer to pay through I

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation applicable at the time when the payment is due; and

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each owner's respective interest in the investment asset.

Comment [NP24]: Investment asset owners might expect to recover 100% through the LDCs, even where the LDCs might not recover 100% of amounts from consumers (per IESO)

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

9xx. (1) The amount of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Comment [NP25]: No/little reference to by pass possibility, except here.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor.

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1.

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

i. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

Comment [NP26]: review/comment

ii. variations in billings due to variations in electricity consumption.

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period.

IESO to collect

(2) The IESO shall, as an agent of the investment asset owners, collect the clean energy adjustment from electricity vendors on behalf of specified consumers and sub-meter customers [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998*].

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those accounts:

1. Amounts described in subsection 12 (4).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Comment [NP27]: A customers covered?

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act.

Comment [NP28]: To shouldn't all amounts just OPG Trust and it would r appropriate parties? Perha addresses?

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment asset owners in accordance with the regulations.

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the

applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect the difference from specified consumers.

Comment [NP29]: (How) Is reference to true-up mechanism needed?

Electricity vendor to invoice specified consumers

12xx. (1) The electricity vendor shall issue an invoice to each specified consumer for the consumer's amount of the clean energy adjustment in accordance with the regulations.

Electricity vendor to collect

(2) Each electricity vendor shall, as an agent of the IESO and the investment asset owners, collect the clean energy adjustment from specified consumers [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998].*

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Comment [NP30]: IESO to advise (understood that LDCs required to pay 100% regardless of amounts collected by consumers).

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset owners or secured parties in accordance with the regulations.

Comment [NP31]: Assumed that LDCs will submit full amounts owed to IESO, not segregating separately/reporting separately the CEA amounts. IESO will segregate? IESO to review and clarify expected process.

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.]

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

Comment [NP32]: Sh or 'material' inconsistenc If this is to be protective, such language would be a

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

Comment [NP33]: Sh specific? OPG to advise.

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Comment [NP34]: Wh representative that this is this expected to be in writi

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Comment [NP35]: Co interim period until such ti material breech has been re (supports 'protective' natu

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and ~~may~~ is expected to administer the investment asset on behalf of the investment asset owner(s) and in accordance with its own financial and operating policies.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

Comment [NP36]: clar

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2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations with the understanding that such costs reasonably incurred would be recoverable.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate the fair allocation amount in accordance with this Act for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and associated with the estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and associated with estimated clean energy benefits across present and expected future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

   i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

   ii. The expected number of specified consumers for each reference period.

   iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period.

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister, for information purposes, the fair allocation calculation and any amendments to the fair allocation calculation.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

Comment [NP37]: accordance with the Ac the 'representative'/'ref

Comment [NP38]: only going to be applied (2005-2017?)

Comment [NP39]: N regard to, but can be term alignment. OPG to comm reference need to be made termination section (see r

Comment [NP40]: Fo purposes (so as not to refl requirement)

Comment [NP41]: Re timeline/expectations/in a requirements of regulatio

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FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan which would be intended as a primary reference ~~to be used~~ by the Financial Services Manager to evaluate whether potential funding obligations ~~should~~ might be incurred or potential transfers ~~should be~~ made for the purposes of this Act.

Comment [NP42]: Is plan to be updated annually and submitted to Minister for info? Will it be publicly posted? If so, by who?

Comment [NP43]: Per OPG, FSM needs to have the "right" but not "obligation" to buy the regulatory assets.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation ~~should~~ are expected to reasonably align the expected finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period.

2. Incurrences and transfers ~~should~~ are expected to be implemented in a manner that, as the Financial Services Manager considers to be reasonable, is cost effective and reflects prevailing market terms and conditions.

3. Reasonable assumptions ~~should~~ are expected to be made regarding such matters as may be prescribed.

[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

Comment [NP44]: above (2018)

Comment [NP45]: specified consumers (bu pay interest and admin c comment on wording.

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period].

Confidentiality of plan

(4) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act*.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations and make transfers in material conformity with the applicable Financing Plan.

Comment [NP46]: Ot impact on control—see ab used as guide (vs. mandat have discretion over its op financing policies, and not buy the rate regulated asse

Same

(2) For greater certainty, section [paramountcy of funding obligations] applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and make transfers.

Comment [NP47]: OP the FSM above. Consider references, where required.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Effect of amendment to Fair Allocation Plan

(4) No funding obligation incurred and no transfer made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

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PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.

[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order to authorize the IESO to do the following:

1. Create a variance account for the purposes of this Act.
2. Record the IESO funding shortfall in the variance account from time to time.
3. Recover the IESO funding shortfall in accordance with section X and the regulations.

Comment [NP48]: Will also include financing and admin cost paid to the OPG Trust. IESO to comment.

No hearing

(2) The order of the Board shall be made in writing and without holding a hearing.

No appeals, etc.

(3) No appeal lies from the order of the Board.

IESO funding shortfall

20xx. (1) The IESO shall determine the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts issued to specified consumers for the month if Part II of this Act did not apply.
2. Calculate the sum of all invoice amounts issued to specified consumers for the month.
3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Comment [NP49]: Should include amounts that will be paid to OPG Trust for admin and financing costs.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity used by specified consumers, the IESO shall record an

Comment [NP50]: Section relevant during period of recovery?

adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers.

Recording of IESO funding shortfall

(3) IESO shall record the IESO funding shortfall from time to time, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall in the variance account is determinative of the amount of IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect the IESO funding shortfall from specified consumers before May 1, 2022.
2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].
3. Such other restrictions as may be prescribed.

Comment [NP51]: T financing and admin cost

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan, which transfer creates the investment asset for purposes of this Act.

Same

(2) Upon receipt of any payment in consideration for the transfer,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) unless otherwise provided for in this Act, the IESO shall have no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

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Same

(3) Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment asset owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall and no obligations related thereto.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

No set off, etc.

(2) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment asset owner or an owner of distribution system assets in the Province;

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

Collective action required

(4) If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.]

Transfer of investment interest

26xx. An investment asset owner may transfer all or a portion of its rights and interests in an investment interest to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment asset owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment asset owner shall have priority over any liens in favour of such other persons.

Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[7]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act....

(b) prescribing types of payment obligations that constitute funding obligations;

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

Comment [NP52]: OP

[7] Note - see s. 51 of the Electricity Act, 1998

Non-binding draft for discussion purposes

[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017*.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.*** ***]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1)]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

Confidential Draft

SCHEDULE 1
ESTIMATED FINANCE AMOUNT

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

   i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

   ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

   iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

Confidential Draft

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Confidential – Draft for discussion purposes only

From Tory - AH 19/17

Version 2

Section 12(3) of the Version 2 Draft Legislation needs to be amended as follows:

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, **Ontario Power Generation Inc.,** the Ontario Energy Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Part VII[1]
amendments to other Acts

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the [Fair Hydro Act];

(q.1) to enter into agreements or arrangements with for the purposes of the FHA;

(q.2) to engage in activities related to making payments to and receiving payments as contemplated under the FHA and to engage in related settlement activities;

(q.3) to engage in activities related to the creation, transfer and administration of the regulatory asset created under the FHA, which activities may include,

(i) incurring liabilities in relation to the regulatory asset

(ii) transferring the regulatory asset for consideration;

(q.4) acting as a recovery agent under the FHA;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

[1] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

Same, [FHA]

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include the following, in addition to any other objects, relating to the FHA:

1. Exercising the powers and rights and performing the duties and obligations assigned to it under that Act.

2. ~~Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by that Act subject to the right of reimbursement from amounts available to the financing entity.~~**Providing services on behalf of a [Financing Entity][2], subject to the right to be paid by the Financing Entity for services, including the following services [NTD: see further changes to OEB Act below regarding review of OPG costs]:**

   (i) the purchase and administration of investment assets on behalf of a Financing Entity and the negotiation, execution and delivery of any related agreements;

   (ii) the negotiation, execution and delivery on behalf of a Financing Entity of constating documents, financial services agreements, administrative services agreements, purchase and sale agreements, trust indentures, hedging agreements, credit enhancement agreements, servicing agreements, loan agreements, subordinated loan agreements, security agreements, underwriting agreements, agency agreements and any similar agreements;

   (iii) the negotiation, execution and delivery of any documents relating to a sale or offering of securities by a Financing Entity;

   (iv) the implementation and administration of any agreements to which a Financing Entity is a party;

   (v) the acquisition, administration and sale of any other investments that may from time to time be made by a Financing Entity;

   (vi) the borrowing of money by a Financing Entity;

3. ~~Preparing~~**(vi) administering the activities of a Financing Entity and preparing** reports on behalf of ~~the financing entity.~~**a Financing Entity;**

[2] **Note – we have used the term "Financing Entity" throughout. The final term chosen for the legislation will need to be used throughout.**

(vii) enforcing the rights of a Financing Entity;

4. ~~Enforcing the rights of the financing entity.~~
(vii) engaging or employing any persons to assist it in providing services to a Financing Entity and delegating its powers and duties to such persons; and

5. ~~Signing offering documents as sponsor or otherwise on behalf of the financing entity~~
(vii) performing any activities incidental to the foregoing.

~~6.~~**3.** Exercising the powers and performing the duties of the Financial Services Manager under that Act.

4. Providing equity contributions and loans to a Financing Entity.

[NTD: Given the detailed list of objects in Section 53.1(1.1), OPG is considering whether the objects listed in Section 53.1(1) need to be similarly expanded.]

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts, **partnerships** or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act or the *Business Corporations Act* or any other laws, the assets and liabilities of a Financing Entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries (other than, if applicable, the Financing Entity) in any proceeding and the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries (other than, if applicable, a Financing Entity) shall not form part of the assets and liabilities of a Financing Entity in any proceeding.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply ~~in:~~

1. In respect of ~~amounts payable to~~**any income, gain or profit of** Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of ~~its functions as the Financial Services Manager under [new Act].~~**or by virtue of:**

(A) where a Financing Entity established is a corporation, acquiring, holding or disposing of any equity interest in the Financing Entity, including in respect of any dividends or other distributions paid or payable or otherwise accrued to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity, or

(B) where a Financing Entity is a trust, acquiring, holding or disposing of any beneficial interest in the Financing Entity, including in respect of any amounts paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

2. To a Financing Entity that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply ~~in~~**:**

1. In respect of ~~amounts payable to~~**any income, gain or profit of** Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of ~~its functions as the Financial Services Manager under the FHA.~~**or by virtue of:**

(A) where a Financing Entity established is a corporation, acquiring, holding or disposing of any equity interest in the Financing Entity, including in respect of any dividends or other distributions paid or payable or otherwise accrued to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity, or

(B) where a Financing Entity is a trust, acquiring, holding or disposing of any beneficial interest in the Financing Entity, including in respect of any amounts paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

2. To a Financing Entity that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.*** ***]***

Add new consequential amendments to Ontario Energy Board Act, 1998 as follows:

Subsection 78.1(4) of the *Ontario Energy Board Act, 1998* would be amended as follows:

Board orders

(4) Subject to subsection (4.1), the Board shall make an order under this section in accordance with the rules prescribed by the regulations and may include in the order conditions, classifications or practices, including rules respecting the calculation of the amount of the payment.

Section 78.1 of the *Ontario Energy Board Act, 1998* would be amended by adding the following subsection:

(4.1) In making an order under this section in respect of Ontario Power Generation Inc., any activities, roles or circumstances whatsoever relating to Ontario Power Generation Inc. under or in relation to the *Intergenerational Fairness in Hydro Rates Act, 2017*, including, without limitation, its appointment as the Financial Services Manager under that Act, any fees charged for performing its duties as the Financial Services Manager under that Act, any cost consequences of being the Financial Services Manager under that Act, and any consequences of consolidating the assets and liabilities for accounting purposes of any special purpose financing entities established under and for purposes established under that Act are not related to a prescribed generation facility or the output therefrom and the Board shall not consider the aforementioned when making an order under this section.

Document comparison by Workshare Compare on April-19-17 10:16:27 AM

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Padding cell	

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Insertions	45
Deletions	15
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	62

Version 2

Section 12(3) of the Version 2 Draft Legislation needs to be amended as follows:

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, **Ontario Power Generation Inc.,** the Ontario Energy Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Part VII[1]
amendments to other Acts

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the [Fair Hydro Act];

(q.1) to enter into agreements or arrangements with for the purposes of the FHA;

(q.2) to engage in activities related to making payments to and receiving payments as contemplated under the FHA and to engage in related settlement activities;

(q.3) to engage in activities related to the creation, transfer and administration of the regulatory asset created under the FHA, which activities may include,

(i) incurring liabilities in relation to the regulatory asset

(ii) transferring the regulatory asset for consideration;

(q.4) acting as a recovery agent under the FHA;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

[1] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

Same, [FHA]

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include the following, in addition to any other objects, relating to the FHA:

1. Exercising the powers and rights and performing the duties and obligations assigned to it under that Act.

2. ~~Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by that Act subject to the right of reimbursement from amounts available to the financing entity.~~**Providing services on behalf of a [Financing Entity][2], subject to the right to be paid by the Financing Entity for services, including the following services [NTD: see further changes to OEB Act below regarding review of OPG costs]:**

   (i) the purchase and administration of investment assets on behalf of a Financing Entity and the negotiation, execution and delivery of any related agreements;

   (ii) the negotiation, execution and delivery on behalf of a Financing Entity of constating documents, financial services agreements, administrative services agreements, purchase and sale agreements, trust indentures, hedging agreements, credit enhancement agreements, servicing agreements, loan agreements, subordinated loan agreements, security agreements, underwriting agreements, agency agreements and any similar agreements;

   (iii) the negotiation, execution and delivery of any documents relating to a sale or offering of securities by a Financing Entity;

   (iv) the implementation and administration of any agreements to which a Financing Entity is a party;

   (v) the acquisition, administration and sale of any other investments that may from time to time be made by a Financing Entity;

   (vi) the borrowing of money by a Financing Entity;

3. ~~Preparing~~**(vi) administering the activities of a Financing Entity and preparing** reports on behalf of ~~the financing entity.~~**a Financing Entity;**

[2] **Note – we have used the term "Financing Entity" throughout. The final term chosen for the legislation will need to be used throughout.**

(vii) enforcing the rights of a Financing Entity;

~~4. Enforcing the rights of the financing entity.~~

(vii) engaging or employing any persons to assist it in providing services to a Financing Entity and delegating its powers and duties to such persons; and

~~5. Signing offering documents as sponsor or otherwise on behalf of the financing entity~~

(vii) performing any activities incidental to the foregoing.

~~6.~~**3.** Exercising the powers and performing the duties of the Financial Services Manager under that Act.

4. Providing equity contributions and loans to a Financing Entity.

[NTD: Given the detailed list of objects in Section 53.1(1.1), OPG is considering whether the objects listed in Section 53.1(1) need to be similarly expanded.]

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts, **partnerships** or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act or the *Business Corporations Act* or any other laws, the assets and liabilities of a Financing Entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries (other than, if applicable, the Financing Entity) in any proceeding and the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries (other than, if applicable, a Financing Entity) shall not form part of the assets and liabilities of a Financing Entity in any proceeding.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply ~~in~~**:**

1. In respect of ~~amounts payable to~~**any income, gain or profit of** Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of ~~its functions as the Financial Services Manager under [new Act].~~**or by virtue of:**

(A) where a Financing Entity established is a corporation, acquiring, holding or disposing of any equity interest in the Financing Entity, including in respect of any dividends or other distributions paid or payable or otherwise accrued to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity, or

(B) where a Financing Entity is a trust, acquiring, holding or disposing of any beneficial interest in the Financing Entity, including in respect of any amounts paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

2. To a Financing Entity that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply ~~in~~**:**

1. In respect of ~~amounts payable to~~**any income, gain or profit of** Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of ~~its functions as the Financial Services Manager under the FHA.~~**or by virtue of:**

(A) where a Financing Entity established is a corporation, acquiring, holding or disposing of any equity interest in the Financing Entity, including in respect of any dividends or other distributions paid or payable or otherwise accrued to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity, or

(B) where a Financing Entity is a trust, acquiring, holding or disposing of any beneficial interest in the Financing Entity, including in respect of any amounts paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

2. To a Financing Entity that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.*** ***]***

Add new consequential amendments to Ontario Energy Board Act, 1998 as follows:

Subsection 78.1(4) of the *Ontario Energy Board Act, 1998* would be amended as follows:

Board orders

(4) Subject to subsection (4.1), the Board shall make an order under this section in accordance with the rules prescribed by the regulations and may include in the order conditions, classifications or practices, including rules respecting the calculation of the amount of the payment.

Section 78.1 of the *Ontario Energy Board Act, 1998* would be amended by adding the following subsection:

(4.1) In making an order under this section in respect of Ontario Power Generation Inc., any activities, roles or circumstances whatsoever relating to Ontario Power Generation Inc. under or in relation to the *Intergenerational Fairness in Hydro Rates Act, 2017*, including, without limitation, its appointment as the Financial Services Manager under that Act, any fees charged for performing its duties as the Financial Services Manager under that Act, any cost consequences of being the Financial Services Manager under that Act, and any consequences of consolidating the assets and liabilities for accounting purposes of any special purpose financing entities established under and for purposes established under that Act are not related to a prescribed generation facility or the output therefrom and the Board shall not consider the aforementioned when making an order under this section.

Document comparison by Workshare Compare on April-19-17 10:16:27 AM

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Document 1 ID	interwovenSite://INVENTORYS1/TorysAtWork/23344385/1
Description	#23344385v1<TorysAtWork> - Fair Hydro Act (April 17 2017) Consultationv5 (002)ASEN
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Insertion	
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Statistics:	
	Count
Insertions	45
Deletions	15
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	62

Entity Mandate

- The Following table depicts either a prescriptive or flexible mandate for a new entity established to manage Global Adjustment (GA) smoothing.
- This mandate could be established through legislation or through a combination of legislation and the constating documents of the organization.
- The focus of the governance principles would be to reinforce the independence of the entity from Government.

Element	Prescriptive Mandate	Flexible Mandate
Objective	- Smooth impacts of the Global Adjustment Mechanism (GAM) in order to allocate costs to ratepayers across a [25 / 30] year time horizon, in accordance with the following parameters - OEB oversight (annually) but no licensing or rate-order. - Could have OEB set overall cap for collection each year, allowing entity to recover according to prescribed rules within specified range.	- Smooth impacts of the Global Adjustment Mechanism (GAM) in order to allocate costs to ratepayers across a 25-35 year time horizon, guided by the following parameters - All decisions to balance the interests of current and future ratepayers, taking into account factors including but not limited to: o Current and expected future demand for electricity o Current and future expected number and composition of ratepayers o Total cost of electricity and expected future changes to the cost of electricity - OEB oversight (annually) but no licensing or rate-order. o Could have OEB set overall cap for collection each year, allowing entity to recover at will within specified range. o Could accommodate moderate role for OEB to manage/supervise entity's (and IESOs) collection schedule. o Ambit of OEB role could be constrained by reg. - Current and expected future

		interest expenses
Sources of Financing	- Borrow via the Ontario Financing Authority (OFA) under commercial terms	- Seek lowest cost of financing either from the OFA or 3rd party lenders in order to balance cost and risk to ratepayers - Develop and deploy borrowing strategies to minimize cost and mitigate risk to ratepayers, considering factors above
GAM Payment & Financing Approach	- Legislated loan and interest repayment mechanism with recourse to rate-payers only (cost of capital and financing costs) - In year 1 provide $X billion to finance the cost of GAM (hereafter known as "Annual Financed GAM Payment"), offset by a deferral account to be recovered from ratepayers - Over years 2 to x, reduce Annual Financed GAM Payment amounts, relative to the year 1 total ($x billion), such that the decrease is not greater than 2% of the total annual cost of GAM from the prior year - Starting in year 1, recover, on a monthly basis, interest expenses related to accumulated debt from electricity ratepayers - Reduce Annual Financed GAM Payment amounts to $0 or less (once less than $0, this becomes a charge to ratepayers) in 12 to 15 years - In years a to b, Recover accumulated debt via a charge to ratepayers over remaining 10 to 13 years (25 years total), provided that the annual increase in the charge to ratepayers is not greater than 2% of the total annual cost of GAM from the prior year	- Legislated loan and interest repayment mechanism with recourse to rate-payers only (cost of capital and financing costs) - In year 1 provide $X billion to finance the cost of GAM (hereafter known as "Annual Financed GAM Payment"), offset by a deferral account to be recovered from ratepayers - Each year, the New Entity will submit plans for approval to the OEB that propose a rolling [5 yr / 10 yr] declining Annual Financed GAM Payment schedule , such that the annual decrease is not greater than 3% of the total annual cost of GAM from the prior year. - Legislate or prescribe criteria OEB to apply in approving or requiring changes to such schedule. - Manage the recovery of interest expenses and administrative costs related to accumulated debt from electricity ratepayers, subject to OEB review - Manage the recovery of accumulated debt over a 25-35 year period - Financed Annual GAM Payment schedules and recovery of accumulated debt should take into account the interests of both current and future ratepayers, while ensuring long term financial stability for the

		new entity. -
Mechanism for Recovery from Ratepayers	-	-
	- Legislation would provide the entity with the right to recover debt, interest and administrative costs from rate payers. - Prescriptive mandate: legislation prescribes who pays and in what proportions - Broad mandate: Board has discretion to determine recovery. **Amendments to Electricity Act, 1998** could specify: - Amendments to IESO mandate (objects) and GAM provisions to authorize IESO to receive and pay amounts from and to entity; - monthly amounts to be settled (separately) with IESO, distributors/retailers then collected from consumers and settle with IESO. IESO makes payments to entity. Separate reporting can be explicitly mandated. - IESO to report annually to OEB about these settlements separately. - Variance accounts established within entity, IESO, distributors to track payment flows and variances. OEB oversight of accounts (reporting only) - **Optional:** OEB could set overall cap for annual recovery and/or manage repayment schedule or could be prescribed. - **Amendments to OEBA:** "Rate mitigation" added to Board's objectives re electricity; - IESO specifically required to make payments to entity: -	
Ontario Energy Board Oversight	- OEB could receive and review annual report from entity. - No OEB license or rate-order for entity (light touch) versus overseeing repayment schedule or even fixing / approving same (closer to rate-making). - OEB could set cap or repayment schedule. **or** - **OEB could fix entity's rate:** OEB's approval of internal/operating costs together with approval of schedule and setting hard cap. - New Entity to submit to the OEB on an [annual] basis its rolling 5 year declining Annual Financed GAM Payment schedule and / or recovery mechanism from ratepayers to demonstrate that the plan aligns with its mandate and maximizes benefit to both current and future ratepayers, while mitigating risks - New Entity to submit annual business plans to the OEB for review and approval. This review would exclude any pre-existing debt obligations and would ensure that all associated debt covenants are respected	
Contract with IESO	- New Entity to enter into a commercial, contractual arrangement with IESO whereby IESO will collect a portion of GAM to service debt (see cost-recovery amendments above) - Once the GAM payment switches to a charge (as described in "GAM Payment & Financing Approach"), the New Entity will contract collection from ratepayers to the IESO, while retaining all rights and obligations associated with collection of this charge	

	- The contract between the New Entity and IESO will establish an annual (monthly?) mechanism to reset payment and recovery amounts, as established by through the Ontario Energy Board review process described above

OEBA

s. 57 - requirement to have a license

60 (1) - application for a license

70 (1) - license may prescribe conditions

(1.1) - Board may, with or without a hearing, grant an approval, amend or revoke a condition in a license

(2) - examples of condition: time period, info req'd by Board, reg'ing agents, reg'ing conduct

(2.1) - (2.3) deemed conditions

EA

s. 25 (1) IESO shall submit proposed expenditures & revenue req'ments ... & fees it proposes to charge to the Board

Entity representing the rights described in the previous sentence (which is a hybrid of an intangible right akin to a government licence and present and future accounts receivable derived therefrom). Regulatory Assets are NOT fungible. The characteristics of a Regulatory Asset may change depending upon who owns it, because the Qualified Costs recoverable pursuant to the Regulatory Asset may change depending upon how the owner is financing its ownership and what its costs and expenses of operation are.]

STATUTORY AMENDMENTS

The following is preliminary and is based on our current understanding of the proposed structure and objectives. For example, we have assumed that the structure will not entail the insertion of a new Holdco between OPG and the Province. As these aspects are refined, some of the suggested amendments described below may not be needed and other aspects that we are not aware of may need to be considered. Accordingly, these suggested amendments are provided for discussion purposes and are subject to change. We would welcome the opportunity to work with OPG and the Ministry on refining the scope and substance of required legislative and regulatory amendments.

A. Amendments to Implement Structure

Certain *Electricity Act, 1998* amendments would be needed to implement the anticipated structure (which we understand, as noted above, would not include a Holdco), as follows:

- **Section 53.1(1):** Amend to permit owning and operating generation facilities through subsidiaries (not only directly through OPG). In addition, amend to permit OPG to administer, manage, loan moneys to and have a beneficial interest in, if applicable, Financing Trust.

- **Section 53.2:** Amend to permit the Minister to acquire, hold, dispose of or otherwise deal with securities or debt obligations of, or any other interest in, OPG or any subsidiaries. This is to accommodate possible variations to the financing structure that may be desirable over time.

- **Section 53.■ (new):** New statutory section to permit the Minister to enter into arrangements relating to an exercise of powers under 53.2.

- **Section 53.■ (new)**: New statutory section providing that creditors of Financing Trust have no recourse to the assets of OPG or any of its subsidiaries (other than Financing Trust, if applicable). In addition, consideration should be given as to whether the Act should be amended so that the Financing Trust cannot be wound up or liquidated.

B. Miscellaneous Corporate Items to Address

- **OPG Articles:** Amend the OPG's articles to remove the private company restrictions.

- **MOA with Province:** Consider whether any amendments to OPG's MOA with the Province are required to contemplate the Financing Trust.

C. Amendments Under Electricity Act to Implement GA Smoothing

Based on our understanding that the global adjustment smoothing mechanism is intended to benefit residential and small business customers only and that the Minister will be responsible for determining how much global adjustment smoothing is to be applied in a given month, if any, amendments to the *Electricity Act, 1998* and Ontario Regulation 429/04 (Adjustments Under Section 25.33 of the Act) would be needed to implement the mechanism, as follows:

(i) **Electricity Act:**

- **Section ■ (New):** Establish a new power for the Minister to make directives to the IESO in relation to the global adjustment smoothing mechanism and, particularly, for purposes of establishing global adjustment smoothing amounts from time to time (expected to be monthly). To the extent possible, the directive power should be drafted so as to limit the ability for a future Minister to require the IESO to do anything that would materially and adversely affect the Financing Trust or its lenders. **[NTD: While our understanding is that the Minister would direct this, we note from other materials we have seen that OPG may instead be recommending a formula approach. It is not clear what the formula would look like, where it would be set out or how it would be applied and by whom]**

- **Paragraph 25.33(1):** This section says that IESO shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of market participants reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require IESO to ensure that, over time, payments by prescribed classes of market participants also reflect amounts paid to Financing Trust. **[NTD: Not certain this is needed if only to benefit residential and small business consumers, who are not market participants. May be needed in reference to payments from distributors and retailers]**

- **Paragraph 25.33(2):** This section says that distributors and retailers shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of consumers reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require distributors and retailers to ensure that, over time, payments by prescribed classes of consumers also reflect amounts paid to Financing Trust.

- **Note**: As described below, the regulation will need to include new requirements for the IESO to record the global adjustment smoothing amounts in one or more variance accounts and to use those amounts to offset amounts otherwise recorded in the variance accounts under Section 25.33(3) of the Act. For context, we note:

    - Section 25.33(3) says that adjustments under (1) or (2) relating to electricity consumed by consumers whose rates are determined by the OEB under s. 79.16 of the OEB Act (i.e. RPP Customers) shall instead be made in

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accordance with the regulations to one or more variance accounts established and maintained by the IESO.

- Section 25.33(4) says IESO, distributors and retailers shall make and receive such payments, set-offs and credits as may be required or permitted by the regulations with respect to consumers described in (3), i.e. RPP Customers.

- Section 25.33(5) says that IESO shall establish and maintain such variance accounts as may be needed to record all amounts payable or receivable by it under 25.33.

(ii) **O. Reg. 429/04 (Adjustments Under Section 25.33 of the Act):**

- **Section 1(1):** Consider adding definitions for "Financing Trust" and "global adjustment smoothing amount" or such other terms as may be preferred.

- **Section 1.2(1) (New):** Add section providing that, for the purposes of this Regulation, the global adjustment smoothing amount for a month is the amount determined by the IESO in accordance with a directive from the Minister under section ■ of the Electricity Act in respect of the month. **[NTD: See above note re use of Minister directives]**

- **Section 1.2(2) (New):** Consider adding a section providing that the IESO shall publish the global adjustment smoothing amount for a month by no later than the 10th business day of the following month [to align with general publication requirements for global adjustment under s. 1.1(2)].

- **Section 10(1):** Amend formula for calculating Class B GA rate by subtracting the global adjustment smoothing amount for a month from "M", which is the total amount of the global adjustment for the month. The global adjustment smoothing amount could be designated as "X", such that the formula would be (M-X-N)/(P-Q). Define "X" as the global adjustment smoothing amount for the month as determined by the IESO in accordance with the Minister's directive under section ■ of the Electricity Act for the month. **[NTD: See above note re use of Minister directives]**

- **Section 10.1 (New):** Add new section to deal with adjustments under subsection 25.33(3) of the Act, i.e. in respect of RPP consumers. This section should require the IESO to establish, within the variance account(s) it maintains pursuant to subsection 25.33(3) of the Act, one or more subaccounts in which it shall record the global adjustment smoothing amounts applicable to the classes of consumers described in subsection 25.33(3) of the Act. This section must also specify that the IESO shall apply the amounts recorded in the subaccounts against the balances in the variance accounts for purposes of section 79.16(3) of the OEB Act.

  - **Note:** This is a key aspect because, when the OEB determines RPP rates, it must take into account the balances in the variance accounts established by the

IESO under s. 25.33 of the Electricity Act and make adjustments with a view to eliminating the balances within 12 months. This proposed new section 10.1 causes the IESO to reduce (in the near term) the variance account balances by the global adjustment smoothing amounts, as provided by Financing Trust, thereby enabling the OEB to determine RPP rates that, despite being lower for RPP consumers in the near term, still eliminate the relevant variance account balances within 12 months.

- **Paragraph 11(2)2.ii:** Amend the formula for calculating the allocation of global adjustment for a month to a licensed distributor that is a market participant by subtracting the global adjustment smoothing amount for a month from "M", which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as "X", such that the formula would be [(M-X-N) x (R+S-T)]/(P-Q). Define "X" as suggested under section 10(1).

- **Paragraph 11(2)3:** Amend the formula for calculating the allocation of global adjustment for a month to each Class B market participant by subtracting the global adjustment smoothing amount for a month from "M", which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as "X", such that the formula would be [(M-X-N) x U]/(P-Q). Define "X" as suggested under section 10(1).

- **Paragraph 16(7)4:** Consider amending the description of "Global Adjustment" that is required to be included on certain invoices so as to inform consumers that their portion of the global adjustment for the month (i) may have been reduced by the application of a global adjustment smoothing amount from the Financing Trust, or (ii) may include amounts payable to the Financing Trust in respect of global adjustment smoothing amounts previously applied.

- **Section 20(1):** This section establishes an obligation for the Ontario Electricity Financial Corporation and every licensed distributor that is a market participant to give the IESO such information as the IESO may require for the purposes of the Regulation in the form specified by the IESO and before the expiry of the period specified by the IESO. Consider amending to extend this obligation to the Financing Trust.

- **Section 20(6):** This section provides that on request by the OEB, the IESO, a licensed distributor, an embedded generator, a retailer or the OEFC shall give the OEB such information relating to this Regulation as the OEB may require, in the form and within the period specified by the OEB. Consider amending to extend this obligation to the Financing Trust.

D. Amendments Under OEB Act to Implement Cost Recovery for Financing Trust

Amendments to the *Ontario Energy Board Act*, including amendments to O. Reg. 95/05 (Classes of Consumers and Determination of Rates) and the introduction of a new regulation, would be

needed to implement a cost recovery process for the Financing Trust in relation to the global adjustment smoothing mechanism, potentially with limited OEB oversight, as follows:

(i) **Ontario Energy Board Act:**

- **Section 78(3.3):** This provision establishes an obligation for the OEB, when determining rates for the retailing of electricity, to take into account balances in variance accounts established under section 25.33 of the Electricity Act and to make adjustments "with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct." Consider whether any amendments are needed, and confirm this works with the framework being proposed.

- **Section 78.7 (New):** We understand that the Province may want the OEB to have an oversight role. One possible approach would be to establish a new statutory section establishing that the IESO shall make payments to the Financing Trust with respect to the internal administrative costs incurred by the Financing Trust in connection with the purchase and management of the Regulatory Asset and the Financing Trust. Such payments by the IESO would need to be made in accordance with the order of the OEB then in effect, which orders shall be made by the OEB in accordance with rules prescribed under a new regulation.

    - The new regulation would need to be clear that the OEB does not have jurisdiction to consider the principal amount or any interest, financing costs, third party fees or expenses. Rather, OEB's role would be limited to considering the internal administrative costs of the Financing Trust and ensuring the Financing Trust receives an appropriate fee for its services, all of which would be recovered by the Financing Trust from the IESO, which would collect those amounts in the global adjustment. Note that, if this approach is accepted, the IESO and distributors and retailers would need the authority to collect such amounts as part of the GA and IESO would need the authority to pay such amounts to the Financing Trust. As such, additional amendments would be needed under O. Reg. 429/04.

- **Note:** Section 79.16 of the OEB Act does not require changes, but the significance of this provision should be understood.

    - Section 79.16 gives the OEB responsibility for determining electricity commodity prices for eligible consumers. Eligibility is determined under Reg. 95/05 (Classes of Consumers and Determination of Rates), which is also known as the Regulated Price Plan (RPP) Regulation.
    - Section 4(2) of the RPP Regulation defines RPP-eligible consumers as low volume consumers (i.e. those who annually use less than 150,000 kWh or such other amount as prescribed), consumers with demand of 50 kW or less, residential consumers that have accounts with distributors, consumers who annually use 150,000 to 250,000 kW of electricity, and consumers who have accounts with distributors if in the farming business.

- Paragraph 6(1)3 of the RPP Regulation provides that "In determining the rates (for RPP-eligible consumers), the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect those costs."
- The Ontario Energy Board has developed a Regulated Price Plan Manual (revised February 16, 2016) to describe the processes and methodologies it uses for determining electricity commodity prices that are charged to RPP consumers pursuant to Section 79.16 of the OEB Act and paragraph 6(1)3 of the RPP Regulation.

(ii) O. Reg. 95/05 (Classes of Consumers and Determination of Rates)

- **Paragraph 6(1)3:** Amend so as to require the Board, when forecasting the cost of electricity to be consumed by the consumers to whom the rates apply, to take into consideration not only the adjustments required under section 25.33 of the Electricity Act but also the application or prior application of global adjustment smoothing amounts determined by the IESO in accordance with Minister directives under section ■ of the Electricity Act, and to ensure that the RPP rates reflect those amounts. **[NTD: See above note re use of Minister directives]**

(iii) New Regulation (Payments to the Financing Trust)

- If the OEB is to be given the role of reviewing and approving the recovery of OPG's internal administrative costs for the Financing Trust under the potential section 78.7 (see above), then this regulation should describe the process and criteria pursuant through which the OEB would determine the amounts that the IESO would be required to collect through the global adjustment, in accordance with section 25.33 of the Electricity Act, and pay to the Financing Trust in respect of the provision of global adjustment smoothing amounts. This part of the regulation should establish:
  - any reporting requirements from the Financing Trust and/or the IESO to the OEB in connection with the global adjustment smoothing mechanism;
  - the frequency of the OEB making determinations under this part of the regulation;
  - the process through which the OEB shall make these determinations, which should be a streamlined administrative process rather than a public hearing process or, if a hearing is needed, then the scope of the proceeding should be clearly and narrowly constrained so as to deter intervenor involvement, lengthy proceedings and reduce/eliminate risk to recovery by Financing Trust;
  - the basis for the OEB's determinations as to the payments that shall be made to the Financing Trust, which should specify that:
    - the Financing Trust shall recover its prudently incurred internal administrative costs on a forecast basis each year;
    - the Financing Trust shall receive an appropriate fee each year (with some guidance as to what would be appropriate); and

- the approved payment amounts shall be collected by the IESO through the global adjustment and paid to the Financing Trust in accordance with the order of the OEB then in effect. Note that O. Reg. 429/04 would likely need amendments to permit IESO (and distributors and retailers) to collect these amounts through the global adjustment.

Version 2

This document is a draft intended for discussion purposes only. It may not be relied upon to interpret the legislation, if an Intergenerational Fairness in Hydro Rates Act, or any related act, is enacted by the Legislature. The notes included in this document are intended to assist the review of this discussion document only.

Confidential Draft

A proposal to create Legislation.

Intergenerational Fairness in Hydro Rates Act, 2017, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL TO ANY FINAL BILL PRIOR TO INTRODUCTION.

[Notes re this draft:
- all numbering of provisions will need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix that includes renewable energy. The Government is also committed to removing barriers to and promoting opportunities for renewable energy projects.[1]

The Government of Ontario has established a regulatory and contractual framework related to the generation and sale of electricity to ensure significant investment in decarbonizing and modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom.[2]

Given the long-term benefits that future generations of Ontarians will receive from many of these investments, it is appropriate and fair to raise money in respect of these generating sites and facilities[3] in a manner that allocates the costs of these investments fairly among present and future consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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Confidential Draft

[1] FLS: please see the preamble of the *Green Energy Act, 2009*.

[2] FLS: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".

[3] FLS: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL

Interpretation
Definitions

1. (1) In this Act,

"clean energy adjustment" means the amount determined under section 11x; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in renewable energy projects and cleaner energy sources and technologies, including alternative energy sources,

(b) removing barriers to and promoting opportunities for renewable energy projects and cleaner energy sources and technologies and clean energy, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[4] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")
[Note – still to draft: unit sub-meter providers and their customers.]

"Fair Allocation Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"Financial Services Manager" means Ontario Power Generation Inc. or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section 12.1; ("French")

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner under section x; ("French")

"holiday" means New Year's Day, Family Day, Good Friday, Christmas Day, Boxing Day, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day and, if any of those days falls on a Saturday or Sunday, the weekday next following that day that is not one of those days; ("jour férié")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section X for the reference period; ("French")

"investment asset" means all or part of the regulatory asset that is deemed to be an investment asset under section x; ("French")

"invoice amount" means, in respect of a consumer, the sum of the following amounts:

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[4] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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1. The commodity price of the electricity [used by the consumer?] during the invoice period.

2. The rates and charges set out in the applicable rate order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

3. Any adjustment required [in respect of the consumer?] under section 25.33 of the *Electricity Act, 1998*.

4. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada); ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of the owner of an investment asset by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the regulatory asset established under section X; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

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"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means an assignment, conveyance, disposition or sale; ("French")

"weekday" means any Monday, Tuesday, Wednesday, Thursday or Friday that is not a holiday. ("jour de semaine")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

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iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount, exclusions

(2) For the purposes of the definition of "invoice amount" in subsection (1), an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

i. A fixed monthly service charge payable by a generation facility within the meaning of section 50 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the Act;

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(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Effect of invalidity, etc.[5]

1.1 (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

2. (1) The purposes of this Act are,[6]

(a) to ensure that the costs of the clean energy initiative are fairly distributed among specified customers over time;

(b) to recognize the long-term benefits of the clean energy initiative that accrue over time and will continue to benefit present and future electricity consumers in the Province;

(c) to promote the use of clean energy sources and technologies, including low carbon, alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario;

(d) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity;

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[5] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[6] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

(e) to facilitate the maintenance of a financially viable electricity industry, including by raising money in respect of sites and facilities in the Province for the generation of electrical energy and the production therefrom;[7] and

(f) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.

Crown bound

3. This Act binds the Crown.

Protection and guarantee of scheme

Prohibition

4. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may enter into agreements for the purposes of guaranteeing that compensation will be paid to an investment asset owner for losses suffered as a result of,

(a) a contravention of subsection (1);

(b) a change in law that would adversely affect the rights under this Act of an investment asset owner;

(c) approval by the Lieutenant Governor in Council of a Fair Allocation Plan, or an amendment to a Fair Allocation Plan, that fails to recognize the principles set out in section x; or

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[7] FLS - as per the note in the Preamble on this language, please see 92A (4) of the *Constitution Act, 1867.*

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(d) a final determination by a court of final jurisdiction rendering invalid or ineffective all or any of the provisions of this Act.[8]

Electricity vendors, obligations

(5) If an electricity vendor fails to carry out its obligations under this Act for any reason, including because the electricity vendor is dissolved or restructured or because it becomes insolvent, the Government of Ontario shall carry out those obligations or ensure they are carried out by another appropriate entity.

PART II
FAIR ADJUSTMENT

Determination of rates, May 1, 2017 to April 30, 2018

6. (1) The Ontario Energy Board shall determine the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 in the following manner:

1. Determine the average rate payable by a representative consumer in accordance with subsection (2).

2. Determine the average monthly invoice amount that would be payable by a representative consumer under the rate determined under paragraph 1.

3. Determine the amount that is [# tbc] per cent less than the monthly invoice amount determined under paragraph 2.

4. Determine the average rate payable by a representative consumer that would result in the monthly invoice amount mentioned in paragraph 3 for a representative consumer.

[Note: Query whether 79.16 of the OEBA should be replaced to clearly state that the price-setting work that the OEB does under the RPP is authorized and that the work it must do to accommodate the Fair Adjustments is also authorized going forward.]

Determination of baseline, average rate

(2) For the purposes of paragraph 1 of subsection (1), the average rate payable shall be determined as follows:[9]

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[8] Note to translator: See s. 9 of the Public Authorities Protection Act.

[9] FLS: Please see section 6 of O. Reg. 95/05 (a bilingual reg).

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1. The Board shall determine rates in a manner that is consistent with the Standard Supply Service Code issued by the Board.

2. The Board shall forecast the costs of electricity to be consumed by the representative consumer, taking into consideration adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect those costs.

3. The Board shall set an off-peak period associated with the regulated price referred to as RPEMOFF in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board,

    i. that begins no later than 7 p.m. on every weekday and ends

        A. no earlier than 7 a.m. on the next day if the next day is a weekday, or

        B. no earlier than 12 a.m. on the next day if the next day is Saturday, Sunday or a holiday, and

    ii. that begins no later than 12 a.m. on every Saturday, Sunday and holiday and ends no earlier than,

        A. 12 a.m. on the next day, if the next day is Saturday, Sunday or a holiday, or

        B. 7 a.m. on the next day if the next day is a weekday.

Determination of rates, on and after May 1, 2018

7. On and after May 1, 2018, the Board shall determine the rate for electricity payable by a specified consumer as follows:

1. Determine the rate by applying the steps set out in section 6.

2. Adjust the rate determined under paragraph 1 for inflation in accordance with the regulations.

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PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

9x. (1) Subject to subsection (1.1), upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the owner of the investment asset, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Limitation

(1.1) No clean energy adjustment shall be collected from a specified consumer before May 1, 2022.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the Fair Allocation Plan applicable at the time when the payment is due; and

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

10x. (1) Any clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

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Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor.

Determination of clean energy adjustment

11x. (1) The Ontario Energy Board shall apply the method set out in Schedule 1 to determine the amount of the clean energy adjustment payable on a monthly basis by each electricity vendor on behalf of the electricity vendor's specified consumers.

True up amount

(2) The Ontario Energy Board may, in accordance with the regulations, adjust the amount determined under Schedule 1 from time to time to address the any difference between the amount of the clean energy adjustment payable in respect of the reference period and the amount of the clean energy adjustment collected as of the date of the determination.

Communication to electricity vendors

(4) The Ontario Energy Board shall communicate to each electricity vendor information relating to the clean energy adjustment to be allocated by the electricity vendor to each specified consumer in respect of a reference period.

IESO to invoice electricity vendors

12x. (2) The IESO shall issue an invoice to each electricity vendor for the clean energy adjustment in accordance with the regulations.

IESO to collect

(3) The IESO shall, as an agent of the investment asset owner, make reasonably diligent efforts to collect the clean energy adjustment from electricity vendors.

Collection account

(3.1) The IESO shall establish an account in which to record its collection of the following:

1. Amounts remitted from accounts established under section 15x.
2. Payments made by specified consumers directly to the IESO as electricity vendor, in respect of clean energy adjustment.

Deposit

(4) The IESO shall promptly deposit all amounts received in respect of the clean energy adjustment into the account established under subsection (3.1).

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Same, held in trust

(2) The amounts collected are deemed to be held in trust for the investment asset owner.

IESO to remit

(5) The IESO shall remit amounts received in respect of the clean energy adjustment to or for the benefit of the investment asset owner in accordance with the regulations.

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable Fair Allocation Plan, the IESO may collect the difference from specified consumers.

Electricity vendor to apply rate

13x. (1) Each electricity vendor shall, in accordance with the codes and orders of the Ontario Energy Board, determine the proportionate share of the clean energy adjustment payable on a monthly basis by each of its specified consumers.

Electricity vendor to invoice specified consumers

(2) The electricity vendor shall issue an invoice to each specified consumer for the applicable amount of the clean energy adjustment in accordance with the regulations.

Electricity vendor to collect

(3) Each electricity vendor shall, as an agent of the IESO, make reasonably diligent efforts to collect clean energy adjustments from specified consumers.

Pro rating of payments

14x. (1) This section applies if,

(a) an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices; and

(b) the amount paid is less than the total amount payable.

Same

(2) The electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices.

Deposit

(3) The electricity vendor shall deposit the portion of the payment allocated to the clean energy adjustment into the account established under X.

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Electricity vendor, account

15x. (1) Each electricity vendor shall establish and maintain an account into which the electricity vendor deposits or receives only the following:

1. Payments by specified consumers in respect of the clean energy adjustment.

2. Portions of payments by specified consumers that are allocated to the clean energy adjustment under subsection 14x (2).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Held in trust

(2) The amounts required to be deposited or received into the account are deemed to be held in trust for the investment asset owner.

Remittance to IESO

(5) The electricity vendor shall remit amounts received in respect of the clean energy adjustment to the IESO for the benefit of the investment asset owner in accordance with the regulations.

PART IV
FAIR ALLOCATION PLAN AND FINANCING PLAN

MINISTER TO PREPARE FAIR ALLOCATION PLAN

Minister to prepare plan

8. (1) In order to fairly measure and allocate amounts described in section 8.0.1 for a reference period among specified consumers for the purposes of this Act, the Minister shall prepare and provide to the Lieutenant Governor in Council a written plan entitled the Fair Allocation Plan.

Amendments to the plan

(2) Subject to the approval of the Lieutenant Governor in Council, the Minister may amend the Fair Allocation Plan from time to time, as the Minister considers appropriate, having regard to the requirements of this Act.

Effective date

(3) The Fair Allocation Plan or an amendment to the plan takes effect on the day that the plan or the amendment, as the case may be, is approved by the Lieutenant Governor in Council.

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Publication

(4) The Minister shall ensure that the Fair Allocation Plan and any amendments to the plan are made available to the public in a manner that the Minister considers appropriate.

Amounts to be allocated

8.0.1 The amounts referred to in subsection 8 (1) are, in relation to a reference period,

(a) the costs incurred by the IESO previously or expected to be incurred by the IESO during the reference period and after the reference period in relation to,

(i) payments made or expected to be made under section 78.1 of the *Ontario Energy Board Act, 1998*, other than payments made under contracts with Bruce Power L.P or Bruce Power A. L.P. or their successors or assigns, and

(ii) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*; and

(b) such other costs, benefits or amounts as may be prescribed, in respect of the clean energy initiative, made or received before the reference period or expected to be incurred during or after the reference period. ("French")

Principles

8.1 In preparing the Fair Allocation Plan or any amendments to the plan, the Minister shall have regard to the following principles:

1. Costs of the clean energy initiative should be allocated among specified consumers during the period beginning on the day this Act comes into force and ending on April 30, 2047 or such later day as may be prescribed.

2. The allocation of the costs among specified consumers should be proportionate to the benefits of the clean energy initiative to those specified consumers over time.

3. During a reference period, no specified consumer should bear an unreasonably disproportionate share of the costs.

4. To the extent that specified consumers have borne an unreasonably disproportionate share of the costs over periods that occurred before the

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coming into force of this Act, the allocation should provide for a fair adjustment for those specified consumers.

5. The allocation of costs among specified consumers over future reference periods should include reasonable assumptions about the time value of money, the rate of inflation, electricity consumption and the composition of specified consumers as a class of individuals.

Implementation

8.2 The IESO shall ensure that the IESO funding shortfall during a reference period does not exceed the maximum amount set out for the reference period in the Fair Allocation Plan.

FINANCIAL SERVICES MANAGER TO PREPARE FINANCING PLAN

Ontario Power Generation Inc. appointed as Financial Services Manager

8.3 Subject to section 12.1, Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Financial Services Manager to prepare plan

11. (1) The Financial Services Manager shall prepare and provide to the Minister a plan entitled the Financing Plan for the purpose of ensuring that decisions made under this Act are cost effective and consistent with the Fair Allocation Plan.

Consistency with Fair Allocation Plan

(2) The Financing Plan in effect at any given time shall be consistent with the applicable Fair Allocation Plan.

Amendments to approved plan

(3) The Financial Services Manager may propose amendments to the Financing Plan at any time.

[Note - still need to deem Financial Plan to be third party confidential information for the purposes of s. 17 of FIPPA?]

Implementation of Financing Plan

11.1 The Financial Services Manager shall implement the Financing Plan.

Contents of plan

12. (1) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following:

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1. The allocation of costs of the clean energy initiative among specified consumers over reference periods, as described in the Fair Allocation Plan.

2. The estimated IESO funding shortfall for each reference period.

3. The funding obligations incurred as part of the consideration for the sale of the regulatory asset.

4. The need for the clean energy adjustment payable by a specified consumer to be proportionate to the benefit that the specified consumer receives from the clean energy initiative.

5. Reasonable compensation for the Financial Services Manager on terms that balance market terms and conditions with the interests of specified consumers.

6. Such other matters as may be prescribed.

Limitation

(1.1) The Financing Plan shall not provide for the collection of the clean energy adjustment by specified consumers before May 1, 2022.

Special purpose financing entities

(2) The Financing Plan may provide for the Financial Services Manager to,

(a) if the Financial Services Manager is Ontario Power Generation Inc., establish one or more special purpose financing entities under subsection 53.1 (1.2) of the *Electricity Act, 1998*, that may incur funding obligations; or

(b) if the Financial Services Manager is appointed under section 12.1, establish one or more special purpose financing entities under subsection (3) that may incur funding obligations.

Same

(3) If the Financial Services Manager is appointed under section 12.1, it may create one or more special purpose entities in order to more efficiently conduct its activities under this Act.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Ontario Energy Board, the Province or the Lieutenant Governor in Council, except to the extent that any

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of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Funding obligations unaffected by amendment to Fair Allocation Plan

(4) No change to a funding obligation shall result from an amendment to the Fair Allocation Plan or Financing Plan that is made after the funding obligation has been incurred.

Termination of appointment

12.1 (1) The Minister may [by what means? Written order?] terminate an appointment as Financial Services Manager under section 8.3 or subsection (2) if,

(a) the Minister has advised the appointee that the Financing Plan is not consistent with the Fair Allocation Plan;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(2) Upon terminating an appointment under subsection (1), the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

PART V
THE REGULATORY ASSET [AND INVESTMENT ASSET]

Regulatory asset established

22. (1) The IESO has property rights and interests, which together constitute a regulatory asset, in the recovery of the IESO funding shortfall.
[Note to draft - Is it sufficient to say "*property rights and interests in the recovery of the IESO funding shortfall*"? Does that convey the right to enforce other parties' obligations that would allow for the shortfall to be recovered by the IESO?]

Limitation

(1.1) The right to recover the IESO funding shortfall under subsection (1) is subject to the following limits:

1. The amount of the IESO funding shortfall recovered in respect of a reference period may not exceed the amount determined in the Fair Allocation Plan for

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the reference period, minus the amount of the clean energy adjustment for the reference period.

[Note: Will want to link up the language in para. 1 above with the language relating to this in provision above that authorizes the IESO to collect this amount (where some of the R.A. has not been sold) - s. 12x (6).]

2. No part of the IESO funding shortfall shall be collected from specified consumers before May 1, 2022.

Same

(2) The establishment of the regulatory asset is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

Recording of IESO funding shortfall in books

22.1 (1) Subject to the approval by order of the Ontario Energy Board, the IESO shall record the IESO funding shortfall from time to time in its books, including adjustments resulting from any transfer of the regulatory asset.

Order

(2) The Ontario Energy Board may, in accordance with the regulations, by order specify how the IESO funding shortfall must be recorded.

Recording in books determinative

(3) A recording in its books is determinative of the amount of IESO funding shortfall at the time of the recording.

No hearing

(4) The order of the Ontario Energy Board shall be made in writing and without holding a hearing.

No appeals, etc.

(5) No appeal lies from the order of the Ontario Energy Board.

Judicial review

(6) The *Judicial Review Procedures Act* does not apply to an order made under this section.

IESO funding shortfall

22.2 (1) The IESO shall determine the IESO funding shortfall for each month in a reference period by calculating the difference between the following amounts:

1. The sum of all invoice amounts issued to specified consumers for the month.

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2. The sum of all invoice amounts that would have been issued to specified consumers for the month if paragraphs 1 and 2 of section 7.2 did not apply.

[Note: The value of any consideration received as part of a transfer should be reflected in this section -- see below para. 2 of subs. 23 (2) which says the payment should cause a reduction in the shortfall.]

Same

(2) The determination under subsection (1) shall be made based on the amount of electricity actually used by specified consumers during the reference period.

Transfer of regulatory asset

23. (1) The IESO may transfer the regulatory asset in accordance with the Financing Plan.

Consideration

(2) The IESO may receive consideration for the transfer of the regulatory asset, subject to the following rules:

1. The prospective investment asset owner shall pay to the IESO an amount equal to all or part of the IESO funding shortfall.

2. Upon receipt of the payment, the IESO shall record the payment as a reduction of the IESO funding shortfall in its books.

3. Upon receipt of the payment, the IESO shall have no continuing right or interest in, or maintain any right to recover all or any part of the transferred regulatory asset.

Investment asset

Regulatory asset deemed to be investment asset upon transfer

23.1 Upon transfer of the regulatory asset or a portion of the regulatory asset, the regulatory asset or portion is deemed to be an investment asset and is vested in the investment asset owner.

Same

(2) An investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

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2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Same

(3) An investment asset is not affected by failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

No set off, etc.

(4) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment asset owner or an owner of distribution system assets in the Province;

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a);

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(c) by any affiliate or successor of a person mentioned in clause (a).

Transfer of investment asset

24. The investment asset owner may transfer all or a portion of its rights and interests in an investment asset to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

25. (1) A transfer of a regulatory asset or an investment asset under this Act that is expressed to be a sale or an absolute assignment is a valid and enforceable sale and absolute assignment of the regulatory asset or investment asset, as the case may be, and confers upon the owner of the investment asset acquired a valid property right and interest in, to and under the applicable investment asset in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall or an investment asset owner's right, title and interest in, to and under an investment asset, as applicable (or relevant portion thereof), and not merely as a pledge thereof, and upon such absolute transfer the transferor shall retain no right, title or interest in regulatory asset or the investment asset (or relevant portion thereof) subject to the transfer, including all rights to recover the IESO funding shortfall or the investment asset arising after such transfer.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset or an investment asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the owner of the investment asset shall have priority over any liens in favour of such other persons.

Administration of investment asset

26. (1) The Financial Services Manager may administer an investment asset on behalf of the investment asset owner.

[Note: Consider location of this section with other roles of FSM above.]

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Same

(1.1) The administration of an investment asset may include the following:

1. Providing information to the Ontario Energy Board in respect of the funding obligation and the determination of the clean energy adjustment in accordance with section 11x.

2. Providing information to electricity vendors in respect of their obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(2) The Ontario Energy Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

Investment asset owner may grant pledge

27. (1) The owner of an investment asset may grant a pledge to or in favour of a person in, to and over all or a specified portion of its right, title and interest in, to and under the investment asset in connection with any funding obligation.

Types of pledge

(2) A pledge may be a lien, mortgage, charge, right of set-off or security interest.

Validity

(3) The pledge may be made to secure a funding obligation and when granted shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the person to whom the pledge is granted a valid security interest in, to and in respect of the investment asset in accordance with the terms of the pledge.
[Note: Additional content relating to the PPSA has not yet been addressed in any detail. Please review all subsections that contain the (x) below and advise what is needed. Some of this content was already covered by some of the numbered subsections in this draft.]

Perfection and priority of pledges

(x) For purposes of the *Personal Property Security Act*, the regulatory asset shall be intangible personal property and any pledge made by the owner of an investment asset in respect of a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

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Same

(x) All provisions of the *Personal Property Security Act* shall apply to the regulatory asset on the basis that it is intangible personal property, except to the extent otherwise provided in this section.

Same

(x) All proceeds of a related [Investment Interest?] that are subject to the pledge that are received by the owner of the investment asset shall immediately be subject to the pledge, and the security interest in the proceeds shall be perfected pursuant to the *Personal Property Security Act.*

Same

(x) A pledge perfected under the *Personal Property Security Act* shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the [Investment Interest?] subject to the pledge unless the pledgee has otherwise agreed in writing.

Same

(x) A pledgee shall have a perfected security interest in a related [Investment Interest?], including the owner of the investment asset's rights and interests in and to [the clean energy adjustment?] or other related proceeds in respect of the [Investment Interest?] and that are deposited in any [which account?] or other account of any [Electricity Distributor, IESO, Alternative Servicer or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds].

Proceeds

(8) All proceeds of the investment asset that are subject to the pledge and that are received by the investment asset owner shall immediately be subject to the pledge and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(9) The pledge shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment asset subject to the Pledge, subject to the written consent of the person to whom the pledge has been granted.

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Same

(10) The person to whom the pledge has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

Collective action required

28. If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: It seems that successors may need to be addressed here. Also Pledgees have not yet been addressed in this draft.]

Exercise of rights

29. The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

34. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

35.1 For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

35.2 (1) A court in the Province may, upon application by an investment asset owner [or pledgee?], order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner [or pledgee] by any person or entity authorized to collect the clean energy adjustment, defaults on any required remittance of the clean energy adjustment, collections or remittances.

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Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order.

Choice of law

37.1 The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

38. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or PLEDGE,

No further approvals, etc.

39. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

97x. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

98x. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees

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or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[10]

99x. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

100x. The Lieutenant Governor in Council may make regulations,

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[Note: reg-making powers to be dealt with in subsequent draft]

PART VII[11]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the [Fair Hydro Act];

(q.1) to enter into agreements or arrangements with for the purposes of the FHA;

(q.2) to engage in activities related to making payments to and receiving payments as contemplated under the FHA and to engage in related settlement activities;

(q.3) to engage in activities related to the creation, transfer and administration of the regulatory asset created under the FHA, which activities may include,

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[10] FLS - see s. 51 of the Electricity Act, 1998

[11] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

(i) incurring liabilities in relation to the regulatory asset

(ii) transferring the regulatory asset for consideration;

(q.4) acting as a recovery agent under the FHA;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, [FHA]

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include the following, in addition to any other objects, relating to the FHA:

1. Exercising the powers and rights and performing the duties and obligations assigned to it under that Act.

2. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by that Act subject to the right of reimbursement from amounts available to the financing entity.

3. Preparing reports on behalf of the financing entity.

4. Enforcing the rights of the financing entity.

5. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

6. Exercising the powers and performing the duties of the Financial Services Manager under that Act.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

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Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under [new Act].

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the FHA.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 71 of the Act would be amended by adding the following subsection

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

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SCHEDULE 1
METHOD FOR DETERMINING AMOUNT OF CLEAN ENERGY ADJUSTMENT FOR REFERENCE PERIOD

1. The amount of the clean energy adjustment for a reference period shall be determined by calculating the sum of the following:

1. The sum of all payments made by owners of an investment asset [during the reference period?] to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

[Note: Para. 1 is the definition of "repayment" from the Blakes doc. However, that definition include bracketed text that says: (*including making Finance Reserve Deposits).* I don't understand this because (1) Finance Reserve Deposit is listed as a separate line item in the definition of "finance amount" (see para. 4 below). In order to avoid duplication, can we exclude "finance reserve deposits" from para. 1?]

2. The sum of all funding costs for the reference period, as determined under section 2 to this Schedule.

3. The sum of all amounts payable by or on behalf of owners of investement assets to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

[Note: Para. 3 is the definition of "redemption amount" from the Blakes doc.]
[Note: What is meant by "make-whole" -- need some assistance in order to translate this term accurately. Do you have any examples of bilingual legislation where this term has been used?]

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable by owners of investment assets for the reference period that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

[Note: Para. 5 is based on the definition of "additional funding charges".]

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Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

1. Calculate the aggregate of all interest and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of owners of investment assets during the reference period in respect of all funding obligations, including the following:

    i. Standby commitment fees or charges paid to any lender.

    ii. Credit enhancement fees or charges paid to any credit enhancer.

    iii. Liquidity fees or charges paid to any liquidity provider.

    iv. Payments, including termination payments, made under derivatives.

    v. Deposits made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a funding obligation.

2. Calculate the aggregate of all amounts received by or on behalf of the owners of investment assets during the reference period in respect of a funding obligation, including reimbursement of any amounts referred to in subparagraphs 1 i to v.

[Note: Para. 2 is the definition of "finance receipts" in the Blakes doc.]

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

[Note: This section is a modification of the definitions provided in the Blakes document for "Finance Reserve Deposits" and "Finance Reserve Withdrawals". The proposed definition of "FR deposit" involved a subtraction of the "FR withdrawal" so the term 'deposit' was not really descriptive of a pure deposit but rather the balance.]

1. Calculate the sum of all amounts deposited [to what account?] during the reference period in order to pre-fund, collateralize, over-collateralize or

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establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn from the account during the reference period from deposits previously made [e.g. during a previous reference period?] as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

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Stikemans

Comment Draft: April ~~10~~ 11, 2017

CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will benefit present and future electricity consumers in the Province.

The imputed costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment"). The Global Adjustment is included as a charge billed to electricity consumers in their monthly electricity invoices.

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative, which may be higher than prevailing market price for electricity. These differences arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with long-term price certainty for electricity, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. In general, whenever amounts payable under these procurement contracts exceed the market price for electricity, the Green Costs Adjustment passes through the amount of such differences as part of the monthly charge to electricity consumers. Such amount then becomes available to IESO to meet its obligations under the procurement contracts. It has been determined that the useful lives of many of the assets encouraged by the Green Generation Initiative will be well in excess of the respective terms of the related procurement contracts, and in many cases may extend over more than one generation of electricity consumers.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective durations of the procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to Retail Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Retail Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future Retail Consumers (the "Fair Allocation Plan"). [NTD: The IESO has a number of comments on the FAP: (i) Is it necessary to include this much detail in the FAP, as opposed to broadly referencing a FAP that will articulate principles/parameters for allocating future deferred amounts, etc., and which will be developed and/or set out in the Regs; (ii) while we appreciate the constitutional issues, we believe there risk in prescribing this much detail in purpose/objects and in how the FAP is engineered, which makes it easier to challenge. Is it

> keep FAP higher level

not intended to provide for as much flexibility as possible?; (iii) is it intended that the 17% deferred amount is an outcome of the yet to be developed FAP?; (iv) the FAP is in essence a policy-based decision(s) and in the IESO's view would seem to have to necessarily be prepared by the Ministry, albeit with input from relevant experts, including the IESO, LDCs, etc. – as opposed to being delegated to experts]

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the Retail Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such Retail Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in respect of such period. In this case IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred by IESO to cover such a shortfall during one period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in one or more future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on Retail Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf such financing entities by a financial services agent under the Financing Plan contemplated in this Act. The Financing Plan will seek to reasonably match the payment obligations arising under such funding obligations, to be borne by the future Retail Consumers of the period in which such payment obligations become due, with the benefits of the Green Generation Initiative allocated to such future Retail Consumers under the Fair Allocation Plan.

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future Retail Consumers on an equitable and cost effective basis.

Article 2 - Definitions

In this Act:

"Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition.

"Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services Agent whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.

"Additional Funding Charges" means, for a Reference Period in respect of an Absolute Assignee, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of the Absolute Assignee

during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including (without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the Financial Services Agent on behalf of, the Absolute Assignee under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on the Absolute Assignee or incurred by on behalf of the Absolute Assignee under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Financial Services Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of the Absolute Assignee; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith by the Financial Services Agent for recovery and payment under the Financing Plan.

"Allocation Factor" means, in respect of a Retail Consumer for a Reference Period, the number (expressed as a percentage) determined in respect of the Retail Consumer by the OEB based on the application of the Attribution Methodology in respect of the Reference Period.[1] [NTD: Is this needed if OEB determines volumetric rate to recover Period Transition Charge?]

"Alternative Collection Agent" means a person appointed under Section 5(11) and in compliance with the requirements set out in Schedule 2 to assume the ~~collection activities and activities of any~~obligations of an Electricity Distributor ~~or IESO~~ under Article ~~5, as agent for and on behalf of the Regulatory Asset Owners,~~ 5.

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of ~~the Servicer~~an Electricity Distributor under Article ~~4, as agent for and on behalf of the Regulatory Asset Owners,~~ 4.

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars),

[1] Confirm that this will be based on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those may be identified and caught by the True-Up.

as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[2] means the methodology specified in the Fair Allocation Plan for allocating the Period Transition Charges for a Reference Period to individual Retail Consumers of the applicable Retail Consumer Group based on its Allocation Factor.

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by ~~the Servicer~~IESO, a Successor IESO or the Financial Services Agent, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[3]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) and each Pledgee that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.[4] [NTD: is there a need to reference this requirement in the legislation?]

"Delegate" means the person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act.

"Disposition" means ~~an~~any actual or purported sale, assignment~~,~~ or transfer~~, conveyance, sale, contribution, set over, exchange or other disposition~~ of an Investment Interest to an Absolute Assignee ~~pursuant to a Disposition Document.~~, and "Dispose" shall have a corresponding meaning.

"Disposition Document" means ~~the~~any agreement, deed, conveyance, instrument or other document ~~under~~ which relates to a Regulatory Asset ~~Owner effects a Disposition to an Absolute Assignee.~~or an interest therein. [ND: changes are intended to address partial circularity]

"Electricity Distributor" means, in respect of a Service Area, the rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, 1998* in respect of such Service Area, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received [or deemed to be received] [NTD: delete deeming language unless it is intended to provide for deemed collections] by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to IESO or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any

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[2] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

[3] This would pick up adjustments based on actual collection experience, changes in the retail consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

[4] Consider adding the Financial Services Agent and the Servicer as parties.

enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by any of a Electricity Distributor (or ~~in its stead,~~ by an Alternative Servicer) ~~, by the Servicer or by a Retailer, in each case~~ to a Retail Consumer that is served by the Electricity Distributor's distribution system in accordance with Section 4(1) in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to a distribution network in the Electricity Distributor's designated Service Area and in respect of applicable Transition Charges to be charged to the Retail Consumer under this Act. [NTD: The Alternative Servicer should only invoice for Transition Charges, not the entire invoice.] - agree

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services Agent; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to any Retail Consumer Group, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Retail Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Retail Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period in respect of an Absolute Assignee, the sum (without duplication) of the following amounts that are or become payable during the Reference Period ~~in respect of the~~by an Absolute Assignee: (a) Repayments; (b) Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges. [Should the Repayment Amount not be reduced to anticipate ordinary course refinancings by Finance Entities?]

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or

establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals.

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan.

"Financial Services Agent" means OPG or, following any Replacement Event, such other person or persons who may be appointed as the Financial Services Agent of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]

"Financing Entity" means an entity established in accordance with the Financing Plan to acquire all or an interest in the Regulatory Asset as an Absolute Assignee and to enter into Funding Obligations to finance such acquisition under the Financing Plan.[6]

"Financing Plan" means the written plan prepared by the Financial Services Agent on behalf of each Absolute Assignee in compliance with Article 9 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred by an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (j) the cash flows arising from time to time or otherwise derived from an Investment Interest may otherwise be applied, as the same may be amended, amended and restated or terminated by the Financial Services Agent in compliance with Article 9 from time to time.

"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve

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[5] Discuss whether to accommodate multiple Financial Services Agents. MOE to consider.

[6] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

account or other account established under any indenture, ancillary agreement or other financing document relating to its Funding Obligations, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period [in respect of a Funding Obligation] [NTD: not all receipts may relate to a Funding Obligation] , including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Absolute Assignee under derivatives and any Finance Reserve Withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the payment of the Funding Costs payable in respect of a Funding Obligation for the Reference Period. [NTD: Make provision for receipts in respect of reserve accounts, i.e Funding Costs should be reduced by interest receipts on reserve accounts]

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including each obligation to pay: principal, interest, premiums and other financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services Agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges incurred by or on behalf of the Absolute Assignee under the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

"Generator" means a generator of electricity that is subject to the *Electricity Act, 1998*.

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO" means (i) the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

"IESO Available Amount" means, for a Reference Period, the lesser of (a) the amount (if any) by which (i) the Maximum Transition Charge Amount for the Reference Period, exceeds (ii) Period Finance Amount for the Reference Period, and (b) the IESO Retained Interest Amount as of the [35th] day prior to the first day of a Reference Period plus any IESO Financing Costs that are due and payable and remain unpaid as of the [35th] day prior to the first day of a Reference Period.

[NTD: Parking for a moment the commercial law issues around subordination, we are considering whether the conferral upon the IESO of a subordinated residual interest in the Transition Charges cash flow create consolidation issues. It may also impact our ability to book an asset.]

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO during the month pursuant to section • of the *Electricity Act*.

"IESO ~~Financing~~Funding Costs" means, for a Reference Period, the ~~financing~~ funding costs (if any) incurred by IESO pursuant to Section 8(4) in order to finance its ownership of the IESO Retained Interest during the Reference Period.

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[7]~~; provided that if the amount of any such shortfall is determined to have been based on incomplete information, variances or estimates that were inaccurate, an adjustment shall be made in determining the amount of any subsequent shortfall for the month in which the inaccuracy is identified.~~ [NTD: it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDC's entails payments by LDCs to the IESO and then credits/debits by the IESO to LDCs to reflect RPP shortfalls/overages]. To the extent reasonably necessary to give effect to this Act, or any transaction contemplated hereby, IESO shall calculate the IESO Funding Shortfall for any month based on information provided by the Electricity Distributors and (i) such calculation shall be binding for all purposes; and (ii) any demonstrated inaccuracy in the calculation for any month (including any such resulting from inaccuracies in the information provided by Electricity Distributors) shall be accounted for by adjusting the IESO Funding Shortfall for a subsequent month.

"IESO Recovery" means each amount remitted to IESO (including by IESO retaining such amount) in respect of the IESO Retained Interest pursuant to Section 5(6)(b), and "IESO Recoveries" means, collectively, all such amounts received by IESO.

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or ~~if applicable the Alternative Collection Agent~~an IESO Successor prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the ~~Alternative Collection Agent~~ IESO Successor to recover payment of amounts payable by Electricity Distributors to IESO or the IESO Successor in accordance with Article 5.

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[7] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

"IESO Retained Interest" means IESO's right, title and ownership interest (if any) in, to and under the Regulatory Asset, which shall exclude each Investment Interest.

"IESO Retained Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, plus (b) the sum of all IESO Funding Costs incurred prior to the day in accordance with Section 8(4), minus (c) the aggregate net proceeds received by IESO from or on behalf of ~~each~~any Absolute Assignee as consideration for ~~the~~a Disposition ~~of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee~~ prior to the day, and minus (d) the IESO Recoveries received by IESO prior to the day.

"IESO Successor" means ~~the~~any entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to ~~a Disposition~~Section 6(2), which ownership interest may include (without limitation) ownership of a specified portion on a divided basis of the assets comprising the Regulatory Asset and ownership of an undivided ownership interest in the Regulatory Asset, in each case as may be described in the applicable Disposition Document.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Finance Amounts due and payable by all Absolute Assignees in respect of the month.

"Maximum IESO Recovery" means, for a month, the amount (if any) by which (a) the IESO Remittances for the month, exceed (b) the sum of all Finance Amounts that are due and payable by Absolute Assignees in respect of the month.

"Maximum Transition Charge Amount" means, for a Reference Period, ~~(a)~~ the aggregate amount of Future Fair Share of Green Transition Benefits that are allocable to the applicable Retail Consumer Group to such Reference Period in accordance with the Fair Allocation Plan~~, divided by (b) the applicable~~. [NTD: When will there be visibility into this process and amount. Is this calculated on a monthly basis or for a Reference Period ~~Length.~~]

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount and (b) the True-Up Amount in respect of the immediately preceding Reference Period.

"Period Transition Charges" means, for a Reference Period, the sum of (a) the Period Finance Charges for the Reference Period and (b) the IESO Available Amount for the Reference Period~~,~~ calculated in accordance with Section 4(2). [Does this mean that any retained IESO Interest amount is necessarily repaid in the next "Relevant Period, subject to the Maximum Transition Charge Amount?"]

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) June 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Reference Period Length" means, for a Reference Period, the number of months in the Reference Period.

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of the IESO Retained Interest and each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor or an Alternative Collection Agent, any bank account into which the Electricity Distributor or such Alternative Collection Agent deposits or receives Transition Charge Collections; (b) for the ~~Servicer~~IESO or an IESO Successor, any bank account into which IESO or the IESO Successor deposits or receives Transition Charges~~, Electricity Distributor Remittances or IESO Remittances; and (c) if applicable, for the Alternative Collection Agent, any bank account into which the Alternative Collection Agent~~

~~deposits or receives Transition Charge Collections~~, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each of (a) IESO, as owner of (and to the extent of) the IESO Retained Interest and (b) each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively IESO and each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Regulatory Asset.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO or if applicable the ~~Alternative Collection Agent~~[IESO Successor as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the Business Day preceding each Settlement Date.

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" ~~means any event specified as such in a Funding Obligation.~~ [should be defined, perhaps in the regulations]

"Retail Consumer" means:

(a) present and future consumers of electricity in the Province who are (i) consumers designated under section 79.16 of[, and O.Reg 95/05 under,] the *Ontario Energy Board Act, 1998*, or (ii) hold or are deemed to hold an "eligible account" under the *Ontario Rebate for Electricity Consumers Act, 2016*, other than any such consumer who has a contract with a Retailer who uses Retailer Consolidated Billing; and

(b) present and future Retailers who use Retailer Consolidated Billing,

and each case includes all such consumers and Retailers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and

distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO.

"Retail Consumer Group" means, in relation to a Reference Period, the Retail Consumers who receive Electricity Invoices during the Reference Period.

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

"Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.

"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is licensed to distribute electricity in accordance with the *Electricity Act, 1998*.

~~"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.~~

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means, for a Retail Consumer in respect of a Reference Period, (a) the Period Transition Charge, (b) multiplied by its Allocation Factor in respect of the Reference Period, divided by (c) the applicable Reference Period Length. [NTD: Do not need to create parallel process. The definition should be linked to the OEB process for determining the volumetric rate as part of the RPP process (see s. 4(2)). The OEB will determine volumetric rate based on forecast consumption, number of consumers, etc. to recover the Period Transition Charges.]

"Transition Charge Collection" means any amount received or deemed by this Act to have been received upon the collection of a Transition Charge paid by or on behalf of a Retail Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services Agent equal to (a) the Estimate of the Finance Amount for the related True-Up Period, minus (b) the Actual Finance Amount for such related True-Up Period, plus (c) the Collected Amount Adjustment for such related True-Up Period.

"True-Up Period" means, in relation to a Reference Period, the period from and including the [30th] day immediately preceding the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the Reference Period.

"Undertaking of the Lieutenant Governor in Council" means the undertaking of the Lieutenant Governor in Council given under Section 11(2).

Article 3 – Transition Charges

(1) Retail Consumer Obligation to Pay a Transition Charge – Each Retail Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such Retail Consumer by its

Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice. [Is the intent that IESO can recover the IESO retained interest only through the Transition Charges, subject to the Maximum Transition Charge Amount and after payment of the Assigned Interest?]

(2) **Indebtedness of Retail Consumers** – Until paid, a Transition Charge charged to a Retail Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the Retail Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[8] debt obligation owing by the Retail Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Retail Consumer under the Electricity Invoice or otherwise.[9]

(3) **No Set-Off or Reduction** – A Retail Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such Retail Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) **Allocation of Retail Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a Retail Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collection.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred under the Financing Plan (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period whether or not the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, whether or not the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

Article 4 – Invoicing of Transition Charges

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[8] Determine if this is critical for rating and markets. Logistics under consideration.

[9] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a Retail Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued by the Electricity Distributor or if applicable by the Alternative Servicer to the Retail Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable Retail Consumer.

(2) **Calculation of the Period Transition Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Agent on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. [35] days prior to the first day of a Reference Period, IESO or Successor IESO if applicable shall specify the IESO Retained Interest Amount and any IESO Financing Costs that are due and payable and remain unpaid on such day. Not later than one month prior to the first day of a Reference Period, the OEB shall calculate the Period Transition Charge applicable to the Reference Period based on the calculations and information set forth in such written notices received from the Absolute Assignees and based on such amounts specified by IESO or Successor IESO, which calculations, information and amounts shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the OEB shall apply the Attribution Methodology to determine the Allocation Factor for each Retail Consumer of the applicable Retail Consumer Group.

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each Retail Consumer of the applicable Retail Consumer Group who has a billing address in the Electricity Distributor's Service Area.

(5) **Adjustments** – The amount of any Transition Charge charged to a Retail Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the Absolute Assignees ~~shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to~~may appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners.

(9) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, ~~IESO, the Servicer,~~an Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to Retail Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges. ~~Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure.~~

~~(10) No Set-Off or Reduction – No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.~~

(10) ~~(11)~~ **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to Retail Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable][10] efforts to collect amounts owing by Retail Consumers in respect of Transition Charges charged to such Retail Consumers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent.

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from Retail Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[11] Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if

[10] Mirror collection "standard of care" under applicable legislation.

[11] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners.

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all Transition Charge Collections received by it from Retail Consumers in respect of the related Reference Period to or to the account of IESO or if applicable the Alternative Collection Agent.

(4) **Duty to Collect Electricity Distributor Remittances** – IESO or if applicable ~~any Alternative Collection Agent~~an IESO Successor shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable] efforts to accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from Retail Consumers that pay their Electricity Invoices directly to IESO.[12]

(5) **Segregation of Electricity Distributor Remittances** – IESO and if applicable ~~the Alternative Collection Agent~~an IESO Successor shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, IESO or if applicable any ~~Alternative Collection Agent~~IESO Successor shall hold such amounts in trust for the Regulatory Asset Owners.

(6) **IESO Remittances** – ~~On~~(a) on each Settlement Date[13], IESO and if applicable ~~the Alternative Collection Agent~~an IESO Successor shall remit all amounts on deposit in its Regulatory Asset Account ~~(a) first,~~in respect of the Investment Interest to or to the account of the Absolute Assignees ~~an amount equal to the Investment Remittance for the related month and (b) second, to IESO (including by IESO retaining such amount) an amount equal to the lesser of (i) the Maximum IESO Recovery for the related month and (ii)~~; and (b) on each Settlement Date[14], IESO and if applicable the IESO Successor shall remit all amounts on deposit in its Regulatory Asset Account in respect of the IESO Retained Interest ~~Amount as of the Settlement Date.~~to the IESO. [NTD: to discuss. I had thought that what we had discussed was that IESO could recover the IESO Retained Interest Amount not as part of the Transition Charges, but independently through its own processes. This would require an allocation, but not express subordination. If subordination is required together with a Maximum Transition Charge Amount, consider whether this puts IESO in the position of a residual interest holder and consider impact on ability to book asset, consolidation and prospectus.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such

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[12] Consider building this obligation into a deemed condition of licence for the IESO.

[13] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

[14] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO Successor** – IESO Successor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[14][15], then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to Retail Consumers in its applicable service area, including all consumers connected to the electricity distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by Retail Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest.

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, ~~the~~an Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from Retail Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure.

(11) **Appointment of an Alternative Collection Agent** – If a Replacement Event occurs in respect of any Electricity Distributor~~ or IESO~~, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations in respect of the Transition Charges otherwise required to be undertaken by such Electricity Distributor~~ or IESO~~, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor~~ or IESO~~, as applicable. Any Electricity Distributor~~ or IESO, as applicable,~~ that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to

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[14][15] This is in anticipation of a possible future restructuring of the distribution system.

permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the Absolute Assignees.

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any Retail Consumer, any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[~~15~~16]

(13) **Sequestration** – If any Electricity Distributor, IESO, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable.[~~16~~17]

(14) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

a. the right of IESO (i) to record its IESO Retained Interest in its accounts in accordance with Section 8(1), having a stated amount from time to time equal to the IESO Retained Interest Amount; and (ii) to receive IESO Recoveries from time to time in accordance with Section 5(6)(b);

[~~15~~16] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a Retail Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

[~~16~~17] Consider adding or substituting this provision for a right to appoint a receiver.

b. the right to impose, bill, invoice, collect and receive Transition Charges from Retail Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each Retail Consumer to pay the Transition Charges charged to the Retail Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices;

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of IESO or if applicable the ~~Alternative Collection Agent~~ IESO Successor in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

f. the right to enforce the duties and obligations of IESO and if applicable ~~the Alternative Collection Agent~~an IESO Successor to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred.

(2) **Validity of Dispositions** – ~~Despite any limitations or restrictions on a Disposition that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Disposition that may arise by operation of any applicable law of the Province, a Disposition by IESO to an Absolute Assignee made under the Financing Plan, or by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted~~[NTD: Addressed in Section 13(3)]. IESO may Dispose of all or any part of its interest in a Regulatory Asset in favour of an Absolute Assignee and, any such Disposition, when made, shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the applicable Investment Interest (or relevant portion thereof) in accordance with the terms of such Disposition~~, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer.~~. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the Regulatory Asset Owner's applicable right, title, and interest in, to and under the Regulatory Asset (or relevant portion thereof), and not merely as a Pledge thereof~~, and upon such,~~ Upon any Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the Investment Interest expressed to be subject to the Disposition~~, including all rights under the Investment Interest arising after such Disposition.~~.

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the transferring Regulatory Asset Owner and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the transferring Regulatory Asset Owner, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens or other adverse interests in favour of such other persons.

(4) **Validity of Pledges** – ~~Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Pledge that may arise by operation of any applicable law of the Province~~[NTD: Section 13(3)], a Pledge by an Absolute Assignee may be made to secure any related Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the Pledge. Other than as required by the Financing Plan, no consent of any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation shall, subject to the terms thereof, give rise to a security interest of which the PPSA applies, and may be perfected by filing a financing statement

under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.[17]18 A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. ~~Subject to the terms of the Collective Action Agreement, a Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).~~ [Covered by the PPSA]

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5. [Add Default rights of a Pledgee]

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document~~ in each case under the Financing Plan~~. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement.

Article 7 – Establishment of the Fair Allocation Plan[18]19

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[17]18 Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

[18]19 The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

(1) **Adoption of the Fair Allocation Plan** – The Delegate may, [by written declaration,] designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with Section 7(4).

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Retail Consumer Groups on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. The Fair Allocation Plan should specify the Reference Periods for the purpose of identifying applicable Retail Consumer Groups and allocating Future Fair Share of Green Transition Benefits among them on a relative basis over time.

3. The share of Future Fair Share of Green Transition Benefits allocable to a particular Retail Consumer Group in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to the Retail Consumer Group over such Reference Period.

4. The share of Future Fair Share of Green Transition Benefits to be allocated to a Retail Consumer Group and any future Retail Consumer Group at a particular time should not exceed the Estimated Future Green Transition Benefits, measured in respect of the Reference Periods following such particular time and to the Program End Date.

5. No future Retail Consumer Group should be allocated an unreasonably disproportionate share of Estimated Future Green Transition Benefits. Except in exceptional circumstances or in the case of any reallocation of an Over-Assessed Amount as contemplated in 7, below, the Future Fair Share of Green Transition Benefits to be allocated under a Fair Allocation Plan to any future Retail Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate]*.

6. The time value of money should be reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Retail Consumer Groups over time.

7. To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may determine that an adjustment should fairly be made to rebate Retail Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such Retail Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more Retail

Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) **Attribution Methodology** – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Transition Charges across the Retail Consumers of a particular Retail Consumer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation.

(4) **Amendments of the Fair Allocation Plan** – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation and (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation.

Article 8 – The IESO Retained Interest

(1) **Maintain Books of Account** – IESO may maintain books of account to record the IESO Retained Interest Amount and all adjustments thereto from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset. [Is this different from the Regulatory Asset or the IESO Retained Interest?]

(2) ~~**Limitation on Additions** – IESO shall not record additions to the IESO Retained Interest Amount in respect of IESO Funding Shortfalls (a) if such additions are restricted by the terms of any Disposition Document or the Collective Action Agreement, or (b) on or after *, 2017.~~ **[NTD: Leave to agreements]**

(3) **Dispositions** – IESO may, from time to time, effect a Disposition to an Absolute Assignee if (a) the Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the ~~Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; (c) the~~ Financial Services Agent confirms in writing that the Disposition is permitted under the Financing Plan; and (~~d~~c) the net proceeds payable to IESO from the sale of the related Investment Interest would not exceed the IESO Retained Interest Amount immediately before the time of such Disposition. [NTD: Is (c) necessary?]

(4) **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any Investment Interest subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party~~ and IESO shall not assert any such right or interest or take or omit to take any action to exercise or enforce its rights or interests under the IESO Retained Interest if such action or omission would impede or obstruct the rights of any Absolute Assignee or a Pledgee to enforce its rights and interests in any Investment Interest, except if IESO is expressly~~

~~permitted to take or omit to take such action, respectively, under the related Disposition Document or the Collective Rights Agreement~~.

(5) **IESO Financing Costs** – IESO ~~shall be entitled in good faith to~~may incur reasonable financing costs ~~(including interest and other reasonable financing charges) reflecting market terms and conditions and which are payable in arrears,~~ in order to finance its ownership of the IESO Retained Interest ~~from time to time.~~.

(6) **IESO Recoveries** – IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) available to IESO under Section 5(6)(b).

Article 9 – The Financing Plan

(1) **Power to Prepare, Implement and Amend the Financing Plan** – The Financial Services Agent shall be authorized to prepare, implement and amend the Financing Plan. If the Financial Services Agent is unwilling or unable to prepare and propose the adoption of the Financing Plan, the Delegate may by written declaration designate one or more other persons who shall be authorized to prepare, implement and amend the Financing Plan.

(2) **Terms and Conditions of the Financing Plan** – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions. The Financing Plan shall have regard to the principles and parameters set forth in Schedule 3 and such other conditions and requirements as may be specified in a written declaration of the Delegate or in accordance with the Regulation.

(3) **OEB Approval** – Any Additional Funding Charge payable to or for the benefit of the Financial Services Agent shall be subject to review and approval by the OEB.

(4) **OEB Review** – The OEB [shall] undertake an annual review of the records maintained by the Financial Services Agent for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan.

(5) **Replacement of the Administrative Agent** – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Administrative Agent shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services Agent under the Financing Plan. If the Financial Services Agent is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services.

(6) **Obligation to Apply IESO Remittances** – The Financial Services Agent shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Absolute Assignees, or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose.

(7) **Non-Recourse** – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, ~~IESO,~~ any Alternative Servicer, any Alternative Collection Agent, IESO, any IESO Successor, the Financial Services Agent, the OEB, the Province or the Lieutenant Governor in Council, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount. [All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]

(8) **Incurrences are Binding** – ~~Notwithstanding anything to the contrary in this Act, each~~Each Disposition made to or by an Absolute Assignee ~~and~~, all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation and each Pledge entered into by an Absolute Assignee, shall be valid and binding ~~for the purposes of this Act~~, including in determining the amount of related Transition Charges, ~~despite~~notwithstanding any ~~impairment or defect resulting from such failure.~~ defect in the manner in incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan.

[Article 10 – Compliance Matters[~~19~~20]

(1) **Right of the [OEB] to Inspect Books and Records** - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) **[OPG's Rate Settings** – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Agent [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Agent; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][~~20~~21]

Article 11 – Undertaking of the Lieutenant Governor in Council[~~21~~22]

[~~19~~20] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

[~~20~~21] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Administrative Agent of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

[~~21~~22] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes.

(1) **No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections** – The [Lieutenant Governor in Council] shall not in any way take or permit any action to reduce, impair, postpone or terminate the obligation of Retail Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by the Lieutenant Governor in Council, including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) **Undertaking and Agreement** – The [Lieutenant Governor in Council] shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, Successor IESO shall be established to perform such obligations.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated for any losses suffered by them as a result of any failure by the Lieutenant Governor in Council to comply with its undertakings and agreements in this Article ~~11.~~[22] 11.[23]

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid.

(6) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Lieutenant Governor in Council, including in marketing materials and other

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~~22~~[23] Requested by Torys. For discussion.

documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous[23][24]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

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[23][24] OPG would like the specific amendments related to OPG to be included in the Bill.]

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule ~~3~~[24]3[25]

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

(1) in respect of each Reference Period, make reference to the allocations of Future Fair Share of Green Transition Benefits to each Reference Group contemplated by the Fair Allocation Plan;

(2) estimate IESO Funding Shortfalls for each Reference Period;

(3) consider alternative funding arrangements suitable to fund the estimated IESO Funding Shortfalls, including short term and/or long term Funding Obligations;

(9) consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(4) if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Retail Consumer Group under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(5) reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical Retail Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation having regard to the application of the Allocation Methodology);

(6) incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:

a. whether the Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that

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[24][25] Awaiting input from Torys based on OPG mark-up of Financing Plan sections.

Blakes

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Toronto ON M5L 1A9 Canada
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INVOICE

Please write invoice number(s) on cheque

May 31, 2017

Ministry of Energy
50 Wellesley St. W.
5th Floor LSB
Toronto, ON M7A 2E7
Canada

Invoice:	1981054
Billing Lawyer	Wilson, Judy
HST/GST No.:	R119396778
Client:	00014229
Matter:	000001

Attention: Carolyn Calwell
Legal Director

Re: Ministry of Energy - Global Adjustment Mitigation

FOR PROFESSIONAL SERVICES RENDERED
as set out in the attached printout:

BALANCE DUE IN CANADIAN CURRENCY **$ 554,570.10 CAD**

REMITTANCE PAGE

Remittance Instructions

*** * * Terms: Due and Payable Upon Receipt * * ***

If paying by cheque, please make cheque payable to **Blake, Cassels & Graydon LLP**. Please remit this page with payment.
If wiring funds, please refer to the appropriate section below for instructions:

Canadian Funds Wiring Instructions:

Canadian Imperial Bank of Commerce
Main Branch, Commerce Court West
Toronto, Ontario M5L 1A2
Transit No.: 00002

Swiftcode: CIBCCATT
Beneficiary: Blake Cassels & Graydon LLP
Account No.: 000021602012
Reference: Invoice No. 1981054

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Interest at the rate of 4.5% per annum will be charged on all amounts not paid within one month of delivery of this invoice.

Approved
Jan 12/17

Approval Log
signed

Blakes

Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trade-mark Agents
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

INVOICE

Please write invoice number(s) on cheque

May 31, 2017

Ministry of Energy
50 Wellesley St. W.
5th Floor LSB
Toronto, ON M7A 2E7
Canada

Invoice:	1981054
Billing Lawyer	Wilson, Judy
HST/GST No.:	R119396778
Client:	00014229
Matter:	000001

Attention: Carolyn Calwell
Legal Director

Re: Ministry of Energy - Global Adjustment Mitigation

FOR PROFESSIONAL SERVICES RENDERED
during the period ended April 30, 2017, as follows:

Total Fees	$ 490,770.00
Harmonized Sales Tax (13.0%)	63,800.10
TOTAL DUE IN CANADIAN CURRENCY	**$ 554,570.10 CAD**

Blakes

Invoice: 1981054
Date: May 31, 2017

Re: Ministry of Energy - Global Adjustment Mitigation (000001)

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
03/27/17	Jackson, Adam	Discussion with S. Ashbourne and J. Viner regarding outline of legislation; office conference and call; reviewing memorandum regarding fair hydro legislation; reviewing summary table of New York legislation from J Viner.	1.5	570.00	855.00
04/01/17	Ashbourne, Stephen R.	Reviewing comments from MOE and annotations; reviewing B. Stokes' comments and additions to MOE version; revising legislation to expand on "funding shortfall" and to deal with positive amounts under power contracts; making revisions and working in comments and annotations from MOE/Blakes working group and responding to questions and correspondence.	4.7	570.00	2,679.00
04/01/17	Stokes, Bryson	Marking up legislative outline (Part 5), and annotations.	2.7	570.00	1,539.00
04/01/17	Wilson, Judy	Reviewing various documents related to the revisions to the statute.	2.8	570.00	1,596.00
04/02/17	Ashbourne, Stephen R.	Drafting legislation, including further revisions and working in comments and annotations from MOE/Blakes working group and responding to questions.	5.3	570.00	3,021.00
04/02/17	Jackson, Adam	Amending Fair Legislation.	4.0	570.00	2,280.00
04/02/17	Stokes, Bryson	Calls and emails re: finalization of comments on draft annotated legislation.	0.6	570.00	342.00
04/02/17	Viner, Jon	Drafting schedule to proposed Fair Act regarding content of treasury plan, treasury tools to be delegated and parameters of such delegation.	3.4	570.00	1,938.00
04/02/17	Wilson, Judy	Reviewing statutory revisions annotated document; various communications with James Rehob	5.8	570.00	3,306.00
04/03/17	Ashbourne, Stephen R.	Internal meeting with J. Wilson, B. Stokes, J. Viner and A. Jackson to discuss status of legislation and requirements; telephone call to Trevor Thom; preparing revisions and comments on draft; preparing for meeting at MOE for internal walk-through of legislation and attending meeting; internal meeting with P. Hogg and C. Beagan-Flood to walk through approach to legislation; discussion	9.2	570.00	5,244.00

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Invoice: 1981054
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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		with TD regarding proposed capital structure of finance entity; follow-up meeting to confirm details in S. Ashbourne draft summary; preparing for meeting with working group; preparing comment draft of summary for circulation to working group.			
04/03/17	Beagan Flood, Catherine	Reviewing draft of legislative provisions; meeting regarding draft legislation.	3.0	570.00	1,710.00
04/03/17	Hogg, Peter	Reviewing and marking up long document prepared by S. Ashbourne outlining details of the Fair Allocation Plan.	2.0	570.00	1,140.00
04/03/17	Hogg, Peter	Meeting to discuss the Fair Allocation Plan with S. Ashbourne, B. Stokes, C. Beagan Flood and others.	2.2	570.00	1,254.00
04/03/17	Jackson, Adam	Office conference with S. Ashbourne; meeting with S. Ashbourne, P. Hogg, B. Stokes and C. Began-Flood regarding constitutional questions.	3.0	570.00	1,710.00
04/03/17	Jackson, Adam	Reviewing amended legislation; reviewing legislation to address delegations and other constitutional issues; amending treasury plan.	2.0	570.00	1,140.00
04/03/17	Prestage, J.A.	Review and comment on draft of statutory provisions; meeting regarding same.	4.2	570.00	2,394.00
04/03/17	Shamess, Brittany	Reviewing preliminary internal draft of the "Fair Hydro" legislation and drafting comments on suggested revisions and additions.	2.8	570.00	1,596.00
04/03/17	Stokes, Bryson	Preparation for and attending meeting with MOE team; calls preparing for same.	2.4	570.00	1,368.00
04/03/17	Stokes, Bryson	Reviewing legislative drafting documents circulated for meeting.	1.6	570.00	912.00
04/03/17	Viner, Jon	Reviewing draft Fair legislation and providing comments on structure and functionality of financing platform.	3.4	570.00	1,938.00
04/03/17	Viner, Jon	Attending meeting with C. Beagan-Flood, J. Prestage, B. Stokes, A. Jackson and S. Ashbourne regarding structure, constitutionality and required content of Fair legislation.	2.3	570.00	1,311.00
04/03/17	Wilson, Judy	Reviewing program description documents; brief teleconference.	4.5	570.00	2,565.00
04/04/17	Ashbourne, Stephen	Engaged all day in meetings, including	13.5	570.00	7,695.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
	R.	meeting at MOE with working group followed by meeting with accountants; following up review of Torys proposed outline for lawyers meeting; reviewing Stikemans feedback and Torys document; considering issues with legislative summary and further revisions to circulate to the working group; call with S. Nelms regarding TD engagement letter; reviewing further "unresolved" list of issues circulated to the Deputy by Torys and call with C. Calwell to discuss same; reviewing and providing comments to C. Calwell on "policy outline"; reviewing NY comparison prepared by J. Viner; providing further input into "treasury plan" and internal discussions regarding same; internal meeting to consolidate comments on Blakes summary and next steps; preparing for working group meeting; exchanges with C. Beagan-Flood and incorporate her comments into the discussion of the summary; calls throughout the day with J. Rehob; follow-ups with S. Wong for regulatory input; preparing revised version of the Blakes summary.			
04/04/17	Beagan Flood, Catherine	Meeting with P. Hogg and B. Shamess to discuss constitutional issues and related email with S. Ashbourne; providing comments on draft legislation.	2.2	570.00	1,254.00
04/04/17	Hogg, Peter	Meeting with C. Beagan-Flood and B. Shamess, with B. Stokes on the phone some of the time, to review draft legislation.	1.5	570.00	855.00
04/04/17	Jackson, Adam	Reviewing legislation; drafting treasury plan.	6.0	570.00	3,420.00
04/04/17	Prestage, J.A.	Review and comment on draft of statutory provisions.	1.8	570.00	1,026.00
04/04/17	Shamess, Brittany	Preparing for status meeting with C. Beagan-Flood and P. Hogg; drafting email to S. Ashbourne regarding draft legislation.	4.3	570.00	2,451.00
04/04/17	Viner, Jon	Reviewing and revising Fair legislation in preparation of lawyers meeting preparing hand-out chart comparing proposed Fair legislation against New York legislation.	5.0	570.00	2,850.00
04/04/17	Wilson, Judy	Prepare for and attend meetings with project team and with stakeholders regarding the program documents.	7.2	570.00	4,104.00
04/04/17	Wong, Sharon	Preparing memorandum describing the	2.0	570.00	1,140.00

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		regulatory regime applicable to the Debt Retirement Charge.			
04/05/17	Ashbourne, Stephen R.	Engaged throughout the day, including reviewing and responding to initial constitutional feedback from CBF; preparing legislative summary for discussion with Torys and OPG; reviewing OPG Q&A; initial conference call with MOE to review quantum and framework issues; reviewing MOE legislative document and identify gaps; attending meeting with OPG and Torys and discussing legislative validity and related issues; discussion with TD regarding US legislation and basis for Ontario equivalent; taking comments from J. Prestage; various follow-ups regarding group coordination and involvement of dealers at this stage; various exchanges regarding bypass issue; attending internal and MOE meetings to discuss approach to provide drafting instructions to legislative counsel.	12.6	570.00	7,182.00
04/05/17	Beagan Flood, Catherine	Email with S. Ashbourne, J. Wilson and S. Wong regarding analysis of draft legislation; reviewing constitutional research.	5.5	570.00	3,135.00
04/05/17	Jackson, Adam	Preparing for meeting; all party meeting to discuss Fair Act; follow-up discussion with Ministry of Energy and S. Ashbourne.	7.7	570.00	4,389.00
04/05/17	Prestage, J.A.	Finalize note to S. Ashbourne regarding draft statutory terms.	0.5	570.00	285.00
04/05/17	Shamess, Brittany	Reviewing emails between Blakes team regarding draft legislation revisions and comments; reviewing case law on the intersection between statutory obligations to pay and Federal bankruptcy law.	1.2	570.00	684.00
04/05/17	Stokes, Bryson	Reviewing updated documents and comments.	0.8	570.00	456.00
04/05/17	Stokes, Bryson	Calls with C. Beagan-Flood; call with S. Ashbourne.	1.7	570.00	969.00
04/05/17	Viner, Jon	Reviewing correspondence regarding underlying constitutional theory of fair legislation between. S. Ashbourne and C. Beagan Flood.	0.2	570.00	114.00
04/05/17	Wilson, Judy	Prepare for (reviewing documents) and attend teleconference with stakeholders.	7.2	570.00	4,104.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
04/05/17	Wong, Sharon	Preparing response to C. Began-Flood's request for information regarding programs that affect the cost of Global Adjustment for First Nations and indigenous people.	1.8	570.00	1,026.00
04/06/17	Ashbourne, Stephen R.	Engaged throughout the day, including several meetings with MOE to discuss regulatory framework and related matters; preparing revised version of legislative summary; follow-up meeting with Torys to review nature of regulatory asset and to discuss approach to financing and flexibility; internal meeting with MOE to review financial parameters of asset and carry-forward; attending group meetings; revising summary for circulation to group; internal exchanges regarding "bypass" issue and constitutional implications; reviewing and responding to IESO business issues document; reviewing and reflecting comments from Torys and H&W in summary; ongoing structuring discussions and related matters.	13.6	570.00	7,752.00
04/06/17	Beagan Flood, Catherine	Call with S. Ashbourne regarding bypass issue; call with P. Hogg and B. Shamess regarding bypass issue.	1.1	570.00	627.00
04/06/17	Hogg, Peter	Meeting by telephone with C. Beagan-Flood, S. Ashbourne and other Blakes lawyers on the treatment of bypass.	1.0	570.00	570.00
04/06/17	Jackson, Adam	Reviewing mark-ups; drafting responses to comments; amending Fair Act; discussion and with J. Viner and S. Ashbourne regarding Fair Act.	8.5	570.00	4,845.00
04/06/17	Shamess, Brittany	Attending phone call with Blakes team regarding bypass group.	0.9	570.00	513.00
04/06/17	Stokes, Bryson	Call with C. Beagan-Flood, P. Hogg and S. Ashbourne regarding bypass issues; reviewing correspondence re: same; calls with J. Wilson and S. Ashbourne.	2.6	570.00	1,482.00
04/06/17	Viner, Jon	Discussing issues pertaining to non-bypassability and constitutional theory underlying Fair legislation with S. Ashbourne, A. Jackson, P. Hogg and C. Beagan-Flood; reviewing Fair legislation use of "Regulatory Asset Owner" concept and providing comments on same; reviewing comments to Fair legislation by Torys (OPG) and Stikeman Elliott (IESO) and revising Fair legislation.	7.2	570.00	4,104.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
04/06/17	Wilson, Judy	Review program/legislative plan draft.	2.5	570.00	1,425.00
04/07/17	Ashbourne, Stephen R.	Engaged throughout the day, including continuing to prepare revised legislative summary that reflects Torys' input and circulating same; exchanges with TD to coordinate dealer input for Government; preparing for and attending meeting with group (other than dealers) to work through summary, including exchanges on validity and financial parameters; attending meeting with Goldmans/CIBC/RBC and Oslers to review legislative basis for Act and approach to financings and constraints; exchanges with US counsel regarding US precedents; participating in structuring discussions around constitutional issues.	14.7	570.00	8,379.00
04/07/17	Shamess, Brittany	Drafting informal memo to Blakes team regarding bypass fee concerns.	3.8	570.00	2,166.00
04/07/17	Stokes, Bryson	Emails re regulatory regime and reviewing comments.	0.7	570.00	399.00
04/07/17	Wilson, Judy	Prepare for and attend stakeholder meeting.	6.8	570.00	3,876.00
04/08/17	Ashbourne, Stephen R.	Preparing revised summary of legislation to reflect input from group and modified approach to address past carry-forward adjustments.	4.4	570.00	2,508.00
04/09/17	Ashbourne, Stephen R.	Engaged throughout the day, including internal follow-ups regarding OEB roles; reviewing exchanges with Stikemans and Torys regarding nature of regulatory asset and approach to reflect entitlements, including detailed responses to Feldman and Hamilton emails; telephone call with B. Purkis to discuss approach on several issues; preparing detailed mark-up of summary to reflect discussions from last week, including to move away from power contract construction towards broader construction; exchanges regarding constitutional issues and structuring implications; reviewing M. Feldman's comments on summary and revising to reflect same; exchanges regarding proposed meeting with Torys' constitutional lawyers.	14.6	570.00	8,322.00
04/09/17	Beagan Flood, Catherine	Reviewing legal research.	4.0	570.00	2,280.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
04/10/17	Ashbourne, Stephen R.	Engaged throughout the day, continuing to revise legislative summary for internal circulation; internal meeting to coordinate input on Torys' comments; ongoing discussion with C. Calwell and J. Rehob regarding delegations and structure; follow-up with T. Christie regarding quantum of carry-forward; preparing for meeting at Blakes with broad group to review and discuss legislative summary; reviewing issues list provided by Oslers; attending lengthy meeting with broad group to review and discuss legislative summary and Oslers issues list; post-meeting discussions regarding approach to issues and extent of delegation; revising legislative summary and circulating same to broad group for comment; follow-up discussion with B. Purkis.	18.8	570.00	10,716.00
04/10/17	Beagan Flood, Catherine	Drafting analysis of constitutional issues; call from S. Ashbourne regarding delegation and bypass issues; email with P. Hogg and B. Shamess.	2.4	570.00	1,368.00
04/10/17	Jackson, Adam	Engaged throughout the day reviewing and amending legislation; reviewing foreign precedents; discussions with S. Ashbourne and J. Viner regarding legislation.	4.5	570.00	2,565.00
04/10/17	Shamess, Brittany	Reviewing Quebec case law on electricity regulation, per C. Beagan-Flood's instructions.	0.7	570.00	399.00
04/10/17	Stokes, Bryson	Reviewing and revising Fair Hydro Act document; reviewing existing legislation to complete drafting; reviewing provisions with S. Wong.	8.5	570.00	4,845.00
04/10/17	Stokes, Bryson	Numerous calls with S. Wong regarding legislation and cross references; calls with S. Ashbourne to discuss draft; emails with J. Rehob and D. Shear.	1.4	570.00	798.00
04/10/17	Viner, Jon	Drafting chart outlining roles and responsibilities of OPG, IESO and Ministry of Energy in draft Fair Hydro legislation; drafting chart outlining proposed calculation of inputs into determination of Transition Charge Amounts; reviewing draft of Fair Hydro legislation and providing comments regarding replacement of servicer on events of default under transaction documents.	6.9	570.00	3,933.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
04/10/17	Wilson, Judy	Prepare for and attend meeting with stakeholders.	7.8	570.00	4,446.00
04/10/17	Wong, Sharon	Reviewing and commenting on the draft Fair Hydro Act and discussing same with B. Stokes.	8.4	570.00	4,788.00
04/11/17	Ashbourne, Stephen R.	Engaged throughout the day, including preparing revised summary for Oslers and Stikemans to update; telephone call with B. Purkis to work through structure of legislation and debrief based on meeting exchanges; internal meeting to coordinate feedback and to provide legislative counsel with instructions; conference call and meeting with MOE (T. Christie) to discuss allocations forecasts; attending at MOE for meetings and drafting discussions; exchanges with C. Beagan-Flood regarding constitutional issues; following up regarding underlying electricity inputs from S. Wong; exchanges with C. Calwell regarding missed deadline for comments by Oslers and cover note; exchanges with J. Rehob; telephone call with B. Purkis regarding structure and rigid proposals by group; reviewing Stikemans' comments on legislative summary; exchanges with CBF regarding constitutional basis and fallback scenario; revising summary to prepare for group meeting.	13.6	570.00	7,752.00
04/11/17	Beagan Flood, Catherine	Providing comments on draft legislation.	3.8	570.00	2,166.00
04/11/17	Shamess, Brittany	Reviewing and considering draft 2 of the new bill and the first draft of Article 10 from the Blakes document.	1.6	570.00	912.00
04/11/17	Stokes, Bryson	Telephone conference calls regarding equitable allocation forecasts; meeting at Ministry of Energy to work on drafting; calls with J. Rehob.	9.8	570.00	5,586.00
04/11/17	Stokes, Bryson	Reviewing and revising updated draft of Fair Hydro Act circulated by S. Ashbourne.	2.2	570.00	1,254.00
04/11/17	Viner, Jon	Reviewing and providing comments on draft of Fair Hydro legislation; attending meeting with S. Ashbourne, B. Stokes, D. Rehob, J. Shear and J. Kacaba regarding theory underlying Fair Hydro legislation, constitutional issues, and revisions to Fair Hydro legislation.	8.7	570.00	4,959.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
04/11/17	Wilson, Judy	Reviewing presentation regarding forecasting the Global Adjustment; attend teleconference regarding Global Adjustment forecasting; review legislative documents.	3.5	570.00	1,995.00
04/11/17	Wong, Sharon	Reviewing and commenting on the draft Fair Hydro Act.	5.8	570.00	3,306.00
04/12/17	Ashbourne, Stephen R.	Engaged throughout the day, including drafting legislation; exchanges with C. Beagan Flood and P. Hogg regarding constitutional matters; reviewing Oslers' markup of summary and preparing for meeting at Torys; internal meeting to coordinate drafting inputs; meeting with T. Christie to review model and assess basis of carry forward; attending at Torys for meeting to review Oslers' comments; attending at MOE for evening to review legislation and provide input on structure, etc.; preparing summary of meeting for J. Wilson; discussions through the day with B. Stokes, A. Jackson and J. Viner regarding drafting matters.	15.4	570.00	8,778.00
04/12/17	Beagan Flood, Catherine	Providing advice to J. Wilson, S. Ashbourne and B. Stokes on constitutional issues; providing comments on draft preamble and purpose clauses.	1.8	570.00	1,026.00
04/12/17	Shamess, Brittany	Emails with Blakes team; reviewing draft 3 of the Intergenerational Fairness in Hydro Rates Act; considering preamble and purpose clauses and drafting revisions to same.	3.0	570.00	1,710.00
04/12/17	Stokes, Bryson	Drafting session at the Ministry of Energy; calls with Legislative Counsel.	8.0	570.00	4,560.00
04/13/17	Ashbourne, Stephen R.	Engaged throughout the day, including preparing list of business issues for discussion with MOE and TD; meeting with B. Purkis to work though business issues and to discuss strategy; reviewing Texas precedent and various exchanges with US counsel to understand language used for true-up; reviewing comments on legislation summary from Stikemans and Torys and related calls with M. Feldman and P. Hamilton; attending at MOE to draft legislation with meetings through the day and evening.	15.3	570.00	8,721.00
04/13/17	Beagan Flood, Catherine	Providing comments on draft legislation.	1.0	570.00	570.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
04/13/17	Jackson, Adam	Engaged throughout the day working through legislation with team from the Ministry of Energy.	12.0	570.00	6,840.00
04/13/17	Stokes, Bryson	Drafting Meetings at MOE.	10.4	570.00	5,928.00
04/13/17	Viner, Jon	Reviewing legislative council draft of fair hydro legislation against Blakes draft legislation and comments provided by OPG and IESO; revising proposed legislation and providing comments to legislative council regarding creation and nature of regulatory asset and transferring and granting security in same.	7.0	570.00	3,990.00
04/13/17	Wilson, Judy	Prepare for and attend Rate Mitigation Implementation Group meeting.	3.1	570.00	1,767.00
04/14/17	Ashbourne, Stephen R.	Updating legislation summary to reflect accommodating position regarding Torys/Oslers mark-up; attending at MOE for all day session to prepare legislation based on summary, including meetings throughout the day and reviewing drafting instructions and various follow ups; exchanges with B. Purkis regarding true-up requirements and US precedents.	14.5	570.00	8,265.00
04/14/17	Jackson, Adam	Attending at ministry office to draft legislation.	10.5	570.00	5,985.00
04/14/17	Stokes, Bryson	Drafting language prior to meeting; meeting at Ministry of Energy offices working on instructions to legislative counsel.	11.8	570.00	6,726.00
04/15/17	Ashbourne, Stephen R.	Telephone call from C. Calwell regarding status and progress; discussion with B. Stokes regarding drafts; reviewing draft legislation; annotating legislation with notes; participating in MOE group call to walk through legislation; continuing to annotate legislation; providing feedback on cover note from C. Calwell; exchanges with C. Calwell throughout the evening; reviewing final circulation.	5.8	570.00	3,306.00
04/15/17	Jackson, Adam	Reviewing revised draft of legislation; call with working group from Ministry of Energy regarding latest draft of legislation.	2.5	570.00	1,425.00
04/15/17	Stokes, Bryson	Reviewing and commenting on drafts.	2.2	570.00	1,254.00
04/15/17	Stokes, Bryson	Emails regarding in progress draft legislation.	0.3	570.00	171.00
04/16/17	Ashbourne, Stephen	Exchanging emails with C. Calwell; telephone	1.2	570.00	684.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
	R.	call with B. Purkis to discuss draft legislation and strategy.			
04/16/17	Stokes, Bryson	Emails with S. Ashbourne regarding draft; call with S. Ashbourne.	0.6	570.00	342.00
04/17/17	Ashbourne, Stephen R.	Engaged through the day, including review and comment on Draft 8 of the legislation; reviewing dealer requested form of the guarantee; reviewing and preparing responses to Tory/OPG list of discussion topics for the afternoon working group meeting; reviewing further input from Torys regarding tax; exchanges with C. Calwell regarding further revised draft of the legislation; preparing mark-up of legislation; reviewing Stikeman's mark-up of Act and provide feedback on same to C. Calwell; pre-meeting with C. Calwell to review the various positions and comments from the working group on the last circulated version; exchanges with TD regarding post-meeting follow-ups and sidebar discussions with dealers and regarding OPG; reviewing riders from D. Shear and exchanges with B. Stokes regarding same; exchanges with P. Hamilton; reviewing and marking-up legislation.	12.7	570.00	7,239.00
04/17/17	Jackson, Adam	Meeting with working group; amending legislation; break-out meeting with Ministry of Energy; meetings with S. Ashbourne, J. Viner and B. Stokes; preparing list of open issues.	15.4	570.00	8,778.00
04/17/17	Stokes, Bryson	Working on drafting instructions; attending stakeholder meeting and preparing for same; working on instructions following meeting.	13.8	570.00	7,866.00
04/17/17	Viner, Jon	Reviewing comments of Ontario accounting, the OEB and Torys tax regarding prior drafts of fair hydro outline against proposed fair hydro legislation and determining revisions required to fair hydro legislation; drafting sections of fair hydro legislation pertaining to calculation of clean energy adjustment; discussing drafting of provisions pertaining to clean energy adjustment and fair allocation amount with S. Ashbourne and A. Jackson.	7.2	570.00	4,104.00
04/17/17	Viner, Jon	Attending and taking notes in meeting with Osler, OPG, Torys, IESO, Stikeman Elliott, the Ministry of Energy and Blakes regarding fair hydro legislation; attending meeting with Blakes and Ministry of Energy regarding	5.2	570.00	2,964.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		drafting items to be completed.			
04/17/17	Wilson, Judy	Prepare for (review draft legislation and mark-ups) and attend meetings with client and stakeholders.	7.8	570.00	4,446.00
04/18/17	Ashbourne, Stephen R.	Engaged through the day, including preparing detailed mark-up of legislation to incorporate "fair allocation" and "fair adjustment" mechanics and to reflect revised approach to address IESO recovery; discussion with C. Calwell regarding issues and strategy to advance the discussions with the working group; reviewing and incorporating B. Stokes input and riders; call with P. Hamilton to discuss underlying approach to variance account and transfer mechanics, and marking up Act accordingly; integrating A. Jackson input on Part II; exchanges with C. Calwell regarding comments and mark-up and following up with J. Wilson regarding same; further revisions, including for definitions and to incorporate J. Viner inputs; reviewing and responding to B. Stokes comments on legislation; preparing for meeting with C. Calwell; discussions with TD regarding liquidity issues for "AA" bonds; internal meeting with J. Wilson and B. Stokes to do a page turn and to look at simplifying the "fair allocation" mechanics; discussion with TD (B. Purkis) regarding economics of OPG and communication of same to MOE; call with P. Hamilton (Stikemans); reviewing note from M. Feldman regarding limitations arising for OPG as a result of accounting and substantive consolidation concerns; exchanges with C. Calwell regarding replacement of OPG and alternative scenarios; reviewing revised version of legislation to be sent to C. Calwell by A. Jackson.	13.3	570.00	7,581.00
04/18/17	Beagan Flood, Catherine	Providing advice on preamble and purpose clause.	0.6	570.00	342.00
04/18/17	Jackson, Adam	Amending draft legislation; calls with Stikeman to discuss transfer and collection mechanics; discussion with B. Stokes, J. Wilson, J. Viner and S. Ashbourne regarding legislation; engaged throughout the day marking-up draft legislation.	12.8	570.00	7,296.00
04/18/17	Stokes, Bryson	Reviewing and revising draft legislation;	7.8	570.00	4,446.00

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		meeting with S. Ashbourne; meetings with J. Wilson.			
04/18/17	Viner, Jon	Revising draft fair hydro legislation to take into account comments of B. Stokes, S. Ashbourne and A. Jackson regarding invoicing and collection mechanics, fair allocation plan and financing plan, fair adjustment and transfer of regulatory and investment assets; revising sections of draft fair hydro legislation pertaining to clean energy adjustment, investment interests and financing plan; discussing proposed revisions to draft fair hydro legislation with B. Stokes, S. Ashbourne, A. Jackson and J. Wilson; revising same.	9.3	570.00	5,301.00
04/18/17	Wilson, Judy	Prepare for and attend internal review of legislation.	4.5	570.00	2,565.00
04/19/17	Ashbourne, Stephen R.	Call with B. Purkis to review status of dealer discussions, OPG and alternative approaches to credit and servicer support; discussion with C. Calwell regarding approach to OPG and overall accounting dynamic in light of reach out to Torys; reviewing OPG comments from K. Hill; reviewing dealer input on proposed provincial guarantee; meeting with B. Stokes to review open items and to coordinate further mark-up of legislation; reviewing Part II revisions and new approach to "fair adjustment" and internal follow-ups regarding same; reviewing Glann Zacher's input on IESO recovery mechanics; call with C. Calwell regarding "fair allocation" mechanics and revisions to further simplify same; revising and sending further comments on legislation (with A. Jackson); reviewing revised version of Bill sent by legislative council; exchanges with C. Beagan-Flood on follow-ups for constitutional analysis.	8.7	570.00	4,959.00
04/19/17	Beagan Flood, Catherine	Reviewing research on delegation of taxing authority; email with S. Ashbourne regarding comments from Constitutional Law Branch.	1.2	570.00	684.00
04/19/17	Jackson, Adam	Amending legislation; amending fair allocation plan; discussion with C. Calwell on fair allocation mechanics; amending fair allocation to contemplate no plan and submission to minister; discussion of termination rights with C. Calwell; office conference with B. Stokes and S. Ashbourne	13.0	570.00	7,410.00

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		regarding legislation; reviewing draft legislation from legislative counsel; amending comment draft to respond to comments and questions from C. Calwell; amending rider on fair allocation to respond to comments and questions from C. Calwell; circulating revised rider on fair allocation.			
04/19/17	Stokes, Bryson	Drafting riders to reflect IESO changes; meetings with S. Ashbourne and A. Jackson re: changes; calls with J. Wilson; call with C. Calwell.	4.7	570.00	2,679.00
04/19/17	Viner, Jon	Meeting with S. Ashbourne and A. Jackson to discuss revisions to fair hydro legislation; reviewing and revising aspects of fair hydro legislation to take into account revised fair allocation concept.	3.6	570.00	2,052.00
04/20/17	Ashbourne, Stephen R.	Engaged through the day, including exchanges with TD regarding OPG economics and constraints; revising legislation to reflect approach to "fair allocation" and "fair adjustment" and various discussion with C. Calwell regarding same; reviewing cash flows summary and various follow-ups regarding OPG accounting considerations; preparing mark-up of Act (Draft 10) and drafting instructions; meeting with C. Beagan Flood to review comments on draft legislation and reviewing and marking up her summary advice to C. Calwell.	7.8	570.00	4,446.00
04/20/17	Beagan Flood, Catherine	Meeting regarding draft legislation; drafting note to S. Ashbourne and B. Stokes on constitutional and administrative law issues.	3.5	570.00	1,995.00
04/20/17	Jackson, Adam	Engaged throughout the day responding to comments and questions from the Ministry of Energy on the draft legislation; drafting responses to comments and questions from C. Calwell; circulating responses; reviewing concepts of clean energy benefits, clean energy costs and fair allocation amount, and providing comments on same; amending legislation to address comments from Stikeman and IESO; reviewing revised legislation.	7.7	570.00	4,389.00
04/20/17	Shamess, Brittany	Reviewing the law and procedure on the introduction of "money bills", per instructions from C. Beagan Flood; emails with Blakes team.	1.5	570.00	855.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
04/20/17	Stokes, Bryson	Reviewing and commenting on riders; calls with A. Jackson and S. Ashbourne. Meeting with J. Wilson re: weekly Deputy meeting debrief; meeting with C. Beagan-Flood, S. Ashbourne and A. Jackson to discuss constitutional points.	4.7	570.00	2,679.00
04/20/17	Viner, Jon	Revising fair hydro legislation to take into account comments of the IESO and P. Hamilton (Stikeman Elliott); revising certain definitions.	1.8	570.00	1,026.00
04/20/17	Wilson, Judy	Prepare for and attend Rate Mitigation Implementation Group.	2.8	570.00	1,596.00
04/20/17	Wilson, Judy	Preparing initial draft of presentation on the new legislation.	1.8	570.00	1,026.00
04/21/17	Ashbourne, Stephen R.	Engaged through the day, including preparing detailed mark-up of the legislation; internal meeting to review constitutional considerations and briefing of C. Beagan-Flood; internal meeting with A. Jackson and J. Viner to map out process and gap analysis; various discussions regarding the "performance guarantee"; discussions with J.A. Prestage regarding the scope of the prohibition and alternatives; responding to input regarding "fair allocation" and rewriting same.	9.7	570.00	5,529.00
04/21/17	Beagan Flood, Catherine	Call with S. Ashbourne; revising email to C. Calwell; email with B. Stokes.	0.6	570.00	342.00
04/21/17	Jackson, Adam	Reviewing amended legislation; amening legislation; discussions with S. Ashbourne regarding amendments; amending legislation to capture comments from B. Stokes and amending various provisions relating to transfers.	6.5	570.00	3,705.00
04/21/17	Prestage, J.A.	Reviewing draft statute and exchanges with S. Ashbourne regarding same.	3.4	570.00	1,938.00
04/21/17	Stokes, Bryson	Reviewing and drafting notes on legislation; meetings with S. Ashbourne; calls with S. Wong; meeting with S. Ashbourne and A. Jackson; several calls with J. Rehob.	7.8	570.00	4,446.00
04/21/17	Viner, Jon	Reviewing draft of fair hydro legislation against Blakes draft legislation and noting matters in which draft fair hydro legislation may be improved; drafting proposed revisions to fair hydro legislation; discussing same with	6.3	570.00	3,591.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		S. Ashbourne and A. Jackson.			
04/21/17	Wong, Sharon	Reviewing and commenting on the latest version of the Fair Hydro Act received from Ministry of Energy and discussing comments with B. Stokes.	4.6	570.00	2,622.00
04/22/17	Ashbourne, Stephen R.	Exchanges through the day with A. Jackson regarding preparing the Blakes mark-up on the legislation; responding to comments and questions on the legislation by email; reviewing comments received.	1.5	570.00	855.00
04/22/17	Jackson, Adam	Amending legislation; email to S. Ashbourne and JA Prestage regarding amendments; circulating comments to C. Calwell.	3.0	570.00	1,710.00
04/22/17	Prestage, J.A.	Considering draft statute and exchanges regarding same with S. Ashbourne.	2.0	570.00	1,140.00
04/22/17	Stokes, Bryson	Providing comments to A. Jackson; emails regarding issues identified by JA Prestage.	0.8	570.00	456.00
04/23/17	Ashbourne, Stephen R.	Reviewing group comments; internal call with J. Wilson and A. Jackson to review main items of difference and alternative approaches to resolve; exchanges with C. Calwell to provide input on various items based on revised legislation; various internal discussions regarding "fair adjustment" mechanics and exchanges with MOE regarding same.	2.5	570.00	1,425.00
04/23/17	Jackson, Adam	Reviewing comments; telephone calls with S. Ashbourne, B. Stokes and J. Wilson; discussion with B. Strokes regarding changes; telephone call with S. Ashbourne on email from J. Rehob; telephone call with J. Rehob and C. Calwell regarding interest charges for 5 year holiday period; drafting responses to comments from Torys and Stikeman; reviewing OEB comments.	8.0	570.00	4,560.00
04/23/17	Prestage, J.A.	Providing comments on draft statute to S. Ashbourne.	1.0	570.00	570.00
04/23/17	Stokes, Bryson	Telephone call with J. Wilson to discuss status, next steps. Reviewing comments from Torys and IESO; call with J. Wilson, A. Jackson, S. Ashbourne re: same. Meeting with A. Jackson.	3.7	570.00	2,109.00
04/23/17	Viner, Jon	Reviewing draft fair hydro legislation against Blakes draft legislation and noting key	1.2	570.00	684.00

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		differences.			
04/24/17	Ashbourne, Stephen R.	Engaged through the day, including detailed review of comments received from Stikemans/IESO, Torys/OPG, OEB, Dealers and TD and preparing consolidated comment mark-up for discussion with C. Calwell; discussions throughout the day with A. Jackson and B. Stokes regarding open items and requirements for detailed comments, including on "plumbing"; incorporation of "funding rebate" concepts in the draft legislation to address OPG accounting issues; responding throughout the day regarding concerns with OPG economics and basis for regulating OPG's involvement in the program in light of accounting feedback through OPG; reviewing revisions from D. Shear and providing preliminary feedback on approach to "fair adjustment" and integration of same; reviewing and responding to questions from J. Rehob; discussion with J.A. Prestage regarding approach to prohibition and indemnity provisions; follow-up exchanges with C. Beagan Flood; reviewing revised version of legislation and various discussions throughout the day with working group to resolve open drafting and items of substance; exchanges with Stikemans regarding nature and mechanics of the IESO variance account; reviewing J. Viner mark-up of collection and invoicing riders; attending meeting with C. Calwell to review legislation (with A. Jackson and B. Stokes) and providing feedback on various open items.	10.2	570.00	5,814.00
04/24/17	Beagan Flood, Catherine	Providing comments on draft legislation.	0.9	570.00	513.00
04/24/17	Jackson, Adam	Reviewing comments from Stikeman and Torys; preparing consolidated mark-up; reviewing revised draft from legislative counsel; meeting with C. Calwell to work through revised draft of legislation from legislative counsel; drafting riders regarding transfer, funding rebates and PPSA application; telephone call and email with B. Stokes and S. Ashbourne regarding guarantees and other provisions.	13.4	570.00	7,638.00
04/24/17	Prestage, J.A.	Reviewing and commenting on most recent draft of statute; drafting provisions regarding	4.6	570.00	2,622.00

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		limitations on Crown actions and calls and exchanges with J. Rehob regarding same.			
04/24/17	Stokes, Bryson	Reviewing additional comments; reviewing new draft of instructions; meeting with C. Calwell, S. Ashbourne and A. Jackson to do page turn.	8.4	570.00	4,788.00
04/24/17	Viner, Jon	Reviewing draft fair hydro legislation against Blakes outline and noting matters for which more detail should be provided in draft legislation; reviewing mechanics of invoicing, collection and remittances provided in draft legislation and drafting summary note regarding issues with such mechanics.	4.7	570.00	2,679.00
04/24/17	Wilson, Judy	Attend meeting regarding Navigant study.	1.2	570.00	684.00
04/24/17	Wong, Sharon	Reviewing and commenting on recent set of comments on the Fair Hydro Act received from IESO and Torys and discussing same with B. Stokes.	2.0	570.00	1,140.00
04/25/17	Ashbourne, Stephen R.	Reviewing A. Jackson mark-up of selected provisions, including funding rebate mechanics and PPSA issues; preparing mark-up of legislation to address issues; discussion with B. Stokes to review open items and approach to "plumbing" issues; reviewing and responding to questions from TD regarding scope of government support and requirements; discussion with J.A. Prestage regarding various formulations of the "prohibition" (Options 1 and 2) and call regarding same; reviewing A. Jackson mark-up of legislation; responding to questions from J. Rehob; reviewing and responding to correspondence throughout the day.	5.7	570.00	3,249.00
04/25/17	Jackson, Adam	Reviewing changes to legislation; call with S. Ashbourne regarding proposed changes to legislation; call with JA Prestage regarding undertaking; amending legislation to address comments, including amendments to address transfer language; further calls with S. Ashbourne regarding comments on legislation; circulating comments to C. Calwell.	2.6	570.00	1,482.00
04/25/17	Prestage, J.A.	Drafting and revising language for statute and exchanges with S. Ashbourne, B. Stokes and J. Rehob regarding same.	1.2	570.00	684.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
04/25/17	Stokes, Bryson	Considering issue relating to IESO payment of GA post year 10 and amendments necessary to financing plan principles; call with A. Jackson to discuss same; call from J.A. Prestage re: crown prohibition; calls with A Jackson; preparing issues list for next turn.	3.3	570.00	1,881.00
04/26/17	Ashbourne, Stephen R.	Engaged through the day, including review comments received from the working group and providing input on required revisions to legislation; reviewing A. Jackson's slides for the Minister's presentation and editing same; discussions throughout the day with C. Calwell to discuss comments on legislation and required revisions; discussions with P. Johnson and others regarding enforcement and remedies provisions and nature of prohibition; reviewing revised draft of legislation and preparing mark-up on same; several discussions with J.A. Prestage regarding scope and approach to statutory prohibitions; preparing for briefing of Secretary of the Cabinet and attending government offices regarding same; exchanges with P. Hamilton to settle "transfer" language; follow-ups with M. Feldman regarding his concerns with the transfer provisions of the Act; exchanges with TD (Maharukh Hillowala) regarding most recent turn of the legislation and open issues; reviewing CLPA concerns raised by M. Feldman and on-going exchanges regarding same.	9.5	570.00	5,415.00
04/26/17	Jackson, Adam	Drafting slides for presentation to Ministry of Energy; calls with J. Wilson regarding slide deck; discussion with S. Ashbourne regarding legislation; amending legislation.	4.0	570.00	2,280.00
04/26/17	Prestage, J.A.	Exchanges with J. Rehob and S. Ashbourne regarding draft statutory language.	0.6	570.00	342.00
04/26/17	Stokes, Bryson	Call with J. Wilson; review updated legislation; emails with A. Jackson.	1.3	570.00	741.00
04/26/17	Viner, Jon	Reviewing updated legislative counsel draft of Fair Hydro Act.	0.7	570.00	399.00
04/26/17	Wilson, Judy	Preparing presentation; prepare for and attend meeting regarding the Ontario Fair Hydro Plan Act.	7.2	570.00	4,104.00
04/27/17	Ashbourne, Stephen	Engaged throughout the day, including	14.5	570.00	8,265.00

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
	R.	exchanges with M. Feldman regarding his proposed changes to the the "transfer" provisions and preparing mark-up of "transfer" language and considering Stikeman and Tory mark-ups regarding same; preparing mark-up of Tory's comments to guide C. Calwell on open issues; conference call with external counsel to sort out transfer rider and to make corresponding edits throughout the legislation; reviewing and responding to questions from C. Calwell regarding open issues and architecture of the legislation and providing comments; reconciling external comments on "fair allocation" and other mechanics and preparing comment draft; several calls with P. Johnson regarding scope of prohibition and alternative analysis based on NY legislation; call with B. Stokes to review various items in the legislation and to discuss regulatory powers; reviewing P. Hamilton edits to legislation and comment; internal meeting with J. Viner and A. Jackson to review open items and to provide comments on legislation and gap identification; call to review final stages and timing with C. Calwell; reviewing Osler's comments on legislation and conference call to review and discuss same (E. Smith and R. Sebastiano); reviewing J. Wilson's version of the presentation.			
04/27/17	Beagan Flood, Catherine	Call with J. Wilson regarding constitutional issues.	0.3	570.00	171.00
04/27/17	Jackson, Adam	Engaged throughout the day amending and finalizing legislation; various discussions with S. Ashbourne regarding amendments; calls with S. Ashbourne and others regarding legislation; calls with Osler regarding comments on legislation; marking up legislation and working through calculations, including fair adjustment and fair allocation and clean energy adjustments; circulating performance guarantees to C. Calwell; calls with J. Wilson regarding slide deck.	9.0	570.00	5,130.00
04/27/17	Prestage, J.A.	Exchanges and emails regarding statutory language regarding limiting Crown actions.	0.3	570.00	171.00
04/27/17	Stokes, Bryson	Call with S. Ashbourne and A. Jackson regarding next steps and to discuss outstanding issues; call with J. Wilson	4.4	570.00	2,508.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		regarding presentation deck; reviewing and commenting on same; reviewing new instructions to legislative counsel.			
04/27/17	Viner, Jon	Reviewing draft of Ontario Fair Hydro Plan Act, 2017 and providing comments regarding clean energy adjustment, fair allocation, mechanics of collection and remittances and the investment asset; discussing same with A. Jackson and S. Ashbourne.	5.8	570.00	3,306.00
04/27/17	Wilson, Judy	Revising presentation for Minister.	5.8	570.00	3,306.00
04/28/17	Ashbourne, Stephen R.	Discussions through the day with A. Jackson regarding final comments on draft legislation, including to reconcile comments from Torys and Stikemans on revised version of "transfer" and remedial provisions of the legislation; reviewing and considering issues on scope of guarantee and indemnity provisions; reviewing and responding to correspondence throughout the day.	2.5	570.00	1,425.00
04/28/17	Beagan Flood, Catherine	Email regarding meeting with Attorney General.	0.1	570.00	57.00
04/28/17	Jackson, Adam	Engaged throughout the day amending and finalizing legislation; calls and emails with J. Prestage and P. Johnson regarding remedy provisions; amending remedy to capture Section 263 of the Ontario Business Corporations Act; emails with E. Smith, P. Hamilton and M. Feldman regarding comments on legislation, including transfer provisions.	5.0	570.00	2,850.00
04/28/17	Prestage, J.A.	Engaged with A. Jackson regarding drafting statutory provision.	0.8	570.00	456.00
04/28/17	Stokes, Bryson	Reviewing and revising presentation deck; meeting with A. Jackson and J. Wilson for a page turn; reviewing revised turn of legislation.	6.2	570.00	3,534.00
04/28/17	Wilson, Judy	Revising presentation to Minister regarding the Ontario Fair Hydro Plan Act	6.8	570.00	3,876.00
04/30/17	Ashbourne, Stephen R.	Reviewing slide deck for Minister's presentation.	0.5	570.00	285.00
04/30/17	Viner, Jon	Reviewing draft Ontario Fair Hydro Plan Act, 2017 and summarizing items that will require further detail to be prescribed in regulations.	2.6	570.00	1,482.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
04/30/17	Wilson, Judy	Reviewing presentation to Minister; implement brief revisions.	1.8	570.00	1,026.00
				Total Fees for this Matter	**$ 490,770.00**

Matter Timekeeper Summary	ID	Hours	Rate ($)	Amount ($)
Ashbourne, Stephen R.	SRA	276.3	570.00	157,491.00
Beagan Flood, Catherine	CBE	32.0	570.00	18,240.00
Hogg, Peter	PWH	6.7	570.00	3,819.00
Jackson, Adam	AKJ	162.6	570.00	92,682.00
Prestage, J.A.	JAP	20.4	570.00	11,628.00
Shamess, Brittany	BSQ	19.8	570.00	11,286.00
Stokes, Bryson	BAS	135.2	570.00	77,064.00
Viner, Jon	JNV	92.5	570.00	52,725.00
Wilson, Judy	JLW	90.9	570.00	51,813.00
Wong, Sharon	SW	24.6	570.00	14,022.00
	Total	**861.0**		**$ 490,770.00**

Harmonized Sales Tax (13.0%) 63,800.10

Total Due for this Matter in Canadian Currency **$ 554,570.10 CAD**

INSTRUCTIONS – April 16, 2017 – time tbd

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7alt- TP

Intergenerational Fairness in Hydro Rates Act, 2017

NTD: Comments in caps are from Blakes and are attempting to explain the broader intent. We will suggest language insofar as we can.

[OLC Notes re this draft:
- all numbering of provisions will need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still.
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)]

Preamble

The Government of Ontario is committed to fostering the ~~growth~~ development of of a clean, modern and reliable electricity system with a diverse supply mix including renewable energy ~~projects, which use cleaner sources of energy~~, and to removing barriers to and promoting opportunities for renewable energy projects ~~and to promoting a green economy~~.[1]

The Government of Ontario has established a regulatory and contractual framework related to the generation and sale of electricity to ensure significant investment in decarbonizing and modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom.[2]

Given the long-term benefits that future generations of Ontarians will receive from many of these investments, it is appropriate and fair to raise money in respect of these

[1] FLS: please see the preamble of the *Green Energy Act, 2009.*

[2] FLS: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".

generating sites and facilities[3] in a manner that allocates the costs of and benefits from these investments fairly among present and future consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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[3] FLS: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL

Interpretation
Definitions

1. (1) In this Act,

"clean energy adjustment" means…

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in renewable energy projects and ~~[which use~~ *cleaner* ~~*sources of*~~ *energy sources and technologies, including alternative energy sources]*, NTD: tracks the language of s. 1(d) of the Electricity Act and relies on the definition of "alternative energy source" in the EA.

(b) removing barriers to and promoting opportunities for renewable ~~energy~~ projects and cleaner energy sources and technologies and clean energy, and

(c) promoting a ~~green economy [including~~ conservation and demand management]; ("French")

[OLC Notes about the above definition:
- "renewable energy project" is a defined term in the GEA -- should we be applying that definition instead of using the words in square brackets above? (also, the word "cleaner" begs the question, "*cleaner than what"?]* -- I realize this language was used in the preamble to the GEA and is in the proposed preamble above but we try to be more precise with the language choices in the substantive provisions of the bill. NTD: OK to use the definition, but we need to capture more than renewable energy – we want to include all of the investments made to 'get off coal' which includes investments in gas facilities, for example

- "green economy" - Again I know this term was used in the GEA preamble and the preamble above but it's a bit ambiguous and could be interpreted to mean a variety of things. Just want to flag this as a risk in terms of how it would get interpreted. Perhaps it isn't a significant risk given how the term is used etc. NTD: please drop the green economy reference
- Generally, I think we'll want to carefully read the Preamble, the Purpose section and this definition together closely before finalizing the bill, to ensure that they are consistent with one another and to ensure that we are using the same terms to describe the same concepts.]

"electricity vendor"[4] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

NTD: **Dan** to paqrovide instructions related to unit sub-meter providers and their customers.

"Fair Allocation Plan" means a plan prepared under section X; ("French")

"Financial Services Manager" means Ontario Power Generation Inc. or such other entity as may be prescribed; ("French")

"Financing Plan" means a plan prepared under section X; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner under section x; ("French")

"holiday" means [O. Reg. 95/05 definition];] ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"investment asset" means all or part of the regulatory asset that is deemed to be an investment asset under section x; ("French")

"invoice amount" means the sum of the following amounts:

1. The commodity price of the electricity used during the invoice period.

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[4] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

2. The rates and charges set out in the applicable rate order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

3. Any adjustment required under section 25.33 of the *Electricity Act, 1998*.

4. The amount of any harmonized sales tax payable under Part IX of the *Excise Tax Act* (Canada); ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a), or such shorter period as may be set out in a Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of the owner of an investment asset by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, the portion of the regulatory asset that is not deemed to be an investment asset; ("French")

[Blakes' explanation: CURRENT PROPOSAL IS THAT THE REGULATORY ASSET WILL REPRESENT THE RIGHT OF RECOVERY. UPON A TRANSFER OF AN INVESTMENT INTEREST, THE QUANTUM OF THE RIGHT OF RECOVERY FOR THE REGULATORY ASSET WILL BE REDUCED. THE TRANSFER OF AN INVESTMENT INTEREST WILL RESULT IN IESO RELINQISHING ANY

INTEREST IN THE TRANSFERRED INVESTMENT INTEREST, AND WILL RESULT IN THE TRANSFEREE ACQUIRING THE RIGHT OF RECOVERY OF AN INTEREST IN THE CLEAN ENERGY ADJUSTMENTS DETERMINED BY REFERENCE TO FINANCE AMOUNTS INCURRED BY OR ON BEHALF OF THE TRANSFEREE.]

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means an assignment, conveyance, disposition or sale; ("French")

"weekday means [O. Reg. 95/05 definition]; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

i. a dwelling,

ii. a property within the meaning of the *Condominium Act, 1998*,

iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount, exclusions

(2) For the purposes of the definition of "invoice amount" in subsection (1), an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the Act;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Intention of the Legislature[5]

(5) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same

(6) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

2. (1) The purposes of this Act are,[6]

(a) to ensure that the costs of the clean energy initiative are fairly distributed among specified customers over time;

(b) to recognize the long-term benefits of the clean energy initiative that accrue over time and will continue to benefit present and future electricity consumers in the Province;

(c) to promote the use of clean energy sources and technologies, including low carbon, alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario;

(d) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity;

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[5] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[6] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

(e) to facilitate the maintenance of a financially viable electricity industry, including by raising money in respect of sites and facilities in the Province for the generation of electrical energy and the production therefrom;[7] and

(f) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.

Crown bound

3. This Act binds the Crown.

Protection and guarantee of scheme

Prohibition

4. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may enter into agreements for the purposes of guaranteeing that compensation will be paid to an investment asset owner for losses suffered as a result of,

(a) a contravention of subsection (1);

(b) a change in law that would adversely affect the rights under this Act of an owner of an investment asset;

(c) approval by the Lieutenant Governor in Council of a Fair Allocation Plan, or an amendment to a Fair Allocation Plan, that fails to recognize the principles set out in section x; or

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[7] FLS - as per the note in the Preamble on this language, please see 92A (4) of the *Constitution Act, 1867.*

(d) a final determination by a court of final jurisdiction rendering invalid or ineffective all or any of the provisions of this Act.[8]

IESO obligations

(5) If the an electricity vendor~~IESO~~ fails to carry out its obligations under this Act for any reason, including because the electricity vendor~~IESO~~ is dissolved or restructured or because it becomes insolvent, the Government of Ontario shall carry out those obligations or ensure they are carried out by another appropriate entity.

PART II
FAIR ADJUSTMENT PERIOD

Application of Part

5. This Part applies in respect of the five year period beginning on May 1, 2017 and ending on April 30, 2022.

[From Blakes: THIS IS A ROUGH ADAPTATION OF THE "FAIR ADJUSTMENT" CONCEPT. THE PROPOSAL IS THAT THE ~~MINISTER~~ LGIC WILL HAVE DISCRETION TO REDUCE HYDRO BILLS TO REFLECT AN INCURRENCE BY PAST RATEPAYERS OF MORE THAN THEIR FAIR SHARE OF THE GREEN COSTS (THOUGH THE EXISTING AMORTIZATION RATE OF GREEN COSTS THROUGH THE GA CALCULATION). IT WILL BE IMPORTANT TO VALUE THOSE PAST OVER-PAYMENTS, AND TO LIMIT THE TOTAL AMOUNT OF FAIR ADJUSTMENTS TO THAT CALCULATED AMOUNT (ADJUSTED FOR TIME VALUE OF MONEY). THE CONCEPT IS MORE FLEXIBILE THAN THE SUGGESTION HERE, AS TO THE FIRST 5 YEARS ONLY – ALTHOUGH THAT IS CERTAINLY THE CURRENT FOCUS. THE IDEA FOR NOW IS THAT THE ACT WILL REDUCE HYDRO BILLS FOR THE FIRST YEAR, AND EACH OF THE FOLLOWING 4 YEARS BY REGULATION – IN AGGREGATE EQUAL TO THE PAST OVER-CHARGES [PLUS THE RECAPTURE FOR THE FIRST 5 YEARS BASED ON THE REVISED AMORTIZATION PERIOD FOR GREEN COSTS). TO ENSURE THAT THE INCURRENCE OF FUNDING OBLIGATIONS AND CORRESPONDING FINANCE AMOUNTS DO NOT CONFLICT WITH THE ~~MINISTER'S~~ LGIC'S DISCRETION TO APPLY THE FAIR ADJUSTMENT (AND REDUCE HYDRO RATES), THERE WILL BE A MORATORIUM ON CLEAN ENERGY ADJUSTMENTS DURING THE FIRST 5 YEARS (ON BOTH IESO CHARGE-- THROUGHS IN RESPECT OF ITS RIGHT OF RECOVERY (related to the regulatory asset) AND IN RESPECT OF FINANCE AMOUNTS PAYABLE DURING THESE FIRST 5 YEARS) – PROVIDED THAT IF THE ~~MINISTER~~ LGIC DOES NOT

[8] Note to translator: See s. 9 of the Public Authorities Protection Act.

ULTIMATELY DETERMINE THAT A FAIR ADJUSTMENT WILL APPLY IN A YEAR, THE BALANCE, UNDER THE FAP, WILL BE RECOVERABLE BY WAY OF A PASS-THROUGH OF FINANCE AMOUNTS /IESO RECOVERIES. THE IDEA WILL BE THAT THE ~~MINISTER~~ LGIC WILL DETERMINE THE AMOUNT OF A FAIR ADJUSTMENT PRIOR TO THE RELEVANT PERIOD TO WHICH IT APPLIES. NOTE THAT THE PAST-OVERPAYMENTS WILL BE FACTORED INTO THE FAP ON A GO FORWARD BASIS, IN ADDITION TO THE CONTINUING GREEN COSTS (costs of the clean energy initiative) – AND AMORTIZED OVER THE LONGER PERIOD..]

Determination of rates, first twelve months

6. (1) The Ontario Energy Board shall determine the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 in the following manner:

1. Determine the average rate payable by a representative consumer by applying the method set out in subsection (2).

2. Determine the average monthly invoice amount that would be payable by a representative consumer under the rate determined under paragraph 1.

3. Determine the amount that is [# tbc] per cent less than the monthly invoice amount determined under paragraph 2.

4. Determine the average rate payable by a representative consumer that would result in the monthly invoice amount mentioned in paragraph 3 for a representative consumer.

[OLC Note: ENE LSB raised the question of whether 79.16 of the OEBA should be replaced to clearly state that the price-setting work that the OEB does under the RPP is authorized and that the work it must do to accommodate the Fair Adjustments is also authorized going forward.]

NTD: We would like to craft the proxy consumer so that we can show 25% in paragraph 3 but we need to then address the 8% OREC rebate and the move of costs from the rate base to the tax base. **DAN** to provide.

Determination of baseline, average rate

(2) For the purposes of paragraph 1 of subsection (1), the follow method applies:[9]

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[9] FLS: Please see section 6 of O. Reg. 95/05 (a bilingual reg).

1. The Board shall determine rates in a manner that is consistent with the Standard Supply Service Code issued by the Board.

2. In determining the rates, the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect those costs.

3. The Board shall set an off-peak period associated with the regulated price referred to as RPEMOFF in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board,

    i. that begins no later than 7 p.m. on every weekday and ends,

        A. no earlier than 7 a.m. on the next day if the next day is a weekday, or

        B. no earlier than 12 a.m. on the next day if the next day is Saturday, Sunday or a holiday, and

    ii. that begins no later than 12 a.m. on every Saturday, Sunday and holiday and ends no earlier than,

        A. 12 a.m. on the next day, if the next day is Saturday, Sunday or a holiday, or

        B. 7 a.m. on the next day if the next day is a weekday.

Determination of rates, on and after May 1, 2018

7. On and after May 1, 2018, the Board shall determine the rate for electricity payable by a specified consumer in the following manner:

1. Determine the rate by applying the steps set out in section 6.

2. Adjust the rate determined under paragraph 1 for inflation in accordance with the regulations.

PART III
CLEAN ENERGY ADJUSTMENT PERIOD

~~**Application of Part**~~

~~**8x.** This Part applies in respect of the period beginning on May 1, 2022 and ending on April 30, 2047.~~ NTD: we will start incurring CEAs now. We just won't pay them until after May 1, 2022./

[From Blakes: CONSISTENT WITH THE EARLIER NOTE, THE MORATORIUM (by which Blakes means the immediate reduction in costs and the commitment to limit increases to CPI) IS LIFTED IF THE MINISTER DETERMINES THAT NO FAIR ADJUSTMENT WILL APPLY, IN WHICH CASE CEAs WILL APPLY DURING THE FIRST 5 YEARS. THE DIVISION OF TIME CONTEMPLATED IN THIS DRAFT IS MORE INFLEXIBLE THAN WE HAVE ENVISIONED]

Specified consumers to pay clean energy adjustment

9x. (1) Subject to subsection (1.1), upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the investment asset owner, 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.

[MODIFY TO REFLECT THAT THE PAYMENT IS MADE TO AN EV, AS AGENT FOR THE INVESTMENT ASSET OWNERS]

Limitation

(1.1) No clean energy adjustment ~~is payable by a~~may be collected from a specified consumer on a day before May 1, 2022.

[MODIFY TO REFLECT EARLIER NOTES]

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether payment of the amounts is inconsistent with the Fair Allocation Plan applicable at the time when the payment is due; and

(b) whether the payments relate to funding obligations that were incurred in a manner that did not comply with the Financing Plan.~~; and~~

Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to the investment asset owners in respect of their respective interests in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

[ENFORCEMENT WILL BE LIMITED UNDER THE ACT, SO THAT INVESTMENT ASSET OWNERS CAN'T SERVE NOTICES ON RATEPAYERS DIRECTLY – SEE BELOW]

Irrevocability of clean energy adjustment

10x. (1) Any clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is an error in calculations made by the electricity vendor.

Determination of clean energy adjustment

11x. (1) The Ontario Energy Board shall apply the method set out in Schedule 1 to determine the amount of the clean energy adjustment payable on a monthly basis by each electricity vendor on behalf of the electricity vendor's specified consumers.

[THE AMOUNTS WILL BE CALCULATED AS FOLLOWS: (1) FSM (FOR ALL IAOs) WILL INFORM OEB OF PERIOD FINANCE AMOUNTS FOR THE REFERENCE PERIOD (IE ESTIMATE OF FAs PLUS PAST TRUE UP ALLOCATION) (2) OEB WILL ATTRIBUTE THAT AGGREGATE AMOUNT BASED ON RPP-LIKE RATE DETERMINATION FOR CUSTOMERS OF THE RELEVANT CLASSES (3) OEB WILL TELL EVs THE RATES APPLICABLE TO THEIR CUSTOMERS, SO THAT THE FULL AMOUNT IN (1) IS RECOVERED (BASED ON EXPECTED COLLECTION RATES AND NONE PAYMENTS)]

True up amount

(2) The Ontario Energy Board may adjust the amount determined under Schedule 1 from time to time to address the any difference between the amount of the clean energy

adjustment payable in respect of the reference period and the amount of the clean energy adjustment collected as of the date of the determination.

[THIS IS ONLY A PARTIAL DESCRIPTION OF THE TRUE UP. SEE EARLIER DRAFTING INSTRUCTION FOR SUGGESTED APPROACH – I.E., DESCRIBE BROADLY THE NATURE OF THE CALCULATION AND THEN SPECIFY THE CALCULATION IN A DETAILED CALCULATION TO BE INCLUDED IN A REGULATION]

Same, regulations

(3) The Lieutenant Governor in Council may make regulations governing the calculation under subsection (2) and how the amount is to be applied to the clean energy adjustment.

Communication to electricity vendors

(4) The Ontario Energy Board shall communicate to each electricity vendor information relating to the clean energy adjustment to be allocated by the electricity vendor to each specified consumer in respect of a reference period.
[OLC Note: Just to confirm, the OEB sends this communication but then the IESO is the one that actually invoices the electricity vendor?] [NTD: we are not sure there is a role for IESO. We thought the period finance amounts would be forwarded by Financial Services Manager to OEB directly]

Allocation

~~(5) The Ontario Energy Board shall ensure that the information communicated under subsection (4) is consistent with [the amounts allocated under section 79.16 of the *Ontario Energy Board Act, 1998*].~~
[OLC Note: The above is based on instructions provided at 10pm on April 13th, but I'm not exactly sure what the part in square brackets is meant to accomplish. If the rate setting process under the OEBA is happening in parallel to the determination under this section, how does this work?]NTD: not required.

IESO to invoice electricity vendors

12x. (2) The IESO shall issue an invoice to each electricity vendor for the clean energy adjustments in accordance with the regulations.

IESO to collect

(3) The IESO shall, as an agent of the investment asset owner, make reasonably diligent efforts to collect clean energy adjustments from electricity vendors.

Collection account

(3.1) The IESO shall establish an account in which to record its collection of the following:

1. Amounts remitted from accounts established under section 31.NTD: check cross reference

2. Payments made by specified consumers directly to the IESO as electricity vendor, in respect of clean energy adjustments.

Deposit

(4) The IESO shall promptly deposit all amounts received in respect of clean energy adjustments into the account established under subsection (3.1). NTD: IESO to advise re: "promptly deposit" standard

Same, held in trust

(2) The amounts collected are deemed to be held in trust for the ~~regulatory asset holder [or~~ investment asset owner~~?]~~.

IESO to remit

(5) The IESO shall remit amounts received in respect of clean energy adjustments to or for the benefit of the ~~regulatory~~ investment asset owner in accordance with the regulations.

Electricity vendor to apply rate

13x. (1) Each electricity vendor shall [in accordance with the regulations?] determine the proportionate share of clean energy adjustments payable on a monthly basis by each of its specified consumers.

NTD: rather than "in accordance with regulations", standard may be "in accordance with Distribution system Code" or broader reference to OEB codes and orders.

Electricity vendor to invoice specified consumers

(2) The electricity vendor shall issue an invoice to each specified consumer for the applicable amount of clean energy adjustments in accordance with the regulations.

Electricity vendor to collect

(3) Each electricity vendor shall, as an agent of the IESO, make reasonably diligent efforts to collect clean energy adjustments from specified consumers.

Pro rating of payments

14x. (1) This section applies if,

(a) an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices; and

(b) the amount paid is less than the total amount payable.

Same

(2) The electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices.

Deposit

(3) The electricity vendor shall deposit the portion of the payment allocated to clean energy adjustments into the account established under X.

Electricity vendor, account

15x. (1) Each electricity vendor shall establish and maintain an account into which the electricity vendor deposits or receives only the following:

1. Payments by specified consumers in respect of clean energy adjustments.

2. Portions of payments by specified consumers that are allocated to clean energy adjustments under subsection 30 (2).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the ~~regulatory~~ investment asset.

Held in trust

(2) The amounts required to be deposited or received into the account are deemed to be held in trust for the ~~regulatory asset owner [or~~ investment asset owner~~?]~~.

Remittance to IESO

(5) The electricity vendor shall remit amounts received in respect of clean energy adjustments to the IESO for the benefit of the ~~regulatory asset owner [~~or investment asset owner~~]~~ in accordance with the regulations.

[OLC Note: I know we need to include something about the following, but I'm not sure I understand how this would play out. Basically as I understand it, the OEB applies the methodology and tells the electricity vendors how much they owe… and then the IESO issues an invoice to the electricity vendors… but then the provision below seems to say that the total of the invoices might not be sufficient to cover what the FAP "contemplates" NTD: Correct to this point and so in that case the specified consumers have to pay MORE…NTD: not that specified consumers pay more. Rather that if the amounts paid to the investment asset owner is less than the FAP, then there may be amounts owed to the IESO for the portion of the regulatory asset that the IESO has retained. The amounts paid to the investment asset owner plus the amounts paid to the IESO for the regulatory asset that it has retained could not exceed the FAP. would this additional amount just be added on to the "clean energy adjustment" on a subsequent invoice? NTD: the clean energy adjustment only repays the investment asset owner. Do

we need to put this duty to charge that amount on the electricity vendor? Or isn't this just something that would be worked out through the next iteration of the FAP? NTD: IEOS just needs a right to collect. The way it's set out below, it's imposing an additional "charge" on the specified consumer but I'm thinking that this would ultimately just form part of the clean energy adjustment over time.NTD: we would like separate processes to collect amounts owed for the regulatory asset (IESO) and the amounts owed to the investment asset owner, which is the intent of the point below.

Payment re regulatory asset~~/investment asset~~

(x) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable Fair Allocation Plan, the difference is payable to the IESO by the specified consumers.]

PART IV
FAIR ALLOCATION PLAN AND FINANCING PLAN

FAIR ALLOCATION PLAN

Minister to prepare plan

8. (1) In order to fairly measure and allocate amounts described in section 8.0.1 as of a reference period~~specified day~~ among specified consumers for the purposes of this Act, the Minister shall prepare and provide to the Lieutenant Governor in Council a written plan entitled the Fair Allocation Plan to take effect on the specified day.

Amendments to the plan

(2) Subject to the approval of the Lieutenant Governor in Council, the Minister may amend the Fair Allocation Plan from time to time, as the Minister considers appropriate, having regard to the requirements of this Act.

Effective date

(3) The Fair Allocation Plan or an amendment to the plan takes effect on the day that the plan or the amendment, as the case may be, is approved by the Lieutenant Governor in Council.

Publication

(4) The Minister shall ensure that the Fair Allocation Plan and any amendments to the plan are made available to the public in a manner that the Minister considers appropriate.

Amounts to be allocated NTD: Is this the IESO Funding Shortfall?

8.0.1 The amounts referred to in subsection 8 (1) are, in relation to a ~~specified day~~reference period,

[From Blakes: THE IDEA IS THAT THE EXPECTED FUTURE ~~GREEN~~ COSTS WILL BE INCLUDED AS COSTS, AND RATHER THAN AMORTIZING THEM

BASED ON THE TERMS OF THE POWER CONTRACTS, THE COSTS WILL BE AMORTIZED AND PASSED THROUGH BASED ON A MORE ACCURATE AMORTIZATION SCHEDULE TIED MORE TO THE COSTS AND BENEFITS OF THE ~~GREEN PLAN~~clean energy initiative OVER THE NEXT 30 YEARS. IN ADDITION, TO THE EXTENT THAT THERE HAVE BEEN OVER-CHARGES (BASED ON THE SHORT AMORTIZATION OF ~~GREEN COSTS~~clean energy iniative costs) SINCE 2005, THOSE OVERAGES WILL BE ADDED TO THE AMOUNT OF THE FAP COSTS TO BE AMORTIZED OVER THE FUTURE – I.E., THE FUTURE GENERATIONS WOULD HAVE BENEFITED FROM AN ARTIFICALLY LOW SHARE OF THE COSTS SINCE THE RATEPAYERS FOR 2005 – 2017 PAID TOO MUCH, SO WE SHOULD BE ABLE TO ADD THOSE TO THE FUTURE GROUPS AND RECOGNIZE A FAIR ADJUSTMENT FOR CURRENT RATEPAYERS]

(a) the costs incurred by the IESO before that day or expected to be incurred by the IESO on or after that day in relation to,

(i) payments made or expected to be made under section 78.1 of the *Ontario Energy Board Act, 1998*, other than payments made under contracts with Bruce Power L.P or Bruce Power A. L.P. or their successors or assigns, and

(ii) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*; and

(b) such other costs, benefits or amounts as may be prescribed, in respect of the clean energy initiative, made or received before that day or expected to be incurred on or after that day. ("French")

Principles

8.1 In preparing the Fair Allocation Plan or any amendments to the plan, the Minister shall have regard to the following principles:

[OLC Note: Consider whether all of the items in this list are really meant to be "principles" that the Minister must "have regard to" or whether some of them are requirements for which you want straight compliance. (e.g. para. 1, 1.1?)NTD: although they sound strict, we want them treated as prinicples.

Also consider the order of the items in the list, so that most important are at the beginning.]

NTD: here is another try at the list that also tries to address your notes in this section:

Costs of the clean energy initiative should be allocated among specified consumers from the date this Act comes into force until the program end date [April 30, 2047 or such other date as may be prescribed];

The allocation of costs of the clean energy initiative among specified consumers over time should be proportionate to the benefits of the clean energy initiative those specified consumers at that time;

No specified consumer during a reference period should bear an unreasonably disproportionate share of costs of the clean energy initiative;

To the extent that specified consumers have borne an unreasonably disproportionate share of costs of the clean energy initiative over reference periods that occurred prior to the coming into force of this Act, those specified consumers should receive the Fair Adjustment;

The allocation of costs among specified consumers over future reference periods should include reasonable assumptions about the time value of money, the rate of inflation, electricity consumption and the composition of specified consumers as a class of individuals.

1. The amounts should not be allocated in respect of any period of time after April 30, 2047.

1.1 At no time should the Fair Allocation Plan impair any investment asset, outstanding funding obligation or clean energy adjustment.

2. The share of the amounts allocated to specified consumers who receive an invoice in respect of a reference period should be proportionate to a reasonable assessment of the benefits derived by those consumers during that reference period.

3. The specified consumers to whom an invoice is issued during a reference period should not bear an unreasonably disproportionate share of the amounts allocated.

[OLC Note: Are paras. 2 and 3 really saying the same thing in a different way?]

4. Adjustments should be made over time if the Minister is of the opinion that specified consumers have paid more than is reasonably proportionate.

[OLC Note: Is para. 4 essentially flagging the concept of "fair adjustment"? Should we be linking this up somehow with the "fair adjustment" provisions below?]

5. Allocation of amounts should be determined for each reference period.

6. A reasonable estimate of the rate of inflation should be applied [in accordance with the regulations?].

Compliance

8.2 The IESO ~~and the Financial Services Manager~~ shall not, at any time, ~~exceed the limits [what "limits" are we referring to?]~~ incur a funding shortfall for a reference period in excess of the amount for the reference period set out in the applicable Fair Allocation Plan.

[From Blakes: THIS IS TOO STRONG. THE IDEA IS THAT IESO'S RIGHT OF RECOVERY WILL BE LIMITED IN A REFERENCE PERIOD BY THE FAP AMOUNT FOR THE PERIOD, MINUS THE FINANCE AMOUNTS (that is the amounts attributable to the investment asset) FOR THE PERIOD. IN THIS WAY, THE IESO WILL BE ENTITLED TO PASS-THROUGH RECOVERIES IN A WAY THAT AFFECTS THE HYDRO BILLS OF EACH REFERENCE PERIOD RATEPAYERS IN A WAY THAT TRACKS THE FAP. SIMILARLY, IF IESO HAS TRANSFERRED ITS RECOVERY RIGHTS TO A Investment Asset Owner, THEN THE RELATED Clean Energy Adjustments FOR THAT IAO WILL BE INSIDE THE FAP – AGAIN, SO THAT THE RATEPAYERS OF THAT PERIOD DO NOT BEAR A DISPROPORTIONATE BURDEN FOR THOSE COSTS. THESE CONCEPTS ARE REFLECTED IN THE MECHANICS DEALING WITH IESO RECOVERIES AND PASSING THROUGH CEAs]
Limiting IESO's actions should work here, because the investment asset can't be bigger than the regulatory asset.

FINANCING PLAN

Financial Services Manager to prepare plan

11. (1) The Financial Services Manager shall prepare and provide to the Minister a plan entitled the Financing Plan for the purpose of ensuring that decisions made under this Act are cost-effective and consistent with the Fair Allocation Plan.

NTD: 11(1.1) from version 6 dropped out: If another entity is prescribed for the purpose of this Part, that entity shall have all of the obligations and duties of the Financial Services Manager under this Part and all references to the Financial Services Manager in this Part are deemed to be references to that entity.

Amendments to approved plan

(2) The ~~f~~Financial ~~s~~Services ~~m~~Manager may propose amendments to the Financing Plan at any time.

[NTD: From Blakes: THE FINANCING PLAN IS SUPPOSED TO BE FLEXIBLE, UNLIKE THE FAP. FORMAL AMENDMENTS WOULD MAKE THIS TOO RIGID. THE FSM SHOULD KEEP RECORDS OF THE FP OVERTIME, SO THAT FUNDING DECISIONS CAN BE DETERMINED BASED ON THE PRINCIPLES AND THERE IS A MEASURE OF ACCOUNTABILITY FOR THE FSM, INSOFAR AS THE RECORD-KEEPING WILL ALLOW THE MINISTER TO CHECK TO MAKE SURE THAT FUNDING OBLIGATIONS WERE INCURRED IN MATERIAL CONFORMITY WITH THE FSM'S EVOLVING FP. THE CONCEPT OF THE FP IS TO CREATE DISCIPLINE, THORUGHFULNESS AND SOME MEASURE OF ACCOUNTABILITY FOR FSM IN MAKING FINDING DECISIONS.]

The Financing Plan shall be consistent with the Fair Allocation Plan.

Compliance with Plan

11.1 The Financial Services Manager shall ~~comply with~~ implement the Financing Plan.

[PROBABLY TOO RIGID A STATEMENT – SEE ABOVE. ALSO, OPG SEEMS TO HAVE ACCOUNTING ISSUES WITH THIS SORT OF MANDATORY DIRECTION – NEED TO CONFIRM]

Contents of plan

12. (1) The Financing Plan shall have regard to: ~~be prepared in accordance with the regulations and shall include such matters as may be prescribed, which may include the following:~~\

[OLC Note: Not sure if this is what you meant by "scoping" the regs… please let me know.]

The allocation of costs of the clean energy initiative among specified consumers over reference periods, as described in the Fair Allocation Plan;

The estimated IESO funding shortfalls in each reference period;

Funding obligations incurred in consideration of the sale of a regulatory asset;

The clean energy adjustment for a specified consumer with a view to ensuring that it is proportionate to the benefit that the specified consumer receives from the clean energy initiative during a reference period;

Reasonable compensation of the Financial Services Manager on terms that balance market terms and conditions with the interests of specified consumers;

Such other matters as may be prescribed

1. ~~A description of one or more transfers that may be made in respect of the regulatory asset established under Part **.~~

~~2. A description of the basis upon which funding obligations may be incurred in a manner that is consistent with the applicable Fair Allocation Plan.~~

~~3. A description of the funding obligations mentioned in paragraph 2, which may include the following:~~

~~i. Indebtedness.~~

~~ii. Payment obligations arising under or in respect of derivatives.~~

~~iii. Payment obligations owing to service providers, administrative agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies.~~

~~iv. Refinancing an existing funding obligation by applying the net proceeds obtained by incurring other funding obligations.~~

Limitation

(1.1) The Financing Plan shall not provide for the ~~payment~~ collection of the clean energy adjustment by specified consumers before May 1, 2022.

[From Blakes: WOULD PREFER TO SAY (1) NO CEAs IN THE FIRST 5 YEARS UNTIL, FOR A YEAR, THE MINISTER CONFIRMS THAT THERE WILL NOT BE A FAIR ADJUSTMENT FOR THAT YEAR. SEE MECHANICS, ABOVE.]

Special purpose financing entities

(2) If the Financial Services Manager is Ontario Power Generation ~~a prescribed entity~~, the Financing Plan may, ~~in accordance with the regulations~~, provide for the establishment by that entity of one or more special purpose financing entities that may incur funding obligations.

[OLC Note: I understand that OPG doesn't need authority to establish a SPV beyond existing OPG authority under the EA, but do you still want something like subs. (2) for an entity other than OPG? It almost makes it look like OPG is not authorized to do so, since the provision singles out prescribed entities. Need to consider further]NTD: Agree on need for further consideration. Would prefer to make some sort of link between OPG as FSM and its ability to estabslish a special purpose vehichle in this bill, because without that, an important part of the narrative of what we are doing is lost. Drafting above is one

try. Took out reference to regs because we don't want to tell them how to do it – we just want to ensure they have the proper authority.

Limit on liquidation, etc. of [special purpose funding entities]

(3) ~~The Financing Plan shall not provide for a~~No person may ~~[special purpose funding entity] tbe be~~ liquidated, dissolved or voluntarily wind~~wound~~-up a special purpose entity that has created a funding obligaiton under the FHPA until at least one year after all of the funding obligations the entity has incurred have been satisfied. [MOVE TO THE REGULATION]NTD: This links more to the consequential amendments to the EA that will empower OPG to create these entities than it does to the Financial Plan itself.

Prohibition

(3) The Financial Services Manager ~~ng Plan~~ shall not provide for funding obligations to be incurred with any recourse to any assets of the electricity vendors, the IESO, the Ontario Energy Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Funding obligations unaffected by amendment to Fair Allocation Plan

(4) No change to a funding obligation shall result from an amendment to the Fair Allocation Plan or Financing Plan that is made after the funding obligation has been incurred.

[OLC Note: Consider Article 8 (9) entitled "incurrences are binding" -- I believe we have already stated in the Part dealing with the regulatory asset that the rights are enforceable etc. even if charges have been imposed in a manner that does not follow the Financing Plan. Is more drafting required? Please advise. NTD: Bring forward for review after next turn]

NTD: Need to deal with removal of the Financial Services Manager:

The Minister may remove and replace the Financial Services Manager if:
Minister advises the Financial services Manager that the Financing Plan is not consistent with the Fair Allocation Plan;
The Financial Services Manager has a reasonable opportunity to consider and addresses the inconsistency; and
The Financial Services Manager is unwilling or unable to address the inconsistency to the satisfaction of the Minister acting reasonably.

Minister may appoint a [new] Financial Services manager in accordance with the regulations.

PART V
THE REGULATORY ASSET [AND INVESTMENT ASSET]

Regulatory asset established

22. (1) The IESO has property rights and interests, which together constitute a regulatory asset, in the recovery of the IESO funding shortfall.

[OLC Note to draft - Is it sufficient to say "*property rights and interests in the recovery of the IESO funding shortfall*"? Does that convey the right to enforce other parties' obligations that would allow for the shortfall to be recovered by the IESO?] NTD: Bring forward for review after next turn]

Limitation

(1.1) The right to recover the IESO funding shortfall under subsection (1) is subject to the following limits:

1. The amount recovered in respect of a reference period may not exceed the amount determined in ~~by which the~~ Fair Allocation Plan [~~fair allocation~~] ~~in respect of~~for a reference period ~~exceeds~~ minus the amount of the clean energy adjustment for the reference period.

[OLC Note: I don't understand para. 1.NTD: See comments immediately above Part IV. This is related.]

[From Blakes: CONSIDER IF THIS SHOULD BE A MAXIMUM OR A MANDATORY FLOW-THROUGH. IF THE IESO RECOVERIES PLUS CEAs FOR A PERIOD ARE LESS THAN THE FAIR ALLOCATION FOR A PERIOD, THEN THE RATEPAYERS OF THE PERIOD WILL BENEFIT FROM A LESSER SHARE OF THE COSTS THAN WOULD BE INDICATED BY THE FAP] NTD: here, Blakes is worried that people will be paying less than their fair share because the obligation to pay has not been created by either IESO or the investment asset owner. We don't yet have a sense of how to fix this.

2. No part of the funding shortfall shall be ~~recovered~~ collected from specified consumers before May 1, 2022. [From Blakes: TOO RIGID. SEE CONCEPT OF FAIR ADJUSTMENT, ABOVE]

Same

(2) The establishment of the regulatory asset is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

Recording of IESO funding shortfall in books

22.1 (1) Subject to the approval by order of the Ontario Energy Board, the IESO shall record the IESO funding shortfall from time to time in its books.

[From Blakes: THIS SHOULD ALSO INCLUDE ADJUSTMENTS WHEN THERE IS A TRANSFER AND RECOVERY – I.E., THE REGULATORY ASSET AMOUNT RECORDED SHOULD BE REDUCED]

Order

(2) The Ontario Energy Board may, in accordance with the regulations, by order specify how the IESO funding shortfall must be recorded.

No hearings,

(4) An order referred to in this section shall be made in writing and without holding a hearing.

No appeals, etc.

(5) No appeal lies from an order referred to in this section.

JRPA, etc.

(6) The *Judicial Review Procedures Act* does not apply to an order made under this section.

Recording in books determinative

(3) A recording in its books is determinative of the amount of IESO funding shortfall at the time of the recording.

IESO funding shortfall

22.2 (1) The IESO shall determine the IESO funding shortfall for each month in a reference period by calculating the difference between the following amounts:

1. The sum of all invoice amounts issued to specified consumers for the month.

2. The sum of all invoice amounts that would have been issued to specified consumers for the month if paragraphs 1 and 2 of section 7.2 did not apply.

[OLC Note: Should the value of any consideration received as part of a transfer be reflected in this section?]NTD: Yes.

Same

(2) The determination under subsection (1) shall be made based on the amount of electricity actually used by specified consumers during the reference period.

Transfer of regulatory asset

23. (1) The IESO may transfer the regulatory asset in accordance with the Financing Plan.

Consideration

(2) The IESO may receive consideration for the transfer of the regulatory asset, subject to the following rules:

1. The prospective owner of the investment asset to be acquired through the transfer shall pay to the IESO an amount equal to all or part of the IESO funding shortfall.

2. Upon receipt of the payment, the IESO shall record the payment as a reduction of the ~~AGGREGATE~~ IESO funding shortfall in its books.

[OLC Note: What is the "aggregate IESO funding shortfall"? Is this something different from whatever is recorded under s. 7.5?]No

3. Upon receipt of the payment, the IESO shall have no continuing right or interest in, or maintain any right to recover all or any part of the transferred regulatory asset.

Investment asset

Regulatory asset deemed to be investment asset upon transfer

23.1 Upon transfer of the regulatory asset or a portion of the regulatory asset, the regulatory asset or portion is deemed to be an investment asset and is vested in the investment asset owner.

Same

(2) An investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:
[OLC Note: For the moment I have more or less just cut and pasted the language you proposed in instructions received on April 14th. If we have time, we should revisit the language.]

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Same

(3) An investment asset is not affected by failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

No set off, etc.

(4) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, the IESO, an agent of the investment asset owner or an owner of distribution system assets in the Province;

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a);

(c) by any affiliate or successor of a person mentioned in clause (a).

Transfer of investment asset

24. The investment asset owner may transfer all or a portion of its rights and interests in an investment asset to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

[OLC Note: What is meant by "any other investment asset owner"? Do you mean to say anyone who already has the status of "investment asset owner" by virtue of the fact that the IESO has transferred a portion of the initial R.A. to that person previously?]

Validity of transfer

25. (1) A transfer of a regulatory asset or an investment asset under this Act that is expressed to be a sale or an absolute assignment is a valid and enforceable sale and absolute assignment of the regulatory asset or investment asset, as the case may be, and confers upon the owner of the investment asset acquired a valid property right and interest in, to and under the applicable investment asset in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall or an investment asset owner's right, title and interest in, to and under an investment asset, as applicable (or relevant portion thereof), and not merely as a pledge thereof, and upon such absolute transfer the transferor shall retain no right, title or interest in regulatory asset or the investment asset (or relevant portion thereof) subject to the transfer, including all rights to recover the IESO funding shortfall or the investment asset arising after such transfer. [OLC Note: I have reproduced the requested language for now but I don't understand what subs. (2) is saying that is different from subs. (1).]

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset or an investment asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the owner of the investment asset shall have priority over any liens in favour of such other persons.

Administration of investment asset

26. (1) The Financial Services Manager ~~shall~~ may administer an investment asset on behalf of the owner of the investment asset.

Administration of an investment asset may include:

- providing information to the OEB in respect of the funding obligation and the determination of the clean energy adjustment in accordance with s. 11x;

- providing information to electricity vendors in respect of there obligations under Part III.
- Such other matter as may be prescribed.

Review of costs

(2) The Ontario Energy Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

[OLC Note: Does this actually need to be included in the bill and if it does, what role does the OEB have after reviewing the administrative costs -- does it make recommendations or impose any consequences when it sees something out of line in the costs?]NTD: For the purposes of the regulations, we would recreate the process the OEB uses to review IESO's fees, set out in s.25 of the EA.

Investment asset owner may grant pledge

27. (1) The owner of an investment asset may grant a pledge to or in favour of a person in, to and over all or a specified portion of its right, title and interest in, to and under the investment asset in connection with any funding obligation.

Types of pledge

(2) A pledge may be a lien, mortgage, charge, right of set-off or security interest.

Validity

(3) The pledge may be made to secure a funding obligation and when granted shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the person to whom the pledge is granted a valid security interest in, to and in respect of the investment asset in accordance with the terms of the pledge.

[OLC Note: You asked for a additional content relating to the PPSA, which I have not had time to review in any detail. Please review all subsections that contain the (x) below and advise what is needed. It seems to me that some of this content was already covered by some of the numbered subsections in this draft. Also please advise as to the updated language based on most recent drafting.]

Perfection and priority of pledges

(x) For purposes of the *Personal Property Security Act*, the regulatory asset shall be intangible personal property and any pledge made by the owner of an investment asset in respect of a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Same

(x) All provisions of the *Personal Property Security Act* shall apply to the regulatory asset on the basis that it is intangible personal property, except to the extent otherwise provided in this section.

Same

(x) All proceeds of a related [Investment Interest?] that are subject to the pledge that are received by the owner of the investment asset shall immediately be subject to the pledge, and the security interest in the proceeds shall be perfected pursuant to the *Personal Property Security Act.*

Same

(x) A pledge perfected under the *Personal Property Security Act* shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the [Investment Interest?] subject to the pledge unless the pledgee has otherwise agreed in writing.

Same

(x) A pledgee shall have a perfected security interest in a related [Investment Interest?], including the owner of the investment asset's rights and interests in and to [the clean energy adjustment?] or other related proceeds in respect of the [Investment Interest?] and that are deposited in any [which account?] or other account of any [Electricity Distributor, IESO, Alternative Servicer or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds].

Proceeds

(8) All proceeds of the investment asset that are subject to the pledge and that are received by the investment asset owner shall immediately be subject to the pledge and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

[OLC Note: Isn't the above subs. (8) already covered by the general section in our "Miscellaneous" part that deals with "no further acts or approvals required"? (Article 12 (3) of Blakes doc.]

Perfection

(9) The pledge shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment asset subject to the Pledge, subject to the written consent of the person to whom the pledge has been granted.

Same

(10) The person to whom the pledge has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or

the IESO or other person who may have commingled such revenues or other proceeds with other funds.

Collective action required

28. If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [OLC Note: It seems that successors may need to be addressed here. Also Pledgees have not yet been addressed in this draft.]

Exercise of rights

29. The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset shall be exercised in accordance with section [xx].NTD: this was a cross reference to the PPSA.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

34. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

35.1 For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.
[OLC Note: would there be any doubt about whether the regulatory asset owner is a Crown agent? Is that where this needs to be articulated instead?]NTD: Regulatory asset owner is IESO.

Sequestration

35.2 [OLC Note: Still to be drafted:
If any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect clean energy adjustments, defaults on any required remittance of Clean energy adjustment Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by a Regulatory Asset Owner or Pledgee and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the Clean energy adjustment Collections,

Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Regulatory Asset Owner or Pledgee.] [Such order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or other person or entity authorized to collect Clean energy adjustments, as applicable.]

Successors

37. [OLC Note: Articles 4 (6) and (7) and Articles 5 (7) and (8) are rules about successors to distributors and the IESO being bound by specific requirements. Still to be drafted.]NTD: We think this is adequately dealt with by 4(5).

Choice of law

37.1 The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

38. The provisions of this Act [and the regulations?] NTD: Yes apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or PLEDGE,
[OLC Note: Please confirm that the underlined list of verbs is correct, taking into consideration the defined terms we are using in the draft Bill.]

No further approvals, etc.

39. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

97x. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

98x. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[10]

99x. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

100x. The Lieutenant Governor in Council may make regulations,

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[OLC Note: reg-making powers to be dealt with in subsequent draft]

PART VII[11]
AMENDMENTS TO OTHER ACTS

[OLC note (April 15th): I have not had time to deal with the latest instructions on consequential amendments.]

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

[OLC Note - Have not yet addressed instruction sent on April 14th in Rider relating to this section.]NTD: we have repeated the instructions from that rider here and updated those instructions.

[NOTE: Perhaps we should include a more general power tied to the Fair Hydro Act, and provide that additional objects can be added by regulation to that Act. For example, the IESO should have the power to "exercise the powers and rights, and the perform the dutes and obligations assigned to it under the Fair Hydro Act". In addition, the general power should contemplate that IESO has such other incidental powers to take all actions necessary to carry out the intent and purpose of the Fair Hydro Act and the transactions and actions contemplated by the Fair Hydro Act.

[10] FLS - see s. 51 of the Electricity Act, 1998

[11] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

We have added some very specific items to the list below, and to the OPG list to identify items that will be important to this transaction, and for which opinions will likely be necessary to facilitate the transactions. We would also like the flexibility to be able to add to IESO's objects by regulation under the Fair Hydro Act.]

(q.1) to enter into agreements or arrangements for the purposes of the ~~with [any special purpose financing entities established under (name of~~ new Fair Hydro Act?)];

(q.2) to engage in activities related to making payments to and receiving payments ~~from [any special purpose financing entities established under (name of new Fair Hydro Act?)],~~ as contemptaed~~required~~ under that Act, and to engage in related settlement activities;

(q.3) to engage in activities related to the creation, transfer and administration of the regulatory asset created under [(name of new Fair Hydro Act?)], which activities may include,

(i) incurring liabilities in relation to the regulatory asset

(ii) transferring the regulatory asset for consideration ~~to [any special purpose financing entities established under (name of new Fair Hydro Act?)~~];

(iii) ~~transferring the regulatory asset to third parties;~~

[OLC Note: I don't understand (iii) -- I thought the rights to the asset were being assigned to the specified entities and nobody else?]

[OLC note: Instructions were to change references to "regulatory asset" in (q.3) to "investment asset" but I'm not sure that is correct… need to discuss?]You are right – shouldn't be investment asset here.

(q.4) acting as a recovery agent under the [(name of new Fair Hydro Act?)];

201x. Subsection 53.1 (1) of the Act is repealed and the following substituted:

Objects of Ontario Power Generation Inc.

53.1 (1) The objects of Ontario Power Generation Inc. include, in addition to any other objects, the following:

[OLC Note - Have not yet addressed instruction sent on April 14th in Rider relating to this section.] .NTD: Instructions repeated. This was intentional – and as you note is consistent with the current objects clause.]

[NOTE: Perhaps we should include a more general power tied to the Fair Hydro Act, and provide that additional objects can be added by regulation to that Act. For example, OPG should have the power to "exercise the powers and rights, and perform the duties and obligations assigned to it under the Fair Hydro Act". In addition, the general power should contemplate that OPG has such other incidental powers to take all actions necessary to carry out the intent and purpose of the Fair Hydro Act and the transactions and actions contemplated by the Fair Hydro Act. The types of specific activities we have in mind are the following, although I am not yet convinced we need this level of detail, given the approach we took to Hydro One's objects in anticipation of the IPO:

- enter into contracts and undertakings on behalf of the financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the FHA subject to the right of reimbursement from Financing Amounts available to the financing entity thereunder;
- prepare reports on behalf of the financing entity;
- enforce the rights of the financing entity
- sign offering documents as sponsor or otherwise on behalf of the financing entity
- exercise the powers and perform the duties of the financial services manager under the Fair Hydro Act

We do need to include the ability to issue non-equity securities for the purpose of acquiring debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the FHA

1. Owning and operating generation facilities.

2. Establishing, operating and supervising the activities of [any special purpose financing entities established under (name of new Fair Hydro Act?)].

3. Providing financial and other support to the IESO in its activities under the [name of new Fair Hydro Act?].

4. Engaging in such financing, borrowing, lending and related activities and transactions to support the IESO with short-term or long-term financing.

5. Providing equity, not exceeding the prescribed amount, to support the financing capacity [any special purpose financing entities established under (name of new Fair Hydro Act?)].

[OLC Note: TBD to what extent the above objects can be subsumed under a generic reference to the OPG assuming the role of a "financial services manager".
Still to draft:

- for the EA amendments: *a provision that ensures OPG will continue to have these objects when acting in role as FSM* - OPG is performing functions of FSM concurrently with other functions of OPG under this section? YES
-for the new Fair Hydro Bill: *if OPG is the Financial Services Manager, it shall be required to provide an accounting of the amounts it charges the trust for the financing entity to the OEB 60 days in advance of the commencement of the fiscal year for the OPG trust/special purpose vehicle*]Yes – also addressed in note under Review of Costs (s. 26(2))

Subsidiaries

(1.1) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act is amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under [new Act].

203x. Section 90 of the Act is amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under [new Act].

[OLC Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 71 of the Act is amended by adding the following subsection

[OLC Note - still need to draft new subs. 70 (2.1) - instructions on pp. 8-9 of Rider instructions rec'd April 14th]

PART VII
COMMENCEMENT AND SHORT TITLE

Commencement

103x. This Act comes into force on [insert commencement rule]

Short title

104x. The short title of this Act is the *[TBD], 2017.*

NTD: We need to look at Sch 1 and make sure it works.

SCHEDULE 1
METHOD FOR DETERMINING AMOUNT OF CLEAN ENERGY ADJUSTMENT FOR REFERENCE PERIOD

1. The amount of the clean energy adjustment for a reference period shall be determined by calculating the sum of the following:

1. The sum of all payments made by owners of an investment asset [during the reference period?] to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

[OLC Note: Para. 1 is the definition of "repayment" from the Blakes doc. However, that definition include bracketed text that says: (*including making Finance Reserve Deposits).* I don't understand this because (1) Finance Reserve Deposit is listed as a separate line item in the definition of "finance amount" (see para. 4 below). In order to avoid duplication, can we exclude "finance reserve deposits" from para. 1?]

2. The sum of all funding costs for the reference period, as determined under section 2 to this Schedule.

3. The sum of all amounts payable by or on behalf of owners of investement assets to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

[OLC Note: Para. 3 is the definition of "redemption amount" from the Blakes doc.]

[OLC Note: What is meant by "make-whole" -- need some assistance in order to translate this term accurately. Do you have any examples of bilingual legislation where this term has been used?]

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable by owners of investment assets for the reference period that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

[OLC Note: Para. 5 is based on the definition of "additional funding charges".]

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

1. Calculate the aggregate of all interest and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of owners of investment assets during the reference period in respect of all funding obligations, including the following:

    i. Standby commitment fees or charges paid to any lender.

    ii. Credit enhancement fees or charges paid to any credit enhancer.

    iii. Liquidity fees or charges paid to any liquidity provider.

    iv. Payments, including termination payments, made under derivatives.

    v. Deposits made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a funding obligation.

2. Calculate the aggregate of all amounts received by or on behalf of the owners of investment assets during the reference period in respect of a funding obligation, including reimbursement of any amounts referred to in subparagraphs 1 i to v.

[OLC Note: Para. 2 is the definition of "finance receipts" in the Blakes doc.]

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

[OLC Note: This section is a modification of the definitions provided in the Blakes document for "Finance Reserve Deposits" and "Finance Reserve Withdrawals". The proposed definition of "FR deposit" involved a subtraction of the "FR withdrawal" so the term 'deposit' was not really descriptive of a pure deposit but rather the balance.]

1. Calculate the sum of all amounts deposited [to what account?] during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn from the account during the reference period from deposits previously made [e.g. during a previous reference period?] as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Intergenerational Fairness in Hydro Rates Act, 2017

(Working document – Blakes Article 11 – previously Article 10)

Protection and guarantee of scheme
Prohibition

_. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, ~~or~~ collection or remittance of [the clean energy adjustment/transition charges];

OLC Note (MS): Tara: Here and elsewhere I've square-bracketed terms that I understand might be changing in your next draft (transition charge", "the regulatory asset" and others). I thought it best to leave it to you to change those references once you've landed the terms. Of course there are other terms that follow usage in your draft, so there might be other changes needed to make this fit with your next draft.

(b) except as expressly permitted by this Act, reduce the amount of [the clean energy adjustment/transition charges] or lower the priority of [the clean energy/transition charges] over other debts; or

(c) adversely affect [the ~~regulatory investment~~ asset] or any funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may enter into agreements for the purposes of guaranteeing that compensation will be paid to an investment asset owner ~~person~~ for losses suffered as a result of,

(a) a contravention of subsection (1);

(b) a change in law that would adversely affect an investment asset ownerperson's rights under this Act; or

OLC Note (MS): An explanation because we discussed something a little different on the telephone: If this says "under this Act" it isn't necessary to mention the regulations. (they are also "under this Act).

(c) approval by the Minister of the fair allocation plan, or an amendment to the fair allocation plan, that fails to recognize the principles set out in section 9.

(d) a final determination by a court of final jurisdiction rendering invalid or ineffective all or any of the provisions of that this Act was beyond the legislative jurisdiction of the Legislature.[1]

OLC Note (MS): Of course you'll need to consult with CLB. All of this subsection is, of course, unusual, but clause (c) seems particularly so. My advice is to include something like this only if you really think there is a risk that this is ultra vires. Otherwise this looks like a red flag indicated that the government thinks their bill might be unconstitutional. (And of course if you think there is a risk you must make sure that Cabinet is informed when this goes to Cabinet.)

~~**Deemed contract and undertaking**~~

~~(4) The Government of Ontario is deemed to have entered into a contract with the [regulatory asset owner] under which the Government of Ontario undertakes,~~

~~(a) to ensure that subsection (1) is not contravened; and~~

~~(b) to pay compensation for losses suffered as a result of,~~

~~(i) a contravention of subsection (1),~~

~~(ii) a change in law that adversely affects a person's rights under this Act, or~~

~~(iii) a final determination by a court that this Act was beyond the legislative jurisdiction of the Legislature.~~

~~OLC Note (MS): We didn't get a chance to discuss what changes should be made to clause (b) as a result of the changes to subsection (3) (no longer~~

[1] Note to translator: See s. 9 of the Public Authorities Protection Act.

~~a compensation-paying provision, now just an agreement-authorizing provision and also now covering more than s. (1) contraventions). In the end I guessed that you'd want the obligation to pay compensation under clause (b) to cover all that could be guaranteed under s. (3) so I adapted clauses (3) (a) to (c) as subclauses (i) to (iii). If that isn't what you want, you'll need to let me know. Even if that is what you want I suggest you consider subclause (ii) very carefully. I wondered whether the reference to a person should be a reference to the regulatory asset owner.~~

IESO obligations

(5) If the IESO fails to carry out its obligations under this Act for any reason, including because the IESO is dissolved or restructured or because it becomes insolvent, the Government of Ontario shall carry out those obligations or ensure they are carried out by another appropriate entity.

Limit on liquidation, etc. of [special purpose funding entities]

(6) A [special purpose funding entity] may not be liquidated, dissolved or voluntarily wound-up until at least one year after all of the funding obligations the entity has incurred have been satisfied. NTD: would this fit better with OPG's powers in the EA? Those powers will generally enable OPG to create these SPVs.

References in marketing materials and offering documents

(7) No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

For convenience, here is the relevant article (April 6 document):

Article 10 – Undertaking of the Lieutenant Governor in Council

(1) **No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections** – The Lieutenant Governor in Council may not in any way take or permit any action to reduce, impair, postpone or terminate the obligation of Ratepayers to pay Transition Charges or impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, either directly or indirectly. The Lieutenant Governor in Council undertakes that the amount of Transition Charges determined hereunder shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by the Lieutenant Governor in Council.

(2) **Undertaking and Agreement** – The Lieutenant Governor in Council undertakes to and agrees with the Regulatory Asset Owner, including any Absolute Assignee from time to time, and any Pledgee from time to time, that the Lieutenant Governor in Council will not in any way take or permit any action that limits, alters or impairs the value of the Regulatory Asset or, except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, collected and remitted for the benefit of the Regulatory Asset Owner, including any Absolute Assignee from time to time, and any Pledgee from time to time.

(3) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Lieutenant Governor in Council, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

And here is the revised Article (version 9 – April 10)

Article 11 – Undertaking of the Lieutenant Governor in Council[2]

(1) **No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections** – The [Lieutenant Governor in Council] shall not in any way take or permit any action to reduce, impair, postpone or terminate the obligation of Retail Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by the Lieutenant Governor in Council, including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) **Undertaking and Agreement** – The [Lieutenant Governor in Council] shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, Successor IESO shall be established to perform such obligations.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated for any losses suffered by them as a result of any failure by the Lieutenant Governor in Council to comply with its undertakings and agreements in this Article 11.[3]

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[2] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes.

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid.

(6) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Lieutenant Governor in Council, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

[3] Requested by Torys. For discussion.

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Blakes Article 10/11
3- MS

Intergenerational Fairness in Hydro Rates Act, 2017

(Working document – Blakes Article 11 – previously Article 10)

Protection and guarantee of scheme
Prohibition

_. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging or collection of [transition charges];

OLC Note (MS): Tara: Here and elsewhere I've square-bracketed terms that I understand might be changing in your next draft (transition charge", "the regulatory asset" and others). I thought it best to leave it to you to change those references once you've landed the terms. Of course there are other terms that follow usage in your draft, so there might be other changes needed to make this fit with your next draft.

(b) except as expressly permitted by this Act, reduce the amount of [transition charges] or lower the priority of [transition charges] over other debts; or

(c) adversely affect [the regulatory asset] or any funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may enter into agreements for the purposes of guaranteeing that compensation will be paid to a person for losses suffered as a result of,

(a) a contravention of subsection (1);

(b) a change in law that would adversely affect a person's rights under this Act; or

OLC Note (MS): An explanation because we discussed something a little different on the telephone: If this says "under this Act" it isn't necessary to mention the regulations. (they are also "under this Act).

(c) a final determination by a court that this Act was beyond the legislative jurisdiction of the Legislature.[1]

OLC Note (MS): Of course you'll need to consult with CLB. All of this subsection is, of course, unusual, but clause (c) seems particularly so. My advice is to include something like this only if you really think there is a risk that this is ultra vires. Otherwise this looks like a red flag indicated that the government thinks their bill might be unconstitutional. (And of course if you think there is a risk you must make sure that Cabinet is informed when this goes to Cabinet.)

Deemed contract and undertaking

(4) The Government of Ontario is deemed to have entered into a contract with the [regulatory asset owner] under which the Government of Ontario undertakes,

(a) to ensure that subsection (1) is not contravened; and

(b) to pay compensation for losses suffered as a result of,

(i) a contravention of subsection (1),

(ii) a change in law that adversely affects a person's rights under this Act, or

(iii) a final determination by a court that this Act was beyond the legislative jurisdiction of the Legislature.

OLC Note (MS): We didn't get a chance to discuss what changes should be made to clause (b) as a result of the changes to subsection (3) (no longer a compensation-paying provision, now just an agreement-authorizing provision and also now covering more than s. (1) contraventions). In the end I guessed that you'd want the obligation to pay compensation under clause (b) to cover all that could be guaranteed under s. (3) so I adapted clauses (3) (a) to (c) as subclauses (i) to (iii). If that isn't what you want, you'll need to let me know. Even if that is what you want I suggest you consider subclause (ii) very carefully. I wondered whether the reference to a person should be a reference to the regulatory asset owner.

IESO obligations

(5) If the IESO fails to carry out its obligations under this Act for any reason, including because the IESO is dissolved or restructured or because it becomes insolvent,

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[1] Note to translator: See s. 9 of the Public Authorities Protection Act.

the Government of Ontario shall carry out those obligations or ensure they are carried out by another appropriate entity.

Limit on liquidation, etc. of [special purpose funding entities]

(6) A [special purpose funding entity] may not be liquidated, dissolved or voluntarily wound-up until at least one year after all of the funding obligations the entity has incurred have been satisfied.

References in marketing materials and offering documents

(7) No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

For convenience, here is the relevant article (April 6 document):

Article 10 – Undertaking of the Lieutenant Governor in Council

(1) **No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections** – The Lieutenant Governor in Council may not in any way take or permit any action to reduce, impair, postpone or terminate the obligation of Ratepayers to pay Transition Charges or impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, either directly or indirectly. The Lieutenant Governor in Council undertakes that the amount of Transition Charges determined hereunder shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by the Lieutenant Governor in Council.

(2) **Undertaking and Agreement** – The Lieutenant Governor in Council undertakes to and agrees with the Regulatory Asset Owner, including any Absolute Assignee from time to time, and any Pledgee from time to time, that the Lieutenant Governor in Council will not in any way take or permit any action that limits, alters or impairs the value of the Regulatory Asset or, except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, collected and remitted for the benefit of the Regulatory Asset Owner, including any Absolute Assignee from time to time, and any Pledgee from time to time.

(3) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Lieutenant Governor in Council, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

And here is the revised Article (version 9 – April 10)

Article 11 – Undertaking of the Lieutenant Governor in Council[2]

(1) **No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections** – The [Lieutenant Governor in Council] shall not in any way take or permit any action to reduce, impair, postpone or terminate the obligation of Retail Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by the Lieutenant Governor in Council, including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) **Undertaking and Agreement** – The [Lieutenant Governor in Council] shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, Successor IESO shall be established to perform such obligations.

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[2] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated for any losses suffered by them as a result of any failure by the Lieutenant Governor in Council to comply with its undertakings and agreements in this Article 11.[3]

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid.

(6) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Lieutenant Governor in Council, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

[3] Requested by Torys. For discussion.

3. Programs are established to aid certain distribution rate-protected residential consumers and on-reserve consumers.

4. Various amendments of a technical and administrative nature are made to support the implementation and oversight of these programs including provisions related to auditing, record-keeping, inspections and inquiries, offences and penalties.

3pm

LSB INSTRUCTIONS APRIL 14/2017 – TIME TBD

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Intergenerational Fairness in Hydro Rates Act, 2017

[OLC Notes re this draft:
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- Need to address "True-Up Amount"
- additional consequential amendments likely required still]

Preamble

The Government of Ontario is committed to fostering the growth of renewable energy projects, which use cleaner sources of energy, and to removing barriers to and promoting opportunities for renewable energy projects and to promoting a green economy.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity to ensure significant investment in decarbonizing and modernizing sites and facilities in the province for the generation of electrical energy and the production therefrom.[2]

Given the long-term benefits that future generations of Ontarians will receive from these investments, it is appropriate to raise money in respect of these sites and facilities[3] in a manner that allocates the costs of these investments fairly among present and future consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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[1] FLS: please see the preamble of the *Green Energy Act, 2009.*
[2] FLS: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".
[3] FLS: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL

Definitions

1. (1) In this Act,

[OLC Note: I haven't included some of the definitions that you added in your instructions on evening of April 13th because I think additional instructions are still to follow that would explain how these terms are to be used.]

"clean energy initiative"

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner under section x; ("French")

"electricity generation assets" means facilities that are constructed, acquired or developed in connection with electricity generation contracts and any related equipment; ("French")

"eligible amounts" mean, in relation to a [measurement date],

(a) the costs incurred prior to or expected to be incurred [on or after of the measurement date?] by the IESO in relation to,

(i) payments made or expected to be made under section 78.1 of the *Ontario Energy Board Act, 1998*, other than payments made under contracts with Bruce Power L.P or Bruce Power A. L.P. or their successors or assigns, and

(ii) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*; and

(b) such other costs, benefits or amounts in respect of the [clean energy initiative] made or received prior to or expected to be incurred or received on or after such measurement date as may be prescribed; [OLC Note: What is the relationship between clause (b) and the "measurement date"?]

"electricity vendor" means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

[OLC Note: ENE LSB noted that the definition of "electricity vendor" needs to be considered further.]

[OLC Note: You have confirmed that the IESO should have the responsibilities of an "electricity vendor" in some cases. Can you please let me know if this arises in other ENE legislation (i.e. a case where the IESO has to be treated as if it is a licensed distributor or licensed retailer) and if so how it is handled. I'm thinking perhaps one interpretive provision may work.] *[NTD: s. 1(1) of the Ontario Rebate for Electricity Consumers Act, 2016 (ORECA) provides the definition for "electricity vendor" which includes the IESO as follows: electricity vendor" means the IESO, a licensed distributor, a licensed retailer or a person prescribed by the regulations; ("vendeur d'électricité"). In that Act, IESO is simply folded into the definition for electricity vendor and has to comply with all of the billing, invoicing and other obligations imposed on distributors, retailers or sub-meter providers. If the IESO needs to have special-case rules for conducting certain obligations, we could create specific provisions for that in the Regulations but the ORECA approach is subtle and may work well for our purposes. I would note that in ORECA, unit sub-meter providers are handled outside the definition for electricity vendor (handled separately particularly in the General Regulation).]*

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means, subject to subsection (4),

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) ~~(b)~~ every six-month period following the period mentioned in clause (a); ("French")

Or such shorter period as may be reflected in the Fair Allocation Plan.

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the regulatory asset established under section X; ("French")

"regulatory asset owner" means, collectively, the owners of the regulatory asset, which may include, NTD: now only IESO

[OLC Note: Your instructions are to break this up into two concepts - "regulatory asset owner" would cover clause (a) and "investment asset owner" would cover clause (b). I haven't addressed this yet. It might help me to draft based on this instruction if I understand why you want to make this change.

It also might be a good idea to go through the draft and consider what change is needed in each place where "regulatory asset" and "regulatory asset owner" occurs. I think that in some places, we would be forced to say "regulatory asset owner or investment asset owner" or in some cases "regulatory asset owner and any investment asset owners" since the rules would be applicable to both (e.g. we have rules that are not dependent upon whether or not the asset has been sold). So far we have drafted on the assumption that all of the owners at any given time would act collectively as "the regulatory asset owner".

NTD: The term "regulatory asset" is important to IESO for accounting purposes. The regulatory asset when IESO has it has 2 components: 1) a bundle of rights related to collecting on a debt; 2) an account. In most cases, IESO will sell the bundle of rights / debt , which will become the investment asset, but keep the account (which will be offset by the sale). If IESO can't sell the bundle of rights / debt, then it will need to collect the debt recorded in the account. We want to distinguish IESO's ability to recover the debt (when it can't sell it) from the rights associated with collecting on the investment asset (the same debt, but held by what we have been calling the regulatory asset owner, which will need to become the investment asset owner).

In the case where only a partial sale has occurred, what is it? A regulatory asset or an investment asset? If two entities share ownership of a thing, doesn't that mean it is one thing and should have only one name?

NTD: When a partial sale occurs, then IESO will retain a regulatory asset (and need to be able to collect on it in the future) and the partial sale will become an investment asset.

Conceptually it might be quite confusing to a reader to have two different labels for the same thing. My understanding is that the asset itself would not be different in any way yet we would be changing the label.] NTD: we are trying to convey that IESO

will have different collection rights than the regulatory asset holder (because IESO's needs and purposes are different from bankers').

An investment asset owner means, collectively, the owners of the investment asset and

(a) the IESO, to the extent that it retains any ownership interest in, to or under the regulatory asset, and

(b) a transferee, to the extent that it has acquired and holds any ownership interest (including a specified portion on a divided basis or by way of an undivided interest) in, to or under the regulatory investment asset; ("French")

NTD: To make the distinction between the regulatory asset and the investment asset,we will deem the regulatory asset to become an investment asset:

Upon transfer of a regulatory asset from the IESO, the regulatory asset shall be deemed to be an investment asset.

"service area", with respect to a licensed distributor or a licensed retailer, means the area in which the distributor is authorized by its licence to distribute electricity or the area in which the retailer is authorized by its licence to retail electricity, as the case may be; ("secteur de service")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed ("French")

"transfer" means an assignment, conveyance, disposition or sale; ("French")

"transferee" means any person to whom all or part of the regulatory asset has been transferred; ("French")

"true up amount" means, in respect of a reference period, the amount calculated in respect of the reference period in accordance with section X."

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

[OLC Note: In light of clause (b) of the definition of "specified consumer", do you still need para. 5?] *[VTD: The question is whether we want to be able to separately prescribe classes of eligible consumers versus prescribing the criteria that those consumers may have to meet. We do see a subtle but important difference that we may need to rely upon. As long as the regulation-making authority permits the creation of classes of consumers as well as prescribing criteria that they must meet we can let para 5 go. Otherwise, we'd feel more comfortable having the authority.]*

Same

(3) In this Act, a reference to a specified consumer of an electricity vendor who is a licensed distributor or a licensed retailer means a specified consumer who has an account with the distributor or retailer for the provision of electricity in Ontario.

[OLC Note: Need to revisit this in light of the fact that the IESO is to be considered an electricity vendor.] NTD: No longer required. Definition fixed.

Reference period

(4) Clauses (b) and (c) of the definition of "reference period" do not apply if the Fair Allocation Plan specifies different reference periods.

[OLC Note: Subs. (4) is quite unusual as it would allow for an external document prepared by an external body to essentially override the legislation. Are you sure you don't want to impose some parameters?]

Intention of the Legislature

(5) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

[OLC Note: The above subsection is intended to address the instruction included in the Blakes doc in Article 12 (5) - "Severability". This kind of provision is generally not considered necessary but the above is based on a provision that was included in the *Climate Change Mitigation and Low-carbon Economy Act, 2016.* Please advise if this achieves your desired objective.] NTD: yes, it does.

Same

(6) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

[OLC Note: This is meant to address Article 12 (4) of the Blakes doc. This provision is a bit unusual and will have to be considered further to ensure that it achieves the desired outcome.] NTD: this provision achieves our intent.

Purpose

2. (1) The purposes of this Act are,[4]

NTD: this has nothing to do with adequacy, safety, sustainability and reliability. Sorry to distract. It's all about costs.

(a) to ensure the adequacy, safety, sustainability and reliability of electricity supply in Ontario through responsible planning and management of electricity resources, supply and demand;

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

(b) to promote the use of cleaner energy sources and technologies, including low carbon, alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario;

(c) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity;

(d) to facilitate the maintenance of a financially viable electricity industry, including by raising money in respect of sites and facilities in the province for the generation of electrical energy and the production therefrom;[5]

(e) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service; and

NTD: (f) and new (g) is really what this is all about-we would like to reinstate the definition of clean energy initiative and have these points first in the list please

(f) to ensure that the costs of ~~generating cleaner energy~~ the clean energy initiative are fairly distributed among specified customers over time.

(g) to recognize the long term benefits of the clean energy initiative accrue over time and will continue to benefit present and future electricity consumers in the Province.

[OLC Note: Do you need a provision that states "This Act binds the Crown"?] Yes please

Undertaking

3. [Drafting related to Article 11 of Blakes document to be proposed in separate document.]

PART II
CLEAN ENERGY ADJUSTMENTS

DUTY OF SPECIFIED CONSUMERS TO PAY

Specified consumers to pay clean energy adjustment

4. (1) Upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

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[5] FLS - as per the note in the Preamble on this language, please see 92A (4) of the *Constitution Act, 1867.*

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether payment of the amounts is inconsistent with the Fair Allocation Plan applicable at the time when the payment is due;

(b) whether the payments relate to funding obligations that were incurred in a manner that did not comply with the Financing Plan; and

Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to the ~~regulatory~~ investment asset owner.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

[OLC Note: ENE LSB to advise if there is precedent language in Ontario legislation to express the above concepts rather than relying on US law.]

[NTD: Our preference is to proceed with the US language provided. We did not find any precedent language in Ontario legislation that addresses the entirety of this concept. The term "separate and distinct" is used in the Insurance Act to convey to the concept of "single and separate" in this section (except that the Insurance Act section deals with separate assets, rather than a debt obligation). The language in s. 22 of the Hydro One Inc. Directors and Officers Act, 2002 (which provides that enforcement of one obligation under the Act does not preclude enforcement of any other obligations under that Act) may be adapted for the second part of this section on separate enforcement.]

Irrevocability of clean energy adjustment

5. (1) Any clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is an error in calculations made by the electricity vendor.

[OLC Note: I note that in the instruction on Article 4 (1), you state: "Upon the inclusion of a Clean energy adjustment in an Electricity Invoice, the obligation to pay such amount shall be deemed to have been imposed on and billed to the applicable Ratepayer". Does this mean the person is deemed to be billed even if they never see the invoice and even if

there is an error in the invoice? You mentioned that you will be following up on consumer protection issues (e.g. OEB's Distribution System Code).] NTD: A person should not be responsible for the cost if they don't get a bill or if there is an error. (2) deals with the error. We will be silent about not receiving an invoice, because of all of the obligations that we put on IESO and electricity vendors to send invoices.

DUTIES OF IESO

IESO to determine clean energy adjustment for electricity vendor

6. (1) The Board IESO shall apply the methodology set out in the Fair Allocation Plan to determine the amount payable on a monthly basis by each electricity vendor on behalf of the electricity vendor's specified consumers for clean energy adjustments.

NTD: we don't have this quite right. It's not IESO. Not sure that it's the "methodology set out in the Fair Allocation Plan" I think it's the methodology set out in the "Finance Amount" section.

IESO to invoice electricity vendors

(2) The IESO shall issue an invoice to each electricity vendor for the clean energy adjustments in accordance with the regulations.

IESO to collect

(3) The IESO shall, as an agent of the regulatory asset owner, make reasonably diligent efforts to collect clean energy adjustments from electricity vendors.

NTD: the account in (4) is different from the IESO's regulatory asset account. This account is for collections. Suggest the following:

The IESO shall establish an account to record its collection of clean energy adjustments from electricity vendors.

Deposit

(4) The IESO shall promptly deposit payments for clean energy adjustments in the account established under section X.[new section above]

IESO's to remit

(5) The IESO shall remit amounts received to the regulatory asset holder in accordance with the regulations.

DUTIES OF ELECTRICITY VENDOR

Electricity vendor to determine clean energy adjustment for specified consumer

7. (1) In order to recover clean energy adjustments invoiced to an electricity vendor under subsection 6 (1), each electricity vendor shall apply the methodology set out in the Fair Allocation Plan to determine the proportionate share of clean energy adjustments payable on a monthly basis by each of its specified consumers. NTD: They are applying the existing methodolody that they already use to determine amounts owed by consumers based on a cents/kWh rate determined by the OEB below.

NTD: Electricity vendors will be told by OEB what their proportionate share of the clean energy adjustment will be and then they will apply that amount to the rate base. We need to make sure that we have a mechanism for the Board to tell electricity vendors what there amounts are – this seems to be s. 6(1).

Electricity vendor to invoice specified consumers NTD: Instructions sent at 9:45 April 13 said remove this (2). Please do not. We need it.

(2) The electricity vendor shall issue an invoice to each specified consumer for the applicable amount of clean energy adjustments in accordance with the regulations.

Electricity vendor to collect

(3) (1) Each electricity vendor shall, as an agent of the regulatory asset owner, make reasonably diligent efforts to collect clean energy adjustments from specified consumers.

NTD: the account in (4) is different the other accounts that we have created so far. This account is for collections. Suggest the following

Each elecuricity vendor shall establish an account to record its collection of clean energy adjustments from specified consumers.

Deposit

(4) The electricity vendor shall promptly deposit payments for clean energy adjustments in the account established under section X [new section above].

Remittance to IESO

(5) The electricity vendor shall remit all amounts received to the IESO in accordance with the regulations.

PART III
HOW CLEAN ENERGY ADJUSTMENTS ARE DETERMINED

INTERPRETATION

Definitions

7.1 (1) In this Part,

"generation facility" has the same meaning as in section 56 of the *Ontario Energy Board Act, 1998*; ("installation de production")

"holiday" means [O. Reg. 95/05 definition];] ("French")

"invoice amount" means the sum of the following amounts:

1. The commodity price of the electricity used during the invoice period.

2. The rates and charges set out in the applicable rate order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

3. Any adjustment required under section 25.33 of the *Electricity Act, 1998*.

4. The amount of any harmonized sales tax payable under Part IX of the *Excise Tax Act* (Canada).

"rate of inflation means"… [to be included in next draft].

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"weekday means [O. Reg. 95/05 definition]; ("French")

Invoice amount, exclusions

(2) For the purposes of the definition of "invoice amount" in subsection (1), an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility and classified as "microFIT".

ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the Act;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

FAIR ADJUSTMENT IN YEARS 2017 TO 2021

[OLC Note: You included instructions relating to the new concept of "fair adjustment". I have a number of questions about this which I'm hoping you can answer through instructions on the next draft:

1. The "fair adjustment" is meant to capture the value of amounts invested by the government during what period of time? (Jan 1, 2005 until May 1, 2017? Or Jan 1, 2005 until the day this Bill receives Royal Assent? NTD: Amounts incurred until May 1, as that is when most of the specified consumers will start to receive the benefit of the fair adjustment.

2. I don't understand the following statement: *it represents an overcharge through the existing GA in relation to "the Green Plan" (IE. based on the longer amortization of those costs now anticipated relative to the amortization periods under the contracts themselves; eg. electricity generations, conservation, demand management).* NTD: we're just trying to explain that people today(and really from 2005 to today) have over paid for clean generation and that those costs are fairly spread into the future.

What do you mean by "overcharge through the existing GA"? NTD: We're referencing how clean initiatives have been paid for to date. Do you mean that this is an amount that consumers have already paid and that is now determined to have been an overcharge because of the new "smoothing" that is linked to the longer amortization period? NTD: Yes

3. You said that the fair allocation plan sets out a limit on how much debt repayment and finance costs a particular reference period will bear and where there is a fair adjustment those costs will be reduced by the fair adjustment amount. I don't understand when there would not be a fair adjustment… since everyone has been paying the GA, won't the fair adjustment remain a constant? NTD: The fair adjustment implements the gov't's March 2 commitment – the initial reduction and then CPI increases for years 2 to 5.

4. How does this concept of "fair adjustment" relate to the "clean energy adjustments" Will the fair adjustment be deducted as part of the calculation of the clean energy adjustment?] NTD: the clean energy adjustments repay the debt incurred to allow the fair adjustment.

[OLC Note (April 13th, 9:30pm) - I'm reproducing below your instruction received tonight - still not clear to me how this fits in with the rules already drafted regarding the first 6 months of the rates etc. Is this meant to replace the various provisions included in the draft below?

Except as otherwise prescribed by regulation, the clean energy adjustment for a reference period shall be determined by applying the following formula:

A / B

where,

A is the estimated finance amount for that period and the true up amount in respect of the prior reference period

B is the [forecast by the Ontario Energy Board of the total volume of electricity that will be consumed by the specified consumer group in the reference period]

NTD: I think you may be confusing "clean energy adjustments" with "fair adjustments".

The "clean energy adjustments" are the "transition charges" (former term) that specified consumers will be invoiced as part of the repayment of the amounts deferred. The Bill will provide (in a section dealing with the financing plan) that no clean energy adjustments can be invoiced in the first five years (i.e. before May 1, 2022).

The "fair adjustments" are in effect amendments to the fair allocation plan. The fair allocation plan is to be "subject to" any fair adjustments from time to time.

The first fair adjustment is set out in section 7.2 of the Bill. The title of this section should say "fair adjustment" not "clean energy adjustment". This title should also now refer to the period from May 1, 2017 to April 30, 2018.

The second fair adjustment will be the CPI increase in the proxy consumer's bill in the second year. This is currently in section 7.4 of the Bill (albeit with a Nov. 1, 2017 effective date), but we can confirm that this will be moved to a regulation. In other words, any fair adjustments after the initial decrease in the proxy consumer bill will be prescribed (in a regulation made under the new statute). The effective date of this second fair adjustment will now be May 1, 2018.

Determination of clean energy adjustment, May 1, 2017 to ~~October 31, 2017~~April 30, 2018

7.2 The Ontario Energy Board shall determine the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on ~~October 31, 2017~~April 30, 2018 in the following manner:

1. [OLC Note: Consequential amendments - e.g. relationship with section 79.16 of the OEBA TBD - please instruct.] *[NTD: Section 79.16 is the authority under which the Board regulates electricity prices for its Regulated Price Plan, and is the authority for the RPP in general. This provision was created as a two-step provision that first provided Government authority to establish prices by regulation (see source law: O. Reg. 95/05 "original"). 4704 made under the precursor to 79.16. The original plan back in 2004-2005 was to have Government set prices for a few years then "hand it over" to the OEB and allow the OEB to set prices under OEBA s.78(3.1). The hand-over was only partial and Government has continued to rely on s.79.16 (note that clause (a) is spent since the date has been prescribed and the OEB is now operating under s.79.16(1)(b). See current O. Reg. 95/05 which clearly shows that the OEB is still doing its RPP work under OEBA s.79.16. This raises an important issue: whether we should "remake" s.79.16(1) to clearly state that the price-setting work that the OEB does under the RPP is authorized and that the work that it must do to accommodate the Fair Adjustments is also authorized going forward long-term.*

1. Determine the average rate payable by a representative consumer by applying the method set out in section 7.3.

2. Determine the average monthly invoice amount that would be payable by a representative consumer under the rate determined under paragraph 1.

3. Determine the amount that is 25 per cent less than the monthly invoice amount determined under paragraph 2. NTD: the amount is more like 14% once we take out the 8% OREC rebate and the social programs that we are moving to the tax base. Need to confirm exact percentage

4. Determine the average rate payable by a representative consumer that would result in the monthly invoice amount mentioned in paragraph 3 for a representative consumer.

Determination of baseline, average rate

7.3 For the purposes of paragraph 1 of section 7.2, the follow method applies:[6]

1. The Board shall determine rates in a manner that is consistent with the Standard Supply Service Code issued by the Board.

2. In determining the rates, the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect those costs.

3. The Board shall set an off-peak period associated with the regulated price referred to as RPEMOFF in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board,

    i. that begins no later than 7 p.m. on every weekday and ends,

        A. no earlier than 7 a.m. on the next day if the next day is a weekday, or

        B. no earlier than 12 a.m. on the next day if the next day is Saturday, Sunday or a holiday, and

    ii. that begins no later than 12 a.m. on every Saturday, Sunday and holiday and ends no earlier than,

        A. 12 a.m. on the next day, if the next day is Saturday, Sunday or a holiday, or

        B. 7 a.m. on the next day if the next day is a weekday.

Determination of rates, starting November 1, 2017

7.4 On and after November 1, 2017, the Board shall determine the rate for electricity payable by a specified consumer in the following manner:

[OLC Note: You mentioned that you might want to delete s. 7.4 but I will wait for confirmation before removing.] [NTD: We would like to provide that on and after April 30, 2018, the fair adjustment (meaning the rate determined under 7.2 and 7.3) may be

[6] FLS: Please see section 6 of O. Reg. 95/05 (a bilingual reg).

adjusted by CPI in accordance with the regulations. The drafting below would then appear in the regulations (and our intent is to have a plain language summary of the first regulation for year 2 – May 1, 2018 ready to post shortly after the bill is introduced to show the intent).Please see NTD following s. 7.5 in the instructions sent last night.

1. The Board shall determine rates in a manner that is consistent with the Standard Supply Service Code issued by the Board.

2. The rate determined by the Board shall remain in effect for six months. The Board shall determine separate rates after that time for each reference period, up to and including the period beginning on November 1, 2021.

3. The rate shall be determined by increasing the rate determined for the most recent reference period by the amount that would increase the monthly invoice amount of a representative consumer by the year-over-year increase in CPI.

Determining amount of funding shortfall

7.5 (1) The IESO shall determine the funding shortfall for each month in a reference period by calculating the difference between the following amounts:

1. The sum of all invoice amounts issued to specified consumers for the month.

2. The sum of all invoice amounts that would have been issued to specified consumers for the month if paragraphs 1 and 2 of section 7.2 did not apply.

[OLC Note: Once the IESO determines this number, what do they do with it? Publish it? Provide it to the Minister?] NTD: The IESO funding shortfall becomes the amount recorded in the IESO Regulatory Asset Account and it is the rights associated with that shortfall that may be sold to the OPG Special Purpose Vehicle.

Same

(2) The determination under subsection (1) shall be made based on the amount of electricity actually used by specified consumers during the reference period.

FAIR ALLOCATION PLAN

Fair Allocation Plan

8. (1) In order to fairly measure and allocate eligible amounts across specified consumers as of May 1, 2017 and future specified consumers, the Minister shall prepare and propose to the Lieutenant Governor in Council a written plan entitled the Fair Allocation Plan.

Amendments to the plan

(2) Subject to the approval of the Lieutenant Governor in Council, the Fair Allocation Plan may be amended or replaced by the Minister, as the Minister considers appropriate.

[OLC Note: Now that we have included the provisions from the RPP to cover the first years of fair allocation, please advise how you want to articulate the contents of the Plan (e.g. must incorporate the above provisions and then come up with a scheme that would apply in subsequent years, subject to some limitations)?] NTD: All we want to say is that the Plan must be developed in accordance with the principles outlined below.

[OLC Note: Please confirm whether the "funding shortfall" should be mentioned above or if it is accurate to refer to the eligible costs.] NTD: funding shortfall can't exceed the Fair Allocation Plan for a reference period. Funding shortfall doesn't need to be mentioned above.

[OLC Note: ENE LSB flagged the following concern: *there needs to be a process for determining impact on the proxy consumer of the transition costs arising out of the Financing Plans which are based on the Fair Allocation Plan.*]

Amendments to plan

(2) The Minister may propose amendments to the Fair Allocation Plan from time to time, as the Minister considers appropriate. NTD: Now addressed by (2) above

Publication

(3) The Minister shall ensure that the Fair Allocation Plan and any amendments to the plan are made available to the public in a manner that the Minister considers appropriate.

Effective date

(4) The Fair Allocation Plan or an amendment to the plan takes effect on the date that the plan or the amendment is published under subsection (3) or on such later date as may be specified by the Minister.

[OLC Note: Please confirm above.] NTD: effective upon date of approval by LGIC

Compliance

tie to IESO funding shortfall and consider clean energy adjustment

8.1 The IESO, ~~electricity vendors~~ and the [~~financing entity~~Financial Services Manager] shall not exceed the limits established by~~comply~~ with the Fair Allocation Plan.

[OLC Note: I don't think we have dealt with the term "financing entity" yet.]

Principles

9. In preparing the Fair Allocation Plan, the Minister shall have regard to the following principles:

max ieso recovery = amount by which FAP exceeds finance amts

1. Eligible amounts should not be allocated in respect of any period of time after April 30, 2047.

2. The share of eligible amounts allocated to specified consumers who receive an invoice in respect of a reference period should be proportionate to a reasonable assessment of the benefits derived by those consumers during that reference period.

3. The specified consumers to whom an invoice is issued during a reference period should not bear an unreasonably disproportionate share of the eligible amounts. Adjustments should be made over time if the Minister is of the opinion that specified consumers have paid more than is reasonably proportionate.

4. Allocation of the eligible amounts should be determined for each reference period.

5. A reasonable estimate of the rate of inflation should be applied.

Methodology

10. (1) The Minister shall set out in the Fair Allocation Plan the methodology to be used for allocating eligible costs among specified consumers, which methodology shall include the inclusion by electricity vendors of clean energy adjustments on the invoices of specified consumers.NTD: OEB will tell electricity vendors what amounts are owed by their customers..

Same

(2) The Lieutenant Governor in Council may make regulations governing the methodology, which may include requiring the Minister to have regard to prescribed considerations when selecting the methodology.

[OLC Note: I'm not sure where to put the following rule yet. It could be something that is dealt with as something that is added on to the methodology or it could be set out as a principle under the FAP… need to consider this further. Also is the amount payable as described below considered to be part of the "clean energy adjustment"? Or is it some other kind of payment? NTD: it's a payment in respect of the regulatory asset, not the clean energy adjustment, which related to the investment asset

(x) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable Fair Allocation Plan, the difference is payable to the IESO by the specified consumers.

FINANCING PLAN

Financing Plan to be prepared by prescribed entity

11. (1) In order to ensure that decisions made under this Act with respect to the period beginning on May 1, 2022 are consistent with the Fair Allocation Plan and ~~sections~~ subject to the [fair adjustment ~~provisions~~] and are cost-effective, the [Financial Services Manager~~]~~ NTD yes shall prepare and ~~propose~~ provide to the Minister a plan entitled the Financing Plan.

[OLC Note: Do you want to impose a timing requirement on the preparation of the plan? When does the plan take effect?] NTD: Financing plans will be fluid and updated from time to time.

[OLC Note: I believe this would be the first reference in this Bill to the Financial Services Manager - need to follow up on this. Is this the same thing as a "financial services agent"?] NTD: Let's definte Financial Services Manager as OPG or such other entity as may be prescribed.

Other prescribed entity

(1.1) If another entity is prescribed for the purposes of this Part, that entity shall have all of the obligations and duties of [the Financial Services Manager~~?]~~ ~~?~~] NTD: Yes under this Part and all references to the [FSM] NTD: Yes in this Part are deemed to be references to that entity.

~~Approval by Minister~~

~~(2) Upon receipt of a proposed Financing Plan or proposed amendments to the plan, the Minister shall, in writing,~~

~~[OLC Note: Please confirm that this reflects the desired policy.]~~

~~(a) approve the proposed plan or proposed amendments; or~~

~~(b) make any amendments to the proposed plan or proposed amendments that the Minister considers appropriate and approve the plan or amendments subject to those further amendments.~~

NTD: Please disregard instruction from last night that the FSM will be a special purpose vehicle created by OPG. The FSM will be OPG unless OPG is fired, which is the only thing the Minister can do if the Financing Plan is not consistent with the Fair Allocation Plan. Please consider:

The Minister may remove the Financial Services Manager in accordance with the regulations in the event that the Finance Plan is not consistent with the Fair Allocation Plan.

Publication

(3) The approved Financing Plan and any subsequent amendments to the plan under this section shall be made available to the public in a manner approved by the Minister.

[OLC Note: Please confirm that this reflects the desired policy.] NTD: The financing plan is a confidential document. Its public release would impact our ability to finance the funding obligation. Please deem Financial Plan to be third party confidential information for the purposes of s. 17 of FIPPA.

Amendments to approved plan

(4) The Financing Plan may be amended at any time by the Financial Services Manager,

(a) [???], subject to the Minister's approval of any such amendments under subsection (2); or

(b) the Minister.

[OLC Notes:
- What does the Minister have to do in order to implement the amendments? Notification to anyone? Publication?) NTD: minister has no responsibility for amendments
- do you want to impose limits on the scope of amendments that can be made?] NTD: The limits are the Fair Allocation Plan

[OLC Note: Do you want to impose a requirement that the Financing Plan be reviewed every time the Fair Allocation Plan is amended?] NTD: no thank you. Financing Plan will be fluid so we won't need to provide this.

Compliance with Plan

11.1 The IESO, electricity vendors, [the financial services manager?] and any [special purpose financing entity?] shall comply with the Financing Plan.

Contents of plan

12. (1) The Financing Plan shall include the following: NTD: We would like the contents of the plan to be set by regulation, and the regulation to be scoped by these parameters.

1. A description of one or more transfers that may be made in respect of the regulatory asset established under Part **.

2. A description of the basis upon which funding obligations may be incurred in a manner that is consistent with the applicable Fair Allocation Plan.

3. A description of the funding obligations mentioned in paragraph 2, which may include the following:

    i. Indebtedness.

    ii. Payment obligations arising under or in respect of derivatives.

    iii. Payment obligations owing to service providers, administrative agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies.

    iv. Refinancing an existing funding obligation by applying the net proceeds obtained by incurring other funding obligations.

3. Such other matters as may be prescribed by the regulations.

Special purpose financing entities

(2) The Financing Plan may, in accordance with the regulations, provide for the establishment of one or more special purpose financing entities that may incur funding obligations.

[OLC Note: ENE LSB asked the following question: *Should we link this ss. to section 23? In other words, should the above SPVs be limited to the entities contemplated in s. 23?*] NTD: we have sorted this out a bit better. OPG as Financial Services Manager could determine under the Financing Plan that it will use its Electricity Act powers to create a special purpose vehicle to undertake the activities set out in the Financing Plan. The above works for OPG (although would not be required if the minister replaces OPG in accordance with (1.1.

[OLC Note: Instructions were to include explicit authority for the creation of funding obligations in accordance with the financing plan. Do you mean authority for the SPVs to do so? NTD: Do you mean to limit the SPVs so that they can *only* create funding obligations in accordance with the financing plan?] NTD: No, that would be too rigid.

Administrative agent

(2.1) The Financing Plan may require an entity other than the [financial services manager] to perform the functions described in section [xx], in which case that entity shall perform those functions in accordance with such terms as may be specified in the Financing Plan.NTD: Already addressed in (1.1)

[OLC Note: ENE LSB noted the following: *The OEB's role and therefore the requirement for a replacement entity must be confirmed.* Please let me know if the "financial services manager" is meant to replace all references to the OEB in this

section.] [NTD: the OEB's only role with respect to the Financial Services Manager is to review its administrative costs.]

Prohibition

(3) The Financing Plan shall not provide for funding obligations to be incurred with any recourse to any assets of the electricity vendors, the IESO, the Ontario Energy Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or [an obligation in relation to a finance amount].

[OLC Note: What is meant by the phrase in square brackets?] [NTD: That phrase is not required.]

Funding obligations unaffected by amendment to Fair Allocation Plan

(4) No change to a funding obligation incurred under the Financing Plan shall result from an amendment to the Fair Allocation Plan that is made after the funding obligation has been incurred.

[OLC Note: Need to cross-reference all usage of the term "funding obligation" against the proposed definition of that term. If the defined term includes reference to its characteristic of being incurred "under the Financing Plan" or "under the Act" then we shouldn't be repeating that phrase here. However, I think we first need to understand what we are trying to convey (e.g. funding obligation *authorized under the FP* vs. funding obligation *incurred for the purposes of achieving the purposes of this Act, etc.).*]

[OLC Note: Consider Article 8 (9) entitled "incurrences are binding" -- I believe we have already stated in the Part dealing with the regulatory asset that the rights are enforceable etc. even if charges have been imposed in a manner that does not follow the Financing Plan. Is more drafting required? Please advise.]

[FUNDING SHORTFALL

Definitions

13. In sections [subsequent sections under Funding Shortfall heading],

"applied surplus" means the amount calculated under section 16; ("Trench")
[OLC Note: In the Blakes document, this is the "IESO applied surplus".]

"consumer contributions" means the amount calculated under section 15; ("Trench")
[OLC Note: In the Blakes document, this is the "GA Power Contract Contribution".]

"net payment" means the amount calculated under subsection 14.1 (1); ("Trench")
[OLC Note: In the Blakes document, this is the "IESO Power Contract Net Payment".]

"net receipt" means the amount calculated under subsection 14.1 (2); ("Tranche")
[OLC Note: In the Blakes document, this is the "IESO Power Contract Net Receipt".]

"unapplied surplus" means the amount calculated under section 17; ("Tranche")
[OLC Note: In the Blakes document, this is the "IESO unapplied surplus".]

Funding shortfall

14. (1) For the purposes of this Act, the funding shortfall for a reference period shall be determined by applying the following formula:

[ENE LSB NTD: Need to ascertain whether the provisions under "FUNDING SHORTFALL" address the same thing as section 7.5] NTD: Yes, it is.

(A – B) – C

Where,

A = the net payment for the reference period,

B = the consumer contribution for the reference period,

C = the applied surplus for the reference period.

Net payment

14.1 (1) The net payment for a reference period is determined as follows:

1. Calculate the sum of the amounts payable by IESO to generators under all electricity generation contracts for the reference period.

2. Calculate the sum of amounts payable by generators to the IESO under all electricity generation contracts for the reference period.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Net receipt

(2) The net receipt for a reference period is determined by subtracting the amount calculated under paragraph 1 of subsection (1) from the amount calculated under paragraph 2 of subsection (1).

~~Consumer contribution~~

~~15. The consumer contribution for a reference period is the aggregate of the payments to be made by the specified consumers in respect of the reference period for clean energy adjustments, as determined under the Fair Allocation Plan.~~

~~Applied surplus~~

~~16. The applied surplus for a reference period is the lesser of the following amounts:~~

~~1. The amount by which the net payment exceeds the consumer contribution for the period.~~

~~2. The unapplied surplus on the last day of the reference period that immediately preceded the relevant reference period.~~

~~Unapplied surplus~~

~~17. The unapplied surplus on a specified day shall be determined by applying the following formula:~~

~~(D + I) − (P + G)~~

~~Where:~~

~~D = the sum of all net receipts for the reference periods occurring before the specified date,~~

~~I = the sum of all consumer contributions for the reference periods occurring before the specified date,~~

~~P = the sum of all net payments for the reference periods occurring before the specified date, and~~

~~G = the sum of all applied surpluses for each reference period occurring before the specified date.~~

FINANCE AMOUNT

Definitions

18. In sections 19, 20 and 21,

"funding costs" means the amount determined under section 21; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of a transferee by applying the net proceeds obtained by the transferee incurring one or more other funding obligations. ("French")

[OLC Note: In the Blakes document, this is the "refinancing" definition.]

Finance amount

19. (1) For the purposes of this Act, the finance amount for a reference period shall be determined by calculating the sum of the following:

1. The sum of all payments made by a transferee [during the reference period?] to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the transferee under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

[OLC Note: Para. 1 is the definition of "repayment" from the Blakes doc. However, that definition include bracketed text that says: (*including making Finance Reserve Deposits).* I don't understand this because (1) Finance Reserve Deposit is listed as a separate line item in the definition of "finance amount" (see para. 4 below). In order to avoid duplication, can we exclude "finance reserve deposits" from para. 1?]

2. The sum of all funding costs for the reference period.

3. The sum of all amounts payable by or on behalf of a transferee to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

[OLC Note: Para. 3 is the definition of "redemption amount" from the Blakes doc.]
[OLC Note: What is meant by "make-whole" -- need some assistance in order to translate this term accurately. Do you have any examples of bilingual legislation where this term has been used?]

4. The balance of the finance reserve at the end of the reference period, as determined under section 20.

5. The sum of any other amounts payable by a transferee for the reference period that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

[OLC Note: Para. 5 is based on the definition of "additional funding charges".]

Finance reserve balance

20. (1) For the purposes of paragraph 4 of section 19, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

[OLC Note: This section is a modification of the definitions provided in the Blakes document for "Finance Reserve Deposits" and "Finance Reserve Withdrawals". The proposed definition of "FR deposit" involved a subtraction of the "FR withdrawal" so the term 'deposit' was not really descriptive of a pure deposit but rather the balance.]

1. Calculate the sum of all amounts deposited [to what account?] during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn from the account during the reference period from deposits previously made [e.g. during a previous reference period?] as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Funding costs

21. The funding costs for a reference period are determined by taking the following steps:

1. Calculate the aggregate of all interest and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of the transferee during the reference period in respect of all funding obligations, including the following:

    i. Standby commitment fees or charges paid to any lender.

    ii. Credit enhancement fees or charges paid to any credit enhancer.

    iii. Liquidity fees or charges paid to any liquidity provider.

    iv. Payments, including termination payments, made under derivatives.

    v. Deposits made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a funding obligation.

2. Calculate the aggregate of all amounts received by or on behalf of the transferees during the reference period in respect of a funding obligation, including reimbursement of any amounts referred to in subparagraphs 1 i to v.

[OLC Note: Para. 2 is the definition of "finance receipts" in the Blakes doc.]

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

PART IV
THE REGULATORY ASSET

[OLC Note: The provisions in Articles 4 (9) and 5 (10) relating to the Regulatory Asset Owner having standing would perhaps fit best in the part dealing with the Regulatory Asset. I'm not sure why this provision would be needed in addition to what is already being stated below (if the statutory right is sold/assigned to the new owner then doesn't that bring with it the ability to enforce the right?) Please instruct.]

ESTABLISHMENT OF REGULATORY ASSET

Regulatory asset established

22. (1) The IESO has property rights and interests, which together constitute a regulatory asset, in the following:

[OLC Note: As a drafting matter, we would typically want each of the items in a list to be distinct from one another (no overlap between the items in the list). Could you please assist with reviewing the language to ensure that each item is distinct.]

[OLC Note: Everything listed below is now characterized as a "right" to something. However, when read with the opening flush, we are essentially saying "the IESO has *a right to rights*". I appreciate that what we are dealing with is a somewhat novel concept but we should see if we can word it in a way that is as clear as possible to avoid any unintended consequences in interpretation.]

[OLC Note: For the paragraphs below where I have suggested a cross-reference, please take a look at the relevant sections and let me know if you think a cross-reference would work well. We could always put a parenthetical reference after the cross-reference to flag the topic for readers of the law, but this way we can be sure that we are lining up the rights with the actual rights that are being given under the statute.]

2. The rights of the IESO under sections [include cross reference to sections that authorize the IESO to impose, bill, invoice, collect and receive amounts and the right to determine the amounts?].

3. The right of the IESO to enforce section [include cross-reference to the section that creates indebtedness of each specified consumer to pay the clean energy adjustments, together with all related late payment fees or interest charges].

4. The right of the IESO to enforce section [include cross-reference to section that requires electricity vendor to impose, bill, invoice, collect and receive clean

energy adjustments, including amounts required to be remitted to the IESO and all collections and the proceeds of any enforcement action undertaken by the electricity vendor to recover payments].

5. The right of the IESO to enforce section [include cross-reference to section that sets out the duties of IESO to collect and receive remittances with respect to and to remit IESO Remittances to or to the accounts of the regulatory asset owner, each with respect to its Regulatory Asset, including all collections and the proceeds of any enforcement action undertaken by it…].

7. The right of the IESO to receive and collect all clean energy adjustments under [include cross-reference].

8. The right of the IESO to all amounts and entitlements under each account created under sections [cross-ref to regulatory asset accounts sections] and all amounts on deposit in those accounts.

[OLC Note: I believe those provisions refer to all of those amounts being held in trust for the regulatory asset owner. Is it necessary to layer this on top of that trust?]

9. All rights of any kind, whether in tort, contract or otherwise, of the IESO that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset.

[OLC Note: Para. 9 is essentially a cut and paste of the Blake's definition of "Related Rights".]

10. The right of the IEO to all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 9, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

[OLC Note: Please check to see if para. 10 is necessary or if any elements could be covered/addressed under one of the previous paragraphs.]

[OLC Note: I wonder whether the proposal allows for double recovery in some cases (e.g. right to recover both amounts that the distributor has to remit AND the amounts that the consumers have to pay). This would be addressed by ensuring each of the above items in the list is distinct from one another. Will consider drafting options for ensuring no duplication.

Same

(2) The establishment of the regulatory asset is not affected by failure to impose, attribute, invoice, accrue or collect clean energy adjustments.

No set off, etc.

(3) The regulatory asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, the IESO, an agent of the regulatory asset owner or an owner of distribution system assets in the Province;

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a);

(c) by any affiliate or successor of a person mentioned in clause (a).

[OLC Note: Need to check how this provision lines up with other provisions dealing with set off and reduction (e.g. clean energy adjustments irrevocable).]

Recording of regulatory asset in books

22.1 The IESO may record its amount of the regulatory asset from time to time in its books.

[OLC Note: Please confirm the proper accounting terminology re "books".]

Same

(2) A recording in its books is determinative of the [amount of IESO's regulatory asset].

[OLC Note: Referring to the "amount of the asset" again muddies the waters in terms of what the RA actually is (e.g. amounts of money vs. rights). I wonder if it would be correct to instead say "its portion of the property rights or interests" or something to that effect.]

[OLC Note - ENE LSB note was as follows: In s. 22.1, need to provide that IESO has a shortfall, and creation of an account to record the shortfall in IESO's books, and approval of that account by the OEB. More to come on what specifically OEB does here, depending on how the shortfall is calculated (i.e. what role the IESO has to play (e.g. in providing OEB with information).]

NTD: Regarding OEB role please consider OEBA, s. 78 (3.0.5) or 78(6.3):

The Board may make orders permitting the IESO to establish one or more deferral or variance accounts related to the IESO funding shortfall.

An order that determines how amounts recorded in a deferral or variance account shall be made in accordance with the regulations. OR The Board shall make an order under this section in accordance with the rules prescribed by the regulations. [without conditions].

NTD: the intent is to allow the OEB to use its administrative powers to validate the account, in order to achieve the IESO's requirement, for accounting purposes, of creating a regulatory asset.

TRANSFER OF REGULATORY ASSET

Transfer of regulatory asset

23. The IESO may transfer the regulatory asset ~~to a special purpose financing entity established under the financing plan.~~

[OLC Note: need to expand the rules in a subsequent draft to address other potential transferors - an entity that receives the Regulatory Asset from the IESO may then go on to sell the Regulatory Asset to someone else.] NTD: we can provide flexibility by only speaking to IESO may transfer, and not specifying to whom.

Upon transfer of the regulatory asset, the regulatory asset shall be deemed to be an investement asset.

[ENE LSB NTD (for further consideration): Do we need to contemplate above an assignee of the regulatory asset beyond the initial assignee from the IESO (e.g. in the event of a default by the [trust] under its financing agreements with the lenders; or in the event of a pledge under s. 27).]

NTD: We need to make the link

Allow for IESO to receive consideration
Proceeds payable to IESO from the transfer of the regulatory asset may not be less than the IESO

Ownership of a portion of the regulatory asset

24. The ~~investment regulatory~~ asset owner may transfer a portion of its rights and interests in the ~~regulatory~~investment asset, including by way of a transfer of a divided or an undivided interest.

[ENE LSB NTD (for further consideration): Should there be limits on transfers here? See the addition in s. 23.]

Validity of transfer

25. (1) A transfer of the regulatory asset is [final and binding? valid and enforceable?] and confers the investment ~~regulatory~~ asset upon the transferee in accordance with the terms of the transfer. NTD: in searching elaws, we would suggest "unconditional and absolute"

[OLC Note: We should choose the phrases we want to use to signify "irrevocable" and use those same phrases consistently throughout the Bill.]

[OLC Note: I understand that the intention is to communicate the finality of the sale/transfer but some of the terminology included in the instructions relating to "validity of dispositions" seems to be redundant of what is drafted in subs. (1) above. The following terms do not appear in any current consolidated law (statutes and regulations) on e-Laws: "absolute transfer"; "true sale". I don't know what these terms mean or what they are adding beyond what we have already said in subs. (1). Please advise.]NTD: There is a definitely a belts and suspenders approach and this anticipates what investment dealers expect to see.

Same

(2) For greater certainty, subsection (1) applies despite the existence of any of the following:

1. Any provision of an Act, regulation or contract relating to the transfer. [OLC Note (reminder): I have noted that ENE LSB wants to keep para. 1 along with a general conflict provision. Reminder to check this against the general conflict provision before finalizing the draft.]

2. Any consent that may be offered by a party to an agreement in respect of the transfer.

3. Any other circumstances, including the following:

    i. Revenues or other proceeds from clean energy adjustments have comingled with other amounts.

    ii. Any interest (including any partial, residual or subordinated interest, whether direct or indirect) has been retained in the regulatory asset by the IESO.

    iii. Any right to repurchase the regulatory asset in favour of the IESO has been retained.

    iv. Any recourse that a transferee may have against the IESO is available.

    v. Any indemnification rights or obligations are provided to the transferee by the IESO.

    vi. Any obligation of the IESO to collect and remit clean energy adjustments on behalf of a transferee, including but not limited to, any retention by the IESO to bare legal title for the purpose of collecting clean energy adjustments.

[ENE LSB NTD (for further consideration): Should we have a defined term that expresses the intention that the transfer constitute an absolute sale?] NTD: This is covered.

vii. The ascribed or intended treatment of the transfer by the IESO or the transferee for tax, financial reporting or other purposes.

Deemed perfection, etc.

(3) At the time a transfer is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the IESO and all other persons who have claims of any kind against the IESO.

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 transferee shall have priority over any liens in favour of such other persons.

ADMINISTRATION OF ~~REGULATORY INVESTMENT~~ ASSET

Administrative agent

26. (1) Unless the Financing Plan provides for another entity to administer the incurrence and payment of funding obligations by transferees, the ~~Ontario Energy Board Financial Services Manager may shall~~ perform those functions as agent of the ~~regulatory investment~~ asset owner.

Application of amounts

(2) For the purposes of performing the functions mentioned in subsection (1), the ~~Ontario Energy Board Financial Services Manager~~ shall ensure that any amounts transferred to it as agent for the ~~investment~~ ~~regulatory~~ asset owner shall only be applied or used to pay finance amounts, as determined under section 19, when they are due and payable.

~~Regulatory Investment~~ **asset owner may grant pledge**

27. (1) The ~~regulatory investment~~ asset owner may grant a pledge to or in favour of a person in, to and over all or a specified portion of its [~~all property~~ rights and interest in?] the ~~regulatory investment~~ asset in connection with any funding obligation.

[OLC Note: The drafting of s. 27 is very rough. I will need to work on the drafting of this section further… just trying to understand the concepts for now. Please advise as to whether this is correct.]

Types of pledge

(2) A pledge may be a lien, mortgage, charge, right of set-off or security interest.

Validity

(3) Subject to subsections (4) and (5), despite any limitations or restriction on the pledge that may arise under an Act or a contract, the pledge may be made to secure a funding obligation and when granted shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the person to whom the pledge is granted a valid security interest in, to and in respect of the investmentregulatory asset in accordance with the terms of the pledge.

Same

(4) Subsection (3) applies if the description of the investmenregulatory asset in the agreement giving effect to the pledge expressly refers to this section.

Financing Plan may require consent

(5) If the Financing Plan requires the consent of any person before the pledge may be given effect, that consent must be obtained [in accordance with the regulations? The plan?] before the pledge takes effect.

Deemed perfection and priority of pledges

(6) The pledge is deemed to have been and shall be perfected, valid and binding from the time when the Pledge is made and shall be valid and binding as against the investmenregulatory asset owner and all other persons who have claims of any kind against the investmen regulatory asset owner.

Same

(7) Subsection (6) applies regardless of whether the persons mentioned in that subsection have notice of the pledge and the security interests under the pledge shall have priority over any liens in favour of those persons.

Proceeds

(8) All proceeds of the investmenregulatory asset that are subject to the pledge and that are received by the investmenregulatory asset owner shall immediately be subject to the pledge and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.
[OLC Note: Isn't the above subs. (8) already covered by the general section in our "Miscellaneous" part that deals with "no further acts or approvals required"? (Article 12 (3) of Blakes doc.]

Perfection

(9) The pledge shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may

subsequently attach to the property rights and interests in the investment regulatory asset subject to the Pledge, subject to the written consent of the person to whom the pledge has been granted.

Same

(10) The person to whom the pledge has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment regulatory asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

[OLC Note: Is the following something you want to specify in the Bill? *A Pledgee shall cause a financing statement to be filed in respect of a Pledge for informational purposes only under the [PPSA].*]

Collective action required

28. If the IESO or a transferee owns a right or interest in the regulatory asset that comprises less than the entire property right and interest constituted by the regulatory asset, the right or interest shall only be enforced by the regulatory asset owner collectively, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the regulatory asset owner as a collective in accordance with its terms.

[OLC Note: It seems that successors may need to be addressed here. Also Pledgees have not yet been addressed in this draft.]

Exercise of rights

29. The rights of the regulatory asset owner to collect and enforce its rights and interests in, to and in respect of the regulatory asset shall be exercised in accordance with section [xx].

REGULATORY INVESTMENT ASSET ACCOUNTS [NTD: THIS LINKS TO THE DUTIES OF ELECTRICITY VENDOR]

Pro rating of payments

30. (1) This section applies if,

(a) an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices; and

(b) the amount paid is less than the total amount payable.

Same

(2) The electricity vendor shall distribute the payment on a pro rata basis in order to allocate a portion of the payment to the clean energy adjustments and other amounts payable on the relevant invoices.

Deposit

(3) The electricity vendor shall deposit the portion of the payment allocated to clean energy adjustments into the account established under section 31.

Electricity vendor

31. (1) Each electricity vendor shall establish and maintain an account into which the electricity vendor deposits or receives only the following:

1. Payments by specified consumers for clean energy adjustments.

2. Portions of payments by specified consumers that are attributed to clean energy adjustments under subsection x (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the regulatory asset.

Held in trust

(2) The amounts required to be deposited or received into the account are deemed to be held in trust for the regulatory asset owner.

IESO

32. (1) The IESO shall establish and maintain an account into which the IESO deposits or receives only amounts remitted from accounts established under section 31. [OLC Note - *These amounts remitted are meant to be what is referred to as "electricity distributor remittances" in the Blakes document, which I believes means remittance of the amounts mentioned in paras. 1-3 of the electricity vendor's account section above*] NTD: Yes

(2) The amounts required to be deposited or received into the account are deemed to be held in trust for the regulatory asset holder.

Accounts held by agents

33. (1) If a person is appointed under section 34 or 35 and accepts the appointment in accordance with the applicable section, the person shall establish and maintain an account into which the person deposits or receives any of the amounts mentioned in sections 31 and 32 in respect of which the person has assumed obligations under section 34 or 35.

Held in trust

(2) The amounts required to be deposited or received into the account are deemed to be held in trust for the regulatory asset owner.

AGENTS

Appointment of agent, invoicing

34. (1) If a prescribed circumstance applies, the regulatory asset owner may 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.

[OLC Note: I have used the phrase "prescribed circumstances" to capture the concept of a "replacement event". I'm not sure if this is something that you'd want to include in regulations or if it's something you'd like to provide for otherwise (e.g. in the Financing Plan?). Please instruct.] NTD: Please allow for in regs

[OLC Note: This section (and the following section dealing with collections) is unusual because the statutory obligations of the parties are determined by a document that exists outside of the legislation and regulations and that is prepared by someone external (a written appointment prepared by the RA owner). So it is a very significant delegation of legislative power, and I would think it would need to be considered by CLB.

It's basically giving the RA owner the power to exempt an electricity vendor from specific provisions of the Act and to simultaneously impose statutory obligations on a party who would not otherwise be subject to the Act.

Would the appointment, once "accepted", be published somehow so that consumers would understand who has a legitimate obligation to issue the invoices or to collect? investment

What happens if the appointment needs to be cancelled or amended? In some cases the obligations being delegated to the agent would otherwise be performed by another statutory creature (e.g. collection by the IESO) so it's not clear to me whether the IESO's obligations would automatically resume at that point and how the IESO (and the public) would be made aware etc. Or would a new appointment be required to replace the previous appointment? This all gets kind of confusing when obligations are set out through a combination of statutory requirements and non-legislative appointments that may be hard to track over time.

I think we have to provide some mechanism for all affected parties to understand who has the statutory obligations at any given point in time.]

Appointment to be in writing

(2) An appointment under subsection (1) shall be in writing and shall specify the provisions of this Act that set out the obligations that the appointed person would be required to carry out.

Acceptance

(3) If the person appointed accepts the appointment in writing, that person is deemed to be the electricity vendor for the purposes of the provisions specified in the appointment.

Notice to electricity vendor

(4) Upon acceptance under subsection (3), the regulatory asset owner shall provide written notice to the electricity vendor affected by the appointment of the details regarding the appointment.

Duties of electricity vendor

(5) Upon receipt of a notice under subsection (4), the electricity vendor is no longer required to comply with the provisions specified in the appointment.

Same, regulations

(6) The Minister may make regulations specifying steps that an electricity vendor is required to take upon receipt of a notice under subsection (5), which may include the execution of instruments in order to allow the appointed person to carry out the obligations specified in the appointment.

Appointment of agent, collection, etc.

35. (1) If a prescribed circumstance applies, the ~~regulatory~~investment asset owner may appoint a person to carry out some or all of the obligations relating to collection, segregation and remittance under this Act in the place of an electricity vendor or the IESO, as the case may be.

Appointment to be in writing

(2) An appointment under subsection (1) shall be in writing and shall specify the provisions of this Act that set out the obligations that the appointed person would be required to carry out.

Acceptance

(3) If the person appointed accepts the appointment in writing, that person is deemed to be the electricity vendor for the purposes of the provisions specified in the appointment.

Notice to electricity vendor, IESO

(4) Upon acceptance under subsection (3), the regulatory asset owner shall provide written notice to the electricity vendor or the IESO, as the case may be, of the details regarding the appointment.

Duties of electricity vendor, IESO

(5) Upon receipt of a notice under subsection (4), the electricity vendor is no longer required to comply with the provisions specified in the appointment.

Same, regulations

(6) The Minister may make regulations specifying steps that an electricity vendor or the IESO is required to take upon receipt of a notice under subsection (5), which may include the execution of instruments in order to allow the appointed person to carry out the obligations specified in the appointment.

Not Crown agent

35.1 For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

[OLC Note: Now that I have set this provision out, I wonder if there would be any doubt about whether the regulatory asset owner is a Crown agent? Is that where this needs to be articulated instead?]

PART V
MISCELLANEOUS

Enforcement

36. [OLC note - Article 9 of Blakes doc deals with "compliance matters" but more instructions are required in order to draft. What are the "regulatory sanctions"? Perhaps this needs to be linked up with authority of the OEB under existing legislation? Please instruct.]

[OLC Note: Are there to be any offences created under this Act? If so, what are they? What are the penalties? What is the liability of directors and officers of a corporation? Is there a limitation period on proceedings?]

[OLC Note: I also believe that the following provision from Article 5 (13) of the Blakes document is an enforcement matter, so please consider this provision along with other compliance matters:

[Sequestration *– If any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Clean energy adjustments, defaults on any required remittance of Clean energy adjustment Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by a Regulatory*

Asset Owner or Pledgee and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the Clean energy adjustment Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Regulatory Asset Owner or Pledgee.] [Such order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or other person or entity authorized to collect Clean energy adjustments, as applicable.]

Successors

37. [OLC Note: Articles 4 (6) and (7) and Articles 5 (7) and (8) are rules about successors to distributors and the IESO being bound by specific requirements. Still to be drafted.]

[OLC Note: I think that Article 5 (9) also relates to succession to some extent --- I understand that this is included in anticipation of restructuring of the distribution system or sale of a distributor to another party. But if we use the defined terms from the Electricity Act (distributor and distribution system) then this doesn't make any sense since a "distributor" is [within the context of the EA] just someone who owns or operates a "distribution system". Are we using different definitions for these terms hre?

It also seems unusual to impose a legal requirement that would be triggered by the regulatory asset owner "requesting" that the new entities comply. Normally I think this kind of issue (new parties becoming part of the distribution system) would be handled through an amendment to the Act when the situation actually arose. Perhaps with more information I will better understand.

Owners of Distribution Assets *- If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province, then such person shall, if requested by the Regulatory Asset Owner, be obligated to act diligently to (a) facilitate the invoicing and collect of any Clean energy adjustments applicable to Ratepayers in its applicable service area, including all consumers connected to the electricity distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by Ratepayers as provided in this Part; (c) terminate service to non-paying Ratepayers on the same basis as termination of service is permitted for non-payment of electricity transmission and distribution rates; (d) exercise all enforcement rights of the Regulatory Asset Owner or Pledgee for the benefit of the Regulatory Asset Owner or Pledgee; and (e) remit any Clean energy adjustment Collections to the Regulatory Asset Owner or Pledgee, as applicable.]*

[OLC Note re Article 12 (1) of the Blakes doc ("Choice of law") -- usually in legislation we don't have to specify that the laws of Ontario apply. Is this necessary?]

Conflict

38. The provisions of this Act [and the regulations?] apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or PLEDGE,

[OLC Note: Please confirm that the underlined list of verbs is correct, taking into consideration the defined terms we are using in the draft Bill.]

No further approvals, etc.

39. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

[OLC Note: This is to address Article 12 (3) of the Blakes doc. Could you please explain the intention behind this provision in order to ensure it achieves the intended goal? Is it to ensure that nothing like an Environmental Assessment is required with respect to a funding obligation? Because it is so broad, it would also purport to cover things like consultation with Indigenous partners. Do you want to keep some reg-making power to allow for exceptions to this rule or do you want to narrow it somehow to address specific concerns that you have?]

[OLC Note: Should the Bill address any issues relating to Immunity of the Crown, liability of various individuals, etc.?]

Non-application, Financial Administration Act, s. 28[7]

99x. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction authorized under this Act.

Regulations

100x. The Lieutenant Governor in Council may make regulations,

(a) specifying contracts are not electricity generation contracts for the purposes of this Act;

(b) governing the inclusion of clean energy adjustments in invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the clean energy adjustments to be imposed over specified periods of time.

[7] FLS - see s. 51 of the Electricity Act, 1998

[OLC Note: Both of Articles 4 and 5 in the instructions included extremely broad regulation-making powers. I am deferring the issue of regulation-making authority until we have worked out more of the substance of the bill and have a better sense of what kind of reg-making power would be needed. Expansion of regulation-making powers may also be something that we deal with in more detail at the motions stage, if we are running short of time.

Please advise if there are reg-making powers that you would like to give to the Minister vs. LGIC.]

PART VI[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.1) to enter into agreements or arrangements with [any special purpose financing entities established under (name of new Fair Hydro Act?)];

(q.2) to engage in activities related to making payments to and receiving payments from [any special purpose financing entities established under (name of new Fair Hydro Act?)], as required under that Act, and to engage in related settlement activities;

(q.3) to engage in activities related to the transfer of the ~~regulatory~~investment asset created under [(name of new Fair Hydro Act?)], which activities may include,

(i) incurring liabilities in relation to the ~~regulatory~~investment asset

(ii) transferring the ~~regulatory~~investment asset to [any special purpose financing entities established under (name of new Fair Hydro Act?)];

(iii) transferring the ~~regulatory~~investment asset to third parties;

[OLC Note: I don't understand (iii) -- I thought the rights to the asset were being assigned to the specified entities and nobody else?]

(q.4) acting as a recovery agent under the [(name of new Fair Hydro Act?)];

201x. Subsection 53.1 (1) of the Act is repealed and the following substituted:

---

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

Objects of Ontario Power Generation Inc.

53.1 (1) The objects of Ontario Power Generation Inc. include, in addition to any other objects, the following:

[OLC Note: I know that the words "in addition to any other objects" appears in the current provision, but it seems very odd. This suggests that the objects are unlimited, which doesn't seem to be the intention but I could be wrong.]

1. Owning and operating generation facilities.

2. Establishing, operating and supervising the activities of [any special purpose financing entities established under (name of new Fair Hydro Act?)].

3. Providing financial and other support to the IESO in its activities under the [name of new Fair Hydro Act?].

4. Engaging in such financing, borrowing, lending and related activities and transactions to support the IESO with short-term or long-term financing.

5. Providing equity, not exceeding the prescribed amount, to support the financing capacity [any special purpose financing entities established under (name of new Fair Hydro Act?)].

[OLC Note: TBD to what extent the above objects can be subsumed under a generic reference to the OPG assuming the role of a "financial services manager". Once we settle the use of that term under the main provisions of the bill, we can return to draft these provisions accordingly. You have noted that you also want to provide for the following:
- *a provision that ensures OPG will continue to have these objects when acting in role as FSM, excluding objects related to generation of electricity* - I don't understand what you mean… do you want to make sure the OPG is performing functions of FSM concurrently with other functions of OPG under this section?
-*if OPG is the Financial Services Manager, it shall be required to provide an accounting of the amounts it charges the trust for the financing entity to the OEB 60 days in advance of the commencement of the fiscal year for the OPG trust/special purpose vehicle* - do you think this belongs in the main bill rather than here?]

Subsidiaries

(1.1) Ontario Power Generation Inc. may create one or more subsidiaries in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act is amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. [or a subsidiary of Ontario Power Generation Inc.?] as a result of its functions as a [financial services manager under new Act].

203x. Section 90 of the Act is amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. [or a subsidiary of Ontario Power Generation Inc.?] as a result of its functions as a [financial services manager under new Act].

[OLC Note: Additional concept included in the instructions was the following… I'm not sure if you want these to be addressed in the EA or in the new Bill or somewhere (e.g. in one of the plans?):
- All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]

[OLC Note: Instructions Required - ENE LSB notes follow:
ss. 25.33 – section 114(1.3)(f) we will need to examine our GAM related legislative and regulatory authority to capture any leftover or residual amounts that were supposed to be captured through OPG/SPV funding obligation but that were not accommodated through the financing plan. The idea here is that IESO in being left with a shortfall wont be able to look to OPG/SPV to fund the entire amount and will have to have resort back to the ratebase to cover off some of these amounts. We would look to this in the future for the out years.][VTD: we don't want to blend the amounts dealt with in this act with the normal amounts collected under GAM. We would use the same structures in parallel.

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 71 of the Act is amended by …

[OLC Note: Your instructions are for "deemed licence conditions" to apply to all electricity vendors under the new Act, requiring them to comply with the obligations provided for under the new act. Since I'm not very familiar with the OEBA, could you help me to understand why this belongs in s. 71 as opposed to elsewhere? (e.g.

somewhere around s. 57, which I believe deals with licences for the "electricity vendors".]

[OLC Note - please explain following note:
ENE LSB NTD: Unit sub meter providers must be addressed in next draft as well as anyone who sends invoices to a specified consumer will be required to share the rebate and will]

PART VII
COMMENCEMENT AND SHORT TITLE

Commencement

103x. This Act comes into force on [insert commencement rule]

Short title

104x. The short title of this Act is the *[TBD], 2017.*

From Blakes July 11/17

Ontario

Reviewed Aug 17/17
→ pack pending amendments proposed by Torys/OPG
Torys will need to apply to Blakes some original drafting choices

O. Reg. 206/17: GENERAL

Ontario Fair Hydro Plan Act, 2017
Loi de 2017 sur le Plan ontarien pour des frais d'électricité équitables

ONTARIO REGULATION 206/17

GENERAL

Consolidation Period: From June 28, 2017 to the e-Laws currency date.

No amendments.

This Regulation is made in English only.

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Definitions

Definitions

1. (1) In this Regulation,

"capital account" means an account established by or on behalf of a financing entity under the governing documents of a funding obligation for the purpose of accumulating funds to be used to make repayments in respect of the funding obligation;

"derivative agreement" means any derivative agreement, including interest rate swaps and cross-currency swaps and any associated collateral, entered into in connection with or to hedge the exposure of a financing entity under a funding obligation;

"derivative payment" means any payment required to be made in connection with a derivative agreement, including ordinary course payments, payments on termination and payments made in connection with margining or collateral arrangements;

"finance reserve account" means an account established by or on behalf of a financing entity under the governing documents of a funding obligation for the purposes of pre-funding, collateralizing, over-collateralizing or establishing reserves for the payment of funding obligations and other finance amounts or for related contingencies;

"financing entity expense"[1] includes,

[1] Consider appropriate limitations.

(a) fees, including fees charged by the Financial Services Manager, charges, costs, indemnities, reimbursements, other amounts incurred or committed to, by or on behalf of a financing entity as a result of an activity authorized or permitted under the Act, and

(b) any taxes on amounts mentioned in clause (a);

"funding cost" means interest, commitment fees or other similar costs payable by or on behalf of a financing entity in respect of funding obligations, including a derivative payment;

"governing documents" means, in respect of a funding obligation, the documents governing the terms of the funding obligation or other matters relating to the funding obligation;

"maturity date"[2] means, in respect of a funding obligation, the date set out in the governing documents of the funding obligation on which all outstanding principal, interest and other amounts outstanding are due and payable;

"recovery amount" means the aggregate of all amounts received by or on behalf of financing entities in respect of funding obligations;[3]

"redemption amount" means the amount payable by or on behalf of a financing entity to redeem, prepay or repurchase a funding obligation incurred by or on behalf of the financing entity, including any premium, make-whole or other amount payable to give effect to the prepayment, redemption or repurchase;

"refinancing amount" means the principal amount[4] of a funding obligation incurred by a financing entity in respect of a refinancing;

"repayment" means the payment by or on behalf of a financing entity or the provision[5] by or on behalf of a financing entity for the payment of all or a portion of the principal amount advanced to the financing entity under a funding obligation;

"tax"[6] means a tax, duty, fee, premium, excise, assessment, impost, levy or other charge payable to Her Majesty in right of Ontario, Her Majesty in right of Canada or the government of any other country, province, state, municipality or other political territory and imposed or authorized to be imposed by any law of Ontario, Canada, or any other country, province, state, municipality or other political territory and includes,

(a) a tax, duty, fee, premium, excise, assessment, impost, levy or other charge,

(i) levied on, measured by or described with respect to income, earnings, gross receipts, profits, capital, capital gains, sales or use, or

[2] Consider expanding this concept to deal with amortizing instruments that do not "mature" in the ordinary way.
[3] Over-broad? Is this supposed to cover all CEA receipts, or just "recoveries" of past amounts due to earlier non-payment when due? Consider addressing the provincial support arrangement in order to avoid negating the Province's right of subrogation.
[4] Consider if this would work in relation to debt issued other than at par.
[5] Need to make sure this does not duplicate capital reserve account mechanics in the context of a defeasance arrangement.
[6] Over-broad, since to be borne by specified consumers? Constraints?

(ii) referred to as branch tax, net worth tax, alternative tax, minimum tax, goods and services tax, harmonized sales tax, value-added tax, excise tax, ad valorem tax, franchise tax, transfer tax, withholding tax, property tax, surtax, payroll tax, employment tax or employer health tax,

(b) government pension plan premiums or contributions, social security premiums, workers' compensation premiums and employment or unemployment insurance or compensation premiums and contributions,

(c) an amount or charge under Part VI of the Electricity Act, 1998,

(d) an instalment in respect of an amount mentioned in clauses (a) to (c), and

(e) interest, penalties, fines, additions to tax or other amounts imposed on or in respect of an amount mentioned in clauses (a) to (c);

"tax liability" means all tax paid or payable by or on behalf of a financing entity, incurred directly or indirectly by the financing entity or for which the financing entity is otherwise liable as a result of any activity, undertaking, transaction or event authorized or permitted under the Act;

"tax refund" means all amounts received by or on behalf of a financing entity as a refund of tax and to which the financing entity is entitled as a result of any activity, undertaking, transaction or event authorized or permitted under the Act.

(2) For the purposes of subsection 21 (8) of the Act and this Regulation,

"readjustment amount" means, in respect of a reference period, the amount ~~determined by applying the following steps:1. Determine the amount~~, if any, by which the total amount payable by specified consumers for electricity in respect of the reference period is forecast to be reduced as a result of a determination of the Board under ~~Part II of the Act.2. Determine the amount, if any, by which the determination under paragraph 1 exceeds the fair allocation amount determined by the Minister under subsection 20 (1) of the Act in respect of the reference period~~[section • of the Part II Regulation][7].

Funding obligation

2. (1) For the purposes of the definition of "funding obligation" in subsection 1 (1)[8] of the Act, a payment obligation in respect of any of the following types of amounts is also a funding obligation if it is incurred by or on behalf of a financing entity:

1. A refinancing.

2. A derivative payment.

3. An amount raised for the purposes of a financing entity acquiring and financing an investment interest, including any amounts raised that also constitute, and are recoverable as, a finance amount.

[7] Add cross reference to the Part II Regulation and the additional provision to deal with readjustments.
[8] Supposed to specify "criteria". Examples would already be covered I think, so being specific could actually have a narrowing effect. For example, would banker/counsel fees or commitment fees be covered if not specified? Are these supposed to be caught as "finance entity expenses"?

(2) Funding obligations include the obligation to pay principal, interest, fees and other amounts owing in respect of the funding obligations.

Refinancing

3. (1) For the purposes of the definition of "refinancing" in subsection 1 (1) of the Act, a refinancing includes the incurrence of a debt if the following criteria are met:

1. The debt is incurred no earlier than six months before the maturity date of a funding obligation.

2. The proceeds of the debt are designated by the Financial Services Manager to repay the funding obligation mentioned in paragraph 1.

3. The proceeds are applied as designated.

(2) For greater certainty, if the proceeds mentioned in paragraph 2 of subsection (1) are not applied as designated, the debt ceases to be a refinancing but remains a funding obligation.

Clean Energy Adjustment

Unit sub-metering, collection

4. For the purposes of subsection 13 (6) of the Act, amounts in respect of the clean energy adjustment may be collected by the specified consumer as follows:

1. If an invoice for electricity is issued to a person by the specified consumer, the specified consumer may collect from the person the person's proportionate share of the amount of the clean energy adjustment shown on the invoice for electricity payable by the specified consumer.

2. If an invoice for electricity is issued to a person by a unit sub-meter provider providing unit sub-metering for a specified consumer, the unit sub-meter provider may collect from the person the person's proportionate share of the amount of the clean energy adjustment shown on the invoice for electricity payable by the specified consumer.

Determining the finance amount

5. (1) Subject to subsection (2), the finance amount in respect of a financing entity and a period of time shall be determined as follows:

1. After eliminating any duplication in the following amounts, calculate the sum of the following amounts:

i. Amounts paid or payable during the period in respect of repayments.

ii. Funding costs paid or payable during the period.

iii. Redemption amounts paid or payable during the period.

iv. Derivative payments required to be made during the period.

v. Amounts deposited, as required under the governing documents of funding obligations, into capital accounts or finance reserve accounts during the period.

vi. Financing entity expenses paid or payable during the period.

vii. Tax liabilities payable during the period.

2. After eliminating any duplication in the following amounts, calculate the sum of the following amounts:

i. Amounts withdrawn, as required under the governing documents of funding obligations, from capital accounts or finance reserve accounts during the period.

ii. Amounts received during the period in respect of funding rebates.

iii. Recovery amounts[9] received during the period.

iv. Refinancing amounts[10] that are applied to repayments during the period.

v. Any payments received in connection with a derivative agreement, including ordinary course receipts, payments received on termination and payments received in connection with margining or collateral arrangements.

vi. Tax refunds received during the period.

3. Subtract the sum calculated under paragraph 2 from the sum calculated under paragraph 1.

(2) Subject to subsection (3), the following rules apply with respect to the determination of the finance amount:

1. The determination shall be made by applying a cash basis accounting method.

2. If the determination is in respect of a past period of time, the determination shall reflect cash amounts actually paid, deposited, received, applied, withdrawn or made available during that period of time.

3. If the determination is in respect of a future period of time, the determination shall reflect the estimated[11] cash amounts that will be paid, deposited, received, applied, withdrawn or made available during that period of time.

4. If the determination is in respect of a period of time that includes both past and future dates, the determination may reflect a combination of actual and expected cash amounts.

(3) Despite subsection (2), taxes may be estimated in respect of a particular tax reporting period of a financing entity and allocated in respect of various periods of time that occur within the tax reporting period, in such manner as the Financial Services Manager considers to be reasonable, subject to the following rules[12]:

[9] Uncertain.
[10] Doesn't seem to belong here – already reflected in concept of "repayment"?
[11] Parameters, or open-ended?
[12] No input provided by Blakes on this tax language.

1. The estimated taxes, less any taxes paid by way of instalment or otherwise by or on behalf of the financing entity during the period of time in respect of which the finance amount is determined, shall be deemed to be a tax liability of the financing entity during that period of time.

2. The amount, if any, by which the estimated taxes exceeds the tax liability of the financing entity in respect of the particular tax reporting period, as determined without taking into account paragraph 1, shall be deemed to be a tax refund received by the financing entity during the period of time described in subsection (4).

3. The amount, if any, by which the tax liability of the financing entity in respect of the particular tax reporting period, as determined without taking into account paragraph 1, exceeds the estimated taxes shall be deemed to be a tax liability payable by the financing entity during the period of time described in subsection (4).

4. If a financing entity receives an assessment or reassessment of taxes for a particular tax reporting period that differs from the amount shown on a tax return filed with the applicable governmental authority, the following rules apply:

i. The assessed or reassessed amount shall be deemed to be a tax liability payable by the financing entity during the first period of time, commencing after the date of the assessment or reassessment, in respect of which the finance amount is determined.

ii. Any interest charged on the assessed or reassessed amount following the date of the assessment or reassessment shall be deemed to be a tax liability payable by the financing entity as the interest is paid or accrues.

iii. Once there has been a final determination with respect to the tax liability payable by the financing entity in respect of the particular tax reporting period, the amount, if any, by which the tax liability payable by the financing entity during the tax reporting period is decreased from the assessed or reassessed amount, together with the after-tax amount of any refund interest received by the financing entity, shall be deemed to be a tax refund received by the financing entity during the first period of time, commencing after the final determination, in respect of which the finance amount is determined.

(4) For the purposes of paragraphs 2 and 3 of subsection (3), the period of time is the first period of time, commencing after the filing of the tax return with the applicable governmental authority for the particular tax reporting period, in respect of which the finance amount is determined.

(5) For the purposes of subparagraph 4 iii of subsection (3),

"final determination" means a determination made by the applicable governmental authority or court of competent jurisdiction and in respect of which all rights to object to or appeal have been exhausted or have expired.

Determining true up amount[13]

6. (1) Unless all funding obligations and other finance amounts are paid in full, the Financial Services Manager shall calculate the true up amount in respect of each reference period.

[13] General questions regarding timing and sequencing.

(2) The Financial Services Manager may, at any time during a reference period, determine the true up amount in respect of the remaining portion of the reference period[14] if,

(a) all funding obligations and other finance amounts have not been paid in full;

(b) the Board has made a determination under subsection 15 (4) of the Act in respect of the reference period; and

(c) the Financial Services Manager reasonably forecasts that the collection of the clean energy adjustment will be insufficient to pay the estimated finance amount for a reference period.

(3) The true up amount in respect of a reference period or a portion of the reference period shall be determined, as follows:

$T = (A - B) + C$

where,

T = the true up amount in respect of the period of time,

A = the aggregate of the finance amounts in respect of all reference periods preceding the current reference period and, if the determination is being made at a point in time during the current reference period, in respect of the portion of the current reference period that precedes the point in time,

B = the aggregate of all amounts of the clean energy adjustment remitted to or for the benefit of the investment interest owners during all reference periods preceding the current reference period and, if the determination is being made at a point in time during the current reference period, in respect of the portion of the current reference period that precedes the point in time,

C = the amount representing reasonably foreseeable[15] differences between the amounts to be invoiced in respect of the clean energy adjustment and the amounts to be remitted by the IESO to the investment interest owners in respect of the invoices due to various factors, including those mentioned in subparagraphs 2 ii and iii of subsection 15 (2) of the Act.

(4) The Financial Services Manager shall, when determining the amounts described in "C" in the formula set out in subsection (3), have regard to amounts payable that were not collected and any amounts in respect of which an overpayment was made, which may include amounts resulting from a default of specified consumers, an electricity vendor or the IESO, whether in its capacity as an electricity vendor or its activities as agent or otherwise under section 16 or 17 of the Act.

(5) If the Financial Services Manager determines that an error in the determination of the clean energy adjustment or any other error relating to the clean energy adjustment requires correction, the Financial Services Manager may reflect the correction in a subsequent determination of the true up amount.

Notification to Board

[14] Uncertain how this would work from a timing perspective, since the true up needs to be included in the amounts to be invoiced 1+ months in advance.
[15] Overbroad?

7. (1) The Financial Services Manager shall notify the Board of the clean energy adjustment in respect of a reference period or a portion of a reference period in accordance with this section.

(2) Subject to subsection (6), until such time as all funding obligations and other finance amounts have been paid in full, the notification in respect of each reference period shall be provided,

(a) in the case of a reference period that begins on May 1, on or before April 1 in the same year; and

(b) in the case of a reference period that begins on November 1, on or before October 1 in the same year.

(3) In addition to complying with subsection (2), the Financial Services Manager shall, starting on the day after the final scheduled payment date of the funding obligation described in subsection (4) and until such time as all funding obligations and other finance amounts have been paid in full, comply with subsection (5).

(4) For the purposes of subsection (3), the relevant funding obligation is the outstanding funding obligation that has the latest maturity date of all outstanding funding obligations.

(5) During the period of time mentioned in subsection (3), the Financial Services Manager shall update its most recent determination of the clean energy adjustment and notify the Board of the updated determination,

(a) on or before January 1 in each year, in respect of the months of February, March and April in the same year; and

(b) on or before July 1 in each year, in respect of the months of August, September and October in the same year.

(6) If the Financial Services Manager makes a determination of the true up amount under subsection 6 (2) in respect of the remaining portion of a reference period, the Financial Services Manager shall redetermine the clean energy adjustment in respect of the remaining months in the reference period for which the Board has made a determination under subsection 15 (4) of the Act and notify the Board of the redetermination as soon as possible.

Board to determine rates

8. (1) The Board shall, upon receiving a notice of the clean energy adjustment under section 7, determine the rates at which specified consumers are to be invoiced in respect of the period of time in respect of which the notice was given.

(2) The rates shall be expressed as a cent per kWh amount and determined by dividing the clean energy adjustment in respect of the relevant period of time by the forecast electricity consumption of specified consumers in respect of the period.

(3) For the purposes of subsection (2), the forecast electricity consumption of specified consumers shall be based on forecast information provided to the Board by the IESO.

(4) If notice is provided under subsection 7 (2) or (5), the rates shall be determined by the Board so that the rate takes effect on the first day of the month following the month in which the notice was required to be provided.

(5) If notice of a redetermination is provided under subsection 7 (6), the rates shall be determined by the Board so that they take effect,

(a) if the notice was provided before the 15th day in a month, on the first day of the month following the month in which the notice was provided; or

(b) if the notice was provided on or after the 15th day in a month, on the first day of the second month following the month in which the notice was provided.

IESO to receive, remit amounts

9. (1) The IESO shall ensure that amounts actually received in respect of the clean energy adjustment under subsection 16 (1) of the Act are identifiable as such.

(2) For the purposes of subsection 16 (4) of the Act, the IESO shall remit the amounts to the financing entities within a reasonable period of time.

Electricity vendors to invoice, collect

10. (1) Each electricity vendor shall ensure that invoices issued to specified consumers include a separate line item for the amount in respect of the clean energy adjustment.

(2) Each electricity vendor shall ensure that amounts collected from specified consumers in respect of the clean energy adjustment are deposited into a segregated account established for the purpose of receiving those amounts exclusively.

(3) Each electricity vendor shall maintain separate records with respect to amounts invoiced to specified consumers in respect of clean energy adjustments.

(4) Subject to any requirement to the contrary under any Act or regulation, each electricity vendor shall make the records mentioned in subsection (3) available, upon request, to the IESO, the Financial Services Manager, financing entities and investment interest owners.

Fair Allocation Amount

Prescribed period, amount

11. (1) The prescribed period for the purposes of sub-subparagraph 1 ii B of subsection 20 (1) of the Act shall be the period beginning on January 1, 2005 and ending on April 30, 2017.

(2) ~~If the sum of the amounts determined under paragraphs 1 and 2 of subsection 20 (1) of the Act is less than or equal to the amount determined under paragraph 3 of subsection 20 (1) of the Act, the amount determined by applying the following formula~~The amount in respect of a reference period, if any, by which the total amount payable by specified consumers for electricity in respect of the reference period is forecast to be reduced as a result of a

determination of the Board under [section • of the Part II Regulation][16] is prescribed for the purposes of paragraph 5 of subsection 20 (1) of the Act:

~~A = B – C~~

~~where,~~

~~A = the amount prescribed for the purposes of paragraph 5 of subsection 20 (1) of the Act,~~

~~B = the sum of the amounts determined under paragraphs 1 and 2 of subsection 20 (1) of the Act, andC = the amount determined under paragraph 3 of subsection 20 (1) of the Act~~.

Determination of estimated financing costs

12. (1) For the purposes of paragraph 2 of subsection 20 (1) of the Act, the estimated financing costs in respect of a reference period shall consist of the amount by which the sum of the following amounts, after eliminating any duplication, that are forecast to become payable during the reference period, would exceed the estimated funding rebates to become payable during the reference period:

1. Estimated funding costs.

2. Estimated financing entity expenses.

~~3. Estimated funding rebates.~~

(2) In estimating amounts for the purposes of subsection (1), the Minister shall make the following assumptions:

1. The entire amount of the regulatory asset is transferred over time in accordance with section 26 of the Act.

2. The principal owing by a financing entity during a reference period is paid in full by applying funds that are forecast to be available to it under the Financing Plan after all other estimated finance amounts for the reference period have been paid in full.

(3) For the purposes of subsection 20 (2) of the Act, the prescribed circumstances are that one or more determinations under section 9 or 11 of the Act in respect of a past reference period have resulted in a readjustment amount.

(4) If the circumstances mentioned in subsection (3) apply, the Minister shall, in ~~addition to~~ calculating the sum of the costs set out in paragraphs 1 ~~to 3~~and 2 of subsection (1)~~, calculate a portion of~~ and without duplication, include the readjustment amount ~~that should be attributed to the reference period and include it in the determination of the estimated financing costs in respect of the reference period.(5) For~~in the principal amount initially owing by a financing entity for the purposes of paragraph 2 of subsection 12(~~4), the Minister shall determine the portion to be attributed to the reference period in such a manner as to ensure that readjustment amounts are recovered equally over the remaining reference periods~~2).

[16] Add cross reference to the Part II Regulation and the additional provision to deal with funding adjustments.

Minister's considerations

13. For the purposes of subsection 20 (3) of the Act, the Minister shall have regard[17] to the following matters:

1. Electricity prices.

2. Interest rates.

3. Inflation.

4. Electricity consumption.

5. The useful life of the assets that are subject to contracts referred to in clause (a) of the definition of "clean energy costs" in subsection 1 (1) of the Act.

Financing Plan[18]

Principles and assumptions

14. (1) The Financial Services Manager shall make reasonable assumptions regarding the following matters in preparing the Financing Plan:

1. The IESO deferral for future months, based on the most recent calculation of the fair allocation amount.

2. Future transfers of specified portions of the regulatory asset.

3. The maturities of funding obligations.

4. Cash flow requirements to meet contractual obligations associated with funding obligations.

5. Descriptions of current funding options, including terms and conditions.

6. Descriptions of currency and interest rate hedging programs, if applicable.

7. Financing entity expenses.

8. Interest rates.

9. The need for and the establishment of financing reserve accounts and capital accounts.

(2) In addition to the principles set out in subsection 21 (3) of the Act, the Financial Services Manager shall have regard to the following principles in preparing the Financing Plan:

1. The Financial Services Manager should,

i. seek the best terms available at the time of incurrence of a funding obligation, having regard to other financing transactions of the size and type contemplated by the Financing Plan,

[17] Too vague to be instructive.
[18] See Blakes description of the items to be covered by the FP.

ii. apply the principal proceeds of a funding obligation for the purpose of repaying or redeeming debt or for the purposes of paying the purchase price for investment interests,

iii. consider the interests of specified consumers with respect to stable and predictable electricity rates,

iv. act as any reasonably prudent financial services manager would act in similar circumstances, and

v. deal with related parties on arm's length terms.

2. The Financing Plan should,

i. identify the reference capital or finance markets in which the funding obligations are to be incurred, including markets outside of Canada,

ii. describe how recovery amounts will be applied to funding obligations over time,

iii. address the capitalization of proposed financing entities,

iv. describe strategies to mitigate risk, including currency and interest rate hedging measures, if applicable,

v. seek to minimize tax consequences associated with the incurrence of a funding obligation, and

vi. articulate the principles by which the Financial Services Manager will make decisions regarding the following:

A. Interest rates.

B. The term to maturity of funding obligations.

C. Refinancing.

D. Deposits to and withdrawals from reserve accounts.

E. Indemnifications.

F. Fees.

(3) The Financial Services Manager shall, no later than 90 days following the end of each fiscal year, submit to the Minister a report with respect to its affairs during the fiscal year, signed by an officer of the Financial Services Manager.

(4) Despite subsection (3), for the fiscal year commencing in 2017, the Financial Services Manager shall submit the report by such time as may be specified by the Minister, which time shall be on or after the 30th day following the end of the fiscal year.

The Regulatory Asset

Determination of IESO deferral

15. The IESO may include the following amounts in the IESO deferral for each month:

1. The difference between the following amounts:[19]

i. The sum of all amounts payable to the IESO in the month by electricity vendors and specified consumers under the Electricity Act, 1998 and the market rules made under section 32 of that Act, without taking into account any of the following:

A. Variances reported to and recorded monthly by the IESO in a variance account under section 5 of Ontario Regulation 430/04 (Payments Re Section 25.33 of the Act) made under that Act.

B. Rates determined by the Board under Part II of the Act.

ii. The sum of all amounts payable in the same month by electricity vendors and specified consumers to the IESO, taking into account rates determined under Part II of the Act.

2. The costs incurred by the IESO in relation to the financing of the difference between the amounts referred to in subparagraphs 1 i and ii.

3. Any amounts incurred by the IESO on or after May 1, 2017 and before the Act came into force.

Adjustments that may be recorded by the IESO

16. For the purposes of paragraph 3 of subsection 24 (1) of the Act, the IESO shall record the following adjustments in a variance account each month:

1. All funding rebates and other amounts paid by the IESO to a financing entity during the month.

2. Any variance account balances in variance accounts established and maintained under subsection 25.33 (5) of the Electricity Act, 1998 and costs incurred in relation to the balances.

Miscellaneous

Investment asset

17. The prescribed accounts referred to in paragraph 3 of subsection 29 (1) of the Act are as follows:

1. Any specifically identified segregated account, regardless of the name in which the account is opened, if it is opened by the IESO or an electricity vendor and if amounts in respect of the clean energy adjustment are deposited into it[20].

2. Any accounts opened in the name of a financing entity by the Financial Services Manager.

[19] Can this be simplified to refer only to Part II adjustments for the applicable billing period (namely, ordinary adjustments, funding adjustments and readjustments)? What is the significance of variances recorded in a variance account under section 5 of Ontario Regulation 430/04 (Payments Re Section 25.33 of the Act)?

[20] Too brash? Any commingling would appear to disentitle IESO to its share of the amounts on deposit in a commingled account – pro rata?

Appointment of agent, invoicing or collection

18. For the purposes of subsection 33 (1) of the Act, the appointment may occur if the electricity vendor is unable or unwilling to perform its obligations under the Act, including if the electricity vendor becomes insolvent, bankrupt or enters into receivership.

Disclosure in marketing materials, offering documents, etc.

19. For the purposes of section 40 of the Act, a person may include the references in marketing materials or offering documents if,

(a) the inclusion is required by applicable law or is necessary for the purposes of any financing of funding obligations, including any requests for disclosure by rating agencies; and

(b) the Minister has been given written notice of the proposed inclusion of the references and has been given a reasonable opportunity to comment.

20. Omitted (provides for coming into force of provisions of this Regulation).

~~O. Reg. 196/17: INVOICING REQUIREMENTS~~

~~Ontario Fair Hydro Plan Act, 2017~~

~~ONTARIO REGULATION 196/17~~

~~INVOICING REQUIREMENTS~~

~~Consolidation Period: From July 1, 2017 to the e-Laws currency date.~~

~~No amendments.~~

~~This is the English version of a bilingual regulation.~~

~~Information to be included on invoices~~

~~1. Invoices issued to a specified consumer by an electricity vendor, other than Hydro One Inc., or a unit sub-meter provider must set out, in a location where conservation or other utility messages to consumers are usually placed, the following statement: "Ontario's Fair Hydro Plan substantially lowers electricity bills for typical residential consumers. This includes the eight per cent rebate introduced in January 2017, and builds on previous initiatives to deliver broad-based relief on all electricity bills."~~

~~Information to be included with invoices~~

~~2. (1) This section applies to invoices issued in paper form to a specified consumer by an electricity vendor or a unit sub-meter provider.~~

~~(2) During the 12-month period beginning with the first invoice issued to the specified consumer on or after July 1, 2017 and ending with the first invoice issued to the specified consumer on or after July 1, 2018, an invoice must, with the frequency set out in subsection (3), be accompanied by a bill insert that meets the following requirements:~~

~~1. The Ontario government trillium logo must appear in a reasonably prominent place on the face of the bill insert.~~

~~2. The words "Ontario's Fair Hydro Plan" and "Bringing electricity bills down" must appear in a reasonably prominent location on the face of the bill insert.~~

~~3. The insert must contain the following wording:~~

~~Ontario's Fair Hydro Plan~~

~~Electricity bills will be lowered by 25 per cent on average for residential consumers~~

~~Rate increases will be held to inflation for four years~~

From Blakes July 11

Follow-ups on the Regulation:

A. Arithmetic

1. "readjustment amount"

Background: The purpose of the "readjustment amount" definition (as used in OFHPA 21(3)1 and 21(4), and Reg'n 12(3), (4) and (5)), is to isolate the impact of only that portion of a Part II adjustment that relates to an *ad hoc* rate reduction – for example, the impact of the anticipated rate reduction required to get an overall 25% RPP rate reduction. Discuss the outcome of the current definition in 2 scenarios:

(a) Scenario 1: "status quo curve" (SQC) > "fair allocation curve" (FAC) (i.e., there is an IESO deferral for the period and there is no "fair allocation amount").

In this case, an ordinary Part II adjustment would be required to ensure that ratepayers do not bear more than FAC in the period. Where SQC exceeds FAC for a period, readjustment amount should only assess the impact of a Part II adjustment after excluding the impact of the ordinary adjustment (SQC minus FAC). As written, readjustment amount would equal the impact of the entire Part II adjustment, including the ordinary course adjustment described above (i.e., to address SQC>FAC).

(b) Scenario 2: FAC > SQC

In this case, there should be no "ordinary" Part II adjustment (as in scenario 1), and so the entire Part II adjustment for that period should be taken into account for the purpose of determining the readjustment amount. As written, the fair allocation amount would reduce the readjustment amount, which does not seem to make sense since ratepayers will separately bear CEAs equal to the fair allocation amount.

2. Part II Adjustments – Note that if debt service funding for a period > FAA for the period, then the excess of such debt service funding will not be available to FE. On that basis, either (a) IESO/Province will need to pay ("funding rebate" concept) or (b) prescribe recovery of those amounts under OFHPA 20(1)5 to increase/form part of FAA. If (b), then will need to reduce the "ordinary" Part II adjustment so that the overall effect on rates borne by specified consumers is neutral (i.e., not in excess of the FAC).

3. Prescribed Amount – Fair Allocation Amount – 11(2) doesn't seem to make sense. The condition for (2) to operate is that C>B. That means that A will always be negative. Is the idea that the fair allocation amount will be a negative number (i.e., adding a negative number) when there is an IESO Deferral (i.e., C>B)? What is the significance to the fiar allocation amount being negative, under the OFHPA?

4. Determination of estimated financing costs (Reg'n 12) – I don't think that para 3 belongs in 12(1). Also, I think that (4) should say that the readjustment amount should be added to the amount financed over time under 12(2), rather than the adding the entire attributed amount (i.e., the principal amount financed) to the estimated financing costs. I don't understand the idea behind 12(5), since the idea is that finance amounts are to be attributed based on their time outstanding (i.e., throughout until paid), rather than divided

equally (I think that's what it is saying). See OFHPA 20(2) which deals just with estimated financing costs.

B. Concepts

1. Timing sequences – "in respect of a reference period" (is that the current period that gets calculated a few months earlier to include in the electricity invoice of customers for that actual reference period? How do the mechanics of section 7 of the Regulation operate?

2. Basis for estimates – direction re financial assumptions by reference to valuation standards? Reliance on experts?

3. Prospective FAA Approach – Basis to recalculate or change the fair allocation amount calculation (see 20(5)).

4. Assumptions by the Minister – I don't understand how the listed items in Reg'n 13 fit into the required calculation in OFHPA 20(3). The idea is to come up with the future GA amount applicable to clean energy costs. While the listed considerations are relevant, the process and connection is very vague. It may be read as applying "current" prices (etc.), rather than expected or estimated prices.

Amendments to reflect a Negative FAA

1. OFHPA 21(3)1 – Would the "reasonably align" requirement suggest that finance amounts must be negative (i.e., rather than incurring costs, the FSM must arrange for finance amount "rebates" during the relevant period, suggesting a requirement for a CEA rebate to specified consumers)? That is obviously not the idea, although it would coincide with the notion that specified consumers should pay less when the status quo exceeds the "fair allocation" (via an ordinary Part II adjustment – as contemplated in #2, below). This possible overlap could create confusion. Assuming General Regulation 11(2) remains as written, consider adding a clarification as new 11(3) to the effect that: "The value of A shall not be taken into account in determining the fair allocation amount for the purposes of paragraph 1 of subsection 21(3) of the Act."

2. Ordinary Rate Adjustments – A Part II rate reduction will be required to take into account any "ordinary rate adjustment" (i.e., equal to the amount of "A" under General Regulation 11(2)) for each billing period occurring on or after May 1, 2019. This could be accomplished by adding the following to the General Regulation:

   "XX. (1) For the purposes of section 11 of the Act, the Financial Services Manager[1] shall determine[2] the following in respect of each reference period commencing on or after May 1, 2019:

   (a) the amount if any by which (i) the sum of the amounts determined under paragraphs 1 and 2 of subsection 20 (1) of the Act in respect of the reference period, exceed (ii) the estimated amount under paragraph 3 of subsection 20 (1) of the Act in respect of the reference period;

   (b) the total volume of electricity expected[3] to be consumed by all specified consumers during the reference period, determined on the following basis:

      (i) in the case of a specified consumer that is a market participant as defined in the *Electricity Act, 1998*, the net volume of electricity expected to be withdrawn from the IESO-controlled grid by the specified consumer during the reference period, as if determined in accordance with the market rules made under section 32 of that Act; or

      (ii) in any other case, the aggregate volume of electricity expected to be distributed to the specified consumer during the reference period by the electricity vendor, [adjusted for total losses as defined in and in accordance with the Retail Settlement Code, issued by the Board under the *Ontario Energy Board Act, 1998*]; and

   (c) a dollar per megawatt hour amount determined by dividing the amount in paragraph (a) by the volume in paragraph (b).

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[1] Consider required flow of information among parties to accomplish this calculation.

[2] Consider timing of calculation. It must be in advance of relevant reference/billing periods.

[3] Is this something that the FSM would know or could independently determine? Use earlier month(s) as a proxy?

XX. (2) The Financial Services Manager shall [provide relevant details respecting (1)(c) to the Board[4]].

XX. (3) The Board shall determine the rates that would, when applied for the purposes of determining the commodity price of electricity payable by specified consumers in respect of a billing period, equal the per megawatt hour rate otherwise determined, minus the dollar per megawatt hour amount determined under XX(1)(c) in respect of the reference period during which such billing period occurs.

XX. (4) The electricity vendor shall determine the amount payable[5] by specified consumers for electricity consumed in respect of a billing period by multiplying the dollar per megawatt hour determined under subsection XX(3) in respect of the billing period by the total volume of electricity consumed by the specified consumer during the billing period.[6]"

3. General Regulation – "readjustment amount" – The definition of "readjustment amount" should be modified by inserting "absolute value of any negative" immediately before the reference to "fair allocation amount" in paragraph 2 of the definition.

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[4] Consider timing of delivery of information.

[5] Consider drafting so that it is clear that this ordinary adjustment is non-exclusive, permitting other Part II adjustments to concurrently apply.

[6] Should this depend on whether the specified consumer is rate regulated or not?

From Dickes July 11/1

Part II Adjustments – Regulations – Proposed Amendments and Additions

1. Initial Rate Adjustments (to achieve 25% rate reduction, plus inflation) – No comment on the existing Part II Regulation in relation to the period ending April 30, 2019, other than to say that the overall rate reduction subsumes the ordinary reduction (see #2 below) and the readjustment (see #4 below) in a single calculation.

2. Ordinary Adjustments – The premise is to reduce rates for a billing period to reflect one-sixth of the amount (if any) by which the "status quo" for a reference period exceeds the "fair allocation" for the reference period. For this purpose:

   "status quo" means the estimated clean energy costs that would have been payable, in the absence of this Act, by specified consumers in respect of the reference period; and

   "fair allocation" means the sum of the determinations under paragraphs 1 and 2 of subsection 20(1) of the Act (including as modified by subsections 20(2) and 20(5) of the Act, if applicable) in respect of the reference period.

   Once determined, one-sixth of the excess would be converted into a per Kw rate, which would in turn reduce the rate that would otherwise apply to specified consumers in respect of the reference period. More specifically, this Part II adjustment would reduce the comparison rates described in subsection 7(3) of the Act in respect of a billing period (in addition to any other Part II adjustments that would apply to the billing period) by (1) one-sixth of the excess, divided by [(2) the estimated net volume of electricity withdrawn from the IESO-controlled grid by all specified consumers during the reference period, as determined in accordance with the market rules made under section 32 of that Act][the forecast electricity consumption of specified consumers in respect of the period][1]. *[Note that consideration should be given to whether a straight-line per Kw allocation is appropriate, or whether it should be proportional to the rates charged based on the class of consumer (rate regulated or not), applicable financial assistance, etc. Similarly, the approach of simply dividing by six to allocate amounts attributed for a reference period across the related six billing periods should be confirmed.]* Note that this Part II adjustment will automatically be picked up as an IESO deferral pursuant to section 15(1)(ii) of the Regulation, and so should form part of the Regulatory Asset.

3. Funding Adjustments – The premise is that, in years 5 to 10, the fair allocation amount will (in the absence of an adjustment) be zero and so OPG will not be able to incur finance amounts during that extended period. To enable OPG to pass-through finance amounts to ratepayers during this period, as clean energy adjustments, it will be necessary to implement an artificial increase to the fair allocation amount for the relevant periods (as permitted by paragraph 5 if subsection 20(1)) equal to those finance amounts. To ensure that specified consumers do not bear rates greater than the "fair allocation" (i.e., key for constitutionality considerations), a corresponding rate reduction equal to the increase in the fair allocation amount will also need to be reflected as a Part II adjustment. Note that this additional Part II adjustment will automatically be picked up as an IESO deferral pursuant to section 15(1)(ii) of the Regulation and so may be

Wrong

[1] Consider alternative formulations to achieve a per Kw hour adjustment.

recaptured by IESO through transfers of the Regulatory Asset.[2] For this purpose, a mechanism should probably be included to set out when OPG can bear finance amounts in excess of the fair allocation amount otherwise determined[3], and as described above that excess amount:

(a) should be added to the fair allocation amount otherwise determined (as permitted by paragraph 5 if subsection 20(1))[4]; and

(b) should be converted into a rate adjustment to apply in respect of the relevant period as an additional Part II adjustment (such conversion to a rate should follow the approach determined to apply as contemplated in 1, above, but on an estimated basis).

4. Readjustments – The premise is that from time to time, the Ministers/LGC can determine that the "fair allocation" in fact overstated a past generation's fair share of clean energy costs (e.g., in years 3 and 4, or later if the fair allocation curve is reset). In that case, a Part II adjustment may be made to reflect that overcharge. This is essentially the consequence of the rate adjustment contemplated in the current Part II Regulation with respect to the period ending April 30, 2019. A further rate adjustment, reducing the clean energy costs borne by a particular generation (e.g., based on proximity to overcharges), will be necessary to fulfill the 4 year rate reduction promise of the Government (for years 3 and 4), and possibly more reductions at a later time if that is determined to be fair in connection with a reset of the fair allocation amount under 20(5) of the OFHPA.

A few related points are noteworthy:

(a) In the Regulation, subsections 12(4) and (5), contemplate adjustments to the fair allocation amount to reflect (i) the recovery of the readjustment amount itself (subsection 12(5) contemplates adding the readjustment amount in equal portions over the remaining reference periods) and (ii) to the financing costs included in the fair allocation amount calculation under subsection 20(2) of the Act. The recovery in (i) appears to be double counting the overcharge, which should already be accounted for in the "fair allocation" curve (i.e., since the status quo curve and the fair allocation curve should have an equal present value, the forward portion of the fair allocation curve will have already captured the "principal" component of the readjustment amount). The attribution of additional financing charges makes sense

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[2] We will need to confirm that the effect of deferring these amounts will not distort the intergenerational allocations. Since the "curves" incorporate a present value equivalence concept, it appears that the effect of allowing cash realizations in years 5 to 10 in this manner and attendant deferrals will have been incorporated into the Navigant approach used to determine the "curves", other than related time value/interest charges which do not appear to be specifically contemplated (i.e., similar to the interest carry adjustments contemplated to be made in subsection 20(2) of the Act in relation to readjustment amounts). This point needs to be confirmed in relation to the constitutional vetting process.

[3] For example, recovery of such permitted finance amounts may be limited to interest expenses and exclude principal rebates.

[4] See Blakes mark-up of the General Regulation, which contemplates a cross-reference to the Part II Regulation.

and is contemplated in the language of subsection 20(2) of the Act, although the wording of subsection 12(4) of the Reg'n could be clearer (see drafting suggestions in Blakes' mark-up of the General Regulation).

(b) We had previously suggested a direct link between the amount of any readjustment amount and the value of past overcharges (i.e., the "piggybank"). That would serve to better explain the constitutional basis and nature of the Part II "readjustment". Wording sensitivities led to the current approach of not making any direct connection for this purpose. If a linkage is now okay, we would suggest specifically adding that context in the Regulation.

(c) The Part II adjustment to reflect any "readjustment amount" should convert the adjustment amount into a rate adjustment to apply in respect of the relevant period (such conversion to a rate should follow the general approach determined to apply as contemplated in 1, above, but applied on an estimated basis).

TORYS/OPG/OSLER/DEALERS COMMENTS: May 23, 2017

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

Proposed Bill 132 Draft Motions

Proposed Draft Government Motions

Proposed Draft Bill 132 Motions

Motion 1

Schedule 1 to the Bill, subsection 1 (1)

The following definition would be added:

"readjustment amount" means, in respect of a reference period, the amount, if any, by which the fair allocation amount in respect of the reference period exceeds or would exceed the sum of the following amounts after eliminating any duplication between the two amounts:

1. The clean energy costs allocated to specified consumers in respect of the reference period as a result of a determination of the Board in respect of the reference period under section 9 or 11.

2. The finance amount in respect of the reference period or, if the finance amount has not been determined, the estimated finance amount in respect of the reference period; ("French")

[NTD: See comments on Motion 12 regarding use of this new term.]

Proposed Draft Bill 132 Motions

Motion 2

Schedule 1 to the Bill, section 7

Section 7 would be struck out and the following substituted:

Regulated rate consumers, first adjustments

7. (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 determined by the Board under this section and in accordance with the prescribed methodology.

Determination by Board [NTD: This heading is similar to the heading of Section 9, "Determinations by the Board". Since these sections are cross-referenced within the Act, consider using more descriptive headings. The table of contents of the Act will also need to updated.]

(2) The rates mentioned in subsection (1) ~~must~~**shall** be the rates that would result in a hypothetical regulated rate consumer who meets the prescribed criteria being invoiced an amount, consisting of such types of amounts as may be prescribed, that is 25 per cent less than the ~~an~~ amount, consisting of such types of amounts as may be prescribed, that the **hypothetical regulated rate** consumer would have been invoiced **[pursuant to section 79.16 of the OEB Act/in the absence of this Act]** under the prescribed rates.

Proposed Draft Bill 132 Motions

Motion 3

Schedule 1 to the Bill, section 8

Section 8 would be struck out and the following substituted:

Other specified consumers, first adjustments

8. For the period beginning on July 1, 2017 and ending on April 30, 2018, the adjustments made under section 25.33 of the *Electricity Act, 1998* shall, with respect to specified consumers who are not regulated rate consumers, be further adjusted in accordance with the regulations by electricity vendors and subject to determinations made by the Board in accordance with the regulations.

Proposed Draft Bill 132 Motions

Motion 4

balance w/ OEB comments

Schedule 1 to the Bill, section 11

Section 11 would be struck out and the following substituted:

Subsequent adjustments

11. (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 methodologies to be applied by the Board [and electricity vendors] **[NTD: Need to be careful not to give electricity vendors authority to set rates as this is the Board's jurisdiction]** after April 30, 2018 for the purpose of determining,

(a) electricity rates for regulated rate consumers; or

(b) adjustments to be applied by electricity vendors to the adjustments made under section 25.33 of the *Electricity Act, 1998* in respect of specified consumers who are not regulated rate consumers.

Regulations

(2) The Lieutenant Governor in Council shall have regard to the following in making the regulations:

1. The purposes of this Act.
2. The clean energy costs borne by specified consumers over time.
3. Such other matters as may be prescribed.

Same

(3) The regulations may prescribe,

(a) different methodologies for different prescribed classes of consumers and in respect of different periods of time; and

(b) different adjustments to be made in respect of prescribed classes of specified consumers who are not regulated rate consumers.

Proposed Draft Bill 132 Motions

Motion 5

Schedule 1 to the Bill, subsections 12 (2) and (3)

Subsection 12 (2) would be struck out and the following substituted:

Regulated rate consumer

(2) In the case of a specified consumer who is a regulated rate consumer, 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 rates payable for the electricity by the person who is liable to pay the invoice shall be determined in accordance with the regulations.

Other specified consumer

(3) In the case of a specified consumer who is not a regulated rate consumer, 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 specified consumer and every unit sub-meter provider providing unit sub-metering for the specified consumer shall ensure that the person receives a credit, determined in accordance with the regulations, in respect of the amount otherwise payable by the person for the electricity.

~~**Proposed Draft Bill 132 Motions**~~

~~**Motion 6**~~

~~**Schedule 1 to the Bill, subsection 13 (2)**~~

~~Subsection 13 (2) would be struck out and the following substituted:~~

~~**Same** (2) For greater certainty, subsection (1) applies regardless of whether any estimate, projection or other input used in calculating the clean energy adjustment was erroneous or out of date at the time of the calculation and regardless of whether [~~**[NTD: This proposed amendment is too restrictive and should be deleted. The current language in the draft legislation which expressly allows recovery of the clean energy adjustment**~~? any of those estimates, projections or other inputs?] is subsequently amended, updated or corrected.~~ **if a funding obligation were incurred in a manner consistent with the Financing Plan must be maintained.]**

Motion better reflects the intent

various other provisions reinforce this

→ new 21(6) 2(2), 22(4) 20(5)

Proposed Draft Bill 132 Motions

Motion 7

Schedule 1 to the Bill, subsection 18 (1)

Subsection 18 (1) would be amended by adding "Subject to subsection (2)" at the beginning.

Proposed Draft Bill 132 Motions

Motion 8

Schedule 1 to the Bill, subsection 18 (2)

Section 18 would be amended by adding the following subsection:

Same

(2) If Ontario Power Generation Inc. is unable or unwilling to act as the Financial Services Manager, the Minister may appoint a different Financial Services Manager in accordance with the regulations.

Proposed Draft Bill 132 Motions

Motion 9

Schedule 1 to the Bill, section 20

Section 20 would be struck out and the following substituted:

Minister to calculate fair allocation amount

20. (1) Before the first funding obligation is incurred, the Minister shall calculate a fair allocation amount in respect of each reference period as follows:

1. Subject to subsection (2), determine, in accordance with the steps set out in the regulations and by applying such method as the Minister considers appropriate, the estimated clean energy costs and ~~financing costs~~**[financing costs] [NTD: "financing costs" is not defined in the Act. If the term "finance amount" was intended to be used, the drafting should be revised to refer to the finance amount in respect of a reference period (i.e. not as allocated to specified consumers)]** to be allocated to specified consumers in respect of the reference period.

2. Determine the estimated clean energy costs that would have been payable, in the absence of this Act **and without taking into account any forecasted impact of any other provisions of this Act**, by specified consumers in respect of the reference period.

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.

[NTD: The current drafting of the formula proposed above for determining the fair allocation amount is very unclear. Is the intent that the fair allocation amount will be determined in respect of every reference period as drafted above (as opposed to an amount determined in respect of the program in its entirety)? Also, as drafted, it appears that the difference between the amount under 1 and 2 above would simply equal the financing costs (we do not believe this was intended) and we are unclear what "such other amounts" would be captured under 4.]

Part II adjustments

(2) If the Board has made a determination under section 9 or 11 in respect of the reference period or in respect of a prior reference period and, as a result of the determination, the prescribed circumstances arise, the Minister shall take the prescribed steps to make the prescribed adjustments to the determination made under paragraph 1 of subsection (1).

Principles, assumptions

(3) In calculating a fair allocation amount, the Minister shall,

(a) have regard to the purposes of this Act and such other principles as may be prescribed; and

(b) make such assumptions as the Minister considers to be reasonable regarding such other matters as may be prescribed.

~~[Note: To be struck on next instructions.]~~

Recalculation

(4) The calculation of a fair allocation amount under this Part may be changed by such person as may be prescribed, subject to the following requirements:

1. The prescribed person shall comply with such requirements as may be prescribed.

2. Subsections (1), (2) and (3) apply to the new calculation, with necessary modifications, as if that person were the Minister.

Same

(5) No change under subsection (4) shall affect any clean energy adjustment that arises as a result of a funding obligation that has been incurred before the change.

Information

(6) The Minister, the 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 under subsection (4).

Proposed Draft Bill 132 Motions

Motion 10

Schedule 1 to the Bill, subsection 21 (1)

Subsection 21 (1) would be amended by striking out "for the purposes of acquiring and financing an investment asset" and substituting "for the purposes of a financing entity acquiring and financing an investment interest".

Proposed Draft Bill 132 Motions

Motion 11

Schedule 1 to the Bill, paragraph 1 of subsection 21 (3)

Paragraph 1 of subsection 21 (3) would be amended by striking out "to reflect determinations of the Board under Part II in respect of the reference period" at the end and substituting "by the amount of any readjustment amount in respect of the reference period".

Proposed Draft Bill 132 Motions

Motion 12

Schedule 1 to the Bill, subsection 21 (4)

Subsection 21 (4) would be amended by striking out clauses (a) and (b) and substituting the following:

(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 that resulted in a readjustment amount; or

(b) if the Board has made a determination under Part II in respect of the reference period that resulted in a readjustment amount, the amounts payable in respect of the clean energy adjustment in respect of the reference period do not exceed the fair allocation amount in respect of the reference period after subtracting the readjustment amount.

[NTD: The concept of a "readjustment amount" introduced to Sections 21(3) and (4) is very unclear and does not appear correct as currently drafted. The language above refers to "subtracting the readjustment amount" but this would result in the deduction of the finance amount in determining the amount of the clean energy adjustment which would not make sense since the finance amount is part of the clean energy adjustment. It is also unclear how a Board determination under Part II would result in a readjustment amount. Section 21(4)(b) should simply require that the clean energy adjustment payable by specified consumers (as an aggregate $ amount) be less than the fair allocation amount (as an aggregate $ amount) in respect of a particular reference period.]

Proposed Draft Bill 132 Motions

Motion 13

Schedule 1 to the Bill, subsection 21 (6)

Subsection 21 (6) would be amended by adding "but no such amendment shall affect any clean energy adjustment that has already been determined under section 15 or any funding obligations that have already been incurred before the amendment" at the end.

Proposed Draft Bill 132 Motions

Motion 14

Schedule 1 to the Bill, section 40.1

The following section would be added:

Compliance and restraining orders
Application to court

40.1 (1) On the application of an investment ~~asset~~**interest** owner, the Superior Court of Justice may make an order,

(a) directing an electricity vendor, the IESO or the Financial Services Manager to comply with this Act or the regulations;

(b) restraining an electricity vendor, the IESO or the Financial Services Manager from acting in breach of this Act or the regulations; or

(c) directing an electricity vendor, the IESO or the Financial Services Manager to provide compensation to the investment interest owner.

Same

(2) An application under subsection (1) may be made by an investment ~~asset~~**interest** owner in addition to exercising any other right of the investment interest owner.

Proposed Draft Bill 132 Motions

Motion 15

Schedule 1 to the Bill, paragraph 7 of subsection 41 (1)

Paragraph 7 of subsection 41 (1) would be amended by striking out "a breach under section 29 **and the manner in which such a right may be enforced under this Act**" and substituting "the failure of any person or entity to comply with this Act".

change made - based on original language.

Document comparison by Workshare Compare on May-23-17 5:46:21 PM

Input:	
Document 1 ID	interwovenSite://INVENTORYS1/TorysAtWork/23534434/1
Description	#23534434v1<TorysAtWork> - Fair Hydro Act Motions Consultation (May 23 2017)
Document 2 ID	interwovenSite://INVENTORYS1/TorysAtWork/23534434/2
Description	#23534434v2<TorysAtWork> - Fair Hydro Act Motions Consultation (May 23 2017)
Rendering set	Firm_Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
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Style change	
Format change	
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	45
Deletions	13
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	58

From Blake - May 2017

I move that section 20 of Schedule 1 to the Bill be struck out and the following substituted:

Minister to calculate fair allocation amount

20. (1) Before the first funding obligation is incurred, the Minister shall calculate a fair allocation amount in respect of each reference period as follows:

1. Subject to ~~subsections (2) and~~subsection (3), ~~and~~determine, in accordance with the following steps ~~set out in~~and the regulations and by applying such method as the Minister considers appropriate, the estimated clean energy costs to be allocated to specified consumers in respect of the reference period:

   ~~i. Determine the past, present and expected clean energy benefits and~~

   a. Determine the clean energy costs incurred or expected to be incurred in respect of reference periods,

   b. ~~ii. Attribute~~Determine the past, present and expected clean energy benefits and attribute the value of ~~past, present and future~~such clean energy benefits across the initial clean energy period ~~to be prescribed,~~ and each ~~of the~~ reference ~~periods.~~period,

   c. ~~iii.~~ Allocate ~~the~~ clean energy costs~~, having regard to the~~ in respect of reference periods in proportion to such relative attributions of clean energy benefits determined in ~~sub~~-subparagraph ~~ii, and related financing amounts in respect of each reference period~~b.

~~[EXPLANATION: Step 1 relates to the overall fair allocation of costs and benefits]~~

2. Subject to subsections (2) and (3), determine, in accordance with the regulations and by applying such method as the Minister considers appropriate, the estimated finance amounts in respect of the reference period.

3. ~~2.~~ Determine, in accordance with the regulations and by applying such method as the Minister considers appropriate, the estimated ~~[Expected?]~~ clean energy costs that would have been payable, in the absence of this Act, by specified consumers in respect of ~~each~~the reference period.

~~[EXPLANATION: this is the clean energy costs in the absence of the OFHPA (ensures that we take the picture without regard to any fair adjustments made under this act)]~~

4. ~~3.~~ Determine the amount, if any, by which the ~~determination~~sum of the determinations under ~~paragraph~~paragraphs 1 and 2 exceeds the determination under paragraph ~~2.~~3.

~~[EXPLANATION: this is the calculation of fair allocation amount for each period which then gets financed]~~

5. ~~4.~~ Calculate the sum of the amount determined under paragraph ~~3~~4 and such other amounts as may be prescribed in respect of the reference period.

~~[EXPLANATION: any further prescribed costs, etc. to adjust paras (steps) 1 through 3.]~~

Part II adjustments

(2) If the Board has made a determination under section 9 or 11 in respect of the reference period or in respect of a prior reference period and, as a result of the determination, the prescribed circumstances arise, the Minister shall take the prescribed steps to make the prescribed adjustments to the determination made under paragraph ~~1~~2 of subsection (1).

Principles

(3) In calculating a fair allocation amount, the Minister shall have regard to the purposes of this Act and such other matters as may be prescribed.

Recalculation

(4) The calculation of a fair allocation amount under this Part may be changed by such person as may be prescribed, subject to the following requirements:

1. The prescribed person shall comply with such requirements as may be prescribed.

2. Subsections (1), (2) and (3) apply to the new calculation, with necessary modifications, as if that person were the Minister.

Same

(5) No change under subsection (4) shall affect any clean energy adjustment that arises as a result of a funding obligation that has been incurred before the change.

Information

(6) The Minister, the 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 under subsection (~~5~~4).

LinkedIn

From: Picard, Michel
Sent: Monday, January 23, 2017 10:27 AM
To: Church, Bailey J <bchurch@kpmg.ca>; Newman, Andrew <andrewnewman@kpmg.ca>
Subject: Time sensitive

Andrew, Bailey,

I have a call today at 2:30pm with the Ontario MOF and MOE concerning the creation of a Trust. PSAB states that Trusts should not be consolidated into the Province's books.

TRUSTS UNDER ADMINISTRATION

.40 *Trusts administered by a government or government organization should be excluded from the government reporting entity.* [JUNE 1996]

.41 Trusts are defined as property that has been conveyed or assigned to a trustee to be administered as directed by agreement or statute. In a trust relationship, the trustee holds title to property for the benefit of, and stands in a fiduciary relationship to, the beneficiary.

.42 To meet the definition in paragraph PS 1300.41, the property conveyed or assigned to the government or government organization acting as a trustee, must be provided to fulfill a particular objective of the donor of the property conveyed or assigned. The government or government organization would merely administer the terms and conditions embodied in the agreement and has no unilateral authority to change the conditions set out in the trust indenture. For this reason, the assets and activities of the trust are excluded from the government's reporting entity.

.43 A government or government organization acts as trustee when it administers trusts on behalf of the beneficiaries specified in the agreement or statute. As trustee, the government is accountable to third parties for the use and disposition of trust assets and for the funds derived from those trust activities. Trust assets are not owned by the Crown in right of Canada, a province or territory, or by a local government, and should not be included in the government reporting entity.

.44 *Government financial statements should disclose, in a note or schedule, a description of trusts under administration by a government or government organization, and a summary of trust balances.* [JUNE 1996]

.45 To acknowledge and report on the magnitude of trusts administered by a government or government organization, a note or schedule to government financial statements would describe the trust assets under administration and would set out a summary of trust balances.

.46 Often the term "trusts" is applied to assets earmarked as a result of a government policy decision when no trust liability exists. Such assets are special funds that comprise part of the government reporting entity and would be consolidated

I would like to discuss with one of you the accounting treatment and whether there is a risk that it could be construed that the Trust is controlled by the Province and therefore would need to be consolidated into the Porvince's books.

From: Picard, Michel
Sent: Monday, January 23, 2017 8:32 AM
To: Church, Bailey J <bchurch@kpmg.ca>
Subject: FW: Thoughts after yesterday's meeting

View?

Blakes Team Members – Associate Billing Rates	
Associate	**Billing Rate**
2011 Theresa Chan, Associate, Infrastructure and Government	$640.00
2013 Jennifer Hancock, Associate, Financial Services	$550.00
2015 David Bristow, Associate, Securities	$505.00
2015 Zac Resnick, Associate, Transactions	$505.00
2014 David Mender, Associate, Transactions	$530.00

Blakes



Marianne Smith
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Blakes

Marianne has over 10 years of experience as a commercial lawyer. A significant portion of Marianne's practice encompasses public procurement, infrastructure and public-private partnerships. She advises clients on the development, preparation and ongoing administration of public tenders and procurement processes, and the development and negotiation of commercial agreements for the design, construction, financing and maintenance of infrastructure.

In her procurement practice, Marianne acts for domestic and international clients in a wide range of sectors, including transit and transportation, water, and wastewater, health-care services, information technology, gaming, energy and mining. She also regularly acts for both procuring entities and bidders with respect to conducting a successful procurement process, fairness issues, mitigating procurement risk and avoiding compliance issues. In particular, Marianne has expertise in the procurement of mega infrastructure development projects and alternative finance and procurement projects across multiple jurisdictions, including municipal, provincial, federal and international and has been at the forefront of recent municipal PPP projects.

Marianne has participated in several corporate transactions, including mergers and acquisitions, corporate reorganizations, and partnership and shareholder matters. She also assists clients with their corporate development, financing and business operations.

SELECT EXPERIENCE

Representative matters include acting on behalf of and advising:

Infrastructure/P3 Projects

- Infrastructure Ontario and Metrolinx on the Eglinton Crosstown LRT design, build, finance and maintain project
- City of Winnipeg on the design, build, finance and maintain project for the Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass
- City of Hamilton on the design, build, finance, operate and maintain for the Biosolids Management Project
- Infrastructure Ontario on projects including:
    - Design, build and financing of sports venues for the 2015 Pan/Parapan American Games, Hamilton Stadium, York University Athletics Stadium and Milton Velodrome, Pan Am Aquatics Centre, Pan Am Field House and Canadian Sport Institute Ontario
    - Design, build, finance and maintain projects for the Sheppard Maintenance and Storage Facility; the Southwest Detention Centre; the Toronto South Detention Centre; and the New Data Centre
    - Build finance project for the Credit Valley Hospital Priority Areas Redevelopment Project; the Hawkesbury & District Hospital Project; and the Public Health Laboratory at MaRS Centre Project.
- City of Saskatoon on the design, build, finance, operate and maintain project for the Phase One Civics Operation Centre Project
- City of Saskatoon on the design, build, finance and maintain project for the North Commuter Parkway and the Traffic Bridge Project
- City of Calgary on a design, build, construction, operate and maintain P3 project for an organics processing facility (food and de-watered biosolids)
- City of Calgary on the Bonnybrook Wastewater Treatment Plant D Expansion Project
- City of Moncton on the Moncton Downtown Centre project (a new multi-use sports and entertainment centre)
- City of Sudbury on the design, build, finance and maintain project for a new biosolids facility and related upgrading of existing City water and wastewater facilities
- Ontario's nuclear new-build project
- Federal Government on the design, build, finance and maintenance of an office building redevelopment

Procurement and Corporate/Commercial Matters

- An Ontario broader public sector entity with respect to the development of a procurement policy and related procedures , template procurement documents and template contract documents
- Ontario Association of Community Care Access Centres with respect to the procurement of outsourced clinical services and medical equipment and supplies, and providing contract template advice
- An Ontario crown agency with respect to the development of template procurement and contract documents

M&A Transactions and Reorganizations

- Nestlé S.A. on its US$3.7-billion acquisition of Kraft Foods' North American frozen pizza business
- An automotive supplier on the sale of two divisions of its Canadian operations
- A Canadian distributor of retail products in the sale of its shares
- An automotive supplier on the reorganization of its Canadian operations



Judy L. Wilson
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With over 30 years of experience dealing with commercial and procurement issues, Judy has advised clients across the globe on the full spectrum of infrastructure and public procurement issues. She has extensive experience in contracts to engage the private sector in the provision of traditional government services. She has also led a wide range of transactions to engage the private sector, including design-build-finance-maintain, operations and maintenance, and facilities management of public-sector facilities, as well as the provision of clinical services in the community-care sector.

Judy is a leading practitioner in the field of alternative finance and procurement projects and infrastructure development projects in industries such as health care, transit and transportation, nuclear energy, and information technology systems. She has developed and implemented procurement and contract documentation to support a wide range of public-private partnerships (P3s), and has provided advice and legal opinions relating to procurement processes and evaluation, project risk management and mitigation strategies, project structuring, and agreements.

SELECT EXPERIENCE

Judy's projects include:

- Ontario's nuclear new-build project
- Infrastructure Ontario projects with respect to alternative financing for hospitals, detention centres, a data centre and other public facilities
- Contracts between government and the private sector with respect to nursing homes, long-term-care facilities, air ambulance, telehealth and community-care access centres
- Transactions related to P3s (advising public-sector clients and international financial institutions) in the water and wastewater sector in Canada, South Africa, the West Bank, Jordan, Gaza, Armenia, Uzbekistan, Tajikistan, the Philippines, Kenya, Zambia, India, Ukraine and Mozambique

AWARDS & RECOGNITION

Judy has been honoured as Public Procurement Lawyer of the Year 2013 by *Who's Who Legal*. She is also recognized as a leading lawyer in the following publications:

- Chambers Global: The World's Leading Lawyers for Business 2017 (Projects and Public Procurement)
- Who's Who Legal: Canada 2016 (Government Contracts)
- The Canadian Legal Lexpert Directory 2016 (Infrastructure Law)
- *The Legal 500 Canada 2016* (Leading Lawyer - Public Procurement; Recommended - Infrastructure & Projects)
- *The Best Lawyers in Canada 2016* (Public Finance Law and Public Procurement Law)
- Chambers Global: The World's Leading Lawyers for Business 2016 (Projects: PPP & Infrastructure, and Public Procurement)

PROFESSIONAL ACTIVITIES

Judy also taught part-time in the Department of Law at Carleton University for approximately 12 years. Her areas of teaching experience include municipal law, contract law, business law, labour law and building contracts, and public tender systems.

Judy is the past Chair and current member of the board of directors of Halton Healthcare Services in the province of Ontario.

EDUCATION

Admitted to the Ontario Bar - 1985
LL.B., Queen's University - 1983
M.P.A., Queen's University - 1980
B.A. (Hon.), Queen's University - 1979

PROFESSIONAL ACTIVITIES

Theresa is a member of the Canadian Bar Association and Ontario Bar Association.

EDUCATION

Admitted to the Ontario Bar - 2011
J.D., University of Toronto - 2010
Exchange Program (Public International and Human Rights Law), University of Amsterdam Law School - 2009
B.A. (Biology), Harvard University - 2006



Michael Matheson
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Blakes

Michael has more than 15 years of experience in banking and financial services law, with a particular specialization in corporate and commercial finance. His practice is focused on the areas of banking, syndicated lending, leveraged finance, project finance, and mergers and acquisitions.

Michael regularly advises Canadian and foreign financial institutions and borrowers with respect to the structuring and negotiation of syndicated loan transactions, acquisition financings, take-over bid financings, leveraged buyouts, corporate reorganizations, workouts, and mergers and acquisitions.

SELECT EXPERIENCE

Transactions in which Michael has been involved include representing:

- The arrangers and lenders in connection with recent acquisition transactions, including First Quantum's acquisition of Inmet, Plazacorp's acquisition of KeyREIT, Birch Hill's acquisition of Soft Choice, Harry Winston's acquisition of BHP's diamond assets, CGI Group Inc's public take-over of Logica plc, Canaccord Financial Inc's public take-over of Collins Stewart Hawkpoint, Intact Financial Corporation's acquisition of AXA Canada, and DHX Media Ltd.'s acquisition of Cookie Jar Entertainment
- Ontario Teachers' Pension Plan, Providence Equity Partners, Madison Dearborn Partners LLC, and BCE Inc. in connection with the acquisition of Q9 Networks
- The arranger and lenders in connection with credit facilities made available to CT REIT, CHOICE REIT, Granite REIT, First Capital Realty, Primaris REIT, Chartwell REIT and other public real estate investment trusts
- The arrangers and the lenders in connection with Apax Partners' acquisition of Garda World Security Corporation
- Equinox Minerals Ltd. in connection with its hostile take-over bid for Lundin Mining Corporation
- The underwriters and a syndicate of lenders in connection with BHP Billiton Limited's hostile take-over bid for Potash Corporation of Saskatchewan
- The underwriters and a syndicate of lenders in connection with TransAlta Corporation's hostile take-over bid for Canadian Hydro Developers
- Mezzanine lenders and borrowers in connection with a variety of loan and warrant arrangements
- The underwriters and lenders in connection with a number of income trust privatizations and public company conversions, including BFI Canada, Golf Town, Sleep Country Canada and Aeroplan

- The lenders and debtors in respect of debtor in possession financings in connection with recent *Companies Creditors' Arrangement Act* transactions, including Arclin Canada Ltd., Canwest Media, Canwest Limited Partnership, Angiotech Pharmaceuticals Inc.

AWARDS & RECOGNITION

Michael has been recognized as a leading banking and financial services lawyer in the following publications:

- Chambers Canada: The World's Leading Lawyers for Business 2017 (Banking & Finance)
- Who's Who Legal: Banking 2017
- The Best Lawyers in Canada 2016 (Banking and Finance Law)
- *The Canadian Legal Lexpert Directory 2017* (Asset-Based Lending, Banking & Financial Institutions, and Project Finance)
- Chambers Canada: Canada's Leading Lawyers for Business 2017 (Banking & Finance)
- The 2016 Lexpert/American Lawyer Guide to the Leading 500 Lawyers in Canada (Banking and Financial Institutions)
- *The Legal 500 Canada 2016* (Leading Lawyer - Banking & Finance)
- IFLR1000: The Guide to the World's Leading Financial Law Firms - 2016 Edition (Banking)
- Legal Media Group's Guide to the World's Leading Lawyers in Banking, Finance and Transactional Law 2014 (Banking)

EDUCATION

Admitted to the Ontario Bar - 1994
LL.B., University of New Brunswick - 1992
B.A., Queen's University - 1989



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Blakes

Jennifer's practice focuses on domestic and cross-border debt financing transactions. She has experience representing lenders and borrowers in both secured and unsecured financing transactions involving bilateral and syndicated loan structures.

Jennifer first joined Blakes as a summer law student in 2011 and subsequently articled with the Firm, completing a secondment at the Canadian Civil Liberties Association.

Prior to joining Blakes, she worked at a boutique civil litigation firm in Toronto and as a fraud analyst for the Royal Bank of Canada.

SELECT EXPERIENCE

Recent representative transactions include advising:

- Element Financial Corporation in connection with a US$8.5-billion senior secured credit facility established in its favour by a syndicate of lenders, with Bank of Montreal acting as administrative agent, to finance, in part, its acquisition of GE Capital's fleet management operations in the United States, Australia, New Zealand and Mexico
- National Bank of Canada and The Bank of Nova Scotia in connection with senior secured credit facilities in favour of a private equity sponsor to finance its acquisition of Niobec Inc.
- Borealis Transportation Infrastructure Trust, a subsidiary of OMERS Administration Corporation, in connection with a secured term loan facility for the Detroit River Rail Tunnel provided by a syndicate of lenders
- Lone Star Funds in connection with the financing of its acquisition of Hanson Building Products from HeidelbergCement AG
- Canadian Imperial Bank of Commerce in connection with a senior secured revolving credit facility in favour of Silver Standard Resources Inc.
- Highline Produce Limited in connection with revolving and term credit facilities established in its favour by The Toronto-Dominion Bank, as lender
- A leading transportation company in connection with its vehicle acquisition financing facility
- A European lender in connection with its project financing for a group of Canadian hotels

- GrandLinq GP (a special purpose vehicle owned by Plenary, Meridiam, Aecon, Kiewit and Keolis) in connection a short-term bank loan and a long-term bond issue to finance the Waterloo Light Rail Transit Project, a public private partnership procured by the Region of Waterloo

EDUCATION

Admitted to the Ontario Bar - 2013
LL.B./B.C.L., McGill University - 2012
B.A. (Highest Distinction), York University - 2008



Tim Andison
Partner | Toronto

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Toronto: 416-863-2654

Blakes

Tim's practice focuses on a wide variety of M&A and equity and debt capital markets transactions, including high-yield and other debt offerings, restructurings and liability-management transactions. He has acted for numerous underwriters, issuers, financial sponsors, lenders and borrowers based in Canada, the United States, South America, Europe, and Asia. Before joining Blakes, Tim practised as a member of the capital markets group of a leading US law firm in its London, New York, Singapore and Toronto offices.

SELECT EXPERIENCE

Recent transactions that highlight Tim's experience include advising:

- The underwriters in connection with various offerings of equity securities, including a C$75-million offering of common shares by Wajax and a US$100-million offering of common shares and gold-linked preferred shares by Banro Corporation
- The underwriters in connection with various offerings of Canadian-dollar high-yield notes, including offerings by Brookfield Residential Properties; DHX Media; Sherritt International (as well as Sherritt's related debt tender offer and consent solicitation); Trevali Mining; Cogeco; Wajax; Crew Energy; Savanna Energy Services; GFL Environmental (as well as GFL's debt tender offer); Southern Pacific Resources; Alliance Grain Traders; Athabasca Oil Corporation; Golf Town, a portfolio company of OMERS Private Equity, in connection with its acquisition of Golfsmith; and Noranda Operating Trust
- The underwriters in connection with various offerings of convertible debentures, including a US$75-miillion offering by Primero and a US$120 million offering by Dorel Industries Inc. to finance Dorel's acquisition of Lerado Group
- The underwriters in connection with various offerings of investment-grade notes, including a C$300-million offering by Federated Co-operatives and multiple C$1-billion offerings by Northwest Redwater Partnership
- MCAP in connection with its multiple offerings of senior secured notes
- BlackBerry Limited in connection with its US$1-billion private placement of convertible debentures to Fairfax and other institutional investors
- Certain shareholders of MI Developments (now Granite REIT) in connection with the elimination of the company's dual-class share structure and the associated sale of the company's racing and gaming business, and advising Granite REIT in connection with ongoing securities law matters including its conversion to a real estate investment trust structure and its C$200-million offering of senior debentures

- The Brick in connection with its sale to Leon's Furniture for C$700-million as well as its earlier debenture buyback transaction, the amendment of its credit facility, and a transaction to facilitate the exercise of its outstanding warrants by adding a cashless exercise right
- TransGlobe Apartment Real Estate Investment Trust in connection with its sale to PD Kanco LP and Starlight Investments Ltd., valued at C$2-billion
- Cliffs Natural Resources in connection with its C$4.9-billion acquisition of a Canadian mining company and the related reorganization of the acquired company's outstanding debt and convertible debt securities

AWARDS & RECOGNITION

Tim is recognized as a leading lawyer in the following publications:

- Chambers Canada: Canada's Leading Lawyers for Business 2017 (Capital Markets: Debt & Equity)
- IFLR1000: The Guide to the World's Leading Financial Law Firms - 2017 Edition (Financial Restructuring, Capital Markets: Debt, Capital Markets: Equity)
- The Canadian Legal Lexpert Directory 2016 (Corporate Finance & Securities)
- The Lexpert Guide to the Leading US/Canada Cross-Border Corporate Lawyers in Canada 2014 (Listed under "Lawyers to Watch")

EDUCATION

Admitted to the New York Bar - 2001
Admitted to the Ontario Bar - 2011
LL.B., University of Toronto - 1999
B.A. (Hon.), Queen's University - 1995



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Blakes

David's practice focuses on a variety of capital markets transactions, including public offerings and private placements of securities, financings, mergers and acquisitions. He also advises clients on corporate governance and securities regulatory matters, including the continuous disclosure obligations of public issuers.

David was a summer student at Blakes after his first and second years of law school and articled with the Firm in 2014/2015. During his articles, he completed a three-month secondment in the legal department of one of the Firm's foreign investment banking clients, where he worked on a variety of corporate, securities and compliance matters.

SELECT EXPERIENCE

Recent examples of David's experience include:

Mergers & Acquisitions

- Acted for Capstone Infrastructure Corporation in connection with its friendly C$480-million acquisition by Irving Infrastructure Corp., a subsidiary of iCON Infrastructure Partners III, L.P., by way of a court approved plan of arrangement
- Acted for Audax Private Equity in connection with its C$245-million acquisition of LifeMark Health Corp. and Viewpoint Medical Assessments
- Acted for Peak Rock Capital LLC in connection with the C$145-million acquisition of Highline Produce Holdings, Inc. by Fyffes PLC

Corporate Finance

- Advised Zeg Oil and Gas Ltd in connection with its private placement investment of US$30 million in Oryx Petroleum Corporation Limited in March 2016
- Acted for the syndicate of underwriters in connection with the C$60-million offering of Collateralized Exchange Listed Notes of Delphi Energy Corp. in June 2016
- Acted for the syndicate of underwriters in connection with the C$51-million bought deal offering of REIT units of Slate Office REIT in June 2016
- Acted for the syndicate of underwriters in connection with the C$50-million bought deal offering of REIT units of Slate Office REIT in September 2016

- Acted for the syndicate of underwriters in connection with the C$35-million bought deal offering of REIT units of Automotive Properties REIT in September 2016

EDUCATION

J.D., Schulich School of Law, Dalhousie University - 2014
B.B.A., Wilfrid Laurier University - 2011



Bryson A. Stokes
Partner | Toronto

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Blakes

In addition to providing general corporate advice to clients, Bryson has extensive expertise in structuring, negotiating and implementing commercial transactions including acquisitions, dispositions, mergers, strategic alliances (including partnerships and joint ventures) and reorganizations. He has acted for entrepreneurs, private companies, public companies and institutional clients in many industries including manufacturing, construction, energy, distribution, publishing, printing, cable television and broadcasting and real estate.

Bryson devotes a portion of his practice to energy-related matters including projects and transactions relating to renewable energy (including under the Ontario feed-in-tariff program), district energy, natural gas and cogeneration.

Bryson also has considerable gaming regulatory experience.

AWARDS & RECOGNITION

Bryson has been recognized as a leading practitioner in the following publications:

- *The Legal 500 Canada 2017* (Recommended Lawyer - Energy - Power)
- Who's Who Legal: Canada 2016 (Energy)
- *The Legal 500 Canada* 2015 and 2016 (Recommended Lawyer - Corporate and Mergers and Acquisitions)

EDUCATION

Admitted to the Ontario Bar - 1992
LL.B., Osgoode Hall Law School - 1990
B.A., York University - 1987

AWARDS & RECOGNITION

Marianne is recognized in:

- Chambers Canada: The World's Leading Lawyers for Business 2017 (Projects - PPP, Infrastructure)
- Chambers Global: The World's Leading Lawyers for Business 2016 (Projects - PPP, Infrastructure and Public Procurement)
- *The Legal 500 Canada 2016* (Recommended - Infrastructure & Projects and Public Procurement)

Marianne is also a past recipient of the Blakes Volunteer of Distinction Award in recognition of her commitment to volunteer and pro bono activities.

PROFESSIONAL ACTIVITIES

Marianne is actively involved as a volunteer and board member with a variety of organizations that seek to provide support and assistance to those in need. She is the former chair of the board of Sherbourne Health Centre in Toronto, Ontario. From 2007 to 2012, she was a member of the board of directors of The Word on the Street Toronto.

Marianne is a member of the Blakes Diversity and Inclusion Committee.

EDUCATION

Leadership Certificate for Hospital Board and Committee Chairs, Ontario Hospital Association - 2011
Admitted to the Ontario Bar - 2003
LL.B., University of British Columbia - 2002
Intensive Mandarin Program, Mandarin Training Centre, National Taiwan Normal University in Taipei - 1998
M.A. (Political Studies), Carleton University - 1998
B.A. (Hon.), Queen's University - 1996



Theresa Chan
Associate | Toronto

theresa.chan@blakes.com
Toronto: 416-863-2479

Blakes

Theresa's practice covers a range of corporate and commercial matters with a focus on public procurement, infrastructure and public-private partnerships (P3s). She advises clients on the development, preparation and ongoing administration of public tenders and procurement processes and the development of commercial agreements for the design, construction, financing, operation and maintenance of infrastructure.

Theresa was seconded for six months to the Blakes Gulf office, where her practice covered a range of corporate, commercial and litigation matters. While in the Gulf, she acted for some of the largest enterprises in the Middle East, including Saudi Aramco and Petro Rabigh.

SELECT EXPERIENCE

Representative transactions include acting on behalf of and advising:

- Infrastructure Ontario on a number of alternative finance projects, including sports venues for the 2015 Pan/Parapan American Games, the Hawkesbury & District General Hospital Redevelopment Project and the Credit Valley Hospital Phase II Redevelopment Project
- Ontario Association of Community Care Access Centres with respect to the procurement of outsourced clinical services and medical equipment and supplies, and providing contract template advice
- Ontario's nuclear new-build project
- City of Saskatoon on two design, build, finance, operate and maintain projects: the Civic Operation Centre and the North Commuter Parkway and Traffic Bridge
- City of Calgary on a design, build, construction, operation and maintenance P3 project for an organics processing facility (food and de-watered biosolids)
- City of Winnipeg on the design, build, finance and maintain project for the Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass
- City of Moncton on the Moncton Downtown Centre project (a new multi-use sports and entertainment centre)
- City of Sudbury on the design, build, finance and maintain project for a new biosolids facility and related upgrading of existing City water and wastewater facilities
- City of Hamilton on the design, build, finance, operate and maintain Biosolids Management Project

Blakes Team Members – Partner Billable Rates	
Partner	**Billing Rate**
Judy Wilson, Partner, Infrastructure and Government	$895.00
Marianne Smith, Partner, Infrastructure and Government	$710.00
Michael Matheson, Partner, Financial Services	$1,005.00
Tim Andison, Partner, Securities	$990.00
Bryson Stokes, Partner, Transactions	$835.00
Kate McGilvray, Partner, Pensions/Trusts	$760.00

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Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trade-mark Agents
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

INVOICE

Please write invoice number(s) on cheque

Revised

April 28, 2017

Ministry of Energy
50 Wellesley St. W.
5th Floor LSB
Toronto, ON M7A 2E7
Canada

Invoice:	1975906
Billing Lawyer	Wilson, Judy
HST/GST No.:	R119396778
Client:	00014229
Matter:	000001

Attention: Carolyn Calwell
Legal Director

Re: Ministry of Energy - Global Adjustment Mitigation

FOR PROFESSIONAL SERVICES RENDERED
as set out in the attached printout:

BALANCE DUE IN CANADIAN CURRENCY **$ 491,757.42 CAD** as

REMITTANCE PAGE

Remittance Instructions	
*** **Terms: Due and Payable Upon Receipt** ***	
If paying by cheque, please make cheque payable to **Blake, Cassels & Graydon LLP**. Please remit this page with payment. If wiring funds, please refer to the appropriate section below for instructions:	
Canadian Funds Wiring Instructions:	
Canadian Imperial Bank of Commerce Main Branch, Commerce Court West Toronto, Ontario M5L 1A2 Transit No.: 00002	Swiftcode: CIBCCATT Beneficiary: Blake Cassels & Graydon LLP Account No.: 000021602012 Reference: Invoice No. 1975906
For further instructions please email Accounts Receivable at AccountsReceivable@blakes.com or telephone 416-863-3865	

Interest at the rate of 4.5% per annum will be charged on all amounts not paid within one month of delivery of this invoice.

Blakes

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Suite 4000, Commerce Court West
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INVOICE

Please write invoice number(s) on cheque

April 28, 2017

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Attention: Carolyn Calwell
Legal Director

Re: Ministry of Energy - Global Adjustment Mitigation

FOR PROFESSIONAL SERVICES RENDERED
during the period ended March 31, 2017, as follows:

Total Fees		$ 435,023.50
Taxable Disbursement(s)		
Catering, Meals etc.	$ 150.53	
Parking	9.52	
		$ 160.05
Harmonized Sales Tax (13.0%)		56,573.87
TOTAL DUE IN CANADIAN CURRENCY		**$ 491,757.42 CAD**

Blakes

Invoice: 1975906
Date: April 28, 2017

Re: Ministry of Energy - Global Adjustment Mitigation (000001)

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
03/01/17	Matheson, Michael	Reviewing materials regarding GA Smoothing and preparing for meeting regarding same.	2.5	570.00	1,425.00
03/01/17	Stokes, Bryson	Reviewing background information and preparing for meeting with client.	3.6	570.00	2,052.00
03/01/17	Wilson, Judy	Reviewing Global Adjustment materials.	2.8	570.00	1,596.00
03/02/17	Andison, Tim	Participating in meeting; preparing for meeting; instructing Blakes team regarding next steps.	4.6	570.00	2,622.00
03/02/17	Childs, Tairroyn	Researching the use of nuclear-asset recovery bonds in Florida and restructuring bonds in Long Island.	2.4	275.00	660.00
03/02/17	Matheson, Michael	Attending meeting regarding GA Smoothing.	4.3	570.00	2,451.00
03/02/17	McGilvray, Kate	Conversation with J. Wilson; conversations with B. Stokes; attending briefing session; attending meeting with MOE; follow-up on meeting.	3.5	570.00	1,995.00
03/02/17	Mender, David	Meeting with B. Stokes; reviewing transaction materials including summary memos, financing orders and legislation from Florida and New York; preparing summary email.	2.7	570.00	1,539.00
03/02/17	Resnick, Zac	Meeting with B.Stokes to discuss file; reviewing OPG white paper, terms to MOE and cabinet submission deck.	2.2	570.00	1,254.00
03/02/17	Stokes, Bryson	Preparation for meeting; calls with J. Wilson; attend pre- and post- client meeting briefing/debrief; attending and participating at briefing session with MOE team; reviewing Long Island Power structure/enabling legislation; reviewing Duke/Florida enabling legislation; meeting with D. Mender, Z. Reznik regarding scope of review of US models; meeting with T. Andison re: bond terms.	6.6	570.00	3,762.00
03/02/17	Wilson, Judy	Reviewing Global Adjustment documents and attending team meeting.	6.5	570.00	3,705.00
03/03/17	Andison, Tim	Instructing Blakes team regarding next steps; considering documentation.	1.1	570.00	627.00
03/03/17	Bristow, David	Attending meeting to discuss transaction structure; coordinating production of memorandum summarizing high level	1.9	570.00	1,083.00

Blakes

Invoice:	1975906
Date:	April 28, 2017
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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		considerations and precedent transactions.			
03/03/17	Childs, Tairroyn	Drafting email to T. Andison summarizing the nuclear asset-recovery bonds offered by Duke Energy Florida Project Finance, LLC and the restructuring bonds offered by the Utility Debt Securitization Authority in Long Island; preparing for and attending meeting with Blakes team to discuss the use of a similar transaction structure in Florida and Long Island.	2.5	275.00	687.50
03/03/17	Hancock, Jennifer	Discussing new transaction with M. Matheson and D. Butler.	0.4	570.00	228.00
03/03/17	Matheson, Michael	Reviewing sample precedents regarding GA Smoothing and discussing same; telephone calls and emails with client regarding risk factors.	3.3	570.00	1,881.00
03/03/17	McGilvray, Kate	Review of documents regarding proposal transaction.	1.1	570.00	627.00
03/03/17	Mender, David	Meeting with B. Stokes, Z. Resnick, D. Bristow and T. Andison; reviewing Global Approach to Rating Securities Backed by Utility Cost Recovery Charges methodology; reviewing documentation in support of US models including enabling legislation and financing orders; preparing work streams; preparing, reviewing and revising structure diagram; meeting with D. Bristow in regards to such.	5.7	570.00	3,249.00
03/03/17	Resnick, Zac	Reviewing Florida Statue 366.95 and all documentation providing by Ontario Ministry of Energy/OPG; meeting with internal team to discuss deliverable with respect to Long Island and Florida legislation.	6.7	570.00	3,819.00
03/03/17	Stokes, Bryson	Reviewing legislation; conference call with MOE; team meetings (Z. Resnick ,D. Mender; meeting with J. Wilson, M Matheson, T. Andison et. al). Reviewing and US legislation and rating agency guidance.	6.5	570.00	3,705.00
03/03/17	Wilson, Judy	Prepare for and attend call with accounting team. (1.8); Reviewing documents regarding legislative changes for Global Adjustment. (2.6)	4.4	570.00	2,508.00
03/04/17	Andison, Tim	Reviewing documentation; instructing Blakes team regarding next steps.	2.0	570.00	1,140.00

Blakes

Invoice: 1975906
Date: April 28, 2017

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
03/04/17	Bristow, David	Preparing summary of bonds for precedent transactions; coordinating summary of applicable governing legislation.	3.0	570.00	1,710.00
03/04/17	Childs, Tairroyn	Drafting memo regarding the nuclear asset-recovery bonds offered by Duke Energy Florida Project Finance, LLC and the restructuring bonds offered by the Utility Debt Securitization Authority in Long Island.	3.2	275.00	880.00
03/04/17	Maodus, Mike	Reviewing key documents; drafting memo on Long Island approach to utility backed bonds; circulating same to T. Andison and B. Stokes.	8.2	275.00	2,255.00
03/05/17	Bristow, David	Reviewing and revising draft memorandum summarizing precedent offerings.	0.6	570.00	342.00
03/05/17	Childs, Tairroyn	Continuing to draft memo regarding the nuclear asset-recovery bonds offered by Duke Energy Florida Project Finance, LLC and the restructuring bonds offered by the Utility Debt Securitization Authority in Long Island; revising the same.	1.8	275.00	495.00
03/05/17	Hancock, Jennifer	Reviewing and considering electricity price mitigation presentation slides.	0.9	570.00	513.00
03/05/17	Mender, David	Drafting, reviewing and revising summary memos on Long Island Power Authority and Duke Energy Florida Project Finance precedent bond issuances; meeting with D. Bristow and B. Stokes in regards to such; attending to calls with T. Andison, M. Maudus and T. Childs.	3.5	570.00	1,995.00
03/05/17	Resnick, Zac	Drafting and revising a memorandum summarizing bond issuances involving utility backed bonds in Florida and New York.	4.1	570.00	2,337.00
03/05/17	Stokes, Bryson	Reviewing Moody's document; reviewing draft summary of US legislation; preparing speaking notes.	1.8	570.00	1,026.00
03/06/17	Andison, Tim	Instructing Blakes team regarding next steps; reviewing and commenting on draft memo.	2.9	570.00	1,653.00
03/06/17	Ashbourne, Stephen R.	Meeting with T. Andison regarding proposed transaction to monetize a portion of hydro bills; reviewing revenue bond models, including for 407; reviewing US transactions and background materials to determine Canadian structural equivalence; preparing outline of basic presentation on securitization in Canada for MOE; considering risk factor	3.2	570.00	1,824.00

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Date:	April 28, 2017
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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		considerations regarding enforcement of government assigned debts; reviewing background materials regarding electricity market; discussion with others regarding background considerations.			
03/06/17	Bristow, David	Discussing securitization presentation internally; preparing material relating to same; discussing presentation on trust structure internally; reviewing and revising memorandum relating to precedent transactions.	3.1	570.00	1,767.00
03/06/17	Childs, Tairroyn	Preparing for and attending meeting with S. Ashbourne, T. Andison and D. Bristow regarding the use of a securitization structure; preparing for and attending meeting with P. Hogg, B. Reay, T. Andison and D. Bristow regarding the use of a trust to issue the bonds; revising memo regarding the nuclear asset-recovery bonds offered by Duke Energy Florida Project Finance, LLC and the restructuring bonds offered by the Utility Debt Securitization Authority in Long Island; preparing powerpoint slides regarding securitization basics for presentation to the Ministry of Energy.	2.8	275.00	770.00
03/06/17	Hogg, Peter	Meeting for briefing on province's plans to reduce electricity bills.	0.8	570.00	456.00
03/06/17	Maodus, Mike	Meeting with T. Andison to discuss Long Island approach to utility backed bonds; completing further revisions to memorandum.	2.2	275.00	605.00
03/06/17	Matheson, Michael	Telephone calls and emails regarding precedent transactions and structuring matters; reviewing and discussing same.	2.5	570.00	1,425.00
03/06/17	McGilvray, Kate	Review of materials.	1.3	570.00	741.00
03/06/17	Mender, David	Meeting with B. Stokes; attending call with T. Andison; reviewing and revising summary memo on Long Island Power Authority and Duke Energy Florida Project Finance precedent bond issuances; meeting with D. Bristow and Z. Resnick in regards to such.	1.8	570.00	1,026.00
03/06/17	Resnick, Zac	Meeting with internal team to discuss memoranda in respect of key features of precedent bond issuances; reviewing and revising memoranda.	0.9	570.00	513.00
03/06/17	Stokes, Bryson	Reviewing and marking up outline of US	2.6	570.00	1,482.00

Blakes

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		legislation/bonds and speaking notes; call with T. Andison regarding securitization factors; call with M. Matheson regarding bond structure; call to Peter Hogg to discuss trust overview; meeting with D. Mender regarding further US follow-up.			
03/07/17	Andison, Tim	Preparing for and attending meeting with Ministry team.	2.5	570.00	1,425.00
03/07/17	Ashbourne, Stephen R.	Engaged throughout the day, including preparing for presentation to Ministry of Energy regarding Overview of Securitization; attending MOE group meeting; meeting with M. Matheson and J. Prestage to discuss key issues; follow-up discussion with B. Stokes, T. Andison and K. McGilvray to understand possible limitations on underlying assets for monetization purposes and to provide preliminary feedback on possible structuring issues and approaches.	4.7	570.00	2,679.00
03/07/17	Bristow, David	Reviewing and revising summary of precedent transactions; corresponding regarding same.	0.3	570.00	171.00
03/07/17	Hogg, Peter	Meeting with J. Wilson, S. Ashbourne, B. Stokes, other lawyers and other lawyers for the Province of Ontario to review the proposed energy structure.	1.0	570.00	570.00
03/07/17	Matheson, Michael	Preparing for and participating in meeting regarding structuring and related issues.	3.3	570.00	1,881.00
03/07/17	McGilvray, Kate	Preparing for and attending meeting on securitization and trusts; coordinating call on affordability fund; discussion with J. Prestage.	4.9	570.00	2,793.00
03/07/17	Mender, David	Attending meeting with B. Stokes; attending call with T. Andison; reviewing and revising summary memo on Long Island Power Authority and Duke Energy Florida Project Finance precedent bond issuances.	0.9	570.00	513.00
03/07/17	Prestage, J.A.	Call with K. McGilvray and meeting with MOE representatives regarding proposed transaction and related trust issues and reviewing documents regarding same.	2.8	570.00	1,596.00
03/07/17	Stokes, Bryson	Preparation of presentation; attend meeting with MOE team and presenting; reviewing detailed legislative drafting notes prepared by OPG; reviewing materials for Affordability Fund.	6.2	570.00	3,534.00

Blakes

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
03/07/17	Wilson, Judy	Attend meeting with Global Adjustment team.	2.2	570.00	1,254.00
03/08/17	Andison, Tim	Instructing Blakes team regarding next steps; considering disclosure matters.	0.8	570.00	456.00
03/08/17	Ashbourne, Stephen R.	Affordability Fund - Telephone call from K. McGilvray to discuss additional matter; reviewing background materials and preparing issues list.	2.7	570.00	1,539.00
03/08/17	Ashbourne, Stephen R.	Engaged throughout the day reviewing background materials for risk factors; preparing outline of legislative considerations based on market requirements for securitization, including reviewing internal draft of legislation, Moody's methodology, prospectuses for Florida and NY stranded cost securitization and other background materials; internal discussions and meeting (including with J. Prestage and B. Stokes) regarding indirect taxation consideration and general enforceability of government obligations, and reviewing research materials regarding same (including Monahan paper supporting enforcement); preparing outline of legal issues for internal discussion; reviewing J. Viner's summary of Moody's paper; revising and circulating memorandum to B. Stokes to assist with his presentation to MOE.	5.8	570.00	3,306.00
03/08/17	Beagan Flood, Catherine	Call from J. Wilson regarding constitutional issue?.	0.3	570.00	171.00
03/08/17	Bristow, David	Discussing proposed bond issuance considerations internally.	0.3	570.00	171.00
03/08/17	Butler, Danielle	Reviewing slide deck with information relating to plan for electricity price mitigation.	0.7	570.00	399.00
03/08/17	Childs, Tairroyn	Searching for prospectuses or offering memorandums where there are risk factors pertaining to changes in law and reliance on government performance; drafting email to T. Andison and S. Ashbourne regarding the same.	3.4	275.00	935.00
03/08/17	Hogg, Peter	Reviewing province's plan for a new Affordability Fund (.5); conference call (with JA Prestage and K. McGilvray) and provincial officials as to the terms of the trust (1.3); discussion afterwards with JA Prestage and K. McGilvray (.2).	2.0	570.00	1,140.00

Blakes

Invoice: 1975906
Date: April 28, 2017

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
03/08/17	McGilvray, Kate	Discussion with MOE regarding affordability fund; review of documents; discussion with S. Ashbourne; discussion with J. Wilson; discussion with B. Stokes.	4.9	570.00	2,793.00
03/08/17	Prestage, J.A.	Meeting with B. Stokes and Matherson regarding taxes vs fees issues and providing background material regarding same; call with clients regarding Affordability Trust issues; review documents from client regarding affordability fund trust; reviewing draft TPA; exchanges regarding same.	4.9	570.00	2,793.00
03/08/17	Stokes, Bryson	Meetings with S. Ashbourne and M. Matheson and JA Prestage re: constitutional question and trust questions; meetings with M. Matheson and S. Ashbourne regarding Moody's; preparing for meeting with Deputy Minister and Implementation Group; meetings with J. Wilson; meetings with K McGilvray regarding trust structure for Affordability Fund.	6.8	570.00	3,876.00
03/08/17	Viner, Jon	Reviewing approach of Moody's Investor Service to rating of securities backed by utility cost recovery and drafting summary of same for S. Ashbourne; reviewing and providing comments on summary overview of legal structure behind securitization of electricity rate fees; discussing same with S. Ashbourne.	3.4	570.00	1,938.00
03/09/17	Ashbourne, Stephen R.	Affordability Fund – Reviewing background materials and preparing summary of issues for consideration with J. Prestage; meeting with J. Prestage to discuss TPA and context of documentation process; conference call with MOE legal to review trust structure and to work through basic underlying issues; internal follow-up with J. Prestage and B. Stokes; telephone call from P. Milligan to review basic framework for affordability fund; preparing revised outline of structure and contractual considerations, and reviewing revised principles document; conducting research regarding government accounting considerations; follow-up meeting with B. Stokes and J. Prestage.	5.8	570.00	3,306.00
03/09/17	Ashbourne, Stephen R.	Reviewing statutory provisions regarding "global adjustment"; internal discussions (J. Wilson and B. Stokes) regarding framework, process and critical legal issues; telephone	2.3	570.00	1,311.00

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		call from M. Feldman to discuss preliminary issues and structuring considerations; several further internal discussions to organize structuring efforts and legal analysis, including telephone call with T. Andison and K. McGilvray.			
03/09/17	Beagan Flood, Catherine	Reviewing background materials from J. Wilson.	1.3	570.00	741.00
03/09/17	McGilvray, Kate	Following up on accountability fund; update on OPG meetings; forwarding publicly released information.	0.7	570.00	399.00
03/09/17	Prestage, J.A.	Conference calls, and exchanges with client, Oslers and internally regarding Affordability Trust Fund, proposed TPA and required trust deed; preparing and circulating list of outstanding issues; reviewing and considering documents circulated by Hydro One.	7.7	570.00	4,389.00
03/09/17	Stokes, Bryson	Meeting with Rate Mitigation Implementation Group; meeting with OPG, Torys and MOE; attend meeting regarding Affordabiltiy Fund; attend meeting with Torys and S. Ashbourne to discuss creation of the Asset; meetings with J. Wilson; email from/to J. Wilson regarding IESO market settlement process for RPP customers.	8.4	570.00	4,788.00
03/09/17	Wilson, Judy	Prepare for and attend Deputy Minister's team meeting; prepare for and attend team meeting; reviewing Global Adjustment documents.	5.9	570.00	3,363.00
03/10/17	Ashbourne, Stephen R.	Affordability Fund – Follow-up call with MOE legal to discuss open items and follow-ups to yesterday's call with P. Milligan; internal discussions regarding trust issues with J. Prestage and B. Stokes; meeting with P. Rand to provide background on matter; reviewing J. Prestage mark-up of TPA; preparing for call with working group to review agenda items and to raise legal considerations impacting on structure; reviewing accounting policies and guidelines; discussion with J. Prestage regarding same; discussion with P. Rand regarding background materials.	3.8	570.00	2,166.00
03/10/17	Ashbourne, Stephen R.	Discussion with J. Viner and B. Stokes regarding background to statutory	0.7	570.00	399.00

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		arrangements; reviewing background materials regarding Florida and NY transactions.			
03/10/17	Beagan Flood, Catherine	Call from B. Stokes regarding whether GA charge is direct or indirect; call with J. Wilson and P. Hogg and related discussions with P. Hogg regarding unconstitutional tax issues; giving instructions to B. Shamess regarding constitutional research; reviewing background materials from J. Wilson.	1.7	570.00	969.00
03/10/17	Hogg, Peter	Reviewing opinions on the constitutionality of the proposals, reviewing the legal position, discussing with C. Beagan Flood and (by phone) J. Wilson.	1.5	570.00	855.00
03/10/17	Prestage, J.A.	Conference calls regarding Affordability Fund and trust and contract documentation; marking up draft TPA Agreement and exchanges with client regarding same.	3.7	570.00	2,109.00
03/10/17	Rand, Paul	Reviewing and commenting on Transfer Payment Agreement; discussions with S. Ashbourne and J.A. Prestage; attending telephone calls regarding status of documents and next steps; researching and compiling information concerning terms and terminology for Housing Assistance Program.	1.9	570.00	1,083.00
03/10/17	Shamess, Brittany	Meeting with C. Beagan Flood for initial briefing; meeting with P. Hogg for additional background information; reviewing background materials.	1.6	570.00	912.00
03/10/17	Stokes, Bryson	Attend meeting regarding affordability fund; reviewing and commenting on documents and approach; calls with J. Wilson regarding constitutional question and the market settlement mechanics for the RPP rate class; call from T. Andison regarding next steps; meeting with S Wong regarding IESO settlement.	4.2	570.00	2,394.00
03/10/17	Wilson, Judy	Brief P. Hogg and C. Beagan-Flood on constitutional issues.	0.5	570.00	285.00
03/10/17	Wong, Sharon	Telephone discussions with B. Stokes regarding the background facts and the memorandum needed to describe the way the Global Adjustment is currently charged to customers on the regulated price plan.	0.4	570.00	228.00
03/11/17	Prestage, J.A.	Review and consider documents related to	0.6	570.00	342.00

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		accounting treatment if trust funds and year end transfers.			
03/11/17	Shamess, Brittany	Completing review of background materials; reviewing case law on direct vs. indirect taxation.	2.9	570.00	1,653.00
03/12/17	Shamess, Brittany	Reviewing case law on direct vs. indirect tax and regulatory charges vs. tax; drafting memo regarding constitutional risk of the "Global Adjustment smoothing" in light of case law findings.	8.5	570.00	4,845.00
03/13/17	Ashbourne, Stephen R.	Reviewing background materials and considering issues for incorporation into legislation.	2.2	570.00	1,254.00
03/13/17	Ashbourne, Stephen R.	Affordability Fund – Reviewing and revising Osler draft of TPA and DoT and preparing analysis of uncertain disposition risk; meeting with J. Prestage to discuss approach to commenting; responding to MOE questions regarding commenting and approach to "expectations" to provide certainty; internal meeting with P. Rand to discuss precedent review and with J. Viner.	3.3	570.00	1,881.00
03/13/17	Beagan Flood, Catherine	Meeting with P. Hogg and B. Shamess to discuss legal research findings; reviewing summary of legislation from S. Wong and prior Constitutional Law Branch memos; call from B. Stokes regarding impact of GA smoothing.	2.2	570.00	1,254.00
03/13/17	Hogg, Peter	Reviewing constitutional law on provincial taxation power (.5); discussing with B. Shamess (.5); meeting with B. Shamess and C. Beagan Flood to preparing for meeting tomorrow with provincial officials (.5).	1.5	570.00	855.00
03/13/17	Prestage, J.A.	Reviewing and preparing comments on draft trust agreement and draft TPA.	4.1	570.00	2,337.00
03/13/17	Rand, Paul	Receiving email from S. Ashbourne attaching draft trust declaration and transfer payment agreement; reviewing and commenting on same; reviewing comments on declaration of trust from JA Prestage and incorporating same into draft; discussions with S. Ashbourne regarding next steps.	1.8	570.00	1,026.00
03/13/17	Shamess, Brittany	Finalizing and reviewing memo in preparation for meeting with P. Hogg; meeting with P. Hogg; meeting with C. Beagan Flood and P.	7.8	570.00	4,446.00

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		Hogg; reviewing s. 92A(4) (taxation of resources) case law.			
03/13/17	Stokes, Bryson	Reviewing and commenting on draft declaration of trust and TPA regarding the affordability fund; calls with JA Prestage and P. Rand regarding drafting changes; reviewing email from Torys/OPG commenting on legislative checklist for the security/asset; reviewing overview of RPP payment stream prepared by S. Wong and discussing same with S. Wong; meeting with J. Wilson regarding priorities and issues; call with C. Beagan-Flood regarding IESO settlement and to discuss the fact that only one rate class (RPP) gets the benefit of the GA Smoothing.	4.7	570.00	2,679.00
03/13/17	Wilson, Judy	Reviewing MOE materials related to legislative drafting; preparing for team meeting.	2.5	570.00	1,425.00
03/13/17	Wong, Sharon	Drafting document explaining how global adjustment is currently collected from Regulated Price Plan consumers.	5.0	570.00	2,850.00
03/14/17	Ashbourne, Stephen R.	Attending MOE briefing call, to recount earlier discussion with Torys and to review status of Blakes' constitutional analysis; meeting with J. Prestage to discuss follow-up; reviewing US legislation for stranded cost transactions.	2.7	570.00	1,539.00
03/14/17	Ashbourne, Stephen R.	Affordability Fund – Revising DoT and TPA to circulate comments to MOE team and related meetings and conversations internally and with MOE, including in relation to accounting requirements; reviewing initial feedback form MOE on revised documents and internal coordination to reflect changes based on my review; considering issues related to delegation of trust powers.	6.3	570.00	3,591.00
03/14/17	Beagan Flood, Catherine	Instructions to B. Shamess; meetings with P. Hogg and B. Shamess to discuss analysis and additional research; reviewing prior constitutional opinions, Taxpayer Protection Act and key cases; call with J. Wilson to discuss constitutional analysis; attending risk assessment call with clients.	4.2	570.00	2,394.00
03/14/17	Hogg, Peter	Discussing tax versus regulatory charge with B. Shamess and C. Beagan Flood in advance of the 4:00 pm meeting with the provincial participants; attending and presenting at the	3.0	570.00	1,710.00

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		meeting with provincial participants.			
03/14/17	Prestage, J.A.	Revising draft trust agreement and TPA; exchanges and conference calls with Ministry regarding same; conference call regarding status of project; call with P. Milligan; exchanges with S. Ashbourne regarding draft documents and outstanding issues.	7.8	570.00	4,446.00
03/14/17	Rand, Paul	Reviewing feedback from Hydro One's counsel regarding Trust Declaration; discussions with S. Ashbourne and JA Prestage; conference call with Team from the Ministry; reviewing proposed revisions to draft Transfer Payment Agreement and editing same; correspondence with S. Ashbourne; email and discussion with B. Stokes concerning documentation; reviewing feedback comments on Trust Declaration received from Ministry of Environment.	4.7	570.00	2,679.00
03/14/17	Shamess, Brittany	Reviewing the applicability of, and exceptions to, the Taxpayer Protection Act; meeting with P. Hogg and C. Beagan-Flood to discuss constitutional opinion and guidelines for drafting the Fair Hydro Plan Act; attending conference call with Blakes team and Ministry of Energy team.	7.6	570.00	4,332.00
03/14/17	Stokes, Bryson	Reviewing draft legislation; telephone conference call with MOE team to walk through the first drafts of legislation; reviewing and amending/annotating draft legislation; prepare for and attend weekly rate mitigation session with MOE; calls with C. Beagan-Flood regarding constitutional issues; meeting with S. Ashbourne regarding Affordabiltiy Trust; call with S. Wong regarding RPP rate class.	6.7	570.00	3,819.00
03/14/17	Viner, Jon	Affordability Fund - Discussing proposed Affordability Fund Trust with S. Ashbourne; attending and taking notes on phone call between Blakes and Ministry of Energy; reviewing declaration of trust against Accounting Considerations for Government-Funded Trusts to determine potential accounting issues in drafting.	4.2	570.00	2,394.00
03/14/17	Wilson, Judy	Drafting legislative changes summary	2.2	570.00	1,254.00
03/14/17	Wilson, Judy	Briefing by Peter Hogg and Cathy Beagan Flood (1.4); Prepare for an attend	4.9	570.00	2,793.00

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		teleconferences regarding Rate Mitigation and draft legislation (3.5)			
03/15/17	Ashbourne, Stephen R.	Exchanges with B. Stokes regarding feedback to MOE on drafting approach and questions.	0.3	570.00	171.00
03/15/17	Ashbourne, Stephen R.	Affordability Fund – Engaged throughout the day preparing DoT and TPA, including major reconstruction based on ideas of "annexes" and detailed drafting to address countervailing pressures in transaction; several meetings with J. Viner, telephone call with MOE to talk conceptually about approach to reflect in documents and specific areas for concern by MOE; P. Rand and J. Prestage to coordinate drafting, including reviewing relevant precedents for DoT; responding to questions and drafting comments from MOE.	16.3	570.00	9,291.00
03/15/17	Childs, Tairroyn	Researching the purpose and case law behind s. 92A(4) which permits the provinces to tax the generation and production of electrical energy.	2.4	275.00	660.00
03/15/17	Hogg, Peter	Discussing terms of trust with JA Prestage.	0.2	570.00	114.00
03/15/17	Owen, Leanne	Conducting historic legislative research for T. Childs/J. Lam.	2.9	230.00	667.00
03/15/17	Prestage, J.A.	Conference calls and revising draft documents.	10.5	570.00	5,985.00
03/15/17	Rand, Paul	Reviewing and drafting trust declaration and appendix addressing principles of affordability fund program; attending various conference calls with S. Ashbourne, JA Prestage and team from Ministry; internal discussions on documentation and approach; further review and revision of Transfer Payment Agreement; considering precedent delegation agreements; various discussions with S. Ashbourne, JA Prestage and J. Viner concerning documentation and approach.	7.5	570.00	4,275.00
03/15/17	Shamess, Brittany	Drafting opinion on the constitutional risk of the global adjustment smoothing proposal.	5.9	570.00	3,363.00
03/15/17	Stokes, Bryson	Revising and annotating legislation instructions; reviewing US Legislation.	2.8	570.00	1,596.00
03/15/17	Stokes, Bryson	Calls with MOE team to discuss and review drafting approach; call with J. Wilson re:	1.1	570.00	627.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		same.			
03/15/17	Viner, Jon	Affordability Fund - Attending and taking notes on telephone call with Ministry of Energy regarding issues pertaining to Declaration of Trust and annexes, drafting Permitted Delegation Annex, discussing Permitted Delegation Annex with P. Rand and S. Ashbourne; revising Permitted Delegation Annex.	8.1	570.00	4,617.00
03/15/17	Wilson, Judy	Prepare for and attend Deputy Minister's meeting.	1.8	570.00	1,026.00
03/15/17	Wong, Sharon	Reading OEB's recent changes to the Standard Supply Settlement Code and considering it's possible impacts on the method used to collect global adjustment from RPP customers.	0.3	570.00	171.00
03/16/17	Ashbourne, Stephen R.	Reviewing summary and legislative language forwarded by B. Stokes and providing initial feedback; responding to questions regarding nature of "asset"; sketching out "asset" description for inclusion in legislative proposal; reviewing background materials.	1.5	570.00	855.00
03/16/17	Ashbourne, Stephen R.	Affordability Fund – Engaged throughout the day, including preparing further revised mark-ups of DoT and TPA to address structural features, annex approach and accounting control considerations; conference call with MOE to walk through approach to DoT drafting and related issues to underlying tensions; preparing briefing note requested by MOE to accompany initial circulation of comments on TPA and DoT; ongoing discussions throughout the day with Blakes team to revise, conform and incorporate annex approach into DoT; revising TPA and discussing same with JA Prestage; preparing revised versions of documents for circulation to broader group.	9.6	570.00	5,472.00
03/16/17	Beagan Flood, Catherine	Analysis of constitutional issues.	1.9	570.00	1,083.00
03/16/17	Childs, Tairroyn	Continuing to research the purpose and case law behind s. 92A(4) which permits the provinces to tax the generation and production of electrical energy; drafting email to B. Shamess regarding the same.	0.8	275.00	220.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
03/16/17	Prestage, J.A.	Drafting and revising documents re Affordability Trust and conference calls re same	3.1	570.00	1,767.00
03/16/17	Rand, Paul	Affordability Fund - Reviewing and considering comments from Ministry of Energy on Trust Declaration; conference calls with Ministry of Energy to review documents and address questions; drafting and updating in respect of the Trust Declaration and Transfer Payment Agreement; drafting and updating program principles to reference in the Trust Declaration; commenting on mechanism to address replacing trusting; internals discussions involving J. Prestage, J. Viner, S. Asbhourne; reviewing draft delegation of authority annex; receiving and reviewing email correspondence in connection with matter.	7.7	570.00	4,389.00
03/16/17	Shamess, Brittany	Continuing to draft opinion on the constitutional risk of the Global Adjustment Smoothing proposal.	3.3	570.00	1,881.00
03/16/17	Stokes, Bryson	Further amending /annotating draft legislation (instructions); reviewing and commenting on draft trust and TPA documents for the affordability trust.	1.7	570.00	969.00
03/16/17	Stokes, Bryson	Several calls with S. Ashbourne regarding the affordability trust; participate on conference call/update call on legislative drafting with MOE team; call with S. Wong regarding OEB mechanics and RPP issues; meeting with J. Wilson	1.2	570.00	684.00
03/16/17	Viner, Jon	Affordability Fund - Attending and taking notes on phone call with Ministry and Blakes regarding changes to Declaration of Trust and associated Annexes; discussing next steps with S. Ashbourne.	1.7	570.00	969.00
03/16/17	Wilson, Judy	Meeting with B. Stokes to review legislative changes. (1.2); reviewing draft legislation issues and attending legislative update call. (2.5)	3.7	570.00	2,109.00
03/17/17	Ashbourne, Stephen R.	Preparing outline of formula approach to legislation ("Outline"); providing B. Stokes with feedback on legislative discussion document and explaining background to Outline approach to drafting; meeting with J. Viner to discuss underlying US legislation and	4.7	570.00	2,679.00

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		alternative approach to populate Ontario equivalent; reviewing US legislation and preparing summary of terms; reviewing and revising B. Stokes' comments on proposal and related discussions.			
03/17/17	Ashbourne, Stephen R.	Affordability Fund – Engaged throughout the day including responding to questions and incorporating comments received from MOE and Oslers regarding DoT; providing comments on TPA to J. Prestage and related discussions to mesh drafting; reviewing and revising documents based on MOE comments; follow-up call with MOE to review and discuss comments received, including initial accounting input; reviewing accounting principles and considering material compliance issues; responding to question regarding advisory committee representation.	5.3	570.00	3,021.00
03/17/17	Mender, David	Meeting with J. Viner in regards to legislation in New York and Florida.	0.3	570.00	171.00
03/17/17	Prestage, J.A.	Revising documents re Affordability Trust and conference calls re same.	3.7	570.00	2,109.00
03/17/17	Rand, Paul	Considering and drafting Trustee governance provisions; various discussions with S. Ashbourne and J. Viner regarding documentation; reviewing and revising permitted delegation annex.	4.3	570.00	2,451.00
03/17/17	Shamess, Brittany	Reviewing background materials on energy regulation to assist in drafting the constitutional risk opinion.	1.2	570.00	684.00
03/17/17	Stokes, Bryson	Reviewing draft financing outline and commenting on same; reviewing and revising legislation instructions.	2.6	570.00	1,482.00
03/17/17	Stokes, Bryson	Telephone conference calls with S.Ashbourne regarding outline and preliminary comments on markup/annotations to legislation instructions; calls with J. Wilson.	1.2	570.00	684.00
03/17/17	Viner, Jon	Affordability Fund - Discussing revisions to Declaration of Trust and annexes with S. Ashbourne and P. Rand; drafting provisions to Permitted Delegation Annex regarding obligations of administrative services agents, and representations and indemnities to be set out in administrative services agreement; revising Declaration of Trust.	3.6	570.00	2,052.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
03/18/17	Ashbourne, Stephen R.	Reviewing background materials to prepare outline of issues for consideration in drafting legislation.	0.8	570.00	456.00
03/18/17	Ashbourne, Stephen R.	Affordability Fund – Preparing detailed mark-up of DoT, including build-out of existing concepts for advisory mechanics and other matters to bridge into initial phase with Computershare; reviewing and incorporating MOE comments received on DoT; conference call with MOE (including N. Petsche) and KPMG to review accounting considerations and further revisions to documents to reflect accounting considerations.	6.8	570.00	3,876.00
03/19/17	Ashbourne, Stephen R.	Preparing internal notes regarding structure and legislative authority in light of basic cash flow considerations.	1.7	570.00	969.00
03/19/17	Ashbourne, Stephen R.	Affordability Fund – Continuing to prepare detailed mark-up of each of DoT and TPA to flesh out terms of advisory committee, transition process, control items, accounting considerations and underlying legal matters; numerous follow-ups through the day with MOE (including N. Petsche) and responding to KPMG's questions; circulating revised versions of documents to MOE working group; addressing feedback through the day, including turning interim drafts to address MOE feedback and accounting comments; exchanges with J. Prestage to further revise documents.	7.3	570.00	4,161.00
03/19/17	Prestage, J.A.	Review and comment on latest draft of trust declaration	2.5	570.00	1,425.00
03/19/17	Shamess, Brittany	Continuing to draft opinion on the constitutional risk of the Global Adjustment Smoothing proposal.	5.8	570.00	3,306.00
03/19/17	Viner, Jon	Considering drafting of legislation regarding general adjustment charge property through review of precedent transaction documents and associated legislation in the states of Florida and New York.	4.2	570.00	2,394.00
03/19/17	Viner, Jon	Affordability Fund - Revising Transfer Payment Agreement and Declaration of Trust for clean-up changes.	0.8	570.00	456.00
03/20/17	Ashbourne, Stephen R.	Preparing outline of legislative authority for internal consideration, in light of structural considerations and need for substantial	3.5	570.00	1,995.00

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		delegated authority to implement treasury plan; discussion with B. Stokes regarding rate based interaction and need for underlying review; preparing for meeting to discuss proposals; meeting with A. Jackson and J. Viner to obtain assistance to deal with authority and structural features and scoping out legislation.			
03/20/17	Ashbourne, Stephen R.	Affordability Fund – Engaged throughout the day revising DoT and TPA based on feedback from MOE on my weekend drafting; revising documents based on comments and oral feedback from MOE staff; attending at MOE to brief Deputy Minister on Trust arrangements and possible issues based on balance of accounting and control; continuing to revise all documents to re-circulate same; ongoing comments and responding to accounting considerations and incidental drafting; reviewing comments with J. Prestage and continuing to turn revised versions of documents.	8.5	570.00	4,845.00
03/20/17	Jackson, Adam	Reviewing Florida legislation; reviewing New York legislation; reviewing memorandum prepared by S. Ashbourne; reviewing Tory's memorandum; reviewing memorandum from B. Stokes.	4.5	570.00	2,565.00
03/20/17	Prestage, J.A.	Conference calls and exchanges and drafting and revising AFT documents	6.6	570.00	3,762.00
03/20/17	Stokes, Bryson	Reviewing comments provided by Torys; reviewing revised legislative framework circulated by MOE.	2.7	570.00	1,539.00
03/20/17	Viner, Jon	Considering draft language of legislation authorizing re-financing of the general adjustment amounts through review of precedent legislative language in the States of Florida and New York.	4.2	570.00	2,394.00
03/21/17	Ashbourne, Stephen R.	Affordability Fund – Engaged throughout the day preparing and reviewing documents, including TPA and DoT, including numerous calls and meetings through the day to finalize outstanding accounting and logistics issues as well as responding through the day to N. Petsche's comments and questions; conference call with Computershare to walk through documents and explain overall context of first stage; preparing comments on	5.4	570.00	3,078.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		accounting summary; following up regarding ASA draft; turning and circulating comments on documents.			
03/21/17	Ashbourne, Stephen R.	Preparing for meeting with MOE to review structure of legislation; attending meeting at MOE (with OPG and Torys) to review structure and approach to legislation; attending follow-up meeting with J. Wilson, J. Prestage and B. Stokes (scheduled for MOE meeting, but canceled) to review legislative outline and discuss overall context of proposals and related issues like delegation revise legislative outline based on input from B. Stokes and circulating to prepare for internal call regarding constitutional issues; reviewing background materials; preparing summary of legislative items for inclusion in Act and proposed break down for locating items within legislation.	7.6	570.00	4,332.00
03/21/17	Jackson, Adam	Reviewing legislation.	1.0	570.00	570.00
03/21/17	Jackson, Adam	Meeting with S. Ashbourne.	0.4	570.00	228.00
03/21/17	Prestage, J.A.	Conference calls and revising AFT documents and exchanges re same; meeting re issues in proposed statutory scheme	7.4	570.00	4,218.00
03/21/17	Shamess, Brittany	Reviewing case law on the delegation of taxing power for the purpose of the constitutional risk opinion.	2.7	570.00	1,539.00
03/21/17	Stokes, Bryson	Legislation Check-in Call with MOE; meeting with Torys/OPG; debrief meeting with Blakes team; attending planning meeting for next steps.	4.6	570.00	2,622.00
03/21/17	Stokes, Bryson	Reviewing and revising overview document.	0.8	570.00	456.00
03/21/17	Viner, Jon	Considering drafting of legislation creating general adjustment property and authorizing issuance of bonds and charging of transition amounts through review of precedents in States of Florida and New York.	1.6	570.00	912.00
03/21/17	Viner, Jon	Affordability Fund - Reviewing control assessment memorandum of N. Petsche for accuracy and consistency with provisions of Declaration of Trust and Transfer Payment Agreement; providing comments on same.	2.5	570.00	1,425.00
03/21/17	Wilson, Judy	Reviewing draft legislation and attend teleconference to discuss legislation;	4.2	570.00	2,394.00

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		discussion with MOE regarding OPG perspective on litigation.			
03/22/17	Ashbourne, Stephen R.	Revising J. Wilson's summary for Deputy Minister and various follow-ups regarding same; discussions through the day on structure and legislative authority matters; revising and circulating outline prepared to review scope and location of legislative provisions as background for delegations meeting; reviewing and responding to internal questions from B. Stokes regarding scope of legislation; internal meeting to discuss approach to legislative drafting.	3.4	570.00	1,938.00
03/22/17	Ashbourne, Stephen R.	Affordability Fund – Engaged throughout the day, including telephone calls and reviewing terms of documents and settling terms with MOE and accounting representatives; reviewing and revising administrative services agreement ("ASA"); follow-up telephone calls with Oslers regarding same; meetings with J. Prestage to review and reflect comments in DoT and TPA and numerous telephone calls with MOE representatives to respond to questions, comments and follow-ups to settle documentation issues, including linkage to travel plan and accounting questions; follow-up regarding Computershare issues, including commingled deposits question.	7.1	570.00	4,047.00
03/22/17	Prestage, J.A.	Conference calls and revising draft AFT documents and exchanges re same; considering limits on delegation of authority under statutes	7.6	570.00	4,332.00
03/22/17	Shamess, Brittany	Continuing to draft opinion on the constitutional risk of the Global Adjustment Smoothing proposal.	3.4	570.00	1,938.00
03/22/17	Stokes, Bryson	Meeting with J. Wilson to review contents of reporting to Implementation Committee; calls with S. Ashbourne regarding structure; telephone call with C. Calwell and J. Wilson.	2.2	570.00	1,254.00
03/22/17	Stokes, Bryson	Drafting report for Thursday morning meeting with the Implementation Committee; circulating email re: same; receiving comments from the MOE team and updating and recirculating draft.	2.6	570.00	1,482.00
03/22/17	Wilson, Judy	Discussion with Carolyn Calwell regarding status of legislation.	0.8	570.00	456.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
03/22/17	Wilson, Judy	Revising legislative update for Deputy Minister's committee meeting.	1.2	570.00	684.00
03/23/17	Ashbourne, Stephen R.	Preparing memorandum to set out basis for considering delegation legislative authority to accommodate treasury plan, including considering ways to accommodate commodity price fluctuations and incorporation of refinancing scenarios into model; revising memorandum and preparing for internal session with PH and CBF to discuss scope of permitted delegations; attending internal meeting to review basis for delegation and to consider broader issues regarding constitutionality and administrative law matters; meeting with J. Viner and A. Jackson to discuss next steps for filling out drafting of legislation to reflect overall approach to delegation of treasury decisions.	6.3	570.00	3,591.00
03/23/17	Ashbourne, Stephen R.	Affordability Fund – Engaged throughout the day finalizing DoT, TPA and ASA, including reviewing and revising Oslers' draft ASA and providing mark-up; pre-call to discuss comments on ASA with MOE; telephone call with Oslers to review ASA and discuss other documents issues; reviewing mark-ups to finalize all documents; responding to ongoing accounting considerations from N. Petsche; several follow-ups with MOE to discuss logistics for signing and finalizing documents.	3.7	570.00	2,109.00
03/23/17	Beagan Flood, Catherine	Preparing for and attending meeting with S. Ashborne, B. Stokes, J.A. Prestage and P. Hogg regarding potential constitutional and administrative law issues; call from B. Stokes.	3.0	570.00	1,710.00
03/23/17	Hogg, Peter	Reviewing outlines of legislation prepared by S. Ashbourne (1.0); meeting (with C. Beagan-Flood and B. Shamess) with S. Ashbourne, B. Stokes and other lawyers to review the province's plan and begin thinking about what needs to be in the legislation (2.3); discussion afterwards with C. Beagan-Flood and B. Shamess (.5).	3.8	570.00	2,166.00
03/23/17	Jackson, Adam	Reviewing outline of legislation from S. Ashbourne; office conference to discuss constitutional analysis of proposed legislation with C. Beagan-Flood, S Ashbourne, P. Hogg, B. Stokes and J. Viner.	2.7	570.00	1,539.00
03/23/17	Prestage, J.A.	Conference calls and exchanges and revising	6.0	570.00	3,420.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		and finalizing AFT documentation; meeting re statutory and regulatory issues .			
03/23/17	Shamess, Brittany	Attending Blakes team meeting regarding delegation issues.	3.4	570.00	1,938.00
03/23/17	Stokes, Bryson	Attend Implementation Committee meeting at 900 Bay; prepare for and attend internal meeting on delegation issues.	4.5	570.00	2,565.00
03/23/17	Stokes, Bryson	Revising handout and preparing for Implementation Committee Meeting; reviewing and annotating legislative drafting outline.	1.8	570.00	1,026.00
03/23/17	Viner, Jon	Attending and taking notes at meeting with Blakes team to discuss issues and structure of global adjustment financing transaction.	2.2	570.00	1,254.00
03/23/17	Wilson, Judy	Prepare for and attend (part of) Deputy Minister's meeting.	1.2	570.00	684.00
03/24/17	Ashbourne, Stephen R.	Reviewing materials to prepare for session with MOE; attending "brain-storming" meeting with MOE and counsel to sketch out premise of legislation and need for treasury plan; reviewing MOE draft of amending legislation to provide input on drafting; exchanges with B. Stokes regarding draft legislation.	4.8	570.00	2,736.00
03/24/17	Ashbourne, Stephen R.	Affordability Fund – Reviewing final documents; responding to questions regarding AFT set-up; reviewing final version of ASA.	0.7	570.00	399.00
03/24/17	Shamess, Brittany	Continuing to draft the opinion on the constitutional risk associated with the global adjustment smoothing proposal.	1.2	570.00	684.00
03/24/17	Stokes, Bryson	Marking up legislative drafting instructions; circulating same to MOE team.	1.2	570.00	684.00
03/24/17	Stokes, Bryson	Attending meeting re: Legislation Brainstorming Session; legislative check-in and Equity Injection calls.	4.4	570.00	2,508.00
03/24/17	Viner, Jon	Discussing structure of legislation for general adjustment financing with S. Ashbourne.	0.2	570.00	114.00
03/24/17	Wilson, Judy	Attend brief teleconference regarding equity infusion into the OPG trust. (0.5); prepare for and attend dIscussions with MOE legal team regarding draft legislation. (4.2)	4.7	570.00	2,679.00
03/26/17	Ashbourne, Stephen	Preparing sketch of Fair legislation and	3.3	570.00	1,881.00

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
	R.	related background review of treasury aspects of program.			
03/26/17	Viner, Jon	Reviewing state of New York financing legislation and drafting summary chart with concepts to consider importing to Ontario legislation.	5.4	570.00	3,078.00
03/26/17	Wilson, Judy	Review of latest version of legislative changes.	3.2	570.00	1,824.00
03/27/17	Ashbourne, Stephen R.	Engaged throughout the day, including preparing "sketch" of fair legislation; internal meeting with B. Stokes, A. Jackson and J. Viner to walk through funding process and discuss LIPA legislation; exchanges with S. Nelms regarding selection of financial advisor; revising and circulating "sketch" to working group; working session with D. Shear and J. Rehob; preparing 'key questions' overview for M. Manning; reviewing J. Viner's summary of US legislation; internal meeting to discuss constitutional feedback.	5.5	570.00	3,135.00
03/27/17	Shamess, Brittany	Continuing to draft the opinion on the constitutional risk associated with the global adjustment smoothing proposal.	5.6	570.00	3,192.00
03/27/17	Stokes, Bryson	Attending Ministry of Energy Chief of Staff meeting; preparation for same; debriefing meeting with J. Wilson; meeting with S. Ashbourne.	2.2	570.00	1,254.00
03/27/17	Viner, Jon	Revising chart summarizing New York legislation and aspects thereof that may be imported to Ontario legislation; discussing structure of legislation with S. Ashbourne and A. Jackson.	2.0	570.00	1,140.00
03/28/17	Ashbourne, Stephen R.	Engaged throughout the day, including meeting with B. Stokes and J. Wilson to review "sketch" and to discuss conceptual outline of legislation; telephone call with province lawyers to review most recent document for legislative counsel; various follow-ups regarding drafting.	6.3	570.00	3,591.00
03/28/17	Hogg, Peter	Reviewing draft opinion prepared by B. Shamess and writing comments on the draft for C. Beagan Flood and B. Shamess.	1.5	570.00	855.00
03/28/17	Jackson, Adam	Reviewing and amending chart analyzing New York legislation; reviewing New York legislation; call with S. Ashbourne and J.	3.7	570.00	2,109.00

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		Viner regarding status.			
03/28/17	Shamess, Brittany	Finalizing draft opinion on the constitutional risk associated with the Global Adjustment; emailing draft opinion to C. Beagan-Flood and P. Hogg for review; incorporating comments from P. Hogg.	3.2	570.00	1,824.00
03/28/17	Stokes, Bryson	Attending meetings regarding legislative check-in, meeting to review overview of framework, and attend weekly meeting; calls with D. Shier and J Wilson regarding modeling necessary to support legislative theory.	2.8	570.00	1,596.00
03/28/17	Stokes, Bryson	Revising draft outline/sketch document.	2.7	570.00	1,539.00
03/28/17	Viner, Jon	Discussing structure of draft legislation for general adjustment financing with S. Ashbourne.	0.4	570.00	228.00
03/28/17	Wilson, Judy	Reviewing legislative briefing document; attend teleconference with legal team, attend weekly meeting with MOE team.	7.9	570.00	4,503.00
03/29/17	Ashbourne, Stephen R.	Preparing for advisor selection meetings at OFA; attending meetings with Scotia, BMO and TD and related follow-ups with M. Manning and S. Nelms; meeting with B. Stokes and J. Wilson to discuss requirements and timing for legislation preparation based on my outlines and review related matters; following up internally to discuss legislative validity issues; meeting with J. Viner and A. Jackson to review inputs based on precedents and requirements; preparing first detailed draft of fair legislation; reviewing DBRS methodology based on European standed costs transactions; reviewing Torys memorandum describing "deferral" mechanics.	13.4	570.00	7,638.00
03/29/17	Jackson, Adam	Discussion with J. Viner regarding table of provisions for proposed legislation; reviewing and amending legislative analysis for New York.	1.0	570.00	570.00
03/29/17	Stokes, Bryson	Meetings with J. Wilson; call with D. Shear.	0.8	570.00	456.00
03/29/17	Stokes, Bryson	Revising transaction overview.	3.2	570.00	1,824.00
03/29/17	Stokes, Bryson	Reviewing document circulated by Torys/OPG. Reviewing interim drafts of policy document.	1.8	570.00	1,026.00

Blakes

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
03/29/17	Viner, Jon	Revising chart summarizing key components of financing legislation in state of New York and providing comments on aspects to be imported into Ontario legislation; reviewing DBRS rating agency methodology regarding electricity tariff financing regulation in Spain.	6.3	570.00	3,591.00
03/30/17	Ashbourne, Stephen R.	Engaged throughout the day, including exchanges with M. Manning regarding retention of TD as advisor; internal discussions with T. Andison and J. Viner regarding NDA preparations; preparing draft legislation, including reviewing MOE draft amendments to integrate; conducting detailed review of US (LIPA) precedent to extract relevant operative sections; discussions with J. Viner regarding follow-ups on Spain and Portugal legislation dealing with flow of funds through several intermediaries; several internal discussions regarding approach and status of main portion of legislation; preparing first draft of legislation.	11.5	570.00	6,555.00
03/30/17	Rand, Paul	Receiving and reviewing ISDAs for sign-off; corresponding with S. Ashbourne concerning same.	0.8	570.00	456.00
03/30/17	Viner, Jon	Reviewing DBRS ratings methodology for Spanish and Portuguese electricity tariff securitization structures and drafting note to S. Ashbourne and A. Jackson summarizing key aspects thereof; reviewing forms of non-disclosure agreements for engagement with TD; discussing non-disclosure agreement with S. Ashbourne.	3.1	570.00	1,767.00
03/30/17	Wilson, Judy	Prepare for and attend Rate Mitigation Implementation Group	2.8	570.00	1,596.00
03/30/17	Wilson, Judy	Reviewing legislative documents.	3.5	570.00	1,995.00
03/31/17	Ashbourne, Stephen R.	Fair - Engaged throughout the day continuing to prepare first draft of legislation; reviewing comments and questions from MOE on first draft, including discussions regarding summary of relevant amendments and basis for approach; exchanges with OFA regarding TD retainer and related matters; reviewing comments from MOE and annotations; exchanges with B. Stokes and J. Wilson regarding process matters; meeting with A. Jackson and J. Viner regarding further steps to develop legislation and approach.	12.7	570.00	7,239.00

Blakes

Invoice:	1975906
Date:	April 28, 2017
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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
03/31/17	Jackson, Adam	Reviewing draft legislation; amending draft legislation; amending rider for creation of treasury plan and issuer; call with J. Viner, S. Ashbourne and ministry representatives.	4.7	570.00	2,679.00
03/31/17	Stokes, Bryson	Call with MOE team; call with J. Wilson and S. Ashbourne regarding drafting and next steps.	1.2	570.00	684.00
03/31/17	Stokes, Bryson	Preliminary review of Part V of the legislation.	1.2	570.00	684.00
03/31/17	Viner, Jon	Drafting provisions for Fair Act legislation regarding procedure for establishment of treasury plan, creation of special purposes entities and required use of proceeds under treasury plans; attending phone call with S. Ashbourne, A. Jackson and Ministry; discussing next steps regarding drafting of Fair Act legislation with S. Ashbourne.	4.4	570.00	2,508.00

Total Fees for this Matter **$ 435,023.50**

checked against original retainer → update req'd.

Matter Timekeeper Summary	ID	Hours	Rate ($)	Amount ($)
Andison, Tim	TAN	13.9	570.00	7,923.00
Ashbourne, Stephen R.	SRA	201.5	570.00	114,855.00
Beagan Flood, Catherine	CBE	14.6	570.00	8,322.00
Bristow, David	DBW	9.2	570.00	5,244.00
Butler, Danielle	DZB	0.7	570.00	399.00
Childs, Tairroyn	TAI	19.3	275.00	5,307.50
Hancock, Jennifer	JRK	1.3	570.00	741.00
Hogg, Peter	PWH	15.3	570.00	8,721.00
Jackson, Adam	AKJ	18.0	570.00	10,260.00
Maodus, Mike	DUS	10.4	275.00	2,860.00
Matheson, Michael	MCMA	15.9	570.00	9,063.00
McGilvray, Kate	KAM	16.4	570.00	9,348.00
Mender, David	DNM	14.9	570.00	8,493.00
Owen, Leanne	LZG	2.9	230.00	667.00
Prestage, J.A.	JAP	79.0	570.00	45,030.00
Rand, Paul	PSR	28.7	570.00	16,359.00
Resnick, Zac	ZCR	13.9	570.00	7,923.00
Shamess, Brittany	BSQ	64.1	570.00	36,537.00
Stokes, Bryson	BAS	109.4	570.00	62,358.00

Blakes

Invoice: 1975906
Date: April 28, 2017
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Matter Timekeeper Summary	ID	Hours	Rate ($)	Amount ($)
Viner, Jon	JNV	58.3	570.00	33,231.00
Wilson, Judy	JLW	66.9	570.00	38,133.00
Wong, Sharon	SW	5.7	570.00	3,249.00
	Total	**780.3**		**$ 435,023.50**

Taxable Disbursement(s)

Catering, Meals etc.	~~$ 150.53~~	
Parking	9.52	
		$ 160.05

need receipt. to be removed

Harmonized Sales Tax (13.0%)	56,573.87
Total Due for this Matter in Canadian Currency	**$ 491,757.42 CAD**

Calwell, Carolyn (ENERGY/MEDEI/MRI)

From: WILSON, JUDY <JUDY.WILSON@blakes.com>
Sent: June-01-17 4:31 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Cc: DAVILA, CRISTINA
Subject: Re: Ministry of Energy Invoice - Period Ended March 31, 2017
Attachments: image001.gif

Thanks Carolyn, that was my miss. We will of course remove the charges.

JUDY L. WILSON
Partner
Dir:416-863-5820

> On Jun 1, 2017, at 4:30 PM, Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca> wrote:
>
> Hi Cristina – I have reviewed the invoice and have no concerns about the lawyers fees. I can't pay catering under the Province's Travel, Meals and Hospitality Directive. Would you please reissue the bill without that charge. Please also send the receipt for the parking charge. You will appreciate there are strict rules for government spending that I am obliged to comply with.
>
> Judy, I will also have to update the retainer letter to reflect all of the lawyers who billed on the file. I will get something to you in the next day or so.
>
> Thank you for your assistance.
>
> Carolyn
>
> From: DAVILA, CRISTINA [mailto:CRISTINA.DAVILA@blakes.com]
> Sent: May-05-17 12:42 PM
> To: Calwell, Carolyn (ENERGY/MEDEI/MRI)
> Cc: WILSON, JUDY
> Subject: Ministry of Energy Invoice - Period Ended March 31, 2017
>
> Dear Ms. Calwell,
>
> Attached please find our firm invoice for the Global Adjustment Mitigation matter for the period ending March 31, 2017.
>
> Kind Regards,
> Cristina
>
> Cristina Davila
> Legal Assistant
> Cristina.Davila@blakes.com<mailto:Cristina.Davila@blakes.com>
> Dir: 416-863-2936
>

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>
> Blake, Cassels & Graydon LLP
> 199 Bay Street, Suite 4000, Toronto ON M5L 1A9
> Tel: 416-863-2400 Fax: 416-863-2653
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> #197....pdf>

Blakes

Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trade-mark Agents
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

INVOICE

Please write invoice number(s) on cheque

May 31, 2017

Ministry of Energy
50 Wellesley St. W.
5th Floor LSB
Toronto, ON M7A 2E7
Canada

Invoice:	1981106
Billing Lawyer	Wilson, Judy
HST/GST No.:	R119396778
Client:	00014229
Matter:	000001

Attention: Carolyn Calwell
Legal Director

Re: Ministry of Energy - Global Adjustment Mitigation

FOR PROFESSIONAL SERVICES RENDERED
as set out in the attached printout:

BALANCE DUE IN CANADIAN CURRENCY **$ 491,576.56 CAD** 10

REMITTANCE PAGE

Remittance Instructions	
*** **Terms: Due and Payable Upon Receipt** ***	
If paying by cheque, please make cheque payable to **Blake, Cassels & Graydon LLP**. Please remit this page with payment. If wiring funds, please refer to the appropriate section below for instructions:	
Canadian Funds Wiring Instructions:	
Canadian Imperial Bank of Commerce Main Branch, Commerce Court West Toronto, Ontario M5L 1A2 Transit No.: 00002	Swiftcode: CIBCCATT Beneficiary: Blake Cassels & Graydon LLP Account No.: 000021602012 Reference: Invoice No. 1981106
For further instructions please email Accounts Receivable at AccountsReceivable@blakes.com or telephone 416-863-3865	

Interest at the rate of 4.5% per annum will be charged on all amounts not paid within one month of delivery of this invoice.

Approved
June 2/17

Blakes

Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trade-mark Agents
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

INVOICE

Please write invoice number(s) on cheque

May 31, 2017

Ministry of Energy
50 Wellesley St. W.
5th Floor LSB
Toronto, ON M7A 2E7
Canada

Invoice:	1981106
Billing Lawyer	Wilson, Judy
HST/GST No.:	R119396778
Client:	00014229
Matter:	000001

Attention: Carolyn Calwell
Legal Director

Re: Ministry of Energy - Global Adjustment Mitigation

FOR PROFESSIONAL SERVICES RENDERED
during the period ended March 31, 2017, as follows:

Total Fees	$ 435,023.50
Harmonized Sales Tax (13.0%)	56,553.06
TOTAL DUE IN CANADIAN CURRENCY	**$ 491,576.56 CAD**

Blakes

Invoice: 1981106
Date: May 31, 2017

Re: Ministry of Energy - Global Adjustment Mitigation (000001)

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
03/01/17	Matheson, Michael	Reviewing materials regarding GA Smoothing and preparing for meeting regarding same.	2.5	570.00	1,425.00
03/01/17	Stokes, Bryson	Reviewing background information and preparing for meeting with client.	3.6	570.00	2,052.00
03/01/17	Wilson, Judy	Reviewing Global Adjustment materials.	2.8	570.00	1,596.00
03/02/17	Andison, Tim	Participating in meeting; preparing for meeting; instructing Blakes team regarding next steps.	4.6	570.00	2,622.00
03/02/17	Childs, Tairroyn	Researching the use of nuclear-asset recovery bonds in Florida and restructuring bonds in Long Island.	2.4	275.00	660.00
03/02/17	Matheson, Michael	Attending meeting regarding GA Smoothing.	4.3	570.00	2,451.00
03/02/17	McGilvray, Kate	Conversation with J. Wilson; conversations with B. Stokes; attending briefing session; attending meeting with MOE; follow-up on meeting.	3.5	570.00	1,995.00
03/02/17	Mender, David	Meeting with B. Stokes; reviewing transaction materials including summary memos, financing orders and legislation from Florida and New York; preparing summary email.	2.7	570.00	1,539.00
03/02/17	Resnick, Zac	Meeting with B.Stokes to discuss file; reviewing OPG white paper, terms to MOE and cabinet submission deck.	2.2	570.00	1,254.00
03/02/17	Stokes, Bryson	Preparation for meeting; calls with J. Wilson; attend pre- and post- client meeting briefing/debrief; attending and participating at briefing session with MOE team; reviewing Long Island Power structure/enabling legislation; reviewing Duke/Florida enabling legislation; meeting with D. Mender, Z. Reznik regarding scope of review of US models; meeting with T. Andison re: bond terms.	6.6	570.00	3,762.00
03/02/17	Wilson, Judy	Reviewing Global Adjustment documents and attending team meeting.	6.5	570.00	3,705.00
03/03/17	Andison, Tim	Instructing Blakes team regarding next steps; considering documentation.	1.1	570.00	627.00
03/03/17	Bristow, David	Attending meeting to discuss transaction structure; coordinating production of memorandum summarizing high level	1.9	570.00	1,083.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		considerations and precedent transactions.			
03/03/17	Childs, Tairroyn	Drafting email to T. Andison summarizing the nuclear asset-recovery bonds offered by Duke Energy Florida Project Finance, LLC and the restructuring bonds offered by the Utility Debt Securitization Authority in Long Island; preparing for and attending meeting with Blakes team to discuss the use of a similar transaction structure in Florida and Long Island.	2.5	275.00	687.50
03/03/17	Hancock, Jennifer	Discussing new transaction with M. Matheson and D. Butler.	0.4	570.00	228.00
03/03/17	Matheson, Michael	Reviewing sample precedents regarding GA Smoothing and discussing same; telephone calls and emails with client regarding risk factors.	3.3	570.00	1,881.00
03/03/17	McGilvray, Kate	Review of documents regarding proposal transaction.	1.1	570.00	627.00
03/03/17	Mender, David	Meeting with B. Stokes, Z. Resnick, D. Bristow and T. Andison; reviewing Global Approach to Rating Securities Backed by Utility Cost Recovery Charges methodology; reviewing documentation in support of US models including enabling legislation and financing orders; preparing work streams; preparing, reviewing and revising structure diagram; meeting with D. Bristow in regards to such.	5.7	570.00	3,249.00
03/03/17	Resnick, Zac	Reviewing Florida Statue 366.95 and all documentation providing by Ontario Ministry of Energy/OPG; meeting with internal team to discuss deliverable with respect to Long Island and Florida legislation.	6.7	570.00	3,819.00
03/03/17	Stokes, Bryson	Reviewing legislation; conference call with MOE; team meetings (Z. Resnick ,D. Mender; meeting with J. Wilson, M Matheson, T. Andison et. al). Reviewing and US legislation and rating agency guidance.	6.5	570.00	3,705.00
03/03/17	Wilson, Judy	Prepare for and attend call with accounting team. (1.8); Reviewing documents regarding legislative changes for Global Adjustment. (2.6)	4.4	570.00	2,508.00
03/04/17	Andison, Tim	Reviewing documentation; instructing Blakes team regarding next steps.	2.0	570.00	1,140.00

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Date: May 31, 2017
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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
03/04/17	Bristow, David	Preparing summary of bonds for precedent transactions; coordinating summary of applicable governing legislation.	3.0	570.00	1,710.00
03/04/17	Childs, Tairroyn	Drafting memo regarding the nuclear asset-recovery bonds offered by Duke Energy Florida Project Finance, LLC and the restructuring bonds offered by the Utility Debt Securitization Authority in Long Island.	3.2	275.00	880.00
03/04/17	Maodus, Mike	Reviewing key documents; drafting memo on Long Island approach to utility backed bonds; circulating same to T. Andison and B. Stokes.	8.2	275.00	2,255.00
03/05/17	Bristow, David	Reviewing and revising draft memorandum summarizing precedent offerings.	0.6	570.00	342.00
03/05/17	Childs, Tairroyn	Continuing to draft memo regarding the nuclear asset-recovery bonds offered by Duke Energy Florida Project Finance, LLC and the restructuring bonds offered by the Utility Debt Securitization Authority in Long Island; revising the same.	1.8	275.00	495.00
03/05/17	Hancock, Jennifer	Reviewing and considering electricity price mitigation presentation slides.	0.9	570.00	513.00
03/05/17	Mender, David	Drafting, reviewing and revising summary memos on Long Island Power Authority and Duke Energy Florida Project Finance precedent bond issuances; meeting with D. Bristow and B. Stokes in regards to such; attending to calls with T. Andison, M. Maudus and T. Childs.	3.5	570.00	1,995.00
03/05/17	Resnick, Zac	Drafting and revising a memorandum summarizing bond issuances involving utility backed bonds in Florida and New York.	4.1	570.00	2,337.00
03/05/17	Stokes, Bryson	Reviewing Moody's document; reviewing draft summary of US legislation; preparing speaking notes.	1.8	570.00	1,026.00
03/06/17	Andison, Tim	Instructing Blakes team regarding next steps; reviewing and commenting on draft memo.	2.9	570.00	1,653.00
03/06/17	Ashbourne, Stephen R.	Meeting with T. Andison regarding proposed transaction to monetize a portion of hydro bills; reviewing revenue bond models, including for 407; reviewing US transactions and background materials to determine Canadian structural equivalence; preparing outline of basic presentation on securitization in Canada for MOE; considering risk factor	3.2	570.00	1,824.00

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Invoice: 1981106
Date: May 31, 2017
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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		considerations regarding enforcement of government assigned debts; reviewing background materials regarding electricity market; discussion with others regarding background considerations.			
03/06/17	Bristow, David	Discussing securitization presentation internally; preparing material relating to same; discussing presentation on trust structure internally; reviewing and revising memorandum relating to precedent transactions.	3.1	570.00	1,767.00
03/06/17	Childs, Tairroyn	Preparing for and attending meeting with S. Ashbourne, T. Andison and D. Bristow regarding the use of a securitization structure; preparing for and attending meeting with P. Hogg, B. Reay, T. Andison and D. Bristow regarding the use of a trust to issue the bonds; revising memo regarding the nuclear asset-recovery bonds offered by Duke Energy Florida Project Finance, LLC and the restructuring bonds offered by the Utility Debt Securitization Authority in Long Island; preparing powerpoint slides regarding securitization basics for presentation to the Ministry of Energy.	2.8	275.00	770.00
03/06/17	Hogg, Peter	Meeting for briefing on province's plans to reduce electricity bills.	0.8	570.00	456.00
03/06/17	Maodus, Mike	Meeting with T. Andison to discuss Long Island approach to utility backed bonds; completing further revisions to memorandum.	2.2	275.00	605.00
03/06/17	Matheson, Michael	Telephone calls and emails regarding precedent transactions and structuring matters; reviewing and discussing same.	2.5	570.00	1,425.00
03/06/17	McGilvray, Kate	Review of materials.	1.3	570.00	741.00
03/06/17	Mender, David	Meeting with B. Stokes; attending call with T. Andison; reviewing and revising summary memo on Long Island Power Authority and Duke Energy Florida Project Finance precedent bond issuances; meeting with D. Bristow and Z. Resnick in regards to such.	1.8	570.00	1,026.00
03/06/17	Resnick, Zac	Meeting with internal team to discuss memoranda in respect of key features of precedent bond issuances; reviewing and revising memoranda.	0.9	570.00	513.00
03/06/17	Stokes, Bryson	Reviewing and marking up outline of US	2.6	570.00	1,482.00

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Invoice: 1981106
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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		legislation/bonds and speaking notes; call with T. Andison regarding securitization factors; call with M. Matheson regarding bond structure; call to Peter Hogg to discuss trust overview; meeting with D. Mender regarding further US follow-up.			
03/07/17	Andison, Tim	Preparing for and attending meeting with Ministry team.	2.5	570.00	1,425.00
03/07/17	Ashbourne, Stephen R.	Engaged throughout the day, including preparing for presentation to Ministry of Energy regarding Overview of Securitization; attending MOE group meeting; meeting with M. Matheson and J. Prestage to discuss key issues; follow-up discussion with B. Stokes, T. Andison and K. McGilvray to understand possible limitations on underlying assets for monetization purposes and to provide preliminary feedback on possible structuring issues and approaches.	4.7	570.00	2,679.00
03/07/17	Bristow, David	Reviewing and revising summary of precedent transactions; corresponding regarding same.	0.3	570.00	171.00
03/07/17	Hogg, Peter	Meeting with J. Wilson, S. Ashbourne, B. Stokes, other lawyers and other lawyers for the Province of Ontario to review the proposed energy structure.	1.0	570.00	570.00
03/07/17	Matheson, Michael	Preparing for and participating in meeting regarding structuring and related issues.	3.3	570.00	1,881.00
03/07/17	McGilvray, Kate	Preparing for and attending meeting on securitization and trusts; coordinating call on affordability fund; discussion with J. Prestage.	4.9	570.00	2,793.00
03/07/17	Mender, David	Attending meeting with B. Stokes; attending call with T. Andison; reviewing and revising summary memo on Long Island Power Authority and Duke Energy Florida Project Finance precedent bond issuances.	0.9	570.00	513.00
03/07/17	Prestage, J.A.	Call with K. McGilvray and meeting with MOE representatives regarding proposed transaction and related trust issues and reviewing documents regarding same.	2.8	570.00	1,596.00
03/07/17	Stokes, Bryson	Preparation of presentation; attend meeting with MOE team and presenting; reviewing detailed legislative drafting notes prepared by OPG; reviewing materials for Affordability Fund.	6.2	570.00	3,534.00

Blakes

Invoice: 1981106
Date: May 31, 2017
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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
03/07/17	Wilson, Judy	Attend meeting with Global Adjustment team.	2.2	570.00	1,254.00
03/08/17	Andison, Tim	Instructing Blakes team regarding next steps; considering disclosure matters.	0.8	570.00	456.00
03/08/17	Ashbourne, Stephen R.	Affordability Fund - Telephone call from K. McGilvray to discuss additional matter; reviewing background materials and preparing issues list.	2.7	570.00	1,539.00
03/08/17	Ashbourne, Stephen R.	Engaged throughout the day reviewing background materials for risk factors; preparing outline of legislative considerations based on market requirements for securitization, including reviewing internal draft of legislation, Moody's methodology, prospectuses for Florida and NY stranded cost securitization and other background materials; internal discussions and meeting (including with J. Prestage and B. Stokes) regarding indirect taxation consideration and general enforceability of government obligations, and reviewing research materials regarding same (including Monahan paper supporting enforcement); preparing outline of legal issues for internal discussion; reviewing J. Viner's summary of Moody's paper; revising and circulating memorandum to B. Stokes to assist with his presentation to MOE.	5.8	570.00	3,306.00
03/08/17	Beagan Flood, Catherine	Call from J. Wilson regarding constitutional issue?.	0.3	570.00	171.00
03/08/17	Bristow, David	Discussing proposed bond issuance considerations internally.	0.3	570.00	171.00
03/08/17	Butler, Danielle	Reviewing slide deck with information relating to plan for electricity price mitigation.	0.7	570.00	399.00
03/08/17	Childs, Tairroyn	Searching for prospectuses or offering memorandums where there are risk factors pertaining to changes in law and reliance on government performance; drafting email to T. Andison and S. Ashbourne regarding the same.	3.4	275.00	935.00
03/08/17	Hogg, Peter	Reviewing province's plan for a new Affordability Fund (.5); conference call (with JA Prestage and K. McGilvray) and provincial officials as to the terms of the trust (1.3); discussion afterwards with JA Prestage and K. McGilvray (.2).	2.0	570.00	1,140.00

Blakes

Invoice: 1981106
Date: May 31, 2017
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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
03/08/17	McGilvray, Kate	Discussion with MOE regarding affordability fund; review of documents; discussion with S. Ashbourne; discussion with J. Wilson; discussion with B. Stokes.	4.9	570.00	2,793.00
03/08/17	Prestage, J.A.	Meeting with B. Stokes and Matherson regarding taxes vs fees issues and providing background material regarding same; call with clients regarding Affordability Trust issues; review documents from client regarding affordability fund trust; reviewing draft TPA; exchanges regarding same.	4.9	570.00	2,793.00
03/08/17	Stokes, Bryson	Meetings with S. Ashbourne and M. Matheson and JA Prestage re: constitutional question and trust questions; meetings with M. Matheson and S. Ashbourne regarding Moody's; preparing for meeting with Deputy Minister and Implementation Group; meetings with J. Wilson; meetings with K McGilvray regarding trust structure for Affordability Fund.	6.8	570.00	3,876.00
03/08/17	Viner, Jon	Reviewing approach of Moody's Investor Service to rating of securities backed by utility cost recovery and drafting summary of same for S. Ashbourne; reviewing and providing comments on summary overview of legal structure behind securitization of electricity rate fees; discussing same with S. Ashbourne.	3.4	570.00	1,938.00
03/09/17	Ashbourne, Stephen R.	Affordability Fund – Reviewing background materials and preparing summary of issues for consideration with J. Prestage; meeting with J. Prestage to discuss TPA and context of documentation process; conference call with MOE legal to review trust structure and to work through basic underlying issues; internal follow-up with J. Prestage and B. Stokes; telephone call from P. Milligan to review basic framework for affordability fund; preparing revised outline of structure and contractual considerations, and reviewing revised principles document; conducting research regarding government accounting considerations; follow-up meeting with B. Stokes and J. Prestage.	5.8	570.00	3,306.00
03/09/17	Ashbourne, Stephen R.	Reviewing statutory provisions regarding "global adjustment"; internal discussions (J. Wilson and B. Stokes) regarding framework, process and critical legal issues; telephone	2.3	570.00	1,311.00

Blakes

Invoice: 1981106
Date: May 31, 2017
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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		call from M. Feldman to discuss preliminary issues and structuring considerations; several further internal discussions to organize structuring efforts and legal analysis, including telephone call with T. Andison and K. McGilvray.			
03/09/17	Beagan Flood, Catherine	Reviewing background materials from J. Wilson.	1.3	570.00	741.00
03/09/17	McGilvray, Kate	Following up on accountability fund; update on OPG meetings; forwarding publicly released information.	0.7	570.00	399.00
03/09/17	Prestage, J.A.	Conference calls, and exchanges with client, Oslers and internally regarding Affordability Trust Fund, proposed TPA and required trust deed; preparing and circulating list of outstanding issues; reviewing and considering documents circulated by Hydro One.	7.7	570.00	4,389.00
03/09/17	Stokes, Bryson	Meeting with Rate Mitigation Implementation Group; meeting with OPG, Torys and MOE; attend meeting regarding Affordabiltiy Fund; attend meeting with Torys and S. Ashbourne to discuss creation of the Asset; meetings with J. Wilson; email from/to J. Wilson regarding IESO market settlement process for RPP customers.	8.4	570.00	4,788.00
03/09/17	Wilson, Judy	Prepare for and attend Deputy Minister's team meeting; prepare for and attend team meeting; reviewing Global Adjustment documents.	5.9	570.00	3,363.00
03/10/17	Ashbourne, Stephen R.	Affordability Fund – Follow-up call with MOE legal to discuss open items and follow-ups to yesterday's call with P. Milligan; internal discussions regarding trust issues with J. Prestage and B. Stokes; meeting with P. Rand to provide background on matter; reviewing J. Prestage mark-up of TPA; preparing for call with working group to review agenda items and to raise legal considerations impacting on structure; reviewing accounting policies and guidelines; discussion with J. Prestage regarding same; discussion with P. Rand regarding background materials.	3.8	570.00	2,166.00
03/10/17	Ashbourne, Stephen R.	Discussion with J. Viner and B. Stokes regarding background to statutory	0.7	570.00	399.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		arrangements; reviewing background materials regarding Florida and NY transactions.			
03/10/17	Beagan Flood, Catherine	Call from B. Stokes regarding whether GA charge is direct or indirect; call with J. Wilson and P. Hogg and related discussions with P. Hogg regarding unconstitutional tax issues; giving instructions to B. Shamess regarding constitutional research; reviewing background materials from J. Wilson.	1.7	570.00	969.00
03/10/17	Hogg, Peter	Reviewing opinions on the constitutionality of the proposals, reviewing the legal position, discussing with C. Beagan Flood and (by phone) J. Wilson.	1.5	570.00	855.00
03/10/17	Prestage, J.A.	Conference calls regarding Affordability Fund and trust and contract documentation; marking up draft TPA Agreement and exchanges with client regarding same.	3.7	570.00	2,109.00
03/10/17	Rand, Paul	Reviewing and commenting on Transfer Payment Agreement; discussions with S. Ashbourne and J.A. Prestage; attending telephone calls regarding status of documents and next steps; researching and compiling information concerning terms and terminology for Housing Assistance Program.	1.9	570.00	1,083.00
03/10/17	Shamess, Brittany	Meeting with C. Beagan Flood for initial briefing; meeting with P. Hogg for additional background information; reviewing background materials.	1.6	570.00	912.00
03/10/17	Stokes, Bryson	Attend meeting regarding affordability fund; reviewing and commenting on documents and approach; calls with J. Wilson regarding constitutional question and the market settlement mechanics for the RPP rate class; call from T. Andison regarding next steps; meeting with S Wong regarding IESO settlement.	4.2	570.00	2,394.00
03/10/17	Wilson, Judy	Brief P. Hogg and C. Beagan-Flood on constitutional issues.	0.5	570.00	285.00
03/10/17	Wong, Sharon	Telephone discussions with B. Stokes regarding the background facts and the memorandum needed to describe the way the Global Adjustment is currently charged to customers on the regulated price plan.	0.4	570.00	228.00
03/11/17	Prestage, J.A.	Review and consider documents related to	0.6	570.00	342.00

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		accounting treatment if trust funds and year end transfers.			
03/11/17	Shamess, Brittany	Completing review of background materials; reviewing case law on direct vs. indirect taxation.	2.9	570.00	1,653.00
03/12/17	Shamess, Brittany	Reviewing case law on direct vs. indirect tax and regulatory charges vs. tax; drafting memo regarding constitutional risk of the "Global Adjustment smoothing" in light of case law findings.	8.5	570.00	4,845.00
03/13/17	Ashbourne, Stephen R.	Reviewing background materials and considering issues for incorporation into legislation.	2.2	570.00	1,254.00
03/13/17	Ashbourne, Stephen R.	Affordability Fund – Reviewing and revising Osler draft of TPA and DoT and preparing analysis of uncertain disposition risk; meeting with J. Prestage to discuss approach to commenting; responding to MOE questions regarding commenting and approach to "expectations" to provide certainty; internal meeting with P. Rand to discuss precedent review and with J. Viner.	3.3	570.00	1,881.00
03/13/17	Beagan Flood, Catherine	Meeting with P. Hogg and B. Shamess to discuss legal research findings; reviewing summary of legislation from S. Wong and prior Constitutional Law Branch memos; call from B. Stokes regarding impact of GA smoothing.	2.2	570.00	1,254.00
03/13/17	Hogg, Peter	Reviewing constitutional law on provincial taxation power (.5); discussing with B. Shamess (.5); meeting with B. Shamess and C. Beagan Flood to preparing for meeting tomorrow with provincial officials (.5).	1.5	570.00	855.00
03/13/17	Prestage, J.A.	Reviewing and preparing comments on draft trust agreement and draft TPA.	4.1	570.00	2,337.00
03/13/17	Rand, Paul	Receiving email from S. Ashbourne attaching draft trust declaration and transfer payment agreement; reviewing and commenting on same; reviewing comments on declaration of trust from JA Prestage and incorporating same into draft; discussions with S. Ashbourne regarding next steps.	1.8	570.00	1,026.00
03/13/17	Shamess, Brittany	Finalizing and reviewing memo in preparation for meeting with P. Hogg; meeting with P. Hogg; meeting with C. Beagan Flood and P.	7.8	570.00	4,446.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		Hogg; reviewing s. 92A(4) (taxation of resources) case law.			
03/13/17	Stokes, Bryson	Reviewing and commenting on draft declaration of trust and TPA regarding the affordability fund; calls with JA Prestage and P. Rand regarding drafting changes; reviewing email from Torys/OPG commenting on legislative checklist for the security/asset; reviewing overview of RPP payment stream prepared by S. Wong and discussing same with S. Wong; meeting with J. Wilson regarding priorities and issues; call with C. Beagan-Flood regarding IESO settlement and to discuss the fact that only one rate class (RPP) gets the benefit of the GA Smoothing.	4.7	570.00	2,679.00
03/13/17	Wilson, Judy	Reviewing MOE materials related to legislative drafting; preparing for team meeting.	2.5	570.00	1,425.00
03/13/17	Wong, Sharon	Drafting document explaining how global adjustment is currently collected from Regulated Price Plan consumers.	5.0	570.00	2,850.00
03/14/17	Ashbourne, Stephen R.	Attending MOE briefing call, to recount earlier discussion with Torys and to review status of Blakes' constitutional analysis; meeting with J. Prestage to discuss follow-up; reviewing US legislation for stranded cost transactions.	2.7	570.00	1,539.00
03/14/17	Ashbourne, Stephen R.	Affordability Fund – Revising DoT and TPA to circulate comments to MOE team and related meetings and conversations internally and with MOE, including in relation to accounting requirements; reviewing initial feedback form MOE on revised documents and internal coordination to reflect changes based on my review; considering issues related to delegation of trust powers.	6.3	570.00	3,591.00
03/14/17	Beagan Flood, Catherine	Instructions to B. Shamess; meetings with P. Hogg and B. Shamess to discuss analysis and additional research; reviewing prior constitutional opinions, Taxpayer Protection Act and key cases; call with J. Wilson to discuss constitutional analysis; attending risk assessment call with clients.	4.2	570.00	2,394.00
03/14/17	Hogg, Peter	Discussing tax versus regulatory charge with B. Shamess and C. Beagan Flood in advance of the 4:00 pm meeting with the provincial participants; attending and presenting at the	3.0	570.00	1,710.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		meeting with provincial participants.			
03/14/17	Prestage, J.A.	Revising draft trust agreement and TPA; exchanges and conference calls with Ministry regarding same; conference call regarding status of project; call with P. Milligan; exchanges with S. Ashbourne regarding draft documents and outstanding issues.	7.8	570.00	4,446.00
03/14/17	Rand, Paul	Reviewing feedback from Hydro One's counsel regarding Trust Declaration; discussions with S. Ashbourne and JA Prestage; conference call with Team from the Ministry; reviewing proposed revisions to draft Transfer Payment Agreement and editing same; correspondence with S. Ashbourne; email and discussion with B. Stokes concerning documentation; reviewing feedback comments on Trust Declaration received from Ministry of Environment.	4.7	570.00	2,679.00
03/14/17	Shamess, Brittany	Reviewing the applicability of, and exceptions to, the Taxpayer Protection Act; meeting with P. Hogg and C. Beagan-Flood to discuss constitutional opinion and guidelines for drafting the Fair Hydro Plan Act; attending conference call with Blakes team and Ministry of Energy team.	7.6	570.00	4,332.00
03/14/17	Stokes, Bryson	Reviewing draft legislation; telephone conference call with MOE team to walk through the first drafts of legislation; reviewing and amending/annotating draft legislation; prepare for and attend weekly rate mitigation session with MOE; calls with C. Beagan-Flood regarding constitutional issues; meeting with S. Ashbourne regarding Affordabiltiy Trust; call with S. Wong regarding RPP rate class.	6.7	570.00	3,819.00
03/14/17	Viner, Jon	Affordability Fund - Discussing proposed Affordability Fund Trust with S. Ashbourne; attending and taking notes on phone call between Blakes and Ministry of Energy; reviewing declaration of trust against Accounting Considerations for Government-Funded Trusts to determine potential accounting issues in drafting.	4.2	570.00	2,394.00
03/14/17	Wilson, Judy	Drafting legislative changes summary	2.2	570.00	1,254.00
03/14/17	Wilson, Judy	Briefing by Peter Hogg and Cathy Beagan Flood (1.4); Prepare for an attend	4.9	570.00	2,793.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		teleconferences regarding Rate Mitigation and draft legislation (3.5)			
03/15/17	Ashbourne, Stephen R.	Exchanges with B. Stokes regarding feedback to MOE on drafting approach and questions.	0.3	570.00	171.00
03/15/17	Ashbourne, Stephen R.	Affordability Fund – Engaged throughout the day preparing DoT and TPA, including major reconstruction based on ideas of "annexes" and detailed drafting to address countervailing pressures in transaction; several meetings with J. Viner, telephone call with MOE to talk conceptually about approach to reflect in documents and specific areas for concern by MOE; P. Rand and J. Prestage to coordinate drafting, including reviewing relevant precedents for DoT; responding to questions and drafting comments from MOE.	16.3	570.00	9,291.00
03/15/17	Childs, Tairroyn	Researching the purpose and case law behind s. 92A(4) which permits the provinces to tax the generation and production of electrical energy.	2.4	275.00	660.00
03/15/17	Hogg, Peter	Discussing terms of trust with JA Prestage.	0.2	570.00	114.00
03/15/17	Owen, Leanne	Conducting historic legislative research for T. Childs/J. Lam.	2.9	230.00	667.00
03/15/17	Prestage, J.A.	Conference calls and revising draft documents.	10.5	570.00	5,985.00
03/15/17	Rand, Paul	Reviewing and drafting trust declaration and appendix addressing principles of affordability fund program; attending various conference calls with S. Ashbourne, JA Prestage and team from Ministry; internal discussions on documentation and approach; further review and revision of Transfer Payment Agreement; considering precedent delegation agreements; various discussions with S. Ashbourne, JA Prestage and J. Viner concerning documentation and approach.	7.5	570.00	4,275.00
03/15/17	Shamess, Brittany	Drafting opinion on the constitutional risk of the global adjustment smoothing proposal.	5.9	570.00	3,363.00
03/15/17	Stokes, Bryson	Revising and annotating legislation instructions; reviewing US Legislation.	2.8	570.00	1,596.00
03/15/17	Stokes, Bryson	Calls with MOE team to discuss and review drafting approach; call with J. Wilson re:	1.1	570.00	627.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		same.			
03/15/17	Viner, Jon	Affordability Fund - Attending and taking notes on telephone call with Ministry of Energy regarding issues pertaining to Declaration of Trust and annexes, drafting Permitted Delegation Annex, discussing Permitted Delegation Annex with P. Rand and S. Ashbourne; revising Permitted Delegation Annex.	8.1	570.00	4,617.00
03/15/17	Wilson, Judy	Prepare for and attend Deputy Minister's meeting.	1.8	570.00	1,026.00
03/15/17	Wong, Sharon	Reading OEB's recent changes to the Standard Supply Settlement Code and considering it's possible impacts on the method used to collect global adjustment from RPP customers.	0.3	570.00	171.00
03/16/17	Ashbourne, Stephen R.	Reviewing summary and legislative language forwarded by B. Stokes and providing initial feedback; responding to questions regarding nature of "asset"; sketching out "asset" description for inclusion in legislative proposal; reviewing background materials.	1.5	570.00	855.00
03/16/17	Ashbourne, Stephen R.	Affordability Fund – Engaged throughout the day, including preparing further revised mark-ups of DoT and TPA to address structural features, annex approach and accounting control considerations; conference call with MOE to walk through approach to DoT drafting and related issues to underlying tensions; preparing briefing note requested by MOE to accompany initial circulation of comments on TPA and DoT; ongoing discussions throughout the day with Blakes team to revise, conform and incorporate annex approach into DoT; revising TPA and discussing same with JA Prestage; preparing revised versions of documents for circulation to broader group.	9.6	570.00	5,472.00
03/16/17	Beagan Flood, Catherine	Analysis of constitutional issues.	1.9	570.00	1,083.00
03/16/17	Childs, Tairroyn	Continuing to research the purpose and case law behind s. 92A(4) which permits the provinces to tax the generation and production of electrical energy; drafting email to B. Shamess regarding the same.	0.8	275.00	220.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
03/16/17	Prestage, J.A.	Drafting and revising documents re Affordability Trust and conference calls re same	3.1	570.00	1,767.00
03/16/17	Rand, Paul	Affordability Fund - Reviewing and considering comments from Ministry of Energy on Trust Declaration; conference calls with Ministry of Energy to review documents and address questions; drafting and updating in respect of the Trust Declaration and Transfer Payment Agreement; drafting and updating program principles to reference in the Trust Declaration; commenting on mechanism to address replacing trusting; internals discussions involving J. Prestage, J. Viner, S. Asbhourne; reviewing draft delegation of authority annex; receiving and reviewing email correspondence in connection with matter.	7.7	570.00	4,389.00
03/16/17	Shamess, Brittany	Continuing to draft opinion on the constitutional risk of the Global Adjustment Smoothing proposal.	3.3	570.00	1,881.00
03/16/17	Stokes, Bryson	Further amending /annotating draft legislation (instructions); reviewing and commenting on draft trust and TPA documents for the affordability trust.	1.7	570.00	969.00
03/16/17	Stokes, Bryson	Several calls with S. Ashbourne regarding the affordability trust; participate on conference call/update call on legislative drafting with MOE team; call with S. Wong regarding OEB mechanics and RPP issues; meeting with J. Wilson	1.2	570.00	684.00
03/16/17	Viner, Jon	Affordability Fund - Attending and taking notes on phone call with Ministry and Blakes regarding changes to Declaration of Trust and associated Annexes; discussing next steps with S. Ashbourne.	1.7	570.00	969.00
03/16/17	Wilson, Judy	Meeting with B. Stokes to review legislative changes. (1.2); reviewing draft legislation issues and attending legislative update call. (2.5)	3.7	570.00	2,109.00
03/17/17	Ashbourne, Stephen R.	Preparing outline of formula approach to legislation ("Outline"); providing B. Stokes with feedback on legislative discussion document and explaining background to Outline approach to drafting; meeting with J. Viner to discuss underlying US legislation and	4.7	570.00	2,679.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		alternative approach to populate Ontario equivalent; reviewing US legislation and preparing summary of terms; reviewing and revising B. Stokes' comments on proposal and related discussions.			
03/17/17	Ashbourne, Stephen R.	Affordability Fund – Engaged throughout the day including responding to questions and incorporating comments received from MOE and Oslers regarding DoT; providing comments on TPA to J. Prestage and related discussions to mesh drafting; reviewing and revising documents based on MOE comments; follow-up call with MOE to review and discuss comments received, including initial accounting input; reviewing accounting principles and considering material compliance issues; responding to question regarding advisory committee representation.	5.3	570.00	3,021.00
03/17/17	Mender, David	Meeting with J. Viner in regards to legislation in New York and Florida.	0.3	570.00	171.00
03/17/17	Prestage, J.A.	Revising documents re Affordability Trust and conference calls re same.	3.7	570.00	2,109.00
03/17/17	Rand, Paul	Considering and drafting Trustee governance provisions; various discussions with S. Ashbourne and J. Viner regarding documentation; reviewing and revising permitted delegation annex.	4.3	570.00	2,451.00
03/17/17	Shamess, Brittany	Reviewing background materials on energy regulation to assist in drafting the constitutional risk opinion.	1.2	570.00	684.00
03/17/17	Stokes, Bryson	Reviewing draft financing outline and commenting on same; reviewing and revising legislation instructions.	2.6	570.00	1,482.00
03/17/17	Stokes, Bryson	Telephone conference calls with S.Ashbourne regarding outline and preliminary comments on markup/annotations to legislation instructions; calls with J. Wilson.	1.2	570.00	684.00
03/17/17	Viner, Jon	Affordability Fund - Discussing revisions to Declaration of Trust and annexes with S. Ashbourne and P. Rand; drafting provisions to Permitted Delegation Annex regarding obligations of administrative services agents, and representations and indemnities to be set out in administrative services agreement; revising Declaration of Trust.	3.6	570.00	2,052.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
03/18/17	Ashbourne, Stephen R.	Reviewing background materials to prepare outline of issues for consideration in drafting legislation.	0.8	570.00	456.00
03/18/17	Ashbourne, Stephen R.	Affordability Fund – Preparing detailed mark-up of DoT, including build-out of existing concepts for advisory mechanics and other matters to bridge into initial phase with Computershare; reviewing and incorporating MOE comments received on DoT; conference call with MOE (including N. Petsche) and KPMG to review accounting considerations and further revisions to documents to reflect accounting considerations.	6.8	570.00	3,876.00
03/19/17	Ashbourne, Stephen R.	Preparing internal notes regarding structure and legislative authority in light of basic cash flow considerations.	1.7	570.00	969.00
03/19/17	Ashbourne, Stephen R.	Affordability Fund – Continuing to prepare detailed mark-up of each of DoT and TPA to flesh out terms of advisory committee, transition process, control items, accounting considerations and underlying legal matters; numerous follow-ups through the day with MOE (including N. Petsche) and responding to KPMG's questions; circulating revised versions of documents to MOE working group; addressing feedback through the day, including turning interim drafts to address MOE feedback and accounting comments; exchanges with J. Prestage to further revise documents.	7.3	570.00	4,161.00
03/19/17	Prestage, J.A.	Review and comment on latest draft of trust declaration	2.5	570.00	1,425.00
03/19/17	Shamess, Brittany	Continuing to draft opinion on the constitutional risk of the Global Adjustment Smoothing proposal.	5.8	570.00	3,306.00
03/19/17	Viner, Jon	Considering drafting of legislation regarding general adjustment charge property through review of precedent transaction documents and associated legislation in the states of Florida and New York.	4.2	570.00	2,394.00
03/19/17	Viner, Jon	Affordability Fund - Revising Transfer Payment Agreement and Declaration of Trust for clean-up changes.	0.8	570.00	456.00
03/20/17	Ashbourne, Stephen R.	Preparing outline of legislative authority for internal consideration, in light of structural considerations and need for substantial	3.5	570.00	1,995.00

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		delegated authority to implement treasury plan; discussion with B. Stokes regarding rate based interaction and need for underlying review; preparing for meeting to discuss proposals; meeting with A. Jackson and J. Viner to obtain assistance to deal with authority and structural features and scoping out legislation.			
03/20/17	Ashbourne, Stephen R.	Affordability Fund – Engaged throughout the day revising DoT and TPA based on feedback from MOE on my weekend drafting; revising documents based on comments and oral feedback from MOE staff; attending at MOE to brief Deputy Minister on Trust arrangements and possible issues based on balance of accounting and control; continuing to revise all documents to re-circulate same; ongoing comments and responding to accounting considerations and incidental drafting; reviewing comments with J. Prestage and continuing to turn revised versions of documents.	8.5	570.00	4,845.00
03/20/17	Jackson, Adam	Reviewing Florida legislation; reviewing New York legislation; reviewing memorandum prepared by S. Ashbourne; reviewing Tory's memorandum; reviewing memorandum from B. Stokes.	4.5	570.00	2,565.00
03/20/17	Prestage, J.A.	Conference calls and exchanges and drafting and revising AFT documents	6.6	570.00	3,762.00
03/20/17	Stokes, Bryson	Reviewing comments provided by Torys; reviewing revised legislative framework circulated by MOE.	2.7	570.00	1,539.00
03/20/17	Viner, Jon	Considering draft language of legislation authorizing re-financing of the general adjustment amounts through review of precedent legislative language in the States of Florida and New York.	4.2	570.00	2,394.00
03/21/17	Ashbourne, Stephen R.	Affordability Fund – Engaged throughout the day preparing and reviewing documents, including TPA and DoT, including numerous calls and meetings through the day to finalize outstanding accounting and logistics issues as well as responding through the day to N. Petsche's comments and questions; conference call with Computershare to walk through documents and explain overall context of first stage; preparing comments on	5.4	570.00	3,078.00

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		accounting summary; following up regarding ASA draft; turning and circulating comments on documents.			
03/21/17	Ashbourne, Stephen R.	Preparing for meeting with MOE to review structure of legislation; attending meeting at MOE (with OPG and Torys) to review structure and approach to legislation; attending follow-up meeting with J. Wilson, J. Prestage and B. Stokes (scheduled for MOE meeting, but canceled) to review legislative outline and discuss overall context of proposals and related issues like delegation revise legislative outline based on input from B. Stokes and circulating to prepare for internal call regarding constitutional issues; reviewing background materials; preparing summary of legislative items for inclusion in Act and proposed break down for locating items within legislation.	7.6	570.00	4,332.00
03/21/17	Jackson, Adam	Reviewing legislation.	1.0	570.00	570.00
03/21/17	Jackson, Adam	Meeting with S. Ashbourne.	0.4	570.00	228.00
03/21/17	Prestage, J.A.	Conference calls and revising AFT documents and exchanges re same; meeting re issues in proposed statutory scheme	7.4	570.00	4,218.00
03/21/17	Shamess, Brittany	Reviewing case law on the delegation of taxing power for the purpose of the constitutional risk opinion.	2.7	570.00	1,539.00
03/21/17	Stokes, Bryson	Legislation Check-in Call with MOE; meeting with Torys/OPG; debrief meeting with Blakes team; attending planning meeting for next steps.	4.6	570.00	2,622.00
03/21/17	Stokes, Bryson	Reviewing and revising overview document.	0.8	570.00	456.00
03/21/17	Viner, Jon	Considering drafting of legislation creating general adjustment property and authorizing issuance of bonds and charging of transition amounts through review of precedents in States of Florida and New York.	1.6	570.00	912.00
03/21/17	Viner, Jon	Affordability Fund - Reviewing control assessment memorandum of N. Petsche for accuracy and consistency with provisions of Declaration of Trust and Transfer Payment Agreement; providing comments on same.	2.5	570.00	1,425.00
03/21/17	Wilson, Judy	Reviewing draft legislation and attend teleconference to discuss legislation;	4.2	570.00	2,394.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		discussion with MOE regarding OPG perspective on litigation.			
03/22/17	Ashbourne, Stephen R.	Revising J. Wilson's summary for Deputy Minister and various follow-ups regarding same; discussions through the day on structure and legislative authority matters; revising and circulating outline prepared to review scope and location of legislative provisions as background for delegations meeting; reviewing and responding to internal questions from B. Stokes regarding scope of legislation; internal meeting to discuss approach to legislative drafting.	3.4	570.00	1,938.00
03/22/17	Ashbourne, Stephen R.	Affordability Fund – Engaged throughout the day, including telephone calls and reviewing terms of documents and settling terms with MOE and accounting representatives; reviewing and revising administrative services agreement ("ASA"); follow-up telephone calls with Oslers regarding same; meetings with J. Prestage to review and reflect comments in DoT and TPA and numerous telephone calls with MOE representatives to respond to questions, comments and follow-ups to settle documentation issues, including linkage to travel plan and accounting questions; follow-up regarding Computershare issues, including commingled deposits question.	7.1	570.00	4,047.00
03/22/17	Prestage, J.A.	Conference calls and revising draft AFT documents and exchanges re same; considering limits on delegation of authority under statutes	7.6	570.00	4,332.00
03/22/17	Shamess, Brittany	Continuing to draft opinion on the constitutional risk of the Global Adjustment Smoothing proposal.	3.4	570.00	1,938.00
03/22/17	Stokes, Bryson	Meeting with J. Wilson to review contents of reporting to Implementation Committee; calls with S. Ashbourne regarding structure; telephone call with C. Calwell and J. Wilson.	2.2	570.00	1,254.00
03/22/17	Stokes, Bryson	Drafting report for Thursday morning meeting with the Implementation Committee; circulating email re: same; receiving comments from the MOE team and updating and recirculating draft.	2.6	570.00	1,482.00
03/22/17	Wilson, Judy	Discussion with Carolyn Calwell regarding status of legislation.	0.8	570.00	456.00

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03/22/17	Wilson, Judy	Revising legislative update for Deputy Minister's committee meeting.	1.2	570.00	684.00
03/23/17	Ashbourne, Stephen R.	Preparing memorandum to set out basis for considering delegation legislative authority to accommodate treasury plan, including considering ways to accommodate commodity price fluctuations and incorporation of refinancing scenarios into model; revising memorandum and preparing for internal session with PH and CBF to discuss scope of permitted delegations; attending internal meeting to review basis for delegation and to consider broader issues regarding constitutionality and administrative law matters; meeting with J. Viner and A. Jackson to discuss next steps for filling out drafting of legislation to reflect overall approach to delegation of treasury decisions.	6.3	570.00	3,591.00
03/23/17	Ashbourne, Stephen R.	Affordability Fund – Engaged throughout the day finalizing DoT, TPA and ASA, including reviewing and revising Oslers' draft ASA and providing mark-up; pre-call to discuss comments on ASA with MOE; telephone call with Oslers to review ASA and discuss other documents issues; reviewing mark-ups to finalize all documents; responding to ongoing accounting considerations from N. Petsche; several follow-ups with MOE to discuss logistics for signing and finalizing documents.	3.7	570.00	2,109.00
03/23/17	Beagan Flood, Catherine	Preparing for and attending meeting with S. Ashborne, B. Stokes, J.A. Prestage and P. Hogg regarding potential constitutional and administrative law issues; call from B. Stokes.	3.0	570.00	1,710.00
03/23/17	Hogg, Peter	Reviewing outlines of legislation prepared by S. Ashbourne (1.0); meeting (with C. Beagan-Flood and B. Shamess) with S. Ashbourne, B. Stokes and other lawyers to review the province's plan and begin thinking about what needs to be in the legislation (2.3); discussion afterwards with C. Beagan-Flood and B. Shamess (.5).	3.8	570.00	2,166.00
03/23/17	Jackson, Adam	Reviewing outline of legislation from S. Ashbourne; office conference to discuss constitutional analysis of proposed legislation with C. Beagan-Flood, S Ashbourne, P. Hogg, B. Stokes and J. Viner.	2.7	570.00	1,539.00
03/23/17	Prestage, J.A.	Conference calls and exchanges and revising	6.0	570.00	3,420.00

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Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		and finalizing AFT documentation; meeting re statutory and regulatory issues .			
03/23/17	Shamess, Brittany	Attending Blakes team meeting regarding delegation issues.	3.4	570.00	1,938.00
03/23/17	Stokes, Bryson	Attend Implementation Committee meeting at 900 Bay; prepare for and attend internal meeting on delegation issues.	4.5	570.00	2,565.00
03/23/17	Stokes, Bryson	Revising handout and preparing for Implementation Committee Meeting; reviewing and annotating legislative drafting outline.	1.8	570.00	1,026.00
03/23/17	Viner, Jon	Attending and taking notes at meeting with Blakes team to discuss issues and structure of global adjustment financing transaction.	2.2	570.00	1,254.00
03/23/17	Wilson, Judy	Prepare for and attend (part of) Deputy Minister's meeting.	1.2	570.00	684.00
03/24/17	Ashbourne, Stephen R.	Reviewing materials to prepare for session with MOE; attending "brain-storming" meeting with MOE and counsel to sketch out premise of legislation and need for treasury plan; reviewing MOE draft of amending legislation to provide input on drafting; exchanges with B. Stokes regarding draft legislation.	4.8	570.00	2,736.00
03/24/17	Ashbourne, Stephen R.	Affordability Fund – Reviewing final documents; responding to questions regarding AFT set-up; reviewing final version of ASA.	0.7	570.00	399.00
03/24/17	Shamess, Brittany	Continuing to draft the opinion on the constitutional risk associated with the global adjustment smoothing proposal.	1.2	570.00	684.00
03/24/17	Stokes, Bryson	Marking up legislative drafting instructions; circulating same to MOE team.	1.2	570.00	684.00
03/24/17	Stokes, Bryson	Attending meeting re: Legislation Brainstorming Session; legislative check-in and Equity Injection calls.	4.4	570.00	2,508.00
03/24/17	Viner, Jon	Discussing structure of legislation for general adjustment financing with S. Ashbourne.	0.2	570.00	114.00
03/24/17	Wilson, Judy	Attend brief teleconference regarding equity infusion into the OPG trust. (0.5); prepare for and attend discussions with MOE legal team regarding draft legislation. (4.2)	4.7	570.00	2,679.00
03/26/17	Ashbourne, Stephen	Preparing sketch of Fair legislation and	3.3	570.00	1,881.00

Blakes

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
	R.	related background review of treasury aspects of program.			
03/26/17	Viner, Jon	Reviewing state of New York financing legislation and drafting summary chart with concepts to consider importing to Ontario legislation.	5.4	570.00	3,078.00
03/26/17	Wilson, Judy	Review of latest version of legislative changes.	3.2	570.00	1,824.00
03/27/17	Ashbourne, Stephen R.	Engaged throughout the day, including preparing "sketch" of fair legislation; internal meeting with B. Stokes, A. Jackson and J. Viner to walk through funding process and discuss LIPA legislation; exchanges with S. Nelms regarding selection of financial advisor; revising and circulating "sketch" to working group; working session with D. Shear and J. Rehob; preparing 'key questions' overview for M. Manning; reviewing J. Viner's summary of US legislation; internal meeting to discuss constitutional feedback.	5.5	570.00	3,135.00
03/27/17	Shamess, Brittany	Continuing to draft the opinion on the constitutional risk associated with the global adjustment smoothing proposal.	5.6	570.00	3,192.00
03/27/17	Stokes, Bryson	Attending Ministry of Energy Chief of Staff meeting; preparation for same; debriefing meeting with J. Wilson; meeting with S. Ashbourne.	2.2	570.00	1,254.00
03/27/17	Viner, Jon	Revising chart summarizing New York legislation and aspects thereof that may be imported to Ontario legislation; discussing structure of legislation with S. Ashbourne and A. Jackson.	2.0	570.00	1,140.00
03/28/17	Ashbourne, Stephen R.	Engaged throughout the day, including meeting with B. Stokes and J. Wilson to review "sketch" and to discuss conceptual outline of legislation; telephone call with province lawyers to review most recent document for legislative counsel; various follow-ups regarding drafting.	6.3	570.00	3,591.00
03/28/17	Hogg, Peter	Reviewing draft opinion prepared by B. Shamess and writing comments on the draft for C. Beagan Flood and B. Shamess.	1.5	570.00	855.00
03/28/17	Jackson, Adam	Reviewing and amending chart analyzing New York legislation; reviewing New York legislation; call with S. Ashbourne and J.	3.7	570.00	2,109.00

Blakes

Invoice: 1981106
Date: May 31, 2017

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
		Viner regarding status.			
03/28/17	Shamess, Brittany	Finalizing draft opinion on the constitutional risk associated with the Global Adjustment; emailing draft opinion to C. Beagan-Flood and P. Hogg for review; incorporating comments from P. Hogg.	3.2	570.00	1,824.00
03/28/17	Stokes, Bryson	Attending meetings regarding legislative check-in, meeting to review overview of framework, and attend weekly meeting; calls with D. Shier and J Wilson regarding modeling necessary to support legislative theory.	2.8	570.00	1,596.00
03/28/17	Stokes, Bryson	Revising draft outline/sketch document.	2.7	570.00	1,539.00
03/28/17	Viner, Jon	Discussing structure of draft legislation for general adjustment financing with S. Ashbourne.	0.4	570.00	228.00
03/28/17	Wilson, Judy	Reviewing legislative briefing document; attend teleconference with legal team, attend weekly meeting with MOE team.	7.9	570.00	4,503.00
03/29/17	Ashbourne, Stephen R.	Preparing for advisor selection meetings at OFA; attending meetings with Scotia, BMO and TD and related follow-ups with M. Manning and S. Nelms; meeting with B. Stokes and J. Wilson to discuss requirements and timing for legislation preparation based on my outlines and review related matters; following up internally to discuss legislative validity issues; meeting with J. Viner and A. Jackson to review inputs based on precedents and requirements; preparing first detailed draft of fair legislation; reviewing DBRS methodology based on European standed costs transactions; reviewing Torys memorandum describing "deferral" mechanics.	13.4	570.00	7,638.00
03/29/17	Jackson, Adam	Discussion with J. Viner regarding table of provisions for proposed legislation; reviewing and amending legislative analysis for New York.	1.0	570.00	570.00
03/29/17	Stokes, Bryson	Meetings with J. Wilson; call with D. Shear.	0.8	570.00	456.00
03/29/17	Stokes, Bryson	Revising transaction overview.	3.2	570.00	1,824.00
03/29/17	Stokes, Bryson	Reviewing document circulated by Torys/OPG. Reviewing interim drafts of policy document.	1.8	570.00	1,026.00

Blakes

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
03/29/17	Viner, Jon	Revising chart summarizing key components of financing legislation in state of New York and providing comments on aspects to be imported into Ontario legislation; reviewing DBRS rating agency methodology regarding electricity tariff financing regulation in Spain.	6.3	570.00	3,591.00
03/30/17	Ashbourne, Stephen R.	Engaged throughout the day, including exchanges with M. Manning regarding retention of TD as advisor; internal discussions with T. Andison and J. Viner regarding NDA preparations; preparing draft legislation, including reviewing MOE draft amendments to integrate; conducting detailed review of US (LIPA) precedent to extract relevant operative sections; discussions with J. Viner regarding follow-ups on Spain and Portugal legislation dealing with flow of funds through several intermediaries; several internal discussions regarding approach and status of main portion of legislation; preparing first draft of legislation.	11.5	570.00	6,555.00
03/30/17	Rand, Paul	Receiving and reviewing ISDAs for sign-off; corresponding with S. Ashbourne concerning same.	0.8	570.00	456.00
03/30/17	Viner, Jon	Reviewing DBRS ratings methodology for Spanish and Portuguese electricity tariff securitization structures and drafting note to S. Ashbourne and A. Jackson summarizing key aspects thereof; reviewing forms of non-disclosure agreements for engagement with TD; discussing non-disclosure agreement with S. Ashbourne.	3.1	570.00	1,767.00
03/30/17	Wilson, Judy	Prepare for and attend Rate Mitigation Implementation Group	2.8	570.00	1,596.00
03/30/17	Wilson, Judy	Reviewing legislative documents.	3.5	570.00	1,995.00
03/31/17	Ashbourne, Stephen R.	Fair - Engaged throughout the day continuing to prepare first draft of legislation; reviewing comments and questions from MOE on first draft, including discussions regarding summary of relevant amendments and basis for approach; exchanges with OFA regarding TD retainer and related matters; reviewing comments from MOE and annotations; exchanges with B. Stokes and J. Wilson regarding process matters; meeting with A. Jackson and J. Viner regarding further steps to develop legislation and approach.	12.7	570.00	7,239.00

Blakes

Invoice: 1981106
Date: May 31, 2017

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount ($)
03/31/17	Jackson, Adam	Reviewing draft legislation; amending draft legislation; amending rider for creation of treasury plan and issuer; call with J. Viner, S. Ashbourne and ministry representatives.	4.7	570.00	2,679.00
03/31/17	Stokes, Bryson	Call with MOE team; call with J. Wilson and S. Ashbourne regarding drafting and next steps.	1.2	570.00	684.00
03/31/17	Stokes, Bryson	Preliminary review of Part V of the legislation.	1.2	570.00	684.00
03/31/17	Viner, Jon	Drafting provisions for Fair Act legislation regarding procedure for establishment of treasury plan, creation of special purposes entities and required use of proceeds under treasury plans; attending phone call with S. Ashbourne, A. Jackson and Ministry; discussing next steps regarding drafting of Fair Act legislation with S. Ashbourne.	4.4	570.00	2,508.00
		Total Fees for this Matter			**$ 435,023.50**

Matter Timekeeper Summary	ID	Hours	Rate ($)	Amount ($)
Andison, Tim	TAN	13.9	570.00	7,923.00
Ashbourne, Stephen R.	SRA	201.5	570.00	114,855.00
Beagan Flood, Catherine	CBE	14.6	570.00	8,322.00
Bristow, David	DBW	9.2	570.00	5,244.00
Butler, Danielle	DZB	0.7	570.00	399.00
Childs, Tairroyn	TAI	19.3	275.00	5,307.50
Hancock, Jennifer	JRK	1.3	570.00	741.00
Hogg, Peter	PWH	15.3	570.00	8,721.00
Jackson, Adam	AKJ	18.0	570.00	10,260.00
Maodus, Mike	DUS	10.4	275.00	2,860.00
Matheson, Michael	MCMA	15.9	570.00	9,063.00
McGilvray, Kate	KAM	16.4	570.00	9,348.00
Mender, David	DNM	14.9	570.00	8,493.00
Owen, Leanne	LZG	2.9	230.00	667.00
Prestage, J.A.	JAP	79.0	570.00	45,030.00
Rand, Paul	PSR	28.7	570.00	16,359.00
Resnick, Zac	ZCR	13.9	570.00	7,923.00
Shamess, Brittany	BSQ	64.1	570.00	36,537.00
Stokes, Bryson	BAS	109.4	570.00	62,358.00

Blakes

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Matter Timekeeper Summary	ID	Hours	Rate ($)	Amount ($)
Viner, Jon	JNV	58.3	570.00	33,231.00
Wilson, Judy	JLW	66.9	570.00	38,133.00
Wong, Sharon	SW	5.7	570.00	3,249.00
	Total	**780.3**		**$ 435,023.50**

Harmonized Sales Tax (13.0%)	56,553.06
Total Due for this Matter in Canadian Currency	**$ 491,576.56 CAD**

	Blended rate of $570 per hour. Kate's regular rate is $760/hour. The blended rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.
City	TORONTO
Province/State	ONTARIO
Country	CANADA

Law Firm / Lawyer Record #	7	
Law Firm	Blakes	
Lawyer to be Retained	Theresa Chan	Law Firm
Lawyer Year of Call	2011	
Hourly Rate	570	
Special Rate Details	Blended rate of $570 per hour. Theresa's regular rate is $640/hour. The blended rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.	
City	TORONTO	
Province/State	ONTARIO	
Country	CANADA	

Law Firm / Lawyer Record #	8	
Law Firm	Blakes	
Lawyer to be Retained	Jennifer Hancock	Law Firm
Lawyer Year of Call	2013	
Hourly Rate	570	
Special Rate Details	Blended rate of $570 per hour. Jennifer's regular rate is $550/hour. The blended rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.	
City	TORONTO	
Province/State	ONTARIO	
Country	CANADA	

Law Firm / Lawyer Record #	9	
Law Firm	Blakes	
Lawyer to be Retained	David Bristow	Law Firm
Lawyer Year of Call	2015	
Hourly Rate	570	
Special Rate Details	Blended rate of $570 per hour. David's regular rate is $505/hour. The blended rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.	
City	TORONTO	
Province/State	ONTARIO	
Country	CANADA	

Law Firm / Lawyer Record #	10	
Law Firm	Blakes	
Lawyer to be Retained	Zac Posner	Law Firm
Lawyer Year of Call	2001	
Hourly Rate	570	
Special Rate Details	Blended rate of $570 per hour. Zac's regular rate is $505/hour. The blended rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.	
City	TORONTO	
Province/State	ONTARIO	
Country	CANADA	

Law Firm / Lawyer Record #	11	
Law Firm	Blakes	
Lawyer to be Retained	David Mender	Law Firm
Lawyer Year of Call	2014	
Hourly Rate	570	
Special Rate Details	Blended rate of $570 per hour. David's regular rate is $530/hour. The blended rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.	
City	TORONTO	

Province/State	ONTARIO
Country	CANADA

Law Firm / Lawyer Record #	12
Law Firm	Blakes Law Firm
Lawyer to be Retained	Cathy Beagan-Flood
Lawyer Year of Call	2000
Hourly Rate	570
Special Rate Details	Blended rate of $570 per hour. The blended rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.
City	TORONTO
Province/State	ONTARIO
Country	CANADA

Law Firm / Lawyer Record #	13
Law Firm	Blakes Law Firm
Lawyer to be Retained	Peter Hogg
Lawyer Year of Call	1973
Hourly Rate	570
Special Rate Details	Blended rate of $570 per hour. The blended rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.
City	TORONTO
Province/State	ONTARIO
Country	CANADA

Law Firm / Lawyer Record #	14
Law Firm	Blakes Law Firm
Lawyer to be Retained	Stephen Ashbourne
Lawyer Year of Call	1991
Hourly Rate	570
Special Rate Details	Blended rate of $570 per hour. David's regular rate is $530/hour. The blended rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.
City	TORONTO
Province/State	ONTARIO
Country	CANADA

Law Firm / Lawyer Record #	15
Law Firm	Blakes Law Firm
Lawyer to be Retained	Adam Jackson
Lawyer Year of Call	2013
Hourly Rate	570
Special Rate Details	Blended rate of $570 per hour. David's regular rate is $530/hour. The blended rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.
City	TORONTO
Province/State	ONTARIO
Country	CANADA

Law Firm / Lawyer Record #	16
Law Firm	Blakes Law Firm
Lawyer to be Retained	JA Presage
Lawyer Year of Call	1987
Hourly Rate	570
Special Rate Details	Blended rate of $570 per hour. David's regular rate is $530/hour. The blended rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.
City	TORONTO
Province/State	ONTARIO
Country	CANADA

Law Firm / Lawyer Record #	17
Law Firm	Blakes
Lawyer to be Retained	Sharon Wong
Lawyer Year of Call	1988
Hourly Rate	570
Special Rate Details	Blended rate of $570 per hour. David's regular rate is $530/hour. The blended rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.
City	TORONTO
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Country	CANADA

Law Firm / Lawyer Record #	18
Law Firm	Blakes
Lawyer to be Retained	Paul Rand
Lawyer Year of Call	2003
Hourly Rate	570
Special Rate Details	Blended rate of $570 per hour. David's regular rate is $530/hour. The blended rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.
City	TORONTO
Province/State	ONTARIO
Country	CANADA

Law Firm / Lawyer Record #	19
Law Firm	Blakes
Lawyer to be Retained	Danielle Butler
Lawyer Year of Call	2016
Hourly Rate	570
Special Rate Details	Blended rate of $570 per hour. David's regular rate is $530/hour. The blended rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.
City	TORONTO
Province/State	ONTARIO
Country	CANADA

Law Firm / Lawyer Record #	20
Law Firm	Blakes
Lawyer to be Retained	Brittany Shamess
Lawyer Year of Call	2016
Hourly Rate	570
Special Rate Details	Blended rate of $570 per hour. David's regular rate is $530/hour. The blended rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.
City	TORONTO
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Country	CANADA

Law Firm / Lawyer Record #	21
Law Firm	Blakes
Lawyer to be Retained	Jon Viner
Lawyer Year of Call	2016
Hourly Rate	570
Special Rate Details	Blended rate of $570 per hour. David's regular rate is $530/hour. The blended rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.
City	TORONTO
Province/State	ONTARIO
Country	CANADA

Law Firm / Lawyer Record #	22
Law Firm	Blakes
Lawyer to be Retained	Alice Tseng

Lawyer Year of Call	1998
Hourly Rate	570
Special Rate Details	Blended rate of $570 per hour. David's regular rate is $530/hour. The blended rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.
City	TORONTO
Province/State	ONTARIO
Country	CANADA

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PSR # 49/2016-17 - Details

PSR Versions | Print

Version No.	Active Between	Legal Director	PSR Status
6 - [Active]	2 Mar 2017 - Present	Carolyn Calwell	Pending EA Approval

Requesting Ministry	Energy
File Name	Electricity Price Mitigation
Retention Start Date	27 Feb 2017
Date Of Required Approval	15 Mar 2017
Proposed Maximum	5,000,000.00
Type of Legal Work	Opinions and Advice
Area of Law	Energy Law
Reason Outsourced	Expertise Not Available
Reason Outsourced Details	Required expertise is not available
Circumstances of Request	1. Description of legal work to be undertaken The Ministry of Energy is working to implement a strategy of electricity price mitigation to lower the cost of electricity for Ontario consumers. The price mitigation package is comprised of several initiatives that will either lower the price of components of consumers' electricity bills or remove components from electricity bills altogether. The price mitigation package includes an initiative to 'smooth' the global adjustment portion of electricity bills through a cost deferral strategy. In general terms, the global adjustment is a cost recovery mechanism designed to cover the fixed costs of running the province's electricity generation fleet, as well as the cost of conservation programs. These costs are recouped from electricity consumers through electricity bills. The goal of the global adjustment 'smoothing' initiative is to spread these costs over a longer period in order to provide price relief to electricity consumers. Although the majority of the province's electricity generators are under 20-year contracts, Energy expects that some of these generators will continue to provide value to the electricity system beyond their 20-year contract lives. Therefore, there is an opportunity to recognize the long-term benefit of these assets and 'bring forward' the benefit to electricity consumers by deferring some of the current costs by debt financing the global adjustment today. In order to implement global adjustment smoothing, ENERGY, in consultation with Ontario Power Generation (OPG), the Independent Electricity System Operator (IESO), and the Ontario Energy Board (OEB), is contemplating establishing a Special Purpose Vehicle/Trust that would obtain financing to fund the global adjustment. Funding is expected to come from capital markets and from the Province through equity injection, which would be loaned to the SPV as subordinated

	debt. The Province is expected to take equity in the SPV through OPG. The legal work required to support the initiative includes development of the legislative framework, drafting appropriate sale/purchase agreements between OPG and IESO with respect to the SPV, and arranging financing between the SPV and private sector lenders. 2. Why a MAG lawyer cannot act The work entails providing advice on sophisticated corporate and trust structures that must be designed to meet the goals of implementing global adjustment smoothing and achieving favourable accounting treatment. The work is complex and would benefit from private sector expertise, particularly in the fields of securitization, debt financing and trusts. External legal advice would support the development of the legislative framework, drafting appropriate sale/purchase agreements between OPG and IESO, and arranging financing between the SPV and private sector lenders. A significant component of this work will be responding to proposals from OPG as they work to implement GA smoothing. OPG is represented by Torys. Bay St. representation will allow the Province to test OPG's recommendations, understand market requirements and will provide the experience and expertise required to assist the Province in providing creative options for implementation. In particular, OPG has pointed to US models of asset securitization and it will be helpful to be able to draw on expertise that is familiar with this work. Judy Wilson, counsel with Blakes, has worked with the Ministry of Energy opposite OPG in the past. She will work with a multi-disciplinary team from within Blakes, drawing on required expertise as this project unfolds, and working closely with lawyers in the Legal Services Branch serving the Ministry of Energy. 3. Other legal branches contacted Ministry of Finance, Treasury Board, It is anticipated that the legal team serving the Energy client will draw on expertise across government as necessary as this project unfolds.
MAG Lawyer to whom retained lawyer will report	Carolyn Calwell

Law Firm / Lawyer Record #	1	
Law Firm	Blakes	Law Firm
Lawyer to be Retained	Judy Wilson	
Lawyer Year of Call	1985	
Hourly Rate	570	
Special Rate Details	Blended rate of $570 per hour. This rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services	

	run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.
City	TORONTO
Province/State	ONTARIO
Country	CANADA

Law Firm / Lawyer Record #	2	
Law Firm	Blakes	Law Firm
Lawyer to be Retained	Michael Matheson	
Lawyer Year of Call	1994	
Hourly Rate	570	
Special Rate Details	Blended rate of $570 per hour. This rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.	
City	TORONTO	
Province/State	ONTARIO	
Country	CANADA	

Law Firm / Lawyer Record #	3	
Law Firm	Blakes	Law Firm
Lawyer to be Retained	Tim Andison	
Lawyer Year of Call	2001	
Hourly Rate	570	
Special Rate Details	Blended rate of $570 per hour. This rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.	
City	TORONTO	
Province/State	ONTARIO	
Country	CANADA	

Law Firm / Lawyer Record #	4	
Law Firm	Blakes	Law Firm
Lawyer to be Retained	Bryson A. Stokes	
Lawyer Year of Call	1992	

Hourly Rate	570
Special Rate Details	Blended rate of $570 per hour. This rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.
City	TORONTO
Province/State	ONTARIO
Country	CANADA

Law Firm / Lawyer Record #	5	
Law Firm	Blakes	Law Firm
Lawyer to be Retained	Kim Harle	
Lawyer Year of Call	1995	
Hourly Rate	570	
Special Rate Details	Blended rate of $570 per hour. This rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.	
City	TORONTO	
Province/State	ONTARIO	
Country	CANADA	

Law Firm / Lawyer Record #	6	
Law Firm	Blakes	Law Firm
Lawyer to be Retained	David Bristow	
Lawyer Year of Call	2015	
Hourly Rate	570	
Special Rate Details	Blended rate of $570 per hour. This rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.	
City	TORONTO	
Province/State	ONTARIO	
Country	CANADA	

Law Firm / Lawyer Record #	7	
Law Firm	Blakes	Law Firm

Lawyer to be Retained	Theresa Chan
Lawyer Year of Call	2011
Hourly Rate	570
Special Rate Details	Blended rate of $570 per hour. This rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.
City	TORONTO
Province/State	ONTARIO
Country	CANADA

Law Firm / Lawyer Record #	8	
Law Firm	Blakes	Law Firm
Lawyer to be Retained	Jennifer Hancock	
Lawyer Year of Call	2013	
Hourly Rate	570	
Special Rate Details	Blended rate of $570 per hour. This rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.	
City	TORONTO	
Province/State	ONTARIO	
Country	CANADA	

Law Firm / Lawyer Record #	9	
Law Firm	Blakes	Law Firm
Lawyer to be Retained	Marianne Smith	
Lawyer Year of Call	2003	
Hourly Rate	570	
Special Rate Details	Blended rate of $570 per hour. This rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.	
City	TORONTO	
Province/State	ONTARIO	
Country	CANADA	

Law Firm / Lawyer Record #	10
Law Firm	Blakes Law Firm
Lawyer to be Retained	Kate McGilvray
Lawyer Year of Call	1998
Hourly Rate	570
Special Rate Details	Blended rate of $570 per hour. This rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.
City	TORONTO
Province/State	ONTARIO
Country	CANADA

Reviewed by:	**Approved by:**	**DAG Approval Required? Yes / No**
_____	_____	_____
	Irwin Glasberg, ADAG(LSD) Date	**Patrick Monahan,** Deputy Attorney General Date

Ontario

Legal Services Division

Ministry of the Attorney General

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PSR # 49/2016-17 - Details

PSR Versions | Printable View

Version No.	Active Between	Legal Director	PSR Status
8 - [Active]	6 Mar 2017 - Present	Carolyn Calwell	Approved [6 Mar 2017]

Requesting Ministry	Energy		
File Name	Electricity Price Mitigation		
Retention Start Date	27 Feb 2017		
Date Of Required Approval	15 Mar 2017		
Proposed Maximum	500,000.00	Initial Approved Amount	500,000.00
Type of Legal Work	Opinions and Advice		
Area of Law	Energy Law		
Reason Outsourced	Expertise Not Available		
Reason Outsourced Details	Required expertise is not available		

Circumstances of Request

1. Description of legal work to be undertaken

The Ministry of Energy is working to implement a strategy of electricity price mitigation to lower the cost of electricity for Ontario consumers. The price mitigation package is comprised of several initiatives that will either lower the price of components of consumers' electricity bills or remove components from electricity bills altogether.

The price mitigation package includes an initiative to 'smooth' the global adjustment portion of electricity bills through a cost deferral strategy. In general terms, the global adjustment is a cost recovery mechanism designed to cover the fixed costs of running the province's electricity generation fleet, as well as the cost of conservation programs. These costs are recouped from electricity consumers through electricity bills. The goal of the global adjustment 'smoothing' initiative is to spread these costs over a longer period in order to provide price relief to electricity consumers. Although the majority of the province's electricity generators are under 20-year contracts, Energy expects that some of these generators will continue to provide value to the electricity system beyond their 20-year contract lives. Therefore, there is an opportunity to recognize the long-term benefit of these assets and 'bring forward' the benefit to electricity consumers by deferring some of the current costs by debt financing the global adjustment today.

In order to implement global adjustment smoothing, ENERGY is working with Ontario Power Generation (OPG), the Independent Electricity System Operator (IESO), and the Ontario Energy Board (OEB). OPG is contemplating establishing a Special Purpose Vehicle/Trust that would obtain financing to fund the global adjustment. Funding is expected to come from capital markets and from the Province through equity injection, which would be loaned to the SPV as subordinated debt. The Province is expected to take equity in the SPV through OPG.

The legal work required to support the initiative includes development of the legislative framework, drafting appropriate sale/purchase agreements between OPG and IESO with respect to the purchase and sale of the regulatory asset, and arranging financing between the SPV and private sector lenders. This work will require specialized expertise in trusts, financial services, energy law and potentially securities.

2. Why a MAG lawyer cannot act

The work entails providing advice on sophisticated corporate and trust structures that must be designed to meet the goals of implementing global adjustment smoothing and achieving favourable accounting treatment. The work is complex and would benefit from private sector expertise, particularly in the fields of securitization, debt financing and trusts. External legal advice would support the development of the legislative framework, drafting appropriate sale/purchase agreements between OPG and IESO, and arranging financing between the SPV and private sector lenders.

A significant component of this work will be responding to proposals from OPG as they work to implement GA smoothing. OPG is represented by Torys. Outside counsel with experience in financial services, securities and transactions will allow the Province to test OPG's recommendations, understand market requirements and will provide the experience and expertise required to assist the Province in providing creative options for implementation. In particular, OPG has pointed to US models of asset securitization and it will be helpful to be able to draw on expertise that is familiar with this work.

Judy Wilson, a partner with Blakes, has worked with the Ministry of Energy opposite OPG in the past (nuclear new build). She will work with a multi-disciplinary team from within Blakes, drawing on required expertise as this project unfolds, and working closely with lawyers in the Legal Services Branch serving the Ministry of Energy. She has identified partners in relevant practice areas and they have identified associates who may be called upon to support them. The team has been assembled to be able to be nimble and responsive to the legal needs on this file as it unfolds. The team will work closely with and support the work of lawyers in the Legal Services Branch that serves the Ministry of Energy.

3. Other legal branches contacted

Ministry of Finance, Treasury Board

It is anticipated that the legal team serving the Energy client will draw on expertise across government as necessary as this project unfolds.

MAG Lawyer to whom retained lawyer will report	Carolyn Calwell

Law Firm / Lawyer Record #	1	
Law Firm	Blakes	Law Firm
Lawyer to be Retained	Judy Wilson	
Lawyer Year of Call	1985	
Hourly Rate	570	
Special Rate Details		

	Blended rate of $570 per hour. Judy's regular rate is $895/hour. The blended rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.
City	TORONTO
Province/State	ONTARIO
Country	CANADA

Law Firm / Lawyer Record #	2
Law Firm	Blakes Law Firm
Lawyer to be Retained	Michael Matheson
Lawyer Year of Call	1994
Hourly Rate	570
Special Rate Details	Blended rate of $570 per hour. Mike's regular rate is $1,005/hour. The blended rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.
City	TORONTO
Province/State	ONTARIO
Country	CANADA

Law Firm / Lawyer Record #	3
Law Firm	Blakes Law Firm
Lawyer to be Retained	Tim Andison
Lawyer Year of Call	2001
Hourly Rate	570
Special Rate Details	Blended rate of $570 per hour. Tim's regular rate is $990/hour. The blended rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.
City	TORONTO
Province/State	ONTARIO
Country	CANADA

Law Firm / Lawyer Record #	4
Law Firm	Blakes Law Firm
Lawyer to be Retained	Bryson A. Stokes
Lawyer Year of Call	1992
Hourly Rate	570
Special Rate Details	Blended rate of $570 per hour. Bryson's regular rate is $835/hour. The blended rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.
City	TORONTO
Province/State	ONTARIO
Country	CANADA

Law Firm / Lawyer Record #	5
Law Firm	Blakes Law Firm
Lawyer to be Retained	Marianne Smith
Lawyer Year of Call	2003
Hourly Rate	570
Special Rate Details	Blended rate of $570 per hour. Marianne's regular rate is $710/hour. The blended rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.
City	TORONTO
Province/State	ONTARIO
Country	CANADA

Law Firm / Lawyer Record #	6
Law Firm	Blakes Law Firm
Lawyer to be Retained	Kate McGilvray
Lawyer Year of Call	1998
Hourly Rate	570
Special Rate Details	Blended rate of $570 per hour. Kate's regular rate is $760/hour. The blended rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.
City	TORONTO

Province/State	ONTARIO
Country	CANADA

Law Firm / Lawyer Record #	7
Law Firm	Blakes Law Firm
Lawyer to be Retained	Theresa Chan
Lawyer Year of Call	2011
Hourly Rate	570
Special Rate Details	Blended rate of $570 per hour. Theresa's regular rate is $640/hour. The blended rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.
City	TORONTO
Province/State	ONTARIO
Country	CANADA

Law Firm / Lawyer Record #	8
Law Firm	Blakes Law Firm
Lawyer to be Retained	Jennifer Hancock
Lawyer Year of Call	2013
Hourly Rate	570
Special Rate Details	Blended rate of $570 per hour. Jennifer's regular rate is $550/hour. The blended rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.
City	TORONTO
Province/State	ONTARIO
Country	CANADA

Law Firm / Lawyer Record #	9
Law Firm	Blakes Law Firm
Lawyer to be Retained	David Bristow
Lawyer Year of Call	2015
Hourly Rate	570
Special Rate Details	Blended rate of $570 per hour. David's regular rate is $505/hour. The blended rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.
City	TORONTO
Province/State	ONTARIO
Country	CANADA

Law Firm / Lawyer Record #	10
Law Firm	Blakes Law Firm
Lawyer to be Retained	Zac Resnick
Lawyer Year of Call	2001
Hourly Rate	570
Special Rate Details	Blended rate of $570 per hour. Zac's regular rate is $505/hour. The blended rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.
City	TORONTO
Province/State	ONTARIO
Country	CANADA

Law Firm / Lawyer Record #	11
Law Firm	Blakes Law Firm
Lawyer to be Retained	David Mender
Lawyer Year of Call	2014
Hourly Rate	570
Special Rate Details	Blended rate of $570 per hour. David's regular rate is $530/hour. The blended rate is the same as the last rate that Blakes submitted in a competitive procurement for legal services run by Infrastructure Ontario and Metrolinx. Blakes was successful in that procurement.
City	TORONTO
Province/State	ONTARIO
Country	CANADA

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Legal Services Program Support	Monday, 17 Apr. 2017	Contact Us

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Legal Services Branch

Ministry of Energy

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Ministry of
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Accessibility Directorate of Ontario

56 Wellesley Street West
5th Floor,
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Telephone: (416) 212.4569
Fax: (416) 326.1021

Ministère du
Procureur général

Direction des services juridiques

Ministère de l'Énergie

Ministère du Développement
économique et de la Croissance

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Ministère de l'Infrastructure

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Téléphone: (416) 212.4569
Télécopieur: (416) 326.1021

Ontario

Sent by Courier

June 7, 2017 PRIVATE AND CONFIDENTIAL

Judy Wilson
Blakes
199 Bay Street
Suite 4000, Commerce Court West
Toronto, ON
M5L 1A9

Re: Update to the Letter of Retention for provision of Legal Services to Her Majesty the Queen in right of Ontario as represented by the Ministry of the Attorney General Legal Advice regarding Electricity Price Mitigation

Dear Ms. Wilson,

I am writing to update Schedule A of the retainer letter dated March 6, 2017 to you from our Legal Services Branch.

The following are added to Schedule A to the Retainer:

Schedule A

Name	Rate	Year of Call
Stephen R Ashbourne	$570	1991
Catherine Beagan Flood	$570	2000
Danielle Butler	$570	2016

Tairroyn Childs	$275	N/A
Peter Hogg	$570	1973
Adam Jackson	$570	2013
Mike Maodus	$275	N/A
Leanne Owen	$230	N/A
J.A. Prestage	$570	1987
Paul Rand	$570	2003
Brittany Shamess	$570	2016
Jon Viner	$570	2016
Sharon Wong	$570	1988
Alice Tseng	$570	1998

All other provisions of the Retainer shall continue.

Please sign the acknowledgement below and return to me at your earliest convenience. Once received, we will be able to process your April 28, 2017 invoice in accordance with the foregoing. Thank you for bringing the additions to the resourcing for this matter to my attention.

Yours truly,



Carolyn Calwell
Legal Director

ACCEPTANCE

Blake, Cassels & Graydon LPP accepts the terms of this Retainer.

Per:_____ Date:_____
Judy Wilson

I have authority to bind the law firm.

Ministry of the
Attorney General

Legal Services Branch

Ministry of Energy

Ministry of
Economic Development and Growth

Ministry of
Research, Innovation and Science

Ministry of Infrastructure

Accessibility Directorate of Ontario

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Direction des services juridiques

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Ministère de la Recherche, de
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Téléphone: (416) 212.4569
Télécopieur: (416) 326.1021

Ontario

Sent by Courier

June 7, 2017 PRIVATE AND CONFIDENTIAL

Judy Wilson
Blakes
199 Bay Street
Suite 4000, Commerce Court West
Toronto, ON
M5L 1A9

Re: Update to the Letter of Retention for provision of Legal Services to Her Majesty the Queen in right of Ontario as represented by the Ministry of the Attorney General Legal Advice regarding Electricity Price Mitigation

Dear Ms. Wilson,

I am writing to update Schedule A of the retainer letter dated March 6, 2017 to you from our Legal Services Branch.

The following are added to Schedule A to the Retainer:

Schedule A

Name	Rate	Year of Call
Stephen R Ashbourne	$570	1991
Catherine Beagan Flood	$570	2000
Danielle Butler	$570	2016

Tairroyn Childs	$275	N/A
Peter Hogg	$570	1973
Adam Jackson	$570	2013
Mike Maodus	$275	N/A
Leanne Owen	$230	N/A
J.A. Prestage	$570	1987
Paul Rand	$570	2003
Brittany Shamess	$570	2016
Jon Viner	$570	2016
Sharon Wong	$570	1988
Alice Tseng	$570	1998

All other provisions of the Retainer shall continue.

Please sign the acknowledgement below and return to me at your earliest convenience. Once received, we will be able to process your April 28, 2017 invoice in accordance with the foregoing. Thank you for bringing the additions to the resourcing for this matter to my attention.

Yours truly,

Carolyn Calwell
Legal Director

ACCEPTANCE

Blake, Cassels & Graydon LPP accepts the terms of this Retainer.

Per: _____ Date: June 15/17
Judy Wilson

I have authority to bind the law firm.

Ministry of the
Attorney General

Legal Services Branch

Ministry of Energy

Ministry of
Economic Development and Growth

Ministry of
Research, Innovation and Science

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Téléphone: (416) 212.4569
Télécopieur: (416) 326.1021

Sent by Courier

March 6, 2017 PRIVATE AND CONFIDENTIAL

Blakes
199 Bay Street
Suite 4000, Commerce Court West
Toronto, ON
M5L 1A9

Attention: Judy Wilson

Dear Ms. Wilson:

**Re: Retention for provision of Legal Services to
Her Majesty the Queen in right of Ontario
As represented by the Ministry of the Attorney General
Legal Advice regarding Electricity Price Mitigation**

This letter sets out the terms and conditions whereby your firm, Blake, Cassels & Graydon LLP, has been retained to provide advice to the Ministry of the Attorney General on behalf of the Ministry of Energy (ENERGY) related to electricity price mitigation to lower the cost of electricity for Ontario consumers. The price mitigation plan includes an initiative to "smooth" the global adjustment portion of electricity bills through cost deferral, spreading these costs over a longer period of time to provide immediate price relief to electricity consumers. ENERGY is working with Ontario Power

Generation ("OPG"), the Independent Electricity System Operator and the Ontario Energy Board on this matter. OPG is contemplating the establishment of a Special Purpose Vehicle/Trust that would obtain financing to fund the global adjustment smoothing.

In performing this work, you may be required to brief officials from the Ministry of the Attorney General or the Ministry of Energy from time to time.

This matter will be undertaken by the counsel listed in Schedule "A" who will be compensated at the blended rate of five hundred and seventy dollars ($570.00) per hour. Your firm will not substitute legal counsel without our prior written approval. In addition to these fees, you will be reimbursed for reasonable disbursements on a cost basis and without mark-up. All disbursements other than routine expenses such as faxes, copies and long distance charges must be pre-approved. All disbursements must be supported by receipts.

Bills shall be submitted to me monthly for services performed during the preceding month, unless directed otherwise. The maximum amount for the Retainer is five hundred thousand dollars ($500,000.00). In your firm's statement of account, please identify each date the services were completed, by whom and time spent concerning same. Disbursements and applicable taxes should be listed separately on the account. Note that the maximum amount for the retainer is exclusive of disbursements and applicable taxes.

Any and all payments will be made to you on the basis of the statement of accounts provided. A print out of your firm's computerized dockets should accompany each billing. All invoices will be subject to review and approval.

The delivery of services shall comply with all applicable requirements, specifications and standards for accessibility established by the Ministry in accordance with the *Accessibility for Ontarians and Disabilities Act,* 2005, S.O. 2005 c. 11 and any regulations made thereto.

I will be your firm's primary contact and I can be reached at (416) 212-8392, Carolyn.Calwell@ontario.ca and at:

Carolyn Calwell
Legal Director
Ministry of the Attorney General
Ministry of Energy
56 Wellesley St. W. – 5th Floor, Legal Services
Toronto, ON M7A 2E7

During the course of this retainer, should issues be identified which should be more properly addressed by Ministry counsel, your firm will stop the work being performed under this retainer. Under such circumstances no further work will be undertaken until your firm has received further instructions.

You agree that any copyright in any reports, opinion, agreements or materials prepared by you pursuant to this retainer will be the sole property of the Crown in right of Ontario and that you hereby assign such copyright to the provincial Crown. Further, you hereby waive all moral rights in favour of the Crown in right of Ontario

You will not duplicate or copy any documentation provided by the Crown pursuant to this retainer except to the extent necessary to fulfill your obligations under this retainer.

You will promptly destroy or return to the Crown, upon expiry or termination of this retainer, all documentation which you received from the Crown pursuant to this retainer, provided that you may keep a copy of such part of the documentation as may be reasonably necessary to confirm the provision of the service in accordance with your professional obligations.

This retainer does not create an employer/employee relationship or any joint venture or partner relationship. You shall not hold yourself out as an agent, employee or partner or make any statement or representation that may have such authority.

The solicitor-client relationship will terminate upon the end of this retainer. For the purpose of avoiding future conflicts of interest, you will not use confidential information gained through this retainer in respect of work for other clients involving claims against Her Majesty the Queen in right of Ontario.

Either party may terminate this retainer at any time, without fault and without liability, upon two (2) weeks' notice of termination in writing.

The Ministry shall not by termination waive any rights or remedies it may have in law of equity at the date of termination. Termination shall not relieve you or your firm from warranties and other responsibilities relating to services performed and money paid up to and including the date of termination.

The retainer may be amended, altered or added to only by written agreement between the parties which agreement is supplemental to this retainer and thereafter forms part of this retainer.

The retainer and the rights, obligations and relations of the parties shall, unless otherwise specified, be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

It is understood that nothing in this retainer precludes or restricts your firm from acting for other clients in unrelated matters. This includes clients whose interests may be adverse to those of the Crown provided our confidential information is protected appropriately.

If your firm agrees with the terms and conditions set out in this retainer, please sign the acknowledgement below and return to me at your earliest convenience

Yours truly,

Carolyn Calwell
Legal Director

ACCEPTANCE

Blake, Cassels & Graydon LPP accepts the terms of this Retainer.

Per: _____ Date: Mar 7/2017
Judy Wilson

I have authority to bind the law firm.

Schedule "A"
List of Counsel and Rates

The following counsel will provide their services at the rates set out below:

Counsel	Rate	Year of Call
Judy Wilson	$570.00	1985
Mike Matheson	$570.00	1994
Tim Andison	$570.00	2001
Bryson Stokes	$570.00	1992
Marianne Smith	$570.00	2003
Theresa Chan	$570.00	2011
Jennifer Hancock	$570.00	2013
David Bristow	$570.00	2015
Kate McGilvray	$570.00	1998
Zac Resnick	$570.00	2015
David Mender	$570.00	2014

Ministry of the
Attorney General

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Fax: (416) 326.1021

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Ministère de l'Infrastructure

Direction générale de
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5e étage,
Toronto, ON
M7A 2E7

Téléphone: (416) 212.4569
Télécopieur: (416) 326.1021

Ontario

Sent by Email

March 6, 2017 PRIVATE AND CONFIDENTIAL

Blakes
199 Bay Street
Suite 4000, Commerce Court West
Toronto, ON
M5L 1A9

Attention: Judy Wilson

Dear Ms. Wilson:

**Re: Retention for provision of Legal Services to
Her Majesty the Queen in right of Ontario
As represented by the Ministry of the Attorney General
Legal Advice regarding Electricity Price Mitigation**

This letter sets out the terms and conditions whereby your firm, Blake, Cassels & Graydon LLP, has been retained to provide advice to the Ministry of the Attorney General on behalf of the Ministry of Energy (ENERGY) related to electricity price mitigation to lower the cost of electricity for Ontario consumers. The price mitigation plan includes an initiative to "smooth" the global adjustment portion of electricity bills through cost deferral, spreading these costs over a longer period of time to provide immediate price relief to electricity consumers. ENERGY is working with Ontario Power

Generation ("OPG"), the Independent Electricity System Operator and the Ontario Energy Board on this matter. OPG is contemplating the establishment of a Special Purpose Vehicle/Trust that would obtain financing to fund the global adjustment smoothing.

In performing this work, you may be required to brief officials from the Ministry of the Attorney General or the Ministry of Energy from time to time.

This matter will be undertaken by the counsel listed in Schedule "A" who will be compensated at the blended rate of five hundred and seventy dollars ($570.00) per hour. Your firm will not substitute legal counsel without our prior written approval. In addition to these fees, you will be reimbursed for reasonable disbursements on a cost basis and without mark-up. All disbursements other than routine expenses such as faxes, copies and long distance charges must be pre-approved. All disbursements must be supported by receipts.

Bills shall be submitted to me monthly for services performed during the preceding month, unless directed otherwise. The maximum amount for the Retainer is five hundred thousand dollars ($500,000.00). In your firm's statement of account, please identify each date the services were completed, by whom and time spent concerning same. Disbursements and applicable taxes should be listed separately on the account. Note that the maximum amount for the retainer is exclusive of disbursements and applicable taxes.

Any and all payments will be made to you on the basis of the statement of accounts provided. A print out of your firm's computerized dockets should accompany each billing. All invoices will be subject to review and approval.

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I will be your firm's primary contact and I can be reached at (416) 212-8392, Carolyn.Calwell@ontario.ca and at:

Carolyn Calwell
Legal Director
Ministry of the Attorney General
Ministry of Energy
56 Wellesley St. W. – 5th Floor, Legal Services
Toronto, ON M7A 2E7

During the course of this retainer, should issues be identified which should be more properly addressed by Ministry counsel, your firm will stop the work being performed under this retainer. Under such circumstances no further work will be undertaken until your firm has received further instructions.

You agree that any copyright in any reports, opinion, agreements or materials prepared by you pursuant to this retainer will be the sole property of the Crown in right of Ontario and that you hereby assign such copyright to the provincial Crown. Further, you hereby waive all moral rights in favour of the Crown in right of Ontario

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You will promptly destroy or return to the Crown, upon expiry or termination of this retainer, all documentation which you received from the Crown pursuant to this retainer, provided that you may keep a copy of such part of the documentation as may be reasonably necessary to confirm the provision of the service in accordance with your professional obligations.

This retainer does not create an employer/employee relationship or any joint venture or partner relationship. You shall not hold yourself out as an agent, employee or partner or make any statement or representation that may have such authority.

The solicitor-client relationship will terminate upon the end of this retainer. For the purpose of avoiding future conflicts of interest, you will not use confidential information gained through this retainer in respect of work for other clients involving claims against Her Majesty the Queen in right of Ontario.

Either party may terminate this retainer at any time, without fault and without liability, upon two (2) weeks' notice of termination in writing.

The Ministry shall not by termination waive any rights or remedies it may have in law of equity at the date of termination. Termination shall not relieve you or your firm from warranties and other responsibilities relating to services performed and money paid up to and including the date of termination.

The retainer may be amended, altered or added to only by written agreement between the parties which agreement is supplemental to this retainer and thereafter forms part of this retainer.

The retainer and the rights, obligations and relations of the parties shall, unless otherwise specified, be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

It is understood that nothing in this retainer precludes or restricts your firm from acting for other clients in unrelated matters. This includes clients whose interests may be adverse to those of the Crown provided our confidential information is protected appropriately.

If your firm agrees with the terms and conditions set out in this retainer, please sign the acknowledgement below and return to me at your earliest convenience

Yours truly,

Carolyn Calwell
Legal Director

ACCEPTANCE

Blake, Cassels & Graydon LPP accepts the terms of this Retainer.

Per: _____ Date: Mar 7/2017
Judy Wilson

I have authority to bind the law firm.

Schedule "A"
List of Counsel and Rates

The following counsel will provide their services at the rates set out below:

Counsel	Rate	Year of Call
Judy Wilson	$570.00	1985
Mike Matheson	$570.00	1994
Tim Andison	$570.00	2001
Bryson Stokes	$570.00	1992
Marianne Smith	$570.00	2003
Theresa Chan	$570.00	2011
Jennifer Hancock	$570.00	2013
David Bristow	$570.00	2015
Kate McGilvray	$570.00	1998
Zac Resnick	$570.00	2015
David Mender	$570.00	2014

MINISTRY OF ENERGY

Monetization of the Global Adjustment

Legislative Parameters to Address Market Considerations

This is a high-level summary of market considerations that may be relevant to the legislative drafting process. We assume that the goal will be to establish a highly-rated, market-based financing transaction, backed by payment obligations owing by users of power facilities in Ontario.

Broadly, the market[1] for this sort of financing will focus on 3 legal enquiries:

1. **Quality of the Underlying Assets**. The strength and reliability of the underlying payment stream and related rights, including the validity and enforceability of the underlying payment obligations.

2. **Transfer and Isolation of the Underlying Assets**. The ability to isolate and convey the payment stream to investors, without regard to the rights or credit risk of third parties, such as IESO, LDCs, Generators or market intermediaries.

3. **Risk Mitigation**. The mitigation of practical risks arising in connection with flowing through the cash flows from the underlying assets to the investors.

The legislative drafting process provides an opportunity to anticipate these market considerations and improve the prospects for a successful transaction. The following highlights key elements of the legal analysis and corresponding legislative parameters.

A. The Underlying Assets

1. **Obligors** – The overall creditworthiness and other characteristics of the group of payers obligated to pay the GA amount will be critical to the credit assessment. Broad, statistical diversity of the user payers (e.g., commercial users versus non-commercial users) is fundamental to obtaining the highest rating. The group of payers will be assessed regarding the potential for changes in the size or composition of the group and likely per capita energy use.

   It will be very important to ensure that the identified group of payers cannot "bypass" their payment obligations (e.g., define the obligors to not depend on actual electricity use but rather their connection to the grid) or otherwise to identify circumstances where the identified group of payers could avoid their future payment obligations (e.g., leaving Ontario).

2. **Attributes of the Obligation** – The legislation will need to create a transferable property right entitling the owner to claim an amount, throughout the term of the

[1] This summary relies broadly on Moody's rating methodology for utility cost recovery-backed financings. To the extent that this methodology identifies U.S. legal concepts, comparable Ontario concepts will require further consideration.

issued securities, sufficient to make full and timely payment of principal and interest to investors. It will be important to identify any caps or limits on the permitted quantum of related GA amounts and as to any limits on the length of time that such user charges may be lawfully imposed.

As noted above, it will be important to include in the obligation an adjustment right (i.e., a reset or true up privilege), enabling the owner of the payment stream to take account of differences between anticipated and actual payment performance of the GA amount from time to time, including in respect of user payment defaults. To the extent that payers are required to pay a severance fee (e.g., if leaving Ontario), the validity of that obligation will be evaluated (together with the true-up entitlement and the frequency of assessment) in the market's assessment as to whether the cash flow stream will be sufficient to repay the issued securities.

It is noteworthy that the rating of the issued securities will have regard to the potential per user charge, to ensure it is low in absolute amount and as a percentage of a user's energy bill (e.g., Moody's typically expects that the recovery charge would be less than 10% of a user's monthly bill).

3. **Allocations of Payments from Obligors** - If an obligor pays less than the full invoiced amount owing under its utility bill, the legislation should address the relative share of the cash payment to be allocated to pay the GA amount versus other billed amounts. To the extent that the GA amount is prioritized above the other utility charges, the quality of the obligations, as underlying assets, would be significantly improved (although the impact on the LDCs and others who rely on the other component receipts could raise other serious issues).

4. **Validity of the Obligations** – The legislation will need to create a valid, irrevocable property right entitling the owner of the underlying assets to collect (through a servicer – initially IESO/OPG) and receive the GA amount. Related considerations in this regard will include:

    a. eliminating any rights of users to set-off intermediate claims (e.g., user claims against the LDCs)

    b. anticipating and addressing potential legal challenges (e.g., the constitutionality of the legislation, such as the obligations being characterized as a tax that is not valid)

    c. the validity and irrevocability of the [financing order] authorizing the LDCs and IESO to collect the GA amount

    d. the robustness and validity of the "true-up" entitlement, its frequency of application and any inherent limitations.

5. **Enforceability of the Obligations** – The legislation creating the obligations will need to be permanent and not capable of a non-consensual governmental amendment or revocation. Related considerations will include:

a. the inability (including of future governments) to unilaterally amend the legislation in a way that could weaken or invalidate the payment obligations or the ability of the owner to collect them

b. the ability of the legislation to withstand challenges to rescind, revoke or alter the obligations

c. the ability to withstand challenges to the government's pledge not to impair the right or process to collect the obligations.

6. **Related Rights** – The market will expect binding assurances from a very highly-rated source (e.g., the Crown) that the foregoing will be applicable and upheld. These related rights need not take the form of an indemnity or guarantee[2] of the issued securities, but can be limited to the accuracy of asset representations made in connection with the transactions (e.g., that the obligations are valid and enforceable obligations of the payers). In addition, the market may require supplemental rights from third parties or property to address the assessed risk of future cash shortfalls – both temporary (liquidity) and permanent (credit enhancement).

B. **<u>Transfer and Isolation</u>** – The legal structure applied will be very similar to the "special purpose entity" structures commonly used in Canadian securitization transactions. The marketability of issued securities will depend on the legal structure having the effect[3] of putting the underlying assets beyond the reach of creditors of IESO, the LDCs and the Generators – enabling the investors (through an intermediary) to realize on the underlying assets despite an insolvency of those other entities.

Generally speaking, the Canadian securitization market has an established blueprint to achieve these purposes, which is easily adapted and applicable to the proposed transaction. To the extent that it is desirable for the legislation to bolster these legal conclusions, the legislation may prescribe a desired legal outcome in a definitive manner, so long as the particular enactments are not otherwise invalid (e.g., having an invalid or unconstitutional effect on third party rights and remedies[4]).

The legal prerequisites for a Canadian securitization typically include:

1. An irrevocable and valid right to transfer the underlying assets, which could be specified in the legislation.

2. A "true sale" of the underlying assets (including unambiguous procedures for transfer), which could be specifically contemplated (deemed to occur) in the legislation.

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[2] We expect that such an open indemnity would be inconsistent with the anticipated character of the transaction, as "off balance sheet" to the relevant entities.

[3] As corroborated by external counsel opinions.

[4] These sorts of considerations may conflict with the legislative authority of the federal government (e.g., insolvency laws), and so careful consideration will be needed to the extent that any such outcomes are pursued.

3. The formation of a bankruptcy remote (i.e., no other creditors or claimants), special purpose entity (SPV) (i.e., no other business or permitted activities), which could be specifically contemplated (deemed to occur) pursuant to the legislation

4. Sufficient isolation and separation of the SPV from the transferor and other third parties that a court would not permit the assets and debt of the SPV to be substantively consolidated into the assets and liabilities of the transferor or other third party in an insolvency proceeding affecting the transferor

5. Comfort that the SPV will not incur unanticipated tax liabilities

6. Security and priority of payment arrangements (a payment "waterfall") that ensures that the issued securities will have a senior-ranking right to be paid from the cash flows deriving from the underlying assets

7. Cash reserves, subordinated securities, hedges and other credit enhancements to address any payment shortfalls or mismatches that may arise

8. The ability to replace IESO or the LDCs as the collection agent or servicer of the underlying obligations, based on the occurrence of specific events such as an insolvency or breach of covenant of IESO or the LDCs

9. Upfront appointment of a back-up servicer to ensure a smooth transition and no disruption in the collection and payment mechanics of the transaction.

C. **Other Risk Mitigation** – The flow of actual payments, through the LDCs, IESO and deposit taking intermediaries, will be structured to minimize the risk that the property rights in cash flows is lost to the investors. Examples will include:

1. **Commingling of cash** – The frequency of cash flow deposits and the ability of the LDCs and IESO to handle and apply cash amounts (versus directing user payments to a 'lock box') will depend on the assessed credit worthiness of those entities, the existence of any third party guarantee of those obligations and the absence of defaults or insolvency. The manner and required frequency of cash deposits will raise practical considerations for the transaction, including the 'negative carry' associated with unapplied cash amounts and the administrative burden of redirecting and isolating the GA amount from other parts of a user's utility bill.

2. **Right to Directly Enforce against Users** – At its core, an asset-backed financing is predicated on the ability of the investors to look through the legal structure and get access to the end-payers. Providing for that circumstance (however remote) would be extraordinarily disruptive and could raise other practical issues.

3. **Hedging** – To the extent that the issued securities are denominated in a currency other than CAD, or if the interest rate payable on the issued securities differs from the based assumptions incorporated into the GA amount calculation, the SPV may be required to hedge those differences by entering into derivative contracts with eligible (rated) counterparties.

4. **Replacement of the administrative agent of the SPV** – The transaction will allow for the replacement of the administrative agent of the SPV based on predetermined ('bad') events.

Adverse changes in the legal environment could impact the ratings given to the issued securities and the viability of future offerings.

Fun Blakes

OUTLINE

Creation of the Asset

Despite [rate legislation], each Electricity Distributor shall include in each monthly invoice to a Customer an amount payable by the Customer equal to the Transition Amount.

The Transition Amount shall be payable by the Customer to the Electricity Distributor, as agent for and on behalf of IESO.

The Customer's obligation to pay each Transition Amount shall constitute a separate and distinct chose in action entitling IESO, as the initial owner and payee, and any Person who has acquired ownership thereof from IESO, a right of action for payment and collection against the Customer. The collection and enforcement of such right may only be exercised in accordance with the Collection Hierarchy, for and on behalf of the owner thereof.

Determination of the Transition Amount

"**Actual Finance Amount**" means, in respect of a Calculation Period, the sum of the following amounts:

(1) the Debt Repayment for the Calculation Period,
(2) the Interest and Finance Charges for the Calculation Period,
(3) the Redemption Amount for the Calculation Period,
(4) the Finance Reserve Deposit for the Calculation Period,
(5) the Additional Funding Charges for the Calculation Period, and
(6) the Contingency Reserve Contribution for the Calculation Period.

"**Additional Funding Charges**" means [To follow].

"**Administrative Agents**" means [To follow].

"**Advisors**" means [To follow].

"**Calculation Agent**" means IESO or, following any Replacement Event, the Replacement Agent appointed under Section •.

"**Calculation Period**" means each [six] month period commencing [January 1st and July 1st].

"**Capital Markets Intermediaries**" means [To follow].

"Collected Amount Adjustment" means, in respect of a Calculation Period, the amount (which may be a negative amount) equal to (a) the related Estimated Finance Amount for the Calculation Period, minus (b) the sum of all amounts collected from Customers and paid to, to the account of or for the benefit of IESO and each Finance Entity in respect of Transition Amounts during the Calculation Period.[1]

"**Contingency Reserve Contribution**" means [To follow].

"**Credit Enhancement Providers**" means [To follow].

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[1] This would pick up adjustments based on actual collection experience, changes in the Customer Base, changes in the actual costs (versus earlier estimates) included in the Transition Amount calculation, etc.

"**Customer Base**" means, for a Calculation Period, the total number of [Ratepayers] in the Province determined by the Calculation Agent as of the [third] Business Day immediately preceding the first day of the Calculation Period. **[See footnote 2]**

"**Customer Payment**" means each payment made by a Customer in respect of its obligation to pay a Transition Amount.

"**Derivatives**" means [To follow].

"**Disbursement Counterparties**" means [To follow].

"**ED Replacement Event**" means [To follow].

"**Estimated Additional Funding Charges**" means, for a Calculation Period, the sum of (a) the Additional Funding Charges accruing due and payable during the Calculation Period in respect of outstanding Finance Obligations incurred by IESO and each Finance Entity under the Finance Program and (b) the Calculation Agent's estimate of the Additional Funding Charges that will accrue due and become payable during the Calculation Period in respect of Finance Obligations expected to be incurred by IESO and each Finance Entity under the Finance Program during the Calculation Period.

"**Estimated Contingency Reserve**" means, for a Calculation Period, the Contingency Reserve Contribution determined by the Calculation Agent in respect of the Calculation Period.

"**Estimated Finance Amount**" means, in respect of a Calculation Period, the sum of the following amounts:

(1) the Scheduled Debt Repayment for the Calculation Period,
(2) the Estimated Interest Payment for the Calculation Period,
(3) the Estimated Redemption Amount for the Calculation Period,
(4) the Estimated Finance Reserve Deposit for the Calculation Period,
(5) the Estimated Additional Funding Charges for the Calculation Period, and
(6) the Estimated Contingency Reserve for the Calculation Period.

"**Estimated Finance Reserve Deposit**" means, for a Calculation Period, the sum of (a) the Finance Reserve Deposits required to be made during the Calculation Period in respect of outstanding Finance Obligations incurred by IESO and each Finance Entity under the Finance Program and (b) the Calculation Agent's estimate of the Finance Reserve Deposits that will be required to be made during the Calculation Period in respect of Finance Obligations expected to be incurred by IESO and each Finance Entity under the Finance Program during the Calculation Period.

"**Estimated Interest Payment**" means, for a Calculation Period, the sum of (a) the Interest and Periodic Finance Charges accruing due and payable during the Calculation Period in respect of outstanding Finance Obligations incurred by IESO and each Finance Entity under the Finance Program and (b) the Calculation Agent's estimate of the Interest and Periodic Finance Charges that will accrue due and become payable during the Calculation Period in respect of Finance Obligations expected to be incurred by IESO and each Finance Entity under the Finance Program during the Calculation Period.

"**Estimated Redemption Amount**" means, for a Calculation Period, the sum of (a) the Redemption Amount payable during the Calculation Period in respect of outstanding Finance Obligations incurred by IESO and each Finance Entity under the Finance Program and (b) the Calculation Agent's estimate of the Redemption Amount that will become payable during the Calculation Period in respect of Finance Obligations expected to be incurred by IESO and each Finance Entity under the Finance Program during the Calculation Period.

"**Finance Obligation**" means each payment obligation incurred by IESO or a Finance Entity under each Finance Program, including without limitation indebtedness, payment obligations arising under or in respect of Derivatives, payment obligations owing to Service Providers, Administrative Agents, Finance Entity Intermediaries, Capital Markets Intermediaries, Advisors, Lenders, Credit Enhancement Providers, Liquidity Providers, Disbursement Counterparties, Regulatory Agencies and Rating Agencies.

"**Finance Entity**" means each Person that is authorized by the Regulation to incur Finance Obligations under the Finance Program.

"**Finance Entity Intermediaries**" means [To follow].

"**Finance Program**" means each financing arrangement authorized by the Regulation under which IESO or any Finance Entity incurs Finance Obligations that, by the terms of such financing arrangement, will be serviced primarily by applying the cash flows arising from time to time or otherwise derived from the Customer Payments and Finance Reserve Deposits.

"**Finance Receipts**" means, for a Calculation Period, any received by or on behalf of IESO and any Finance Entity during the Calculation Period in respect of any Finance Obligations, including without limitation any reimbursement of standby commitment fees or charges paid by any Lender, any reimbursement of credit enhancement fees or charges paid by any Credit Enhancement Provider, any reimbursement of liquidity fees or charges paid by any Liquidity Provider and any periodic amounts (including for greater certainty any termination payments) paid to IESO and any Finance Entity under Derivatives.

"**Finance Reserve Deposits**" means [To follow].

"**IESO Replacement Event**" means [To follow].

"**Interest and Finance Charges**" means, for a Calculation Period, the amount by which (a) the aggregate of all interest and other periodic finance charges paid by IESO and each Finance Entity during the Calculation Period in respect of any Finance Obligations, including without limitation any standby commitment fees or charges paid to any Lender, credit enhancement fees or charges paid to any Credit Enhancement Provider, liquidity fees or charges paid to any Liquidity Provider and periodic amounts (including for greater certainty any termination payments) paid under Derivatives, exceeds (b) the aggregate of all Finance Receipts paid to IESO and any Finance Entity during the Calculation Period in respect of any Finance Obligations.

"**Lenders**" means [To follow].

"**Liquidity Providers**" means [To follow].

"**Period Finance Amount**" means, for a Calculation Period, the sum of (a) the related Estimated Finance Amount and (b) the True-Up Amount calculated by the Calculation Agent in respect of the immediately preceding Calculation Period.

"**Rating Agencies**" means [To follow].

"**Redemption Amount**" means [To follow].

"**Regulatory Agencies**" means [To follow].

"**Service Providers**" means [To follow].

"**Transition Amount**" means, in respect of a Calculation Period, [one-sixth] of the Period Finance Amount, [divided by the Customer Base][2].

"**True-Up Amount**" means, in respect of a Calculation Period, the amount (which may be a negative amount) equal to (a) the Estimated Finance Amount for the Calculation Period, minus (b) the Actual Finance Amount for the Calculation Period, plus (c) the Collected Amount Adjustment.

Proceeds Hierarchy

[Address that (1) each Transition Amount will form a separate debt owing by a Customer (2) amounts paid by a Customer to an Electricity Distributor pursuant to an Electricity Invoice will be allocable on a *pro rata* basis to and a corresponding deemed payment of the Transition Amount, on the one hand, and the amount by which the other amounts invoiced under the Electricity Invoice exceed any payment reductions claimed by the Customer that reduce the amount of the amount paid, on the other hand (3) the Electricity Distributor will be deemed to hold all amounts received by it in respect of the payment of the Transition Amount in trust[3] for the owner of the Asset (i.e., IESO or an applicable Finance Entity), until such amount is segregated and deposited into the Collection Account, and (4) the Electricity Distributor will be required to deposit amounts received by it in respect of the Transition Amount within a specified number of Business Days (earliest prescribed under any Financing Program).]

Collection Hierarchy

[Address (1) each Electricity Distributor is deemed to act as agent for the owner of the Asset (i.e., IESO or an applicable Finance Entity) and will be required to collect and administer, etc., in respect of the Transition Amount subject to a fiduciary-like duty or prudence, diligence and care (e.g., equal to treatment of its own property) (2) any Electricity Distributor will be replaced in that capacity upon an ED Replacement Event (basically material breach or insolvency) (3) as a result of an ED Replacement Event the legal representative of the Electricity Distributor will be required to permit and will cooperate to enable the ED Replacement Agent to administer and collect the Transition Amounts (needs elaboration) (4) the ED Replacement Agent will be appointed by based on the requirements of the Finance Programs (5) IESO will be replaced in its capacity as Servicer for any Finance Entity upon an IESO Replacement Event (basically material breach or insolvency) (6) as a result of an IESO Replacement Event the legal representative of IESO will be required to permit and will cooperate to enable the IESO Replacement Agent to administer and apply the Transition Amounts and will assume power over the Collection Account (needs elaboration) (4) the IESO Replacement Agent will be appointed by based on the requirements of the Finance Programs.]

what are LDCs current obligations

Permitted Assignment of the Asset

[Address: (1) permitted assignment/sale/security/monetization of the Asset directly by IESO and to or through any Finance Entity and in turn to their assigns (including secured parties) (2) deemed validity and priority of any assignment/sale/security/monetization of the Asset in favour of the applicable Finance

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[2] A key question will be how the overall costs will be spread across the rate base. For simplicity, the approach here is based on a *per capita* (ratepayer) concept. This would mean that all customers who are invoiced in a month would pay the same Transition Amount, and to the extent that the invoiced amounts (i.e., the Transition Amounts billed for a month) are higher or lower than the actual costs, due to a change in the Customer Base, that difference should (among other things) be reflected in the True-Up calculation for the relevant reference period (see "Collected Amount Adjustment"). To the extent that a different allocation method is adopted (such as based on actual electricity use by individual customers), the divisor for the Transition Amount will need to be modified.

[3] Consider statutory deemed ownership of proceeds – in effect a priority claim over LDC assets.

Entity, subject to the Proceeds Hierarchy, Collection Hierarchy and Enforcement Hierarchy (3) effectiveness of rights of transferees (Finance Entities and assignees) under the Proceeds Hierarchy, Collection Hierarchy and Enforcement Hierarchy and deemed adherence to same.

Enforcement Hierarchy

[Address that enforcement of the Asset will be through a common agent determined as follows:

(1) Electricity Distributors, subject to an ED Replacement Event
(2) [next most logical]

[Address that enforcement against the LDCs through a common agent determined as follows:

(1) IESO, subject to an IESO Replacement Event
(2) [next most logical]

Regulation (or perhaps a "Financing Order")

[Address: (1) approval of specific Finance Programs (i.e., platforms) (2) specific terms to flow into the Legislation (above), including approval of specific Finance Obligations (3) administrative oversight (but not vitiating) (4) capital markets requirements/assurance (wrap around compliance warranty), distribution mechanics and ratings (5) authorization of offering amounts (6) conditions precedent to offerings/borrowing (initial and ongoing).]

Blakes

Peter, JA, Cathy, Bryson and Adam,

I think it will be helpful to focus our structuring discussion regarding the legislation by looking at some financing scenarios and a sense of the nature and effect of the ultimate treasury plan.

Background

As soon as the Fair program begins, each month IESO will be short cash equal to the amount by which (1) IESO's payments to the generators (including the legacy top-ups) during the month, exceeds (2) IESO's receipts from the LDCs (i.e., customer receipts minus LDC reductions). The monthly shortfall will need to be funded by IESO, from the capital markets (i.e., the SPV securitization scenario), IESO's banks or some other source (e.g., equity of IESO; Provincial loan to IESO, etc.). I will refer to such monthly amounts as the "Funding Gap".

To make the accounting work, the Act will create the "Regulatory Asset" – which will correspond to future claims against the Ratepayers - in an amount sufficient to repay the Funding Gap, plus all associated finance costs. In this way, IESO will own (at least initially) an asset that has a value exactly equal to the future costs incurred to finance the Funding Gap.

This arrangement would have the effect of directly passing through the actual future costs incurred to finance the Funding Gap to Ratepayers. To the extent that the related financings involve economic decisions (e.g., duration, rates, costs, structure, etc.), the consequences of those decisions will be borne directly and automatically by Ratepayers (in aggregate, and individually on some allocation basis yet to be determined).

The Parameters of Our Review

It seems to me that the implementing legislation will need to be scrutinized from at least five perspectives:

1. Legislative Power – Does the Province have the power to enact legislation having this direct pass-through effect. The "indirect taxation" question is part of that discussion. So far, I understand we are comfortable that the answer here is a "yes" – not *ultra vires* the Province.

2. Legislative Authority – To what extent can the legislation authorize the 'nuts and bolts' decisions associated with financing decisions to a subordinate level – such as Cabinet, the Minister of Energy, an administrative body (maybe the OEB or some new agency with specific financing expertise), a regulated entity (such as OPG) or even perhaps an unregulated third party. Where in this cascade of authorities can the ultimate decision-making regarding permitted financings rest, in order to avoid a successful challenge on the basis that the arrangement provided for an *improper delegation* of legislative authority.

   As described below, I think this requires us to test a particular delegation scenario having regard to the effect on and consequences to the Ratepayers – since they will owe money based directly on the financing decisions made through these delegations.

3. Validity – Assuming legislative power and authority, could the legislation still be challenged on the basis that its scope and substance has an improvident effect on the broad class of Ratepayers in its specific application or is otherwise an invalid exercise[1] of legislative power. At a basic level, I think this will invite a consideration of the *effect on Ratepayers* or other third party rights to see if any part of the legislation is out of bounds.

4. Application – Assuming that the financing decisions are pushed down to an administrative body or a regulated entity, the powers required to implement the arrangement will need to be aligned with (and not exceed) the scope, mandate and permitted activities of that body or entity – in the actual application of the delegated decision-making role and having regard to its mandatory effect on Ratepayers. I assume this is a complex administrative law question that will require a detailed consideration of the delegations and processes established by the legislation to implement the financing decisions.

5. Effect – Assuming that 1 to 4 are all okay on paper, when it comes time to implement a particular financing decision there may be questions regarding whether the implementation is consistent and, in fact, a proper exercise of the delegated legislative powers. The ultimate market-based financing arrangements will depend on financial certainty (i.e., that the decision-making aspects cannot be challenged in hindsight), and so the market will want assurances that the legislation can eliminate the risk of future challenges regarding whether the authorities were valid, properly exercised, etc. For example, if an underwriter contracts through this process for a very juicy fee, that is demonstrably way above the market, and there are assertions of bad faith made to impugn the decision-making process or the decisions themselves, can the legislation over-ride these sorts of challenges by deeming all decisions to have been made properly, in good faith, etc. In the U.S., the legislation institutes a mandatory vetting process (notice, comment, appeals, etc.), the completion of which makes the financing decisions irreversible and not capable of challenge.

Testing a Strawman Scheme – It seems to me we need to bring together the Province and the finance experts to come up with a delegation proposal that can then be tested based on these review parameters. To get to that point, it will be important to have a common understanding as to the basic cash flow model and the ultimate treasury plan, to assess how and when financing decisions will be required to be made.

1. Expected Cash Flows – We understand (overly simplified) that Province is promising that electricity bills will be reduced by 25% for the next 4 years. As a result, the Funding Gap will be 25% of amount otherwise charged to customers, accumulating over the next 4 years.

   For illustration, assume that the Funding Gap would amount to 10M per month, starting in June and accumulating for 48 months. The effect would be that IESO would be short this amount, plus financing costs, less proceeds of sale (securitization) to a Financing

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[1] For example, the 'boot-strapping' measures described in the earlier Fair outline (A.2) may conflict with federal bankruptcy laws or affect third party rights in a fashion that violates the Constitution or some court decision.

Entity. IESO would need to borrow to fill that gap. The terms of that borrowing (e.g., term, interest rate, redemption rights, premiums, costs) would directly impact the obligations of Ratepayers as they would automatically be incorporated into the payment entitlements of IESO to be embodied in the Regulatory Asset.

If IESO were to securitize part of the Regulatory Asset (i.e., sell an undivided interest to a Financing Entity – likely an SPV), the net proceeds would be applied to reduce IESO's borrowings, and correspondingly the terms of the Regulatory Asset would adjust to not include the repayment of that particular IESO borrowed amount, but the terms of the Finance Entities replacement financing would automatically be included in the Regulatory Asset (presumably on better terms and conditions than the original IESO borrowings).

For this illustration, assume that IESO finances 120M at the end of each year for the first 4 years. In the interim, it borrows from banks (on the security of the Regulatory Asset) an additional 10M per month, accumulating to 120M by the end of the year. Assume annual interest costs of based on 3% per annum of 2M.

The legislation would provide that the Regulatory Asset would increase to reflect (1) the actual debt repayments to be made, net of refinancings and securitizations, and (2) the estimated finance costs (subject to a later true-up), and an allocation of this amount would show up on the Ratepayers' bills each month[2].

For the first 4 years, that would just be finance charges (i.e., 24M for the year). After 4 years, there would begin to be an inclusion for the actual repayment of the assumed debt (by IESO and any Financing Entity).

2. Smoothing – It seems appropriate given the "smoothing" objective underlying Fair that the "principal recapture" (i.e., the principal amount of the IESO debt equal to the accumulating Funding Gap) to be borne by Ratepayers be somewhat even over time. Given that the Regulatory Asset will automatically pick up the actual debt repayment schedule, that means that, for fairness over time, the overall debt repayment schedule will need to be managed carefully to make sure the repayments are within an acceptable range of staggered maturities, which doesn't result in a skewing of the repayment schedule (i.e., to achieve a smooth and even repayment line). That suggests to me that the financing decisions made under the program will need to be governed by that smoothing objective, and where there is a mismatch between the target (fair) repayment

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[2] Note that since electricity rates are frozen for the first 4 years, while monthly finance expenses payments incurred under the financings would increase the Regulatory Asset, there would be a cash shortfall and in effect those required cash flows would divert cash away from the other cash flows attributable to the electricity component to allow IESO to fund those finance. That means that IESO would either defer (i.e., not pay – like a 'payment in kind' debt obligation) those costs or borrow from another source to cover the liquidity requirement (i.e., borrow to pay those finance costs) over the first 4 years. In effect, that 4 year commitment will require a gross-up and will "cannibalize" IESO's other available sources of the cash and credit.

time horizon and the actual debt repayment schedule, the difference will need to be accommodated by either (a) a committed standby liquidity facility to IESO or perhaps a Finance Entity (to allow for the extension of early maturing debt) or (b) matching redemption rights (to allow for earlier repayment to pass through). These "treasury functions" (and many other matters, such as interest rate and FX decisions) will be critical to the amount that is ultimately borne by Ratepayers over time, and may be the sort of things that should be specifically considered in any legislative delegation. For example, the legislation might specify a mandatory repayment schedule to match the "Fair" assessment of a proper intergenerational allocation of refurbishment and renewal costs.

3. Treasury Plan – It is likely that the Treasury Plan will have many dimensions, including:

   a. an IESO credit facility, to be used to cover the Funding Gap as it arises and before it is refinanced (as below), and any intermediate mismatch to achieve smoothing, which may in turn have (i) a demand or revolving portion, (ii) a term funding component, with failsafe redemption rights in some cases and (iii) a currency and interest swap facility, in each case structured to the extent appropriate to manage market dynamics and provide for treasury flexibility;

   b. at least one Finance Entity, which would acquire an interest in the Regulatory Asset (of either predetermined amount(s) or that may "revolve"), and concurrently finance its ownership under a corresponding asset-backed securities program or ABCP offering facility, allowing for issuing capability into target capital markets (e.g., public/private; U.S., Canadian or other); and

   c. perhaps a backstop from the Province to fund into any gaps in the structure, to the extent that market-based commitments (e.g., liquidity lines) fail to perform or expire without renewal.

   During the first 4 years, IESO would recover its periodic financing costs (interest, expenses and other non-principal amounts that are payable) associated with financing the Funding Gap under these funding platforms. To the extent that principal amounts become repayable, they would be "rolled over" under the liquidity facility or securitized in order to meet the requirements of the "Fair" allocations through the "transition amount" charge included in a Ratepayer's monthly electricity invoice.

   After 4 years, principal repayments would begin based on the specific terms of the debt incurrences, subject to the smoothing objective to be achieved through managing redemptions and liquidity, refinancing and securitizing (as described above).

4. The "Strawman" – Given the need for flexibility, and given the direct effect of the arrangements on the Ratepayers, it seems to me that (at the minimum[3]) the legislative arrangements:

   (a) will need to set standards and measures regarding the commercially reasonable expectations of the Province for incurring debt under the program, with detailed guidelines regarding all-in funding costs; itemized permitted costs and expenses; required maturities and liquidity requirements (to achieve smoothing as described above); etc.

   (b) will need to empower one or more regulated entities to undertake decision-making activities with respect to financings by IESO and any Finance Entity;

   (c) will need to set out reasonable expectations regarding the appointment or retention of advisors, service providers, contract counterparties, etc., including in relation to 'market terms and conditions' parameters;

   (d) provide for audit and compliance standards applicable to those regulated entities;

   (e) perhaps, provide for specific pre-vetting requirements (e.g., publication and comment periods) applicable before market obligations can be incurred by IESO or a Finance Entity;

   (f) provide for appeal and due process considerations; and

   (g) make financing decisions and commitments irreversible (subject perhaps to a government backstop if not otherwise restricted by accounting objectives, etc.).

5. Our Evaluation – It would be helpful to consider whether this sort of delegation would be upheld, to a very high ("financing") degree of confidence, in light of the considerations described above under "Parameters of Our Review". The goal will be to make recommendations that address each level of the legislative process (i.e., Act, regulations, Minister order, administrative body decisions, regulated party decisions, etc.) and that, from the standpoint of the ultimate financing decisions, are sustainable under such scrutiny.

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[3] Note that the current view of the Ministry staff seems to be that the entire financing process and related decision-making can/will be delegated, without regulatory oversight, to OPG.

"Fair"

A. Legislative Outline – A primary consideration will be whether the enacting statute legislation "hard-codes" the specific terms of the permitted financing arrangements, or delegates authority to Cabinet (Regulation-making power), to a subordinate agency or authority (existing or new – see the Florida and NY models) or to a regulated third party, to approve of specific items of importance (e.g., the amount, timing and limits (referable to the overall GA Amount calculation) on the "transition amount"); the particular structure and terms of permitted financings; the imposition of obligations (e.g., collection and appropriation obligations) on third parties; accountability considerations; etc.). For initial consideration, we suggest being guided by the following principles designed to promote maximum flexibility (which will need to be tested from a statutory authority and permitted delegation perspective, and in light of the statutory basis ("fair") for and the existing electricity regulatory mandates under the current legislative scheme):

1. Primary Legislation - The enacting legislation (the "Act") should address the following:

   (a) Creation of the Regulatory Asset – The Act should create the legal obligation of customers to pay a "transition amount". That will require the delineation of permitted inclusions into a financial formula that is calculable with certainty at the customer level (e.g., basis (narrative to characterize basis for the Act), authority and limits on permitted inclusions; timing considerations; permitted adjustments (true-up); etc.).

   Note that this was the focus of the earlier Blakes "Outline", which created the "slots" for permitting costs and adjustments to flow through to the "transition amount" calculation. The obligation to pay the determined "transition amount" should presumably be imposed by the Act.

   For initial consideration, we suggest creating a "global" obligation, that will represent a single, consolidated payment obligation that will incorporate the cost structures of all permitted financings (by the IESO and any Finance Entity) – which will serve as the asset that will be dedicated to service all related Finance Obligations.

   (b) Ascription of Property Rights and Attribution of Special Status – To remove uncertainty in the financing structure, the Act may "deem" certain matters to be applicable to the Regulatory Asset, in cases where it is considered desirable to ascribe or attribute rights or special status in order to *affect otherwise available third party rights*. Such matters may include:

      (i) "property rights" – ascribe legal attributes of "property" to the bundle of rights encompassed in by the obligations of customers to pay the "transition amount" from time to time (the "Regulatory Asset");

      (ii) "allocation of proceeds" – ascribe *pro rata* sharing of payments received from customers, irrespective of whether the customer purports to allocate partial payments to non-transition amount

invoiced amounts (see "Proceeds Hierarchy" in the earlier Outline");

(iii) "transferability" – make it clear that the Regulatory Asset may be assigned or rights therein may be assigned as security by an owner;

(iv) "true sale" – specify that any absolute assignment or sale of the Regulatory Asset is a "true sale" rather than a mere security interest granted by the assignor (i.e., would not form part of the bankruptcy estate of the assignor);

(v) "perfection and protection" – deem any assignment (absolute or as security) to be effective against third parties (including a bankruptcy trustee of the assignor) without any requirement to file a financing statement under the PPSA, as would ordinarily be required;

(vi) "priority" – deem that an assignee of the Regulatory Asset in compliance with the Act will have priority over the rights of any third parties (including registered and inchoate liens) regardless of the priorities otherwise arising under the PPSA;

(vii) "separate interests" – deem an undivided or partial interest in the Regulatory Asset to constitute a separate and distinct property right, capable of assignment and enforcement as a property interest and without any requirement for interpleader (CLPA s.53) [Note: This may be important for future multi-issuer and tranching of securities];

(viii) "tracing and commingling" – deem that property rights will continue in any proceeds derived from the Regulatory Asset, despite any commingling or lack of tracing, and create a 'deemed trust' in favour of the owner in the hands of any third party who receives or holds such proceeds;

(ix) "no set-offs or reductions" – deem that (x) customers will have no right to set-off their obligation to pay the "transition amount", including against amounts owing to them by Electricity Distributors (y) Electricity Distributors will have no right to set-off amounts payable by them to IESO or any assignee of the Regulatory Asset against flow through payment obligations in respect of the "transition amount" and (z) IESO will similarly not have set-off rights against any Finance Entity;

(x) "cash sequestration" – deem property rights to exist in cash received by Electricity Distributors and the IESO, enforceable against (and specifically enforceable against) any insolvency representative;

(xi) "treatment of defaulted amounts" – require that the Electricity Distributor treat any payment default of the "transition amount" the same was as a failure to pay the commodity charge; and

(xii) "assumption by insolvency representative" – require in the Act that the insolvency representative of an Electricity Distributor or IESO to assume/adhere to the invoicing, collecting and servicing requirements applicable in the first instance to the Electricity or IESO, as applicable.

These sorts of matters (and there are others of a similar character under the U.S. programs) will need to be scrutinized from a legislative powers perspective and be weighed against the practical impact of creating special carve outs from the overall legislative scheme governing property rights within the Province. For initial consideration, we suggest minimizing these sorts of interventions in order to avoid delays in implementing the Act and future challenges to the Act. Note that "AAA" programs in Canada generally operate within the ordinary property rights and security interest regimes (e.g., PPSA and "securities entitlements" concepts), without legislative assistance.

(c) Flow Through Mechanics – The Act should address the status and obligations of each of the entities in the chain of entities involved in the invoicing, billing (e.g., adjustments), collection, on-payment, receipt and application of the Regulatory Asset and its proceeds. This should include the rights and obligations of replacement entities, successors and assign. See "Collection Hierarchy" in the earlier Outline.

(d) Servicing and Enforcement – Given the complex and entangled nature of the Regulatory Asset, it will be important from a practical perspective to specify the manner in which and by whom (a single and clear person) rights against customers and Electricity Distributors will be enforced in the various situations. For example, the Act should specify what happens if an Electricity Distributor defaults (displacement or replacement rights) or becomes insolvent (e.g., its insolvency representative or a replacement servicer will be designated and obligated to perform the servicing obligations). Similarly, if IESO defaults or becomes insolvent, the rights of a single replacement servicer (designated for all interested persons under any financing) should be enshrined and be mandatory.

(e) Regulation or Rule-making Authority – The Act should specify the scope of permitted regulations/rules (see below for suggested scope) and administrative delegations. A process for the enactment of rules (if applicable) should presumably encompass 'due process', publication and 'public input' provisions (see Florida and NY processes as a guide). Administrative law input is required to test the scope of these delegations and authorities.

(f) Agency, Commission or Authority – If appropriate, the Act may create the mandate, powers, delegations, standards, reviewability/appeal, etc., of any administrative body that will detail with the detailed level of the regime. For example, the specific inputs into the "transition amount" calculation would presumably require some degree of review and sign-off by a governmental agency (perhaps the OEB) that is capable of assessing, negotiating and settling

the terms of each financing (in the U.S., this is by way of a "financing order" of an "authority" or "commission"). Administrative law input is required to test the scope of these delegations and authorities (e.g., the scope of these activities and decisions governed by a subordinate agency or a government controlled third party like OPG).

(g) Due Process Considerations – For example, publication requirements for any regulations or rules promulgated under the Act or with respect to delegated decision-making to administrative bodies.

(h) Landscape Narrative – To assist in framing the purpose of the Act, it may be valuable to include a narrative analogous to the NY legislation, which could give context to the purpose and context of the Act – to pre-emptively deal with possible recharacterization, *ultra vires* or other possible challenges to the validity of the Act.

(i) Other Legislative Enactments – The Act will affect the overall legislative scheme in place today. For example the rate regulation provisions of the *Electricity Act* and the mandate of the OEB will likely be affected, and so corresponding changes may be necessary to those other statutes and regulatory regimes. In addition, to the extent that the Act conflicts with the current terms of legislation like the PPSA or insolvency laws, paramountcy considerations will arise and changes may be required to make the overall legal regime internally consistent.

Perhaps equally important will be to avoid including in the Act overly specific enactments, such as ones that enshrine a particular financing approach (like securitization through a "trust", which could be short-sighted). To the extent that such matters can be left to subordinate legislation and/or administrative agency discretion (without impugning the overall legal effect of the scheme), that would be preferable. That suggests that the Act should not be overly prescriptive and should allow for multiple financing programs, undertaken by the IESO (secured borrowing) and multiple Finance Entities (debt or perhaps pass through ownership certificates), in each case in multiple modes, tranches, series and classes – each customized to maximize the Provinces treasury outcomes at the relevant time.

2. Regulations (or perhaps Rule-Making) – Subject to understanding the reasonable limits of permitted delegations to Cabinet, some or all of the broader aspects of the arrangements may be specified by regulations. Some items for initial consideration might include:

(a) the addition of special permitted inclusion categories to be included in the "transition amount" calculation, to the extent contemplated in the Act;

(b) modifications to the deemed obligations and duties of affected entities, to the extent contemplated in the Act;

(c) approval of the creation of Financing Entities and the broad strokes of their intended financing programs (to ensure optimal financing and vetting of key features, such as target capital markets, maximum costs, issuance limits, etc. (similar to what a Board would typically approve in connection with the approval

of a corporate financing transaction), but not necessarily the specific terms of the transaction; and

(d) any applicable authorities of an administrative body to approve specific financings, including the limitations, review, appeal and audit 'checks and balances' appropriate in light of the scope and effect of delegations.

3. Decisions of one or more Administrative Bodies – The functionality and flexibility of the financing programs may depend on a fairly nimble administrative body, with expertise in relation to relevant financing transactions, being appointed for the purposes of approving, implementing, monitoring and reviewing the financings. This would extend to the approval of particular structures, costs and execution strategies. The NY legislation provides a useful guide in relation to these sorts of matters. The Act or regulations will need to frame out the governance and mandate of such an administrative body. The implementing oversight and decision-making aspects might be thought to be analogous to the audit or finance committee within a corporate Board structure or delegated approval powers give to senior officers of a corporation.

4. Regulated Third Parties – Implementation responsibilities for particular financings and related compliance matters could be specifically vested in one or more specified non-government persons, who could be regulated by the Act, regulations or administrative body decisions.

B. Scope and Operation of the Financing Program – It would be helpful to have direction regarding the Province's expectations for the program, including:

1. Range of Transaction Types – For example, secured debt of IESO; securitizations, such as domestic vs. cross-border offerings, senior/subordinated structures; commercial paper vs. term notes; pass-through ownership structures; rated vs. non-rated, and minimum rating expectations; redemption, sinking fund and repurchase options; etc.

2. Multiple Finance Entities, etc. – One important structuring consideration will be whether there is a separate "Regulatory Asset" for each financing or Finance Entity, or whether all of the ultimate securities and borrowings will share cashflows from the same "pool". If structured with the same underlying pool, there may be cross-contamination considerations across financing platforms. While this may be inevitable (given the indivisible nature of the underlying Regulatory Asset and invoicing approach by Electricity Distributors), where the 'streaming' of the Regulatory Asset occurs in the structure may impact investor and rating agency comfort and risk factors.

3. Overcollateralization, Credit Enhancements, Derivatives, Liquidity, etc. – The scope of these features of a typical structured finance transaction should be considered at the outset, in order to properly anticipate the cost inclusions and other items impacted by the Act.

4. Durations and Maturities – The overall funding horizon and replacement strategy should be discussed.

C. Roles and Responsibilities – For discussion.

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SCHEDULE 1
ONTARIO FAIR HYDRO PLAN ACT, 2017

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.

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[1] FLS: please see the preamble of the *Green Energy Act, 2009.*

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx[2] 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

[2] Should this refer to 8(3) re late/interest charges too? > 10xx refers to estimated finance and finance and to be defined in regulations regulations should incl. late/interest charges (and other fees too)

(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"[23] 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")

[23] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

"funding obligation" means a payment obligation incurred by or on behalf of an investment interest owner to fund its ownership of an investment interest or a payment obligation that meets such other criteria as may be prescribed; ("French")

"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[4] 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")

[4] Will the first rate setting only take effect on July 1st (and no longer be retroactive to May 1st)? ⊥ Yes - done to address OEB concerns

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.[35]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred 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,[46]

(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 over time.

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

[35] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[46] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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,

(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[7]

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.

[7] It remains unclear, when looking at (1) and (2), that the 25% reduction will be inclusive of the 8% rebate afforded under the OREC Act. Is it the intent to address the 8% rebate in the regulation dealing with the "invoice amount" although that might be an awkward fit given the operative language in (1) (we also note that the prior definition of invoice amount would not have had this effect)?
In connection with the addition of "without taking into account any forecasted impact of any other provisions of this Act" in defining the comparison rate in (2) we have two questions –

is this broad enough to back out the OEB interim rate order now that the rates under this Act are only effective as of July 1st?
should this language be expanded to back out all related initiatives – such as OREC and the move of other items to the tax base (to address this perhaps the words "or any other related initiatives as may be prescribed" could be added to the end of (2)?

Don discuss

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[8]

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[9] 30, 2021][10] 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.

[8] Fair Adjustment must be backed quantitatively by "over-charges" (quantitative linkages would be advisable to include in the Act).

[9] Is the June reference correct as it doesn't seem to align with (1)?

[10] Why not 2018? Constitutional issue.

discuss

Cathy's comments

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[11] 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[12] 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.

[11] Is this an amount in respect of the CEA – i.e., is this person caught by the general obligation to pay amounts in respect of CEAs to EVs or only to sub-meter providers?

[12] This needs to be limited to (1) reductions in the fair allocation (2) inaccuracies in estimates and assumptions (genuinely made) in the financing plan. As written, this would break the essential link between the CEAs and the fair allocation. Note also that his concept is covered partially in 15xx(6).

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[13] 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.[14]

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.

[13] Confirm that underlying consumer is obligated, or confirm that intermediate credit of sub-meter provider will not inhibit rating.

[14] Does this relate to the sub-meter provider or the underlying consumer?

Dan

Dan discuss

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[15]:

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][16],

    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[17] 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[18] amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and[19] the market rules made under section 32 of the *Electricity Act, 1998*.

[15] Consider adding power to add 'principles' by regulation. — done

[16] Uncertain what this means. The true-up is meant to capture actuals only, I believe. — I think this is ok - true up method - will have to bridge forecast / actuals.

[17] Could this be "rates", based on different classes of consumers? — yes

[18] Why does this not also require IESO to "collect" from EVs (i.e., active rather than passive role)? — discuss — IESO not intended to enforce

[19] Will market rules always apply, or only if prescribed? — always apply but regs could trump them

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[20] 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[21] with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice[22] 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[23] amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

[20] Should "account" be fleshed out by regulation (i.e., eligible deposits and investments)?
[21] Is this where the no set-off language will appear? Does this also cover timing of remittance?
[22] Sub-meter scenario?
[23] Why is there no comparable obligation on IESO to collect from EVs?

~~23124833.1~~23124833.2

Discuss necessity? Deal w/ thru agents?

yes → reqs to deal w/ all aspects of remittances

is this needed? if so, yes

discussed - see IESO NTD in v. 3 (p. 16) → doesn't have into reg'd

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][24].

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[25] 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.[26]

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.

[24] Uncertain what this means.

[25] Why does this not prescribe "accounts" as for IESO?

[26] Re-consider power to remove. The accounting issue should recognize that the Province has the power by law in any event. Perhaps add regulation-making power? Can OPG resign, and if so what happens? Should the Act envision a scenario where investors act to get rid of OPG as FSM (i.e., OPG should not be able to say that investors contract rights are impeded by a statute that mandates OPG now and forever).

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[27] 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. ~~1.~~ Determine the estimated nominal amount of all clean energy costs ~~and estimated clean energy benefits allocated to specified consumers in respect of the reference period.~~ incurred and expected to be incurred.

2. ~~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~~[28].

3. Attribute clean energy benefits to specified consumers in respect of each reference period, having regard to the principles set forth in subsection (2).

4. Allocate the sum of the amounts determined under paragraph 1 in respect of each prospective reference period plus the amount determined under paragraph 2 across all reference periods based on the relative amounts determined under paragraph 3 for the reference periods, having regard to the principles set forth in subsection (2).

[27] Note that this is probably only the tip of the iceberg in terms of what OPG will earn under the program. OPG's economics will all run through to the CEAs and so will be political if there is any perception of over-charge, etc. (e.g., spread earnings on sub-notes).

[28] Note that the following language was deleted because I wasn't sure what it meant: "[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]".

5. Estimate the financing costs and related expenses that would become payable during the reference period assuming that:

~~3. Determine~~

a. IESO deferrals are incurred equal to the amount~~, if any, by which the determination under paragraph 1 exceeds the determination under paragraph 2.~~ by which the [estimated green GA for the reference period] [plus any expected funding rebates], exceeds the amount determined under paragraph 4 for the reference period.

b. Investment interests are transferred to financing entities and funding obligations are incurred to finance such investment interests

c. Such financing entities repay the amounts determined under subparagraph (a) in amounts corresponding to the amounts determined under paragraph 4 for each earlier reference period.

~~4.~~6. Calculate the sum of the ~~amount~~amounts determined under ~~paragraph 3 and~~paragraphs 4 and 5 for the reference period, [plus such or minus such other amounts as may be prescribed][29].

Principles

(2) In calculating the fair allocation amount, the Minister shall have regard to the following principles:

1. ~~1.~~ The ~~purpose of calculating the~~ fair allocation amount ~~is to~~for each reference period should measure and allocate the estimated clean energy costs ~~and estimated clean energy benefits~~ fairly among the specified consumers in ~~respect of each~~the reference period, to align with the estimated clean energy benefits attributed to those specified consumers.

2. Clean energy benefits should ~~reflect~~ a reasonable measure of the expected value of the benefits that a specified consumer would derive from the clean energy initiative during the applicable reference period, including as a result of the incurrence of clean energy costs and related commitments in relation to the clean energy initiative.

3. ~~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.][30]

[29] Could be contrary to fair linkage for constitutional validity purposes.

[30] I don't understand this one. The fair allocation governs the maximum finance amounts, so this crosses that line and makes it circular.

4. ~~3.~~ Estimated clean energy costs allocated to specified consumers in respect of a particular reference period should be allocated ~~in proportion to the estimated clean energy benefits attributed to the~~equitably among such specified consumers ~~in respect of the reference period~~.

~~5. 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 and the expected cost of financing by a financing entity, 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 expected 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.[31]

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.

[31] The timing of fair adjustments will impact the practicality of this provision. If the LGIC does not establish the regulation for a fair adjustment well in advance of the reference period to which it will relate, the ability of OPG to reflect the expected effect of the adjustment may be limited.

4. Such other such principles as may be prescribed[32].

Limitation

(4) ~~In respect of each reference period from May 1, 2017 to April 30, 2021, no~~No funding obligation shall be incurred that would result in amounts payable in respect of the clean energy adjustment in respect of ~~the~~any reference period from May 1, 2017 to April 30, 2021 unless,

(a) the amounts are payable in respect of a reference period in respect of which the [LGIC has determined not to make a] [Board has not made any][33] 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][34].

Other reports

(~~3.15~~) 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.

[32] Principles of the Financing Plan (important since only constraint on FP, which can be amended) should include at least:
- Establishment of FEs
- FE banking arrangements
- Arm's length terms where OPG is a counterparty to an FE
- Terms of a "transfer" from RA to IA/II
- Terms of refinancings
- Underwritings/ Offerings
- Ratings
- Basis for "Estimates" (e.g., key to calculating CEAs)
- Principles for True-Ups
- Mechanics of Reserves (e.g., based on CEAs (monthly based on 6 month period, there will be a need to set aside accumulating amounts for principal and interest as those CEAs flow through; also, need to envision other sinking fund mechanics and credit reserves and the "crediting" of extra amounts released against the relevant reference period CEAs)
- Requirement for FX Hedging.

[33] Not sure this works. I think it should be based on a decision not to make a fair adjustment or the lapse of time permitted to make a regulation (if that is to be incorporated).

[34] I think this is meant to refer to the fair allocation amount for the reference period. Is there a regulatory power contemplated, and if so it will need to link to the fair allocation concept for constitutional purposes.

Motion

Same

(7) No amendment under subsection (6) 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.

see 8(2)

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[35] for each month.

2. ~~All~~As a reduction, 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.

allows for +/- not necessary

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.

[35] Needs to reflect funding rebate payable during the reference period.

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.[36]

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.

[36] This needs to be limited by the fair allocation process to make the regulatory charge analysis work properly.

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. [637]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 form of the invoices and the form of any notice to be provided to the specified consumer under this Act[638];

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.

[637] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.
[638] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

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[739]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the 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

[739] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

(C) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a), 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 is 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 is 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 is 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 is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, 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 is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017.*

205.1x Section 70 of the Act is amended by adding the following subsection:

(2.3) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Fair Hydro Plan Act, 2017* and the regulations made under it.

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

207xx. Subsection 79.16 (3) of the Act is repealed.

PART IX
COMMENCEMENT AND SHORT TITLE

Commencement

103x. This Act comes into force on the day it receives Royal Assent.

Short title

104x. The short title of this Act is the *Ontario Fair Hydro Plan Act, 2017*.

Document comparison by Workshare Compare on Tuesday, May 02, 2017 12:53:37 PM

Input:	
Document 1 ID	PowerDocs://TOR_2528/23124833/1
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Description	TOR_2528-#23124833-v2-SRA_Comments_on_FHA_Version_18
Rendering set	Standard

Legend:	
Insertion	
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Style change	
Format change	
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Inserted cell	
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Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	138
Deletions	42
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	184

From Blakes
Ap 27/17

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14-TP

Ontario Fair Hydro Plan Act, 2017

EXPLANATORY NOTE

Explanatory note TBD once contents of the Bill are settled.

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 the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the ~~estimated~~ amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

[OLC Note: Need to clarify what we mean by the underlined phrase -- do we mean "the estimated amounts to be paid… by the IESO which relate to contracts for…."?]

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other ~~estimated~~ costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair adjustment" means, for any reference period, the rate determined in accordance with Part II.

"fair allocation amount" means the amount determined ~~in~~ under section 15xx;

"finance amount" means an amount determined in accordance with Regulations.

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 22xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")
[OLC Note re "invoice amount" and "invoice period": Latest instructions on s. 20xx mean that we no longer refer to "invoice amount" anywhere except section 6.1xx. Section 6.1xx refers to "monthly invoice amounts". Consider whether you need to allow for various "invoice periods" or if in each case you only need to refer to a "month" and then we can adjust the terminology.

Also please consider the following recommendation: I am thinking that we should remove this from the definitions altogether and instead just specify within Part II that these are the amounts that we are referring to for the purposes of the Fair Adjustment. This would give you flexibility in the regulations going forward (e.g. "invoice amount" wouldn't be locked down as a defined term for all purposes).][***Agreed.***]

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

[OLC Note: Similarly, if you want to have reg-making power to specify that certain items listed below should be included in the invoice amount, then we should provide for that expressly in the reg-making power.]

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

    iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect~~, or any rights or obligations associated with the funding obligation~~.

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

[OLC Note: Consider whether you want to say more about what we mean by "pro rata basis" or whether you want to provide for details to be included in the regulations.]

[OLC Note: Is subs. (6) really about "recovery" or should it be about "collection" or "invoicing"? Just want to make sure we are using terminology consistently. It seems to me that 'recovery" is being used in the context of rights under the RA and IA so perhaps we don't want to use that term here?]

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period~~.~~ and dividing the sum by six.[Note that reference periods are 6 months, and the CEAs are determined on a monthly basis, so we need to divide the sum by 6.]

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

i. differences between the estimated and actual finance amount for the immediately preceding reference period,

ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy ~~adjustment~~adjustments for each reference period and such other information related to the determination of the clean energy ~~adjustment~~adjustments as may be prescribed.

Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy ~~adjustment~~adjustments in respect of the reference period.

IESO to receive amounts

11xx. (2) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts ~~described in subsection (5)~~in respect of the clean energy adjustment to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of ~~fairly~~ measuring and allocating the estimated clean energy costs and measuring and attributing estimated clean energy benefits fairly among the specified consumers in respect of ~~the~~each reference period.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before ~~any~~the first funding obligation is incurred ~~[by a financing entity during the reference period?]~~.

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which~~, if this Act had not been enacted,~~ the estimated clean energy costs allocated to specified consumers and estimated clean energy benefits ~~allocated~~attributed to specified consumers in respect of the reference period ~~would have exceeded~~exceed the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period if this Act had not been enacted.

[OLC Note: As noted in the purpose clause (s. 3xx), are clean energy *benefits* being "allocated"? Or is it just the clean energy *costs* that are being allocated?][Please see proposed amendments above.]

[OLC Note: The above needs some work… in particular we would need to say more than just "in the absence of this Act" because I think we would also need to specify that under the proposed scenario, the current Global Adjustment rules would continue to be in place. We also need to be clear what we mean by global adjustment etc.]

2. A portion of the ~~value of any~~estimated aggregate amount of the reduction in charges to specified consumers that is determined by giving effect to the fair adjustment ~~that has been~~ made under Part II in respect of any previous reference period.

[OLC Note: Need to revisit para. 2 once Part II drafting is settled. Right now Part II describes the way in which rates are determined. So we need to clarify what we mean by "value of any fair adjustment" using the language of Part II. Please instruct if you can][See proposed drafting.]

Principles

(2) In calculating the ~~estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period~~fair allocation amount [These words create a clearer link to (1.2).], the Financial Services Manager shall [comply with the regulations and?] have regard to the following principles:

1. ~~Clean~~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.

2. The prescribed principles for attributing estimated clean energy benefits ~~allocated~~ to the specified consumers in respect of a reference period ~~should be determined in accordance with the regulations~~.

[OLC Note: Para. 2 really doesn't seem to be a "principle". Should this just be set out as a separate requirement to comply with regs when allocating (as per proposed language above in opening flush)? Also this seems to conflict with subs. (3) below. Are we talking about the same thing in both places?][See proposed drafting.]

3. The fair allocation calculation should include reasonable assumptions regarding the following:

   i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

   ii. The expected number of specified consumers in respect of each reference period.

   iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation ~~calculation~~amount or an amendment to the fair allocation ~~calculation~~amount takes effect on the day that is 30 days after the fair allocation ~~calculation~~amount or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation ~~calculation~~amount and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align ~~with~~ the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

[OLC Note: Need to consider further how para. 1 overlaps/conflicts with elements set out in s. 15xx above. Note that fair adjustment is already accounted for under para. 2 of 15xx (1.2) so I'm not sure if the reference above highlighted in yellow is perhaps incorrect?] [To be discussed: The calculation in 15xx addresses a readjustment of the fair allocation amounts in all reference periods to account for fair adjustments in prior periods (i.e. we are re-distributing the adjusted amount over the life of the program). This section refers to a reduction of the fair allocation amount in any reference period by a fair adjustment that is required in that same period (i.e. deep discounts I any reference period, as provided for under Part II), so that the finance amount for a period will not exceed the difference between the fair allocation amount and the fair adjustment.]

[OLC Note: Please confirm that the underlined "during a reference period" is correct.]
Confirmed.

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.

[OLC Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would ~~become payable during the reference period and~~ result in amounts payable in respect of the clean energy ~~adjustment~~adjustments in respect of ~~the~~any reference period from May 1, 2017 to April 30, 2022 unless,

[OLC Note: Please confirm that the underlined "during a reference period" is correct.]
[Confirmed.]

[OLC Note: All references to "fair adjustment" need to be revisited once Part II drafting settles.] [See changes throughout.]

(a) it has been determined that no fair adjustment ~~has been~~shall be made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the ~~[difference between~~amount by which the fair allocation amount in respect of the reference period ~~and~~exceeds the estimated amount ~~of~~determined by giving effect to the fair adjustment in respect of the reference period~~]~~.

[OLC Note: Please confirm that the underlined "during a reference period" is correct.]
Confirmed.

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 [within the fair allocation amount]. [OLC Note: Now that there is no Fair Allocation "Plan", I'm not sure what kind of consistency this would be referring to.]

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest.
[OLC Note: once we settle the definition of "transfer", will have to revisit all provisions like the one above to make sure it works.]

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under ~~such accounts as may be prescribed by regulation~~the account specified in subsection 11xx(3) and all amounts on deposit in such ~~accounts~~account.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Blakes - Ap 25 - Change page only
Changes on version 13.

(v) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means, a licensed distributor, a licensed retailer or such other person as may be prescribed, and shall include the IESO to the extent that the IESO directly invoices a specified consumer; ("French")

[OLC Note: Need to ensure inclusion of IESO in definition of EV works in each case where the defined term is used.]

"fair adjustment" means the rate payable for electricity in accordance with Part II; ("French")

"financing entity" means an entity established for the purpose of being an investment interest owner and that is managed by the Financial Services Manager ; ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means a payment obligation of a type prescribed that is incurred by or on behalf of an investment interest owner ~~in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation~~to fund its ownership of an investment interest; ("French")

[OLC Note: Does the definition of "funding obligation" need to be scoped a bit more narrowly: for example, incurrences for a particular purpose?]

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

"funding rebate" means an obligation, assumed by IESO as part of the transfer ~~by it of an investment interest to an investment interest owner~~ to pay ~~the amount of~~ specified finance amounts incurred to fund the investment interest owner 's ownership of the transferred investment interest.

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")
NTD: Shortfalls will occur monthly.

"investment asset" means the property rights as described in section 22xx; ("French")

"investment interest owner" means a financing entity that acquires an investment interest; ("French")

"investment interest" means an ownership interest in the investment asset, and, in the case of a transfer of an interest in an investment asset, the rights and benefits specified in the agreement under which the interest in the investment ~~interest~~asset is transferred; ("French")

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be prescribed, until April 30, 2047; ("French")

"refinancing" means a redemption or repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment interest owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx to recover the amount recorded in the variance account created under section xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" means (i) in relation to ~~the regulatory asset, or any portion thereof, any act of IESO which states that it is a "transfer" of all or any~~a portion of the regulatory asset ~~or any other act of the IESO by which the IESO purports to dispose of its interest in all or any portion of the regulatory asset;~~ the creation and absolute vesting in the transferee of an investment interest corresponding to a specified amount of the IESO funding shortfall and entitling the investment interest owner to recover clean energy adjustments attributable to the financing of such specified amount and to receive any related funding rebates, and (ii) in relation to an investment interest, an absolute assignment, conveyance, disposition or sale; ("French")

investment asset → s 22

NTD: IESO's counsel explains the approach above: **For a number of reasons it is difficult to treat the transaction between the IESO and the Financing Trust as a transaction which is in law a transfer, sale or assignment. We think that the best way of proceeding is for the Act to state specifically**

iii. The expected electricity consumption rates in respect of each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation in respect of each future reference period.

[OLC Note: Not sure I understand subs. (3) -- if the fair adjustment is done in advance, why wouldn't it be included as part of the current fair allocation calculation as well (i.e. not just future calculations)?]

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

[OLC Note: Here and throughout, I'm not quite sure whether we should be referring to the "calculation" or the "amount".]

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the basis for the fair allocation calculation and any fair allocation re-calculation.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to

evaluate whether potential funding obligations should be incurred for the purposes of acquiring and financing an investment interest in accordance with this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align ~~with~~ the estimated finance ~~amount determined under in accordance with the regulationsthat~~amounts that would, subject to any refinancing, become due and payable during a reference period, with the fair allocation amount determined in respect of the reference period under this Part ~~as of the time of the incurrence~~, in each case after reducing the fair allocation ~~calculation by the~~ amount ~~of~~to reflect any fair adjustment made in respect of the reference period.

[OLC Note: Need to consider further how para. 1 overlaps/conflicts with elements set out in s. 15xx above.]

[OLC Note: Please confirm that the underlined "during a reference period" is correct.]

2. Incurrences should be implemented in a manner that the Financial Services Manager considers to be reasonable, to be cost effective and to reflect prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

[OLC Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section, however the Financial Services Manager shall provide the Minister the amended plan in the same manner as provided for in subsection (1)..

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment in respect of the reference period unless, [OLC Note: Please confirm that the underlined "during a reference period" is correct.]

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

[OLC Note: Please confirm that the underlined "during a reference period" is correct.]

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Confidentiality of plan, reports

(4) The Financing Plan and any report referred to in subsection (3.1), including any other document that would reveal information in the plan or report, used in the preparation of the plan or a report, is deemed to be a record subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, section17xx(5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations and make transfers.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, 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 Allocations

(4) Each funding obligation incurred and each transfer made by a financing entity shall be considered to be consistent with the Financing Plan and the fair allocation.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If any transfer provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.

[OLC Note: This is meant to assist with clarity in the subsequent provisions. Will consider further as drafting settles.]

[NTD: "IESO funding shortfall" throughout to denotes the monthly amount and the "variance account" records the cumulative balance.]

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be equal to A – B + C where:

1. A = the sum of all invoice amounts (not including HST) which would have been issued to specified consumers for the month if Part II of this Act did not apply.

2. B = the sum of all invoice amounts (not including HST) actually issued to specified consumers for the month[5].

3. C = the sum of all ~~financing costs related to all IESO~~payments made by IESO in respect of funding ~~shortfalls incurred by IESO~~rebates for the month.

to be revised by IESO

[5] This probably needs to exclude the amount of any IESO recoveries that are reflected in the invoiced amounts, to avoid double-counting.

(x) For the purposes of calculating A and B of section 20xx(1), the electricity vendors shall provide to IESO such information as IESO may reasonably require and such further information as may be prescribed and the IESO shall be entitled to rely on such information.

20.xx (1) The IESO shall establish and maintain a variance account and shall record in such variance account the amount of the IESO funding shortfall for each month.

Same

(2) To the extent that the IESO funding shortfall for any month is determined based on an estimate of the electricity used by specified consumers or an error in the information provided by an electricity vendor, the IESO shall record in the variance account an adjustment to reflect the difference between the estimate or the erroneous information and the electricity actually used by specified consumers.

(x) The IESO shall record in the variance account such other adjustments as may be prescribed by the regulations.

Recording of IESO funding shortfall

(3) IESO shall record in the variance account, as a reduction, all payments received by the IESO resulting from the exercise of the right of recovery under section 21 and the proceeds of any transfer under section 22.

Recording determinative

(4) A recording by the IESO in the variance account is determinative at the time of the and the balance recorded by the IESO in the variance account from time to time is determinative of such balance at such time, absent manifest error.

Rights of Investment Interest Owner

(6) ~~An investment interest owner~~A transferee of a portion of the regulatory asset may rely, without inquiry, upon the balance in the variance account certified by the IESO at the time of the transfer and no error in such certification and no subsequent adjustment to the balance in the variance account shall affect the rights of the investment interest owner acquired pursuant to a transfer under section 22xx.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover from specified consumers the balance from time to time recorded in the variance ~~accounts~~account.

(2) ~~The~~Subject to subsection (3), the Board shall, from time to time, in accordance with this Act and as further prescribed by regulation and having regard to the fair allocation, determine and set rates payable by specified consumers so that IESO is able to recover the balance recorded in the variance account.

Same, restrictions

(~~2~~3) ~~1.~~ The IESO shall not be entitled to collect all or any part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer ~~all or~~ a portion of the regulatory asset ~~to any~~corresponding to a specified portion of the IESO funding shortfall to a financing entity

~~Same (2) Upon receipt of any payment~~ in consideration for ~~the transfer, (a) the IESO shall record the payment as a reduction~~a cash payment equal to the amount of such specified portion of the IESO funding shortfall ~~in the variance account;~~,

(2) Upon receipt by the IESO of such cash payment, the IESO shall have disposed of, and ~~(b) unless otherwise provided for in this Act, the IESO shall~~ have no further right, title or interest in, ~~or any obligations in respect of,~~ the portion of the regulatory asset ~~or in the related investment asset created by the transfer.~~

~~Same (3) Upon transfer,~~ corresponding to such specified portion of the IESO funding shortfall, and the financing entity ~~and acquires an~~shall have acquired the corresponding investment interest ~~becomes an~~entitling the investment interest owner to recover clean energy adjustments attributable to the financing of such specified amount and to receive any related funding rebates and such other rights, interests and entitlements as may be specified in the transfer agreement.

Validity of transfer

23xx. (1) ~~A~~The transfer of a portion of the regulatory asset under this Act ~~is~~constitutes a valid and enforceable ~~sale and absolute transfer to the~~absolute assignment, conveyance, disposition and sale of the corresponding investment interest ~~owner of~~to the ~~regulatory asset.~~transferee.

Same

(2) Without limiting subsection (1), any transfer ~~that by its terms is intended to constitute a sale or absolute transfer~~agreement that states an intention of the parties to absolutely assign, convey, dispose of or sell an investment interest shall be treated for all purposes as an absolute ~~transfer~~assignment, conveyance, disposition and sale of IESO's right to recover the corresponding IESO funding shortfall, and not merely as a security interest~~, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall~~.

Deemed perfection, etc.

(3) At the time a transfer of a portion 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~~in respect of such portion of the regulatory asset.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims in respect of the regulatory asset have received notice of the transfer and the ~~property~~ rights and interests acquired by the transferee shall have priority over any related liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

(x) The ~~transfer of a~~investment asset will arise at the time that a portion of the regulatory asset ~~or a portion thereof creates an investment asset~~is first transferred to a financing entity.

24xx. If a transfer under this Part provides for the transfer of an investment ~~asset~~interest, any references in this Part to ~~the~~such investment interest are deemed to be references to the ~~specific investment interest transferred~~interest in the investment asset specified and entitling the investment interest owner to the rights and interests transferred under the transfer agreement.

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~~:

[OLC Note: Still need to review the language below carefully.]

1. The right and interest to impose, bill, invoice, collect, receive and recover the clean energy adjustment from specified consumers~~, including the right to determine the amount of the clean energy adjustment~~ in accordance with this Act.

2. The right to receive~~,~~, collect and recover all amounts in respect of the clean energy adjustment that are imposed, billed, invoiced and recoverable under this Act, including any and all amounts in respect of the clean energy adjustment that are held by electricity vendors ~~or~~, 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, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor and IESO to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by ~~an~~any electricity vendor or IESO to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other ~~property~~ rights or interests that comprise the investment interest owner's investment interest, 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 such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

[(x) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.][*We suggest that this provision be deleted – we don't think this adds anything meaningful to the rights and interests of the investment interest owner, and it is not correct to say that the investment interest is unaffected in these circumstances.*]

No set off, etc.

(2) The investment asset shall not[6] be set off,

[OLC Note: I wonder if subs. (2) is worded more broadly than intended -- the idea is that eventually the investment asset could be set off/reduced through payments, right?] Yes, that's right. The investment asset will be paid down over time

(a) by a consumer, an electricity vendor, IESO, an agent of the investment interest owner or an owner of distribution system assets in the Province;

[OLC Note: Consider whether underlined term should be defined.]

(b) in connection with any default, of a person mentioned in clause (a); or

[6] If the code is adopted by reference, consider whether the payment mechanics providing for netting and reductions should be excluded from the application of this section?

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with ~~section [xx] of the *Personal Property Security*~~Part III of this Act.

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.
[OLC Note: It seems that successors may need to be addressed here.]NTD: Nothing further required to deal with successors.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of ~~its rights and interests in~~ an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.
[OLC Note: Please compare the language underlined above vs. the language of subs. 23 (1) above. Here we are talking about transfer of "rights and interests" in an investment interest whereas above we refer to a transfer of "the RA". Why are we not saying transfer of "the IA" here? Can one have a "right or interest" in an "interest"? Yes. Wording is admittedly less than perfect. Still need to clarify how these concepts work together.]NTD: we want to distinguish the RA from the IA and we are trying to convey different rights associated with each asset. The securities lawyers feel it is important to refer to rights and interests for the purposes of the IA.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the ~~investment interest owner acquired~~transferee a valid property right and interest in, to and under the applicable investment interest acquired in accordance with the terms of the transfer.
[OLC Note: Awkward that we occasionally have references to "owner of the investment interest" vs. "investment *asset* owner".]NTD: We have tried to refer consistently to "investment interest owner" rather than "investment asset owner".

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.**~~

Perfection and priority of transfers

(3) ~~At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.~~ All provisions of the *Personal Property Security Act* shall apply to the regulatory asset and any investment interest on the basis that each is intangible personal property and an account.

~~**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.

[OLC Note: This section had become a bit confused through multiple rounds of changes. I have now attempted to remove duplication. Please review carefully to ensure that it contains the correct provisions.]

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

~~**Perfection and priority of security interests**~~

~~(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.~~

Proceeds

(4) All proceeds of an investment interest that ~~are~~is subject to ~~the~~a 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~~such proceeds, registration of any financing statement or any other further act.

Perfection

(5) ~~The~~A security interest in an investment 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~~except if otherwise provided by the written consent of the ~~person to whom the security interest has been granted~~secured party.

Same

(6) The person to whom ~~the~~a security interest in an investment interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any account of IESO, any electricity vendor, ~~an~~any agent of IESO or an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

[(7) The secured party shall be entitled to exercise the rights of an investment interest owner under the Act only after it has given notice of the enforcement of its security interest to the IESO.][*We suggest that this provision be deleted – the secured party has the rights of a secured party opposite the investment interest owner, and not the rights of the investment interest owner.*]

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

[OLC Note: ENE LSB to consider whether this section should apply to unit sub-meter providers.]

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

[OLC Note: would there be any doubt about whether any investment asset owner is a Crown agent? Is that where this needs to be articulated instead?]

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Intergenerational Fairness inOntario Fair Hydro RatesPlan Act, 2017
[OLC Notes re this draft:
- all numbering of provisions will need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. during/for/in respect of reference period; owner of RA/IA vs. RA/IA owner; etc.)
- Consider references to "an investment asset" vs. "the investment asset" and "an investment asset owner" vs. "the investment asset owner" -- do we want to only use "the" and provide an interpretive provision that clarifies that we are talking about all owners collectively and all assets collectively? Check whether we ever need to refer to "an" investment asset owner as an individual owner.]

Preamble
The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.1
The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom,2 and conservation and demand management.
The Government of Ontario is committed to ensuring that the costs of financing these investments, and the ~~raising of money to fund the investments~~associated charges to

1 FLS: please see the preamble of the Green Energy Act, 2009.
2 FLS: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme". SEE CATHY'S NOTE REGARDING REGULATORY SCHEME VERSUS INDIRECT TAX. CONSIDER: The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment in renewable and clean energy projects to enable phasing out of coal fired generation, and conservation and demand management.

is the point to refer to regulatory framework

consumers,3 are allocated fairly among present and future generations of consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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3 FLS: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL
Interpretation
Definitions

1.1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section X10xx; ("French")

[OLC Note: I have not addressed definitions related to the FAP since ENE LSB wanted to review FAP concepts before more drafting is done. Will add definitions as needed based on FAP instructions in next round.] - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference

period vs. the portion payable by a specified consumer. So far I have opted not to go with separate terms (e.g. "aggregate CEA" vs. "CEA") because I'm hoping we can just be clear in each provision without resorting to more defined terms.]

[CONSIDER REFERRING TO "FINANCE AMOUNTS" TO REPRESENT THE AGGREGATE COSTS FOR A MONTH (ESTIMATE SUBJECT TO TRUE UP) TO BE PASSED THROUGH TO SPECIFIED CONSUMERS BASED ON THE RATE-BASED ALLOCATION METHODOLOGY]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined [LINK TO METHODOLOGY?] to be derived by the specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs; ("French")

[SEE COMMENTS ON THE DEFINIITONS OF CLEAN ENERGY BENEFITS AND CLEAN ENERGY COSTS FROM APRIL 20][NEED TO DISCUSS WHETHER THIS FLEXIBILITY CAN BE ACCOMMODATED. SEE CATHY'S NOTE REGARDING REQUIRED NEXUS TO "COSTS" AND CONSIDER ABILITY TO GO BEYOND TO REFLECT "BENEFITS"]

"clean energy costs" means, in respect of a reference period, the value of the costs allocated [LINK TO FAIR ALLOCATION METHODOLOGY?] to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated costs to be incurred by the IESO under section 25.33 of the Electricity Act, 1998 or any provision that is the successor to that provision, which relate to contracts for, [IESO DOES NOT "INCUR" COSTS UNDER SECTION 25.33. INSTEAD, THAT SECTION DEALS WITH THE SETTLEMENT OF AMOUNTS AND MAKES REFERENCE TO THE VARIOUS CONTRACTUAL COMMITMENTS OF IESO (AMONG OTHER THINGS). ACCORDINGLY, WE SUGGEST THAT THE PHRASE "ESTIMATED COSTS INCURRED BY THE IESO UNDER SECTION 25.33 OF THE ELECTRICITY ACT" BE REPLACED WITH "THE ESTIMATED AMOUNTS CONTEMPLATED BY SECTION 25.33(1) OF THE ELECTRICITY ACT".]

(i) renewable energy generation or capacity,

(ii) conservation and demand management, including storage,

(iii) energy efficiency,

(iv) natural gas generation and capacity, excluding contracts relating to amounts

payable by the IESO under section 78.2 of the Ontario Energy Board Act, 1998 and excluding such other contracts as may be prescribed, or

(v) payments made or expected to be made under section 78.5 of the Ontario Energy Board Act, 1998, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

[SHOULD THIS CORRESPOND TO THE ADDITIONAL CATEGORIES OF CLEAN ENERGY COSTS – INCLUDING REGARDING CAPACITY AND EFFICIENCY?]

"electricity vendor"4 means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"fair adjustment" means the determination of the rate payable for electricity in accordance with Part II; ("French") [NOTE THAT THE FAIR ADJUSTMENT MECHANICS REQUIRE THAT (1) THE IMPACT OF A FAIR ADJUSTMENT BE REFLECTED BY LIMITING THE FINANCE AMOUNTS THAT CAN BE PASSED THROUGH TO SPECIFIED CONSUMERS AS CEAs IN THE MONTH TO WHICH THE RELATED RATE REDUCTION RELATES (I.E., IT MUST BE AN AGGREGATE AMOUNT, KNOWN IN ADVANCE, THAT CAN BE SUBTRACTED FROM THE 'FAIR ALLOCATION AMOUNT' AND (2) SINCE THE FAIR ADJUSTMENT AMOUNT WILL CONTRIBUTE TO THE FUNDING SHORTFALL IN THE PERIOD IN WHICH IT IS ATTRIBUTED, IT MUST BE ADDED TO THE FUTURE FAIR ALLOCATIONS IN ORDER TO ENSURE THAT THERE WILL BE SPACE UNDER THE 'CURVE' TO RECAPTURE RELATED FUNDING AMOUNTS]
[OLC Note: Need to consider this def'n a bit more, depending on how Part II drafting lands.]

"Fair Allocation Plan" means the plan prepared under section X, as amended from time to

4 FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

time in accordance with this Act; ("French") [SEE COMMENTS ON "FAIR ALLOCATION" RIDER AND THE CONSEQUENTIAL CHANGES CIRCULATED ON APRIL 20.]

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section 12.1**]; ("French")

[CONSIDER IF OPG SHOULD BE HARD-CODED IN THE ACT]

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")
[CONSIDER IF 'FINANCING STRATEGY' IS MORE IN LINE WITH WHAT WE NOW ARE CONTEMPLATING. IT SOUNDS LIKE 'PLAN' HAS A MORE RIGOROUS MEANING IN THE MOE CONTEXT THAN WHAT IS ACTUALLY INTENDED]

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner under section x; ("French")
[RECONSIDER PROVIDING THE ABILITY TO PRESCRIBE THE SORTS OF OBLIGATIONS THAT MAY BE INCURRED, IN ORDER TO REMOVE DOUBT]

"IESO" means the Independent Electricity System Operator continued under Part II of the Electricity Act, 1998; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section X20xx for the reference period; ("French")

"investment asset" means allthe investment assetsasset [created] as described in section x22xx; ("French")
[CONSIDER "CREATED". THE TENSION IS THAT THE STAKEHOLDERS WANT TO DESCRIBE THIS AS A 'TRANSFER' – WHICH ADMITTEDLY IS SOMEWHAT OF A MISNOMER. ALSO, THIS CONCEPT MAY NEED TO EXPAND TO CONTEMPLATE IESO PAYMENTS TO COVER THE FIRST 5 YEARS]

"investment asset owner" means a financing entity that acquires an investment interest as a result of a transferin the investment asset; ("French")
[OLC Note: I'm not understanding why the label includes reference to "asset" but the description only refers to "interest".]
[COULD DELETE "IN THE INVESTMENT ASSET"]

"investment interest" means an ownership interest in the investment asset, which entitles an investment asset owner to the rights and benefits specified in the agreement under

which the ownership interest is transferred;
[OLC Note: Still need to consider the above three definitions quite carefully, depending on how substantive drafting lands.]

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")
[IF ONLY USED FOR THE PROXY CALCULATION THEN THIS IS FINE. NOTE THAT THE INVOICE WILL ALSO SPECIFY THE CEA FOR THE SPECIFIED CONSUMER SO THIS SEEMS NARROW IF THIS TERM USED IN THAT CONTEXT]

"licensed distributor" means a person licensed under Part V of the Ontario Energy Board Act, 1998 to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the Ontario Energy Board Act, 1998 to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the Executive Council Act; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, [OLC Note: Is clause (a) still correct -- or is the first reference period now the full 12 months (i.e. ending on April 30, 2018?)].

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be ~~set out in the Fair Allocation Plan~~prescribed; ("French")
[SINCE REMOVING THE FAP, WE NO LONGER HAVE A PLACE FOR SHORTENING THE REF PERIOD LENGTH. THE REGULATION SEEMS TO BE ONE POSSIBILITY, ALTHOUGH QUITE RIGID IN TERMS OF ADAPTING THE MODEL. THE DEALERS ASKED THAT THE POWER TO REDUCE THE REF PERIOD LENGTH BE PROVIDED TO ACCOMMODATE MORE FREQUENT TRUE-UPS TOWARDS THE END OF THE PROGRAM]

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the

owner incurring one or more other funding obligations; ("French")
[THIS TERM HAS THE EFFECT OF MAKING A REPAYMENT AMOUNT NOT FLOW THROUGH TO THE CEAs IN THE RELEVANT PERIOD. I HAD SUGGESTED THAT THE CIRCUMSTANCES SHOULD ALSO INCLUDE REDEMPTIONS, WHICH ARE DIFFERENT FROM REPURCHASES FOR CANCELLATION.]

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")
[CONSIDER SAYING "RIGHT AND INTEREST". TE THEORY IS THAT WE WILL DERIVE PROPERTY INTERESTS FROM THE REGULATORY ASSET, IN THE FORM OF THE INVESTMENT ASSET, SO THAT HELPS A BIT WITH THE LOGIC AND CONTINUITIY OF THIS AWKWARD CONSTRUCTION]

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means an assignment, conveyance, disposition or sale; ("French")
[SHOULD THIS TIE IN TO SUBSECTION (4)? THE TERM "TRANSFER" IS USED IN CONNECTION WITH A TRANSFER OF THE REGULATORY ASSET (OR A PORTION THEREOF) AND THE TRANSFER OF AN INVESTMENT INTERST. THE TRANSFER OF AN INVESTMENT INTEREST FITS WITHIN THE DEFINITION OF TRANSFER ABOVE, BUT THE DEFINITION DOES NOT CURRENTLY WORK FOR THE "TRANSFER" OF THE REGULATORY ASSET (OR A PORTION THEREOF). IN THAT REGARD, THE DEFINITION SHOULD DESCRIBE THE PROCESS WHEREBY THE IESO RELINQUISHES ITS RIGHT TO COLLECT THE IESO FUNDING SHORTFALL (THE REGULATORY ASSET) AND THE INVESTMENT INVESTMENT INTEREST VESTS IN THE APPLICABLE INVESTMENT ASSET OWNER. WHILE THIS IS NOT A CUSTOMARY

"TRANSFER", AND THE TERMINOLOGY IS THEREFORE CONFUSING AT TIMES. THIS ARTIFICIAL STRUCTURE IS ONE THAT COUNSEL FOR OPG AND IESO HAVE INSISTED ON.]

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the Farm Registration and Farm Organizations Funding Act, 1993 and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

i. a dwelling,

ii. a property within the meaning of the Condominium Act, 1998,

iii. a residential complex within the meaning of subsection 2 (1) of the Residential Tenancies Act, 2006, without regard to section 5 of that Act, or

iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the Co-operative Corporations Act.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

i. The commodity price of the electricity used during the invoice period.

ii. The rates and charges set out in the applicable rate order issued by the Ontario Energy Board under subsection 78 (3) of the Ontario Energy Board Act, 1998.

iii. Any adjustment on the invoice required under section 25.33 of the Electricity Act, 1998.

iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the Excise Tax Act (Canada);

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Ontario Energy Board under subsection 78 (3) of the Ontario Energy Board Act, 1998:

i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the Ontario Energy Board Act, 1998 and classified as "microFIT".

ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider.

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Ontario Energy Board under section 78 of the Ontario Energy Board Act, 1998;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Transfer

(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset [includes][THIS IS PROBLEMATIC GIVEN THE DEFINITION OF TRANFER.] any act of the IESO by which the IESO purports to dispose of its interest in the regulatory asset with the result ~~of a named person becoming~~that the transferree will become the owner of an investment interest and IESO will have no further right, title or interest in, or any obligation in respect of, the transferred regulatory asset or portion thereof or in such investment interest.

[OLC Note: I don't think subs. (4) is necessary but perhaps this achieves some level of reassurance that the definition above does not?] [SEE COMMENT ABOVE ON THE DEFINITION OF "TRANSFER". THE DEFINITION OF "TRANSFER" DOES NOT ACCURATELY DESCRIBE WHAT IS HAPPENING TO THE REGULATORY ASSET.]

Effect of invalidity, etc.5

1.12xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that ~~was incurred under~~ this Act before the day that the provision was held to be invalid or ceased to be in effect.

[I AM NOT SURE THIS IS NEEDED. I DON'T THINK IT IS CORRECT TO SAY THAT A FUNDING OBLIGATION IS "INCURRED UNDER THIS ACT". IS THIS INTENDED TO APPLY TO A "TRANSER"?]

Purpose

5 FLS: this is from the Climate Change Mitigation and Low-carbon Economy Act, 2016

2.3xx. (1) The purposes of this Act are,6

(a) to ensure that the costs of the clean energy initiativecosts are ~~fairly~~ [allocated among][borne by] specified consumers over time ~~and that the process by which the Province raises money to fund the costs reflects~~to reflect the fair allocation; and
[OLC Note: Instructions were to qualify "clean energy initiative" with the following wording: that promoted and continues to promote significant investment in decarbonizing and modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom. This is a different description of "clean energy initiative" from the proposed definition of "clean energy initiative". It is also slightly different from what is described in the preamble. These should all be consistent with one another if we are referring to the same thing. If we are trying to describe different things, then please explain.]

(b) to recognize the long-term benefits of thethat clean energy initiativebenefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.
[OLC Note: Clause (b) is also slightly different from the wording in the preamble. These should probably also be consistent unless there is a specific reason for using different wording.]

Crown bound

3.4xx. This Act binds the Crown.

Protection and assurances
Prohibition

4.5xx. (1) The Crown shall not do anything that would,

~~(a)~~ hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;
[DOES THIS MEANS ANY CEA CHARGED TO ANY SPECIFIED CONSUMER?]

~~(b)~~ except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or
[UNCERTAIN ABOUT REFERENCE TO "OTHER DEBTS" – DOES THIS MEAN DEBTS OF A SPECIFIED CONSUMER (OBLIGOR)? ALSO, MIGHT THIS LIMIT THE ABILITY TO RECOGNIZE A CALCULATION ERROR OR AN OVER-CHARGE?]

6 FLS: Please see the Electricity Act, 1998 for much of the wording proposed in this section.

~~(c)~~ adversely affect an investment asset or a funding obligation.

[THIS MAY HAVE UNINTENDED CONSEQUENCES. FOR EXAMPLE, IF THE LDC/IESO SETTLEMENT RULES OR PROVISIONS GOVERNING RATE-SETTING CHANGE, AND THE CHANGE HAS SOME IMPACT (E.G., TIMING OR CREDIT IMPLICATIONS) ON THE FLOW OF CEAs, WOULD THIS MEAN THAT THE PROVINCE WOULD HAVE TO CONSIDER AND REFLECT ANY IMPACT OR BE PRECLUDED ALTOGETHER? IF THE OSC WERE TO EXERCISE ITS POWERS IN RELATION TO BONDS OR SWAPS, WOULD THAT POSSIBLY BE CAUGHT? THE DEALERS WILL LIKE THE BREDTH OF THE CURRENT PROVISION, BUT IT MAY BE TOO BROAD AS WRITTEN. PERHAPS REPLACE "ADVERSELY AFFECT" WITH "hinder, delay, impair or prejudice THE RIGHTS OF THE IAO UNDER AN INVESTMENT INTEREST OR THE OBLIGATIONS OF THE IAO UNDER ANY FUNDING OBLIGATION"]

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may enter into agreements and undertakings, which may include indemnities, guarantees and other assurances, for the purpose of providing compensation to an investment asset owner for losses suffered as a result of,The Minister of Finance may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding financial commitments, financial arrangements, indemnities or similar transactions.

[AS NOTED BY CATHY, GREATER SPECIFICITY MY BE REQUIRED TO ACHIEVE A SOLID POSITION THAT PARTICULAR CONTRACTS WERE WITHIN THE CONTEMPLATION OF THE LEGISLATURE. ALSO, IT IS UNCLEAR WHETHER THE IDEA OF COMPENSATION WOULD ADDRESS THE SORTS OF COMMERCIAL UNDERTAKINGS REQUESTED BY THE DEALERS, INCLUDING (1) A PERFORMANCE GUARANTEE OF IESO'S OBLIGATIONS AS THE SERVICER OF THE CEAs (2) AN OBLIGATION TO PURCHASE ISSUED SECURITIES IF A "MARKET DISRUPTION" PREVENTS A REFINANCING OF DEBT MATURITIES. ALSO, CONSIDER WHETHER "COMPENSATION" IMPLIES A LIMIT ON PAYMENTS (SUCH AS RESTITUTION VS. EXPECTATION DAMAGES)]

(a) a contravention of subsection (1);

(b) a change in law that would adversely affect the rights under this Act of an investment asset owner;

(c) approval by the Lieutenant Governor in Council of a Fair Allocation Plan, or an amendment to a Fair Allocation Plan, that fails to recognize the principles set out in section x;

(d) the failure of IESO or the electricity vendors to perform their obligations under this Act in connection with the invoicing, collection and remittance of the clean energy adjustment;

(e) a final determination by a court of final jurisdiction rendering invalid or ineffective all or any of the provisions of this Act;7 or

(f) such other matters as the Minister considers to be appropriate.

PART II
FAIR ADJUSTMENT

Specified consumers, rates forFair adjustment, May 1, 2017 to April 30, 2018
Definition

6.6xx. (1) In this section,

[OLC Note: Will wait for next round of instructions to deal with Part II because instructions received on April 19th did not include review of Draft 9.]

[NEEDS TO REFLECT REGULATORY PURPOSE (SEE EARLIER LANGUAGE IN DEFINITION OF "FAIR ADJUSTMENT") AND NEEDS TO RESULT IN A CALCULATED AMOUNT KNOWN IN ADVANCE OF THE RELEVANT REF PERIOD TO WHICH THE FAIR ADJUSTMENT APPLIES (RATHER THAN REFERRING ONLY TO THE RATE REDUCTION)]

"average baseline invoice amount" means the average monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the Ontario Energy Board Act, 1998 for the purposes of subsection 79.16 (1) of that Act, as determined by the Ontario Energy Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

7 Note to translator: See s. 9 of the Public Authorities Protection Act.

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive a monthly invoice amount that is 25 per cent less than the average baseline invoice amount.

[OLC Note: Consider whether you want/need to include the phrase in square brackets here, given the proposed purpose provision, the preamble and the definitions of the various relevant terms. If we keep this text here, we will want to double-check to ensure consistency throughout.]

[TO AVOID CONFUSION THAT THIS ACT IS PROVIDING A 25% REDUCTION IN ADDITION THE 8% REBATE, WE SUGGEST THAT WHEN REFERENCING THE 25% REDUCTION, THE LANGUAGE OF SECTION 6XX(2) CLEARLY INDICATE THAT THIS IS AFTER INCLUDING OF THE 8% CREDIT UNDER THE OREC ACT. THE CONFUSION ARISES, IN PART, BECAUSE "INVOICE AMOUNT" IS DEFINED IN SECTION 1XX(2.1) AS BEING THE FULL AMOUNT OF AN INVOICE INCLUDING THE 13% HST BUT THE DEFINITION DOES NOT INCLUDE THE 8% OFF-SETTING CREDIT UNDER THE OREC ACT. LOOKING NOW AT SECTION 6XX(2), WHICH INDICATES THAT THE NEW RATE REQUIRED BY THIS SECTION WILL REFLECT A 25% BILL REDUCTION (WHICH IS TIED BACK TO THE DEFINITION OF INVOICE AMOUNT), WE BELIEVE THE LANGUAGE NEEDS TO CLEARLY STATE THAT THE 25% REDUCTION IS INCLUSIVE OF THE OREC REBATE TO AVOID THE POSSIBLE INTERPRETATION THAT THIS ACT WILL PROVIDE AN ADDITIONAL 25% REDUCTION. THIS COULD BE ACCOMPLISHED WITH THE FOLLOWING REVISIONS:

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive a net monthly invoice amount after taking into account the financial assistance that would be credited to the representative consumer under the *Ontario Rebate for Electricity Consumers Act, 2016* that is 25 per cent less than the average baseline invoice amount.]

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer

shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate mentioned in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination.

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations. [WE FOUND THE LANGUAGE IN THIS SECTION UNCLEAR AND WOULD SUGGEST THAT IT PROVIDE THAT THE CUSTOMER WILL RECEIVE A LUMP SUM CREDIT EQUAL TO THE DIFFERENCE BETWEEN THE INVOICED AMOUNT SHOWN ON THEIR INVOICE AND THE INVOICE AMOUNT THAT WOULD HAVE BEEN INVOICED USING THE APPLICABLE RATE.]

Fair adjustments, startingadjustment, May 1, 2018 to April 30, 2022

7.7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate for electricity payable by specified consumers and sub-meter customers for any prescribed periods occurring afterduring the period beginning on May 1, 2018 and ending on April 30, 2018.2022.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

9x8xx. (1) Upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the investment asset owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

[OLC Note - ENE LSB to confirm that unit sub-metering does not need to be addressed here.]

[OLC Note: In all places in the draft where we refer to "as agent of the investment asset owner", are we sure that there will always be an investment asset owner in existence at the time when these provisions need to be relied upon?]

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the Fair Allocation Planfair allocation calculation applicable at the time when the payment is due; and

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

[AS NOTED BY CATHY, THIS LANGUAGE IS TOO BROAD. IT SHOULD SAY THAT A FUNDING OBLIGATION THAT PROVIDES FOR AN AMOUNT TO BE PAYABLE DURING A REF PERIOD AND THAT WAS INCURRED WHEN THE FAIR ALLOCATION AMOUNT FOR THE REFERENCE PERIOD WAS SUFFICIENT TO COVER SUCH PAYMENT AMOUNT CANNOT BE AFFECTED BY A SUBSEQUENT CHANGE IN THE FAIR ALLOCATION FOR THE REF PERIOD. WE HAVE PROVIDED VARIOUS FORMULATIONS OF THIS IDEA IN PRIOR DRAFTS, AND WE CAN EXTRACT THOSE FOR LEG COUNSEL IF HELPFUL.]

Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner [in respect][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 payment obligation or indebtedness owing by the specified consumer [under the ce or otherwise.] [ARE THE CONCLUDING WORDS NECESSARY? IS IT

CLEAR THAT THERE IS A COMPLETELY SEPARATE ENFORCMENT SCENARIO – E.G., CONSIDER THE PRO RATA SCENARIO UNDER S.12xx(3)]

Irrevocability of clean energy adjustment

10x9xx. (1) AnyThe amount of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor. [A MORE COMMON FORMULATION WOULD BE "TO THE EXTENT THERE ARE ANY ERRORS IN COMPUTATION, ANY CLERICAL OR TYPOGRAPHICAL ERRORS, OR ERRORS OF A SIMILAR NATURE." THIS SHOULD REFER TO ERRORS *DETERMINED* BY THE ELECTRICITY VENDOR, SINCE WE DO NOT WANT SPECIFIED CONSUMERS TO ARGUE THAT THEY DO NOT NEED TO PAY THE CLEAN ENERGY ADJUSTMENTS IF *THEY* THINK THAT ELECTRICTY VENDOR HAS MADE AN ERROR.]

Determination of clean energy adjustment

11x10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period [CONFIRM APPROACH TO DIVIDING THE TOTAL AMOUNT CALCULATED FOR A REF PERIOD BY THE NUMBER OF MONTHS IN THE REF PERIOD] shall be determined as follows:

1. Calculate the estimated finance amount [NOT DEFINED] for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1.

[DIVIDE BY THE NUMBER OF MONTHS DURING THE REF PERIOD?]

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment [THIS IS AN AGGREGATE CONCEPT] is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

differences between the estimated and actual finance amounts for the immediately preceding reference period.; ✓

ii. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

ii. variations in billings due to variations in electricity consumption.
[OLC Note: What is the difference between "billings" and "invoices"… also "amounts billed" vs. "amounts invoiced"? Can we just use "invoicing"?] [AGREED] ✓

IESO to invoiceissue remittance notice to electricity vendors

12x11xx. (1) The IESO shall, in accordance with the regulations, issue an invoicea remittance notice to each electricity vendor for all or a portionthe electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment [CEA REFERENCE IS INCORRECT] in respect of a reference period.
[OLC Note: There doesn't seem to be anything in the draft explaining how the CEA would get distributed among EVs. Does the above drafting work? Would this be addressed in the regulations?] [THE IDEA IS THAT THE OEB RECEIVES AN AGGREGATE FINANCE AMOUNT (SUBJECT TO TRUE UP) [PREVIOUSLY CALLED THE "PERIOD FINANCE AMOUNT" FROM THE FSM (THROUGH IESO); TURNS THAT AMOUNT INTO A RATE PAYABLE BY THE VARIOUS CLASSES OF SPECIFIED CONSUMERS; AND INFORMS EACH EV TO CALCULATE THE CEA FOR A SPECIFIED CONSUMER BASED ON ITS VOLUME USAGE]

IESO to collect

(2) The IESO shall, as an agent of the investment asset owners, collect the clean energy adjustment from electricity vendors [in accordance with the monthly settlement process set out in the market rules made under section 32 of the Electricity Act, 1998].
[OLC Note: ENE LSB to advise as to whether to include a standard that IESO must meet (e.g. reasonably diligent efforts).]

Collection account

(3) The IESO shall establish an account in which to record its collection of the following:All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those accounts:
[OLC note - Compare to s. 15x -- should the accounts be for "record of collection" or should the accounts be a place for IESO to "deposit and receive" amounts? Should be

consistent?]

1. Amounts described in section 15xsubsection 12 (4). [CONFIRM REFERENCE]

2. Payments made by specified consumers directly to the IESO as electricity vendor in respect of the clean energy adjustment.under subsection 8 (1).

3. Portions of payments by specified consumers made directly to IESO as electricity vendor that are allocated to the clean energy adjustment under subsection 13x (4).

4. Any proceeds arising from the exercise or enforcement of any rights and interests under or in respect of the investment asset.

Deposit

(4) The IESO shall promptly deposit all amounts received by it in respect of the clean energy adjustment into the account established under subsection (3).

Same, held in trust

(54) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(65) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment asset owners in accordance with the regulations.

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable Fair Allocation Planfair allocation calculation made by the Financial Services Manager under Part IV, the IESO [may? Shall?] collect the difference from specified consumers.

[WHERE DOES THIS MONEY GO? IS THIS INTENDED TO LINK TO THE IESO RECOVERY? THE FAIR ALLOCATION IS NOT INTENDED TO RESULT IN A PAYMENT – IT'S JUST THE MEASUREMENT STICK FOR DETERMINING THE RELATIVE AMOUNTS TO BE ALLOCATED (THROUGH FINANCE AMOUNTS INCURRED) OVER TIME. THIS SEEMS TO SUGGEST THAT THE FAIR ALLOCATION AMOUNT IS MEANT TO CREATE A PAYMENT OBLIGATION.

THAT SAID, IF THE FULL AMOUNT OF THE FAIR ALLOCATION FOR A REF PERIOD IS NOT PASSED ON AS CEAS, THE SPECIFIED CONSUMERS OF THAT PERIOD WILL BEAR LESS OF THE COSTS THAT THE FAIR ALLOCATION SUGGESTS AND THERE MAY BE A DISCONNECT BETWEEN THE CEAs IN AGGREGATE AND THE AGGREGATE COSTS/BENEFITS SPREAD USING THE FAIR ALLOCATION METHODOLOGY]

Electricity vendor to apply rate

13x. (1) [Each electricity vendor shall, in accordance with the codes and orders of the Ontario Energy Board, determine the proportionate share of the clean energy adjustment payable on a monthly basis by each of its specified consumers.]
[OLC Note: Not sure if subs. (1) should remain or if some other mechanism for determining specified consumer's portion of CEA will be proposed. Please instruct.]
[WHY DELETED? NEED A WAY TO GO FROM AGGREGATE FINANCE AMOUNTS TO INDIVIDUAL CEAs BASED ON ACTUAL ELECTRICITY USAGE]

Electricity vendor to invoice specified consumers

(212xx. (1) The electricity vendor shall issue an invoice to each specified consumer for the [consumer's amount of the clean energy adjustment][TERMINOLOGY – ELSEWHERE, THE CEA IS A PER CUSTOMER CONCEPT] in accordance with the regulations.
[OLC Note: Do you want the regulations here to deal with: (1) the way in which invoice is issued; (2) the way the consumer's amount is calculated; or (3) both 1 and 2?]

Electricity vendor to collect

(32) Each electricity vendor shall, as an agent of the IESO and the investment asset owners, collect the clean energy adjustment from specified consumers. [in accordance with the monthly settlement process set out in the market rules made under section 32 of the Electricity Act, 1998].
[I THINK THE IDEA IS THAT THE EV COLLECTS CEAs FOR THE IAO. IESO PROVIDES SERVICES TO IAO TO COORDINATE THE COLLECTION AND REMITTANCE PROCESS, AND IN THAT REGARD IS THE "SERVICER" AND EACH EV IS A "SUB-SERVICER". THAT IS A PARALLEL CONSTRUCTION THAT HAS MORE TO DO WITH THE ADMINISTRATION OF THE OVERALL PROCESS, RATHER THAN THE CAPACITY IN WHICH AN EV HANDLES THE COLLECTIONS IT RECEIVES FROM ITS CUSTOMERS]
[OLC Note: ENE LSB to advise as to whether to include a standard that EV must meet (e.g. reasonably diligent efforts).]

Pro rating of payments

(43) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the

payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period. [COULD THERE BY AMOUNTS FOR ITEMS OTHER THAN ELECTIRICTY CHARGES? THIS WOULD SUGGEST THAT ANY OTHER AMOUNTS WOULD BE SUBORDINATED – IS THAT INTENDED?]

Held in trust

(54) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (65), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted [under this Act][I DON'T THINK THE ACT GRANTS A SECURITY INTEREST. IS THIS REFERRING TO A SECURITY INTEREST CREATED IN COMPLIANCE WITH THE ACT?]:

1. Payments received from or on behalf of specified consumers in respect of the clean energy adjustmentunder subsection 8 (1). [CONFIRM REFERENCE]

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (43). [CONFIRM]

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

[OLC Note: Placeholder - as per ENE LSB note, I have not dealt with "segregated account" provision.]

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts received by it in respect of the clean energy adjustmentdescribed in subsection (5) to the IESO for the benefit of the investment asset owners or secured parties in accordance with the regulations. [I DON'T THINK THE REFERENCES TO SECURED PARTIES IS NEEDED. THEY WILL DERIVE THEIR INTERESTS UNDER THE INSTRUMENTS UNDER WHICH SECURITY IS GRANTED. THE STATUTE SHOULD PROBABLY ONLY DEAL WITH OWNERSHIP INTERESTS.]

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

PART IV
FAIR ALLOCATION PLAN AND FINANCING PLANIMPLEMENTATION

Minister to Prepare Fair Allocation Plan
Minister to prepare plan
Financial Services Manager
Appointment

8. (1) In order to fairly measure and allocate [amounts described in section 8.0.1 for a reference period][SEE THE COMMENT ON 8.0.1 BELOW,] among specified consumers for the purposes of this Act and to align the funding obligations that may be incurred in each reference period with the allocation of those [estimated costs and benefits] across present and future generations of specified consumers, the Minister shall prepare and provide to the Lieutenant Governor in Council a written plan entitled the Fair Allocation Plan.13xx. (1) [Placeholder - in the latest instructions, the proposed provision dealing with appointment of the FSM was removed. I think it would be helpful to say something about how the FSM comes into existence (e.g. the stating that the OPG is the initial FSM) in order to provide necessary context. Please instruct.]
[THE FAIR ALLOCATION RIDER HAS NOT BEEN FULLY IMPLEMENTED. FURTHER TO CATHY'S NOTE, IT WILL BE IMPORTANT TO ALIGN THE REVENUES FROM THE CLEAN ENERGY ADJUSTMENTS TO THE COSTS ASSOCIATED WITH THE REGULATORY SCHEME. WE HAVE RE-INTRODUCED SOME WORDS TO DO THAT.]

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment asset owner.
[NOT SURE "MAY" MAKES SENSE. I THINK THE FSM WILL NEED TO

ALLOCATE CASH COLLECTIONS, EXERCISE COLLECTIVE RIGHTS UNDER THE INVESTMENT INTERESTS, ETC. ALSO, THERE MAY BE MULTIPLE IAOs, EACH WITH AN INVESTMENT INTEREST – AND SO THE REFERENCE TO ADMINISTERING THE IA SHOULD PROBABLY REFER TO THE INVESTMENT INTERESTS]

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX. [CONFIRM SCOPE OF OEB'S INVOLVEMENT IN REVIEWING THE FINANCE AMOUNTS]

2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III. [AS NOTED, I THOUGHT WE AGREED THAT THE INFORMATION REGARDING FINANCE AMOUNTS WOULD GO TO THE OEB (THROUGH IESO?) – THIS SEEMS TO SAY THAT THE FSM WILL DEAL DIRECTLY WITH EVs]

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

[CONSIDER IF THIS SHOULD APPLY MORE BROADLY TO ANY ECONOMIC BENEFIT DERIVED BY OPG, INCLUDING INDIRECTLY BY WAY OF PROFIT MADE ON SUB-NOTES INTO A FE (I.E., DIFFERENCE BETWEEN THE COUPON ON SUB-NOTES AND THE COST OF FUNDING AND CAPITAL TO OPG (I.E., 44% GOVERNMENT LOAN AND EQUITY OFFERING). IF THIS PROVISION IS INTENDED TO COVER THE FACT THAT OPG MAY MAKE A PROFIT, IT IS LIKELY THAT THE SCRUTINY WOULD EXTEND TO THOSE MORE "INDIRECT" SOURCES, WHICH ARE OTHERWISE UNRESTRICTED THROUGH THIS ACT]

Fair Allocation Amount

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall, prior to incurring any funding obligation, calculate ~~thea~~ fair allocation amount in respect of each reference period for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and

estimated clean energy benefits among the specified consumers in respect of ~~each~~such reference period; and

(b) aligning the finance amounts becoming payable in such reference period under funding obligations that may be incurred ~~during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers~~with the fair allocation amount for such reference period.

[THE FAIR ALLOCATION IS SET AT THE OUTSET BASED ON REASONABLE EXPECTATIONS. IT IS FUNDAMENTAL TO THE LEGAL ANALYSIS THAT THE ALLOCATIONS (AS A LIMIT ON FINANCE AMOUNTS TO BE PASSED THROUGH DURING A REF PERIOD) BE TIED TO THAT INITIAL EXPECTATION. IF THE WORDING SUGGESTS THAT THE ALLOCATIONS ARE BASED ON ACTUAL COSTS AND BENEFITS OVER TIME, THE MODEL WILL INVITE SCRUTINY BASED ON FUTURE DEVELOPMENTS – AND WILL THEREFORE NOT BE FINANCABLE GIVEN THE PROSPECT OF AN ACTION TO IMPUGN BASED ON FUTURE DEVELOPMENTS. THE ACT NEEDS TO REFLECT THIS TIMING CONSIDERATION THROUGHOUT.]

Amount

(1.1) The fair allocation amount determined in subsection (1) in respect of a reference period is the sum of the following amounts:

[OLC Note: I'm struggling a bit to understand the distinction between the "calculation" and the "amount" when it comes to fair allocation. I expect these provisions and all references to "fair allocation" will need revision to ensure we are articulating the desired policy.]

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] ~~to be~~ allocated to specified consumers in respect of the reference period pursuant to the fair allocation calculation exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs for the reference period [in the absence of this Act].

[OLC Note: The above needs some work… in particular we would need to say more than just "in the absence of this Act" because I think we would also need to specify that under the proposed scenario, the current Global Adjustment rules would continue to be in place. We also need to be clear what we mean by global adjustment etc.]

2. An allocable portion of the value of any fair adjustment, determined for the reference period in accordance with subsection (3).

[OLC Note: Consider whether para. 2 above and subs. (3) below should be combined somehow. I haven't had a chance to think this through yet.]

Principles

(2) In calculating the ~~fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3)~~estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of ~~a~~the reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of ~~a~~the reference period should be determined based on [Insert principles].

[PRINCIPLES SHOULD HAVE REGARD TO THE INCREMENTAL ITEMS THAT COMPRISE 'BENEFITS' (VS. 'COSTS'). ONCE THOSE HAVE BEEN DESCRIBED, FOR EXAMPLE, IF BENEFITS INCLUDE (SUBJECT TO RECOGNIZING CATHY'S CONCERNS) AN ASSESSMENT OF POSITIVE EXTERNALITIES FROM CLEAN ENERGY (REDUCED HEALTH DAMAGE FROM COAL THROUGH REDUCED POLLUTION), THEN SUCH BENEFITS MIGHT BE REASONABLY ALLOCATED ON A PER CAPITA BASIS AS OPPOSED TO A VOLUMETRIC BASIS. FURTHER DISCUSSION IS REQUIRED TO PROVIDE MEANINGFUL INPUT, INCLUDING TO PAIR-UP THE FINANCIAL ANALYSIS UNDERWAY BY TIM CHRISTIE]

3. The fair allocation calculation should include reasonable assumptions regarding the following:

i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

ii. The expected number of specified consumers for each reference period.

iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period.
[OLC Note: Not sure I understand subs. (3) -- if the fair adjustment is done in advance, why wouldn't it be included as part of the current fair allocation calculation as well (i.e. not just future calculations)?]
[SEE EARLIER EXPLANATION. THE BASIS FOR SPREADING THE VALUE OF A FAIR ADJUSTMENT OVER TIME, FOR THE PURPOSE OF INCREASING THE

FINANCING CAPACITY CORRESPONDING TO THE INCREASED FUNDING SHORTFALL THAT RESULTS FROM THE FAIR ADJUSTMENT, A METHODOLOGY SHOULD BE ADOPTED – PERHAPS TO PARALLEL THE GENERAL APPROACH TO SETTING FAIR ALLOCATION AMOUNTS OVER THE VARIOUS REFERENCE PERIODS.]

Amendments to the planfair allocation calculation

(2) Subject to the approval of the Lieutenant Governor in Council, the Minister may amend the Fair Allocation Plan4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the MinisterFinancial Services Manager considers appropriate, having regard to the requirements of this Act.

[OLC Note: Here and throughout, I'm not quite sure whether we should be referring to the "calculation" or the "amount".]

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the basis for the calculation of the fair allocation ~~calculation~~ [and any amendments to the fair allocation calculation].

Effective date

(36) The Fair Allocation Planfair allocation calculation or an amendment to the planfair allocation calculation takes effect on the day that the planis 30 days after the fair allocation calculation or the amendment, as the case may be, is approved by the Lieutenant Governor in Council.provided to the Minister in writing.

Publication

(47) The Minister shall ensure that the Fair Allocation Planfair allocation calculation and any amendments to the planit are made available to the public in a manner that the Minister considers appropriate.

Amounts to be allocated [ARE THESE ITEMS SUBSUMED BY THE CONCEPTS OF CLEAN ENERGY COSTS AND CLEAN ENERGY BENEFITS? WE USE THOSE TERMS ELSEWHERE IN THE LEGISLATION TO DESCRIBE WHAT IS BEING ALLOCATED ACROSS GENERATIONS, AND ITS NOT CLEAR TO US WHY THERE SHOULD BE ANY DISCERPANCY.]

8.0.1 The amounts referred to in subsection 8 (1) are, in relation to a reference period,

(a) the costs incurred by the IESO previously or expected to be incurred by the IESO during the reference period and after the reference period in relation to,

(i) payments made or expected to be made under section 78.1 of the Ontario Energy Board Act, 1998, other than payments made under contracts with Bruce Power L.P or Bruce Power A. L.P. or their successors or assigns, and

(ii) payments made or expected to be made under section 78.5 of the Ontario Energy Board Act, 1998; and

(b) such other costs, benefits or amounts as may be prescribed, in respect of the clean energy initiative, made or received before the reference period or expected to be incurred during or after the reference period. ("French")

Principles

8.1 In preparing the Fair Allocation Plan or any amendments to the plan, the Minister shall have regard to the following principles:

1. Costs of the clean energy initiative should be allocated among specified consumers during the period beginning on the day this Act comes into force and ending on April 30, 2047 or such later day as may be prescribed.

2. The allocation of the costs among specified consumers should be proportionate to the benefits of the clean energy initiative to those specified consumers over time.

3. During a reference period, no specified consumer should bear an unreasonably disproportionate share of the costs.

4. To the extent that specified consumers have borne an unreasonably disproportionate share of the costs over periods that occurred before the coming into force of this Act, the allocation should provide for a fair adjustment for those specified consumers.

5. The allocation of costs among specified consumers over future reference periods should include reasonable assumptions about the time value of money, the rate of inflation, electricity consumption and the composition of specified consumers as a class of individuals.

[OLC note: I don't think the underlined phrase appears anywhere else - what is this supposed to be conveying?]

Implementation

8.2 The IESO shall ensure that the IESO funding shortfall during a reference period does not exceed the maximum amount set out for the reference period in the Fair Allocation Plan.

Financial Services Manager to Prepare Financing plan

Ontario Power Generation Inc. appointed as Financial Services Manager to prepare Financing Plan

8.3 Subject to section 12.1, Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Financial Services Manager to prepare plan 11.16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred or potential transfers should be made for the purposes of this Act.

Development of plan
Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. [OLC Note - placeholder - because these instructions refer to concepts such as the "fair allocation amount", I am deferring this drafting until FAP instructions are confirmed] Any incurrence of a funding obligation should reasonably align the expected finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period.
[OLC Note: Need to consider further how para. 1 overlaps/conflicts with elements set out in s. 15xx above.]

2. Incurrences and transfers should be implemented in a manner that, as the Financial Services Manager considers to be reasonable, is cost effective and reflects prevailing market terms and conditions.

4. Such other3. Reasonable assumptions should be made regarding such matters as may be prescribed.
[OLC Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time,

without the approval of the Minister, subject to the requirements set out in this section.

Limitation, first five year period

(2.14) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [TBC -difference between the fair allocation amount for the reference period minusand the amount of the fair adjustment for the reference period].

Amendments to approved plan (3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in subsection (2).

Confidentiality of plan

(4) The Financing Plan is deemed to be a record subject to section 17 of the Freedom of Information and Protection of Privacy Act.
[OLC Note: You'll want to check the wording of subs. (4) with MGCS Legal.]

Implementation of Financing Plan

11.117xx. (1) The Financial Services Manager shall incur funding obligations and make transfers in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, section [paramountcy of funding obligations] applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) TheIn accordance with the Financing Plan may provide for, the Financial Services Manager ~~to~~~~may~~may establish one or more financing entities that may incur funding obligations and make transfers.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Ontario Energy Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Effect of amendment to Fair ~~Allocation Plan~~Allocations

(4) No funding obligation incurred and notno transfer made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

Termination of appointment

12.1 (1) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager under section 8.3 or subsection (2) if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(2) Upon terminating an appointment under subsection (1), the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

PART V

THE REGULATORY ASSET

Interpretation, portion of regulatory asset

12.218xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.

[OLC Note: This is meant to assist with clarity in the subsequent provisions. Will consider further as drafting settles.] [SEE COMMENT ON THE DEFINITION OF "TRANSFER" – THESE WORDS DO NOT CURRENTLY DESCRIBE WHAT IS HAPPENING TO THE REGULATORY ASSET UNDER THE OPERATIVE PROVISIONS OF THIS PART.]

Variance account

12.319xx. (1) The Ontario Energy Board shall issue an accounting order to authorize the IESO to do the following:

[OLC Note: Why is the OEB being required to issue an order authorizing these things… why not just authorize these things directly in the Act?]

11. Create a variance account for the purposes of this Act.

2. Record the IESO funding shortfall in the variance account from time to time.

3. Recover the IESO funding shortfall in accordance with section X and the regulations.

No hearing

(2) The order of the Ontario Energy Board shall be made in writing and without holding a hearing.

No appeals, etc.

(3) No appeal lies from the order of the Ontario Energy Board.

IESO funding shortfall

22.220xx. (1) The IESO shall determine the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts [that would have been][THESE WORDS ARE HELPFUL SINCE THE INVOICES AREN'T ACTUALLY ISSUED AS CONTEMPLATED BY THIS PARAGRAPH 1.] issued to specified consumers for the month if Part II of this Act did not apply.

2. TheCalculate the sum of all invoice amounts that would have been issued to specified consumers for the month [if paragraphs 1 and 2 of section 7.2 did not apply.].[THE BRACKETED TEXT MUST BE DELETED FOR THE CALCULATION TO WORK.]

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity used by specified consumers, the IESO shall record an adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers.

Recording of IESO funding shortfall

(3) IESO shall record the IESO funding shortfall from time to time, including adjustments resulting from the exercise of the right of recovery under section 2221 and any transfer under section 23,22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall in the variance account is determinative of the amount of IESO funding shortfall at the time of the recording.

Regulatory asset established

22.21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the IESO funding shortfall~~.~~ from [the specified consumers]. [This right constitutes a regulatory asset and a property right.][WE CONTINUE TO THINK THESE WORDS ARE HELPFUL, INCLUDING TO GUIDE THE READER AS TO THE MEANING OF A REGULATORY ASSET. ALSO CONSIDER WHETHER THIS SECTION (AND (2)2 BELOW) IS SUFFICIENT TO CREATE THE RIGHT OF RECOVERY, OR IF THERE NEEDS TO BE MORE CERTAINTY AROUND THE RECOVERY PROCESS. IN PARTICULAR, IT WOULD BE HELPFUL TO IDENTIFY AGAINST WHOM THE RIGHT OF RECOVERY CAN BE EXERCISED. WE ANTICIPATE THAT THE IESO SHOULD BE FOCUSSED ON THIS POINT.]

Same, restrictions

(2) The IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect the IESO funding shortfall from specified consumers before May 1, 2022.

2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Ontario Energy Board, having regard to the amount of the IESO funding shortfall from time to time and the principles of the Fair Allocation Plan[fair allocation calculation].

3. Such other restrictions as may be prescribed.

Transfer of regulatory asset

23.22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan, which transfer creates the investment asset. [OLC Note: In the previous drafts, we were deeming the RA to be an IA upon transfer. That has been removed in the latest instructions. I think we still need to draft some kind of link between the RA and the IA and II so that a reader can understand how this is meant to work. The underlined phrase (used both here and below) is just a suggested approach.] [WE AGREE THIS SECTION CAN BE CLARIFIED AND WE SUGGEST A STRONGER LINK BETWEEN THE REGULATORY ASSET BEING TRANSFERRED AND WHAT IS ACQUIRED BY THE INVESTMENT ASSET OWNER. CONSIDER THE FOLLOWING DRAFTING, WHICH MAY BE A BIT CLOSER, BUT IS STILL IN LINE WITH WHAT IESO, OPG AND THE DEALERS

ARE LOOKING FOR. THIS IS ULTIMATELY THEIR CONSTRUCTION, SO IT WILL BE USEFUL TO SEE THEIR COMMENTS ON THIS POINT: The IESO may, from time to time, transfer a portion of the regulatory asset relating to any portion of the IESO funding shortfall to a financing entity under the Financing Plan. Upon such transfer, the IESO shall have disposed of and have no further right, title or interest in[, or any obligations in respect of], the portion of the regulatory asset so transferred and the financing entity shall acquire an investment interest in the investment asset which entitles the investment asset owner to receive, among other things, the clean energy adjustment from specified consumers in an amount equal to such portion of the IESO funding shortfall, plus any other amounts determined in accordance with the Financing Plan.]

Same

(2) Upon receipt of any payment in consideration for the transfer,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) unless otherwise provided for in this Act, the IESO shall have no further right, title or interest in, or any obligations in respect of, the regulatory asset so transferred or in the investment asset created by the transfer.[THE IESO DOES NOT RELINQUISH ITS RIGHTS TO COLLECT ALL OF THE IESO FUNDING SHORTFALL UPON A TRANSFER OF A PORTION OF THE REGULATORY ASSET. THE CURRENT DRAFTING IS CONFUSING, AND DEMONSTRATES THE NEED TO MORE CAREFULLY REFER TO A TRANSFER OF A PORTION OF THE REGULATORY ASSET.]

[OLC Note: Consider the language of clause (b) that I have highlighted in green and language highlighted in green below in 23.1 (2). Isn't this repetitive?]

[Same

(3) Upon transfer, the financing entity [becomes an investment asset owner and?] acquires an investment interest.][THIS LANGUAGE IS ADDRESSED BY THE CHANGES TO SECTION 23.22XX]

Validity of transfer

23.123xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and [absolute ~~assignment~~transfer ~~to the investment asset owner~~assignment]/[disposition] of the regulatory asset~~, and the investment asset created by the transfer shall be immediately vested in the transferee~~.

[OLC Note: Should the above say "absolute transfer" to be consistent with terminology used in subs. (2) below and our defined term "transfer"?]

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to

constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Interpretation, portion of investment asset

23.224xx. If a transfer under this Part provides for the transfer of a portion of thean investment [asset/interest?], any references in this Part to the investment assetinterest are deemed to be references to the portion of thespecific investment assetinterest transferred.

[OLC Note: Consider what gets transferred -- the IA or the Investment Interest? Consider whether the "portions" of the IA are in fact "investment interests"? Or could a portion of an investment interest be transferred too?]

Investment asset established

23.325xx. (1) ~~An~~~~The~~The initial transfer of the regulatory asset or a portion thereof gives rise to the investment asset. The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

[OLC Note: Still need to review the language below carefully.]

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by

regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the ~~regulatory asset owner's regulatory~~investment asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

No set off, etc.

(2) The investment asset shall not be set off or reduced by any person in any circumstance, including,

[OLC Note: I wonder if subs. (2) is worded more broadly than intended -- the idea is that eventually the investment asset could be set off/reduced through payments, right?][YES.]

(a) by a consumer, an electricity vendor, an agent of the investment asset owner or an owner of distribution system assets in the Province;

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the Personal Property Security Act.

Collective action required

(4) If the investment asset owner owns a right or interest in the investment asset

that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms.
[OLC Note: It seems that successors may need to be addressed here.]

Transfer of investment interest

24.26xx. An investment asset owner may transfer all or a portion of its rights and interests in an investment interest to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.
[OLC Note: Please compare the language underlined above vs. the language of subs. 23 (1) above. Here we are talking about transfer of "rights and interests" in an investment interest whereas above we refer to a transfer of "the RA". Why are we not saying transfer of "the IA" here? Can one have a "right or interest" in an "interest"? Still need to clarify how these concepts work together.]

Validity of transfer

25.27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute assignmenttransfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.
[OLC Note: We will want to compare the language of 23.1 vs. this section in order to ensure consistency --I'm assuming the intention is for them to track each other.][NO – THE CONCEPTS ARE DIFFERENT. SEE THE COMMENT ON THE DEFINITION OF "TRANSFER".]

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment asset owner's right, title and interest in, to and under an investment interest, as applicable (or relevant portion thereof), 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 (or relevant portion thereof), subject to the transfer, including all rights to the investment interest arising after the transfer.
[OLC Note: Need to update language of subs. (2) above, based on outcome of drafting of 23.1.]

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment asset owner shall have priority over any liens in favour of such other persons.

Administration of investment asset

26. (1) The Financial Services Manager may administer the investment asset on behalf of the investment asset owner.

[OLC Note - still to consider location of this section - move to FSM roles.]

Same

(1.1) The administration of an investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Ontario Energy Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 11x.

2. Providing information to electricity vendors in respect of their obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(2) The Ontario Energy Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

Investment asset owner may grant security interest

27.28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

[OLC Note: This section had become a bit confused through multiple rounds of changes. I have now attempted to remove duplication. Please review carefully to ensure that it contains the correct provisions.]

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

(x3) For purposesAll provisions of the Personal Property Security Act, the shall apply to the investment asset and each investment interest shall beon the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding

obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Same

(x) All provisions of the Personal Property Security Act shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except to the extent otherwise provided in this section.

Same

(x) All proceeds of a related investment interest that are subject to the security interest that are received by the applicable investment asset owner shall immediately be subject to the security interest, and the security interest in the proceeds shall be perfected pursuant to the Personal Property Security Act.

Same

(x) A security interest perfected under the Personal Property Security Act shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the investment interest subject to the security interest unless the secured party has otherwise agreed in writing.

Proceeds

(84) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(95) 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

(106) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

Collective action required

28. If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms.
[OLC Note: It seems that successors may need to be addressed here. Also secured parties have not yet been addressed in this draft.]

Exercise of rights

29. The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset shall be exercised in accordance with section [xx] of the Personal Property Security Act.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

34.29xx. 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.
[OLC Note: ENE LSB to consider whether this section should apply to unit sub-meter providers.]

Not Crown agent

35.130xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the Crown Agency Act.
[OLC Note: would there be any doubt about whether any investment asset owner is a Crown agent? Is that where this needs to be articulated instead?]

Sequestration

35.231xx. (1) A court in the Province may, upon application by an investment asset owner [or pledgee?]a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner [or pledgee]secured party by any person or entity authorized to collect the clean energy adjustment, defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order.

Choice of law

37.132xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

38.33xx. 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.
[OLC Note: Please confirm that the underlined list of verbs is correct, taking into consideration the defined terms we are using in the draft Bill.]

No further approvals, etc.

39.34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the ~~establishment~~determination of the ~~Fair Allocation Plan~~fair allocations.

Immunity

97x35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the Proceedings Against the Crown Act, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

98x36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings [arising under this section] unless the prescribed requirements, if any, are satisfied.[MOVE BACK TO SECTION 5 OR REPLACE BRACKETED TEXT WITH CROSS-REFERENCE TO SECTION5.]

Non-application, Financial Administration Act, s. 2887

99x37xx. Section 28 of the Financial Administration Act does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

100x38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act....

(b) prescribing types of payment obligations that constitute funding obligations;

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.
[OLC Note: reg-making powers to be dealt with in subsequent draft]

PART VII98
AMENDMENTS TO OTHER ACTS
Electricity Act, 1998

200x. (1) Subsection 6 (1) of the Electricity Act, 1998 is amended by adding the following clauses:

(q.0.1)to exercise the powers and rights and to perform the duties and obligations assigned to it under the [Ontario Fair Hydro Plan Act], 2017 and to engage in activities to facilitate the implementation of the FHA,Ontario Fair Hydro Plan Act, 2017, including, [OLC Note: Given that we are listing some FHA "objects" in the EA here, it would be a bit unusual to then prescribe additional FHA-related objects in the regulations under the FHA (as opposed to the regs under the EA). Would you want to list the FHA-related objects of the IESO in the FHA proper, which would then make it more logical for additional FHA-related objects to be set out in the regs under the FHA? Same considerations apply to the OPG objects below (amendments to s. 53.1).]

(i) entering into agreements or arrangements with any person for the purposes of the FHAOntario Fair Hydro Plan Act, 2017;

87 FLS - see s. 51 of the Electricity Act, 1998
98 FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the FHAOntario Fair Hydro Plan Act, 2017 and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the FHA,Ontario Fair Hydro Plan Act, 2017, which activities may include,
[OLC Note: Why is "creation" listed above? Isn't that fully accomplished through the statute?]

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the FHAOntario Fair Hydro Plan Act, 2017;

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, [FHA]Ontario Fair Hydro Plan Act, 2017

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to facilitate the implementation of the FHA,Ontario Fair Hydro Plan Act, 2017, including the following:

1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by thatthe Ontario Fair Hydro Plan Act, 2017 subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under thatthe Ontario Fair Hydro Plan Act., 2017

6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its

subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the FHAOntario Fair Hydro Plan Act, 2017.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act is amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under [newthe Ontario Fair Hydro Plan Act]., 2017.

203x. Section 90 of the Act is amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the FHA.Ontario Fair Hydro Plan Act, 2017.

[OLC Note: Drafting still to be added to the EA consequential amendments: All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]

Amendments to Ontario Energy Board Act, 1998

204x. Subsection 1 (1) of the Ontario Energy Board Act, 1998 is amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act is amended by adding the following subsection

[OLC Note - still need to draft new subs. 70 (2.1) - instructions on pp. 8-9 of Rider instructions rec'd April 14th]

PART VII
COMMENCEMENT AND SHORT TITLE
Commencement

103x. This Act comes into force on [insert commencement rule]

Short title

104x. The short title of this Act is the [TBD]Ontario Fair Hydro Plan Act, 2017.

SCHEDULE 1
ESTIMATED FINANCE AMOUNT
Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by estimating, prior to the start of a reference period, the sum of the following:
[OLC Note: Who is responsible for doing the "estimate"?]

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.
[OLC Note: What is meant by "make-whole" -- need some assistance in order to translate this term accurately. Do you have any examples of bilingual legislation where this term has been used?]

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

sent guidance to Blakes Ap. 19/17

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Intergenerational Fairness in Hydro Rates Act, 2017

[OLC Notes re this draft:
- all numbering of provisions will need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*
- Consider references to "an investment asset" vs. "the investment asset" and "an investment asset owner" vs. "the investment asset owner" -- do we want to only use "the" and provide an interpretive provision that clarifies that we are talking about all owners collectively and all assets collectively? Check whether we ever need to refer to "an" investment asset owner as an individual owner.]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix that includes renewable energy. The Government is also committed to removing barriers to and promoting opportunities for renewable energy projects.[1]

The Government of Ontario has established a regulatory ~~and contractual~~ framework related to the generation and sale of electricity ~~to ensure~~which has promoted and continues to promote significant investment in decarbonizing and modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom.[2] ~~Given the long-term benefits that future generations of Ontarians will receive from many of these investments, it is appropriate and fair to raise money in respect of these generating sites and facilities[3] in a manner that allocates.~~ The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of

[1] FLS: please see the preamble of the *Green Energy Act, 2009.*

[2] FLS: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".

[3] ~~FLS: please see opening flush of s. 92A (4) of the Constitution Act, 1867~~

why not a direct tax → could be direct tax → not a money bill so does this help us?

money to fund such investments, are allocated fairly among present and future generations of consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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PART I
GENERAL

Interpretation
Definitions

1. (1) In this Act,

"aggregate clean energy adjustment" means the amount determined under section [11x(1)];

"clean energy adjustment" means the amount determined under section ~~11x~~[11x(2)] and charged to a specified consumer under this Act; ("French")

"clean energy benefits" means, in respect of a reference period, the value of the benefits expected to be derived by the specified consumers of the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs, as specified in or determined in accordance with the Fair Allocation Plan;

"clean energy costs" means, in respect of a reference period,

(a) the estimated costs to incurred by the IESO during the reference period:

(i) under section [78.1] of the *Ontario Energy Board Act, 1998*[3], other than payments made under contracts with Bruce Power L.P or Bruce Power A. L.P. or their successors or assigns, and

(ii) payments made or expected to be made under section [78.5] of the *Ontario Energy Board Act, 1998*; and

(b) such other estimated costs as may be prescribed in respect of the clean energy initiative ("French");

we will update

[3] Will need to build in successor provision language so that if hard section references change, the relevant amounts will be automatically picked up.

[Note to MOE LSB: Please confirm that the cross-references relate to the relevant contracts and initiatives.]

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in renewable energy projects and cleaner energy sources and technologies, including alternative energy sources,

(b) removing barriers to and promoting opportunities for renewable energy projects and cleaner energy sources and technologies and clean energy, and

(c) promoting conservation and demand management; ("French")

"determination time" means, in respect of a matter to be calculated, determined or prepared under the Act, the effective date on which such matter is calculated, determined or prepared;

"electricity vendor"[4] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

~~[OLC Note - waiting for further instructions on unit sub-meter providers and their customers.]~~

"expected finance amount" means the amount determined under section 4 of Schedule 1 of this Act;

"fair adjustment" means, for any reference period, the amount determined in accordance with Part II.

"fair allocation amount" means, as of a determination time, the sum of (a) the amount determined in respect of a reference period equal to the amount, if any, by which (i) the estimated [clean energy costs][clean energy benefits] to be allocated to the specified consumers of the reference period under the fair allocation calculation, exceed (ii) the estimated amount of the global adjustment that would be borne by such specified consumers of the reference period in respect of clean energy costs in the absence of this Act, and (b) an allocable portion of the value of any fair adjustments determined as of such determination time in respect of the reference period in accordance with the Fair Allocation Plan;

"fair allocation calculation" means the calculation specified in the Fair Allocation Plan to determine as of a determination time the estimated [clean energy costs][clean energy

[4] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

benefits] to be allocated to the specified consumers of each reference period occurring from the determination time to the program-end date;

"Fair Allocation Plan" means the plan prepared under section ~~X~~[8], as amended from time to time in accordance with this Act; ("French")

"Financial Services Manager" means Ontario Power Generation Inc. or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section [12.1]; ("French")

"Financing Plan" means the plan prepared under section ~~X~~[11], as amended from time to time in accordance with this Act; ("French")

"finance amount" means the amount calculated under section 1 of Schedule 1 of this Act;

"financing entity" means an entity established by the Financial Services Manager for the purpose of acquiring one or more investment interests pursuant to one or more transfers and incurring funding obligations to fund such entity's ownership of such investment interests;

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner under section ~~x~~[11.1], including any payment obligation of the type prescribed in the regulation; ("French")

"holiday" means New Year's Day, Family Day, Good Friday, Christmas Day, Boxing Day, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day and, if any of those days falls on a Saturday or Sunday, the weekday next following that day that is not one of those days; ("jour férié")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section ~~X~~[•] for the reference period; ("French")

"investment asset" means ~~all or part of the regulatory asset that is deemed to be an~~the investment asset ~~under section x~~established in section [•], which shall comprise all outstanding investment interests taken together; ("French")

~~[OLC Note: As noted above, need to determine whether we need to refer to one investment asset or multiple investment assets and define accordingly. Consider how in some places we refer to the investment asset owner's "interest" in the investment asset….]~~

"investment asset owner" means a financing entity that acquires an investment interest pursuant to a transfer;

"investment interest" means an ownership interest in, to and under the investment asset, which entitles an investment asset owner to the rights and benefits specified in the agreement under which such ownership interest is transferred;

"invoice amount" means, in respect of a consumer, the sum of the following amounts:

1. The commodity price of the electricity [used by the consumer?] during the invoice period.

2. The rates and charges set out in the applicable rate order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

3. Any adjustment required [in respect of the consumer?] under section 25.33 of the *Electricity Act, 1998*.

4. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada); ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"program end-date" means April 30, 2047 or such later day as may be prescribed;

"rate-based allocation methodology" means **[the manner in which [global adjustment] is currently allocated to consumers of electricity through the IESO, OEB and electricity vendors.]**

[Note to MOE – LSB: Is the global adjustment the appropriate reference here? We note that only a segment (albeit a large one) of specified consumers are RPP consumers with all-in rates set by the OEB. Others (via retailers) are invoiced

differently. We need to consider a methodology that will work for all types of consumers (perhaps a framework in the regulations?)];

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, [OLC Note: Is clause (a) still correct -- or is the first reference period now the full 12 months (i.e. ending on April 30, 2018?)].

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of ~~the owner of~~ an investment asset owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the regulatory asset established under section ~~X;~~ ~~("French"~~[22(1)~~[OLC Note: If I'm understanding correctly, the previous definition was wrong because the regulatory asset itself will not undergo a conceptual "decrease" in size when part of it is sold… rather the right of recovery will just be for a smaller amount of money. So I think the desire is for the definition to just state what I've included above. Please confirm.]~~;

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means an assignment, conveyance, disposition or sale, or, in relation to the regulatory asset or any portion thereof, any act of the IESO by which the IESO purports to dispose of its interest in all or any portion of the regulatory asset and, as a

will need to address → plain language

result, constitute a named person the owner of an investment interest under this Act, and in each case, transferred shall have a corresponding meaning; ("French")

"weekday" means any Monday, Tuesday, Wednesday, Thursday or Friday that is not a holiday. ("jour de semaine")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount, exclusions

(2) For the purposes of the definition of "invoice amount" in subsection (1), an invoice amount does not include any of the following amounts:

check real thru document

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

    iii. A rate rider.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Ontario Energy Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Effect of invalidity, etc.[5]

1.1 (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

[5] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

2. (1) The purposes of this Act are,[6]

(a) ~~(a)~~ to ensure that the costs of the clean energy initiative ~~are fairly distributed among specified customers over time;~~that promoted and continues to promote significant investment in decarbonizing and modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom, are fairly allocated among specified consumers over time and that the process by which the Province raises money to fund such costs reflects such fair allocation; and

(b) to recognize the long-term benefits of the clean energy initiative that have accrued and that will accrue over time ~~and~~ will continue to benefit present and future electricity consumers in the Province~~;~~

~~(c) to promote the use of clean energy sources and technologies, including low-carbon, alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario;~~

~~(d) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity;~~

~~(e) to facilitate the maintenance of a financially viable electricity industry, including by raising money in respect of sites and facilities in the Province for the generation of electrical energy and the production therefrom;~~[7] ~~and~~ ~~(f) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service~~.

Crown bound

3. This Act binds the Crown.

Protection and ~~guarantee of scheme~~Assurances
Prohibition

4. (1) The Crown shall not do anything that would,

[6] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

[7] ~~FLS - as per the note in the Preamble on this language, please see 92A (4) of the *Constitution Act, 1867*.~~

(a) hinder, delay, impair or prejudice the charging, collection or remittance of ~~the~~ clean energy ~~adjustment~~adjustments;

(b) except as expressly permitted by this Act, reduce the amount of ~~the~~ clean energy ~~adjustment~~adjustments or lower the priority of ~~the~~ clean energy ~~adjustment~~adjustments over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may enter into agreements and undertakings, which may include indemnities, guarantees and other assurances, for the purposes of ~~guaranteeing that~~providing compensation ~~will be paid~~ to an investment asset owner for losses suffered as a result of,

(a) a contravention of subsection (1);

(b) a change in law that would adversely affect the rights under this Act of an investment asset owner;

(c) approval by the Lieutenant Governor in Council of a Fair Allocation Plan, or an amendment to a Fair Allocation Plan, that fails to recognize the principles set out in section ~~x~~[8.1]; ~~or~~

(d) the failure of IESO or the electricity vendors to perform their obligations under this Act in connection with the invoicing, collection and remittance of clean energy adjustments;

(e) a final determination by a court of final jurisdiction rendering invalid or ineffective all or any of the provisions of this Act~~.~~[8]; or[7]

[7] Note to translator: See s. 9 of the Public Authorities Protection Act.

~~**Electricity vendors, obligations**~~

~~(5) If an electricity vendor fails to carry out its obligations under this Act for any reason, including because the electricity vendor is dissolved or restructured or because it becomes insolvent, the Government of Ontario shall carry out those obligations or ensure they are carried out by another appropriate entity.~~ f) such other matters as [**may be prescribed/determined by the Minister.**]

PART II
FAIR ADJUSTMENT

Fair adjustment for a reference period

(1) To more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers, the aggregate amount to be paid for electricity by specified consumers in any reference period may be reduced by an amount determined by the Lieutenant Governor in Council as follows:

(a) in respect of the reference period beginning on May 1, 2017 and ending on October 31, 2017, by the amount determined by giving effect to section 6(1); and
(b) for any other reference period, by an amount determined in accordance with section [7(1)].[8]

Fair adjustment determinative

(2) The determination of any fair adjustment by the Lieutenant Governor in Council shall be determinative, and is deemed to comply with the requirements of this Act.

No appeals, etc.

(3) No appeal lies from the determination of any fair adjustment by the Lieutenant Governor in Council.

[8] Note: Paragraph (a) addresses that fair adjustment for the first 6 months, and any future fair adjustment will be calculated in accordance with the regulations. If there is a need for the Act to specify that the 25% adjustment applies through April 2018, the following should be inserted as a paragraph (b): in respect of the reference period beginning on November 1, 2017 and ending on April 30, 2018, by an amount determined by taking the sum of (i) an estimate of aggregate value of the actual rate reduction under 6(1) for such reference period and (ii) (x) the aggregate value of the actual rate reductions determined for specified consumers under 6(1) in respect of the reference period beginning on May 1, 2017 and ending on October 31, 2017, minus (y) the fair adjustment applied under subsection (a);

[Note to OLC: We understand that D. Shear has provided thoughtful comments on the remainder of this part. These comments will need to be reconciled with comments received from the OEB.]

Determination of rates, May 1, 2017 to April 30, 2018

6. (1) The Ontario Energy Board shall determine the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 in the following manner:

1. Determine the average rate payable by a representative consumer in accordance with subsection (2).

2. Determine the average monthly invoice amount that would be payable by a representative consumer under the rate determined under paragraph 1.

3. Determine the amount that is [# tbc] per cent less than the monthly invoice amount determined under paragraph 2.

4. Determine the average rate payable by a representative consumer that would result in the monthly invoice amount mentioned in paragraph 3 for a representative consumer.

[OLC Note: ENE LSB raised the question of whether 79.16 of the OEBA should be replaced to clearly state that the price-setting work that the OEB does under the RPP is authorized and that the work it must do to accommodate the Fair Adjustments is also authorized going forward.]

Determination of baseline, average rate

(2) For the purposes of paragraph 1 of subsection (1), the average rate payable shall be determined as follows:[9]

1. The Board shall determine rates in a manner that is consistent with the Standard Supply Service Code issued by the Board.

2. The Board shall forecast the costs of electricity to be consumed by the representative consumer, taking into consideration adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect those costs.

[9] FLS: Please see section 6 of O. Reg. 95/05 (a bilingual reg).

3. The Board shall set an off-peak period associated with the regulated price referred to as RPEMOFF in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board,

    i. that begins no later than 7 p.m. on every weekday and ends,

        A. no earlier than 7 a.m. on the next day if the next day is a weekday, or

        B. no earlier than 12 a.m. on the next day if the next day is Saturday, Sunday or a holiday, and

    ii. that begins no later than 12 a.m. on every Saturday, Sunday and holiday and ends no earlier than,

        A. 12 a.m. on the next day, if the next day is Saturday, Sunday or a holiday, or

        B. 7 a.m. on the next day if the next day is a weekday.

Determination of rates, on and after May 1, 2018

7. ~~On and after May 1, 2018, the Board shall~~(1) The Lieutenant Governor in Council may determine a fair adjustment in any reference period beginning on and after May 1, 2018 in accordance with the regulations.

(2) The ~~Lieutenant Governor in Council~~ shall notify the Ontario Energy Board of the fair adjustment at least 60 days prior to the applicable reference period, and the Ontario Energy Board shall use the fair adjustment to determine the rate for electricity payable by ~~a~~ specified ~~consumer as follows:~~

~~1. Determine the rate by applying the steps set out in section 6. 2. Adjust the rate determined under paragraph 1 for inflation~~consumers in accordance with the regulations.

~~[OLC Note: Just to confirm, section 7 applies not just in the first 5 years but on a continuing basis. (This is now the effect because I removed the provision that said the above part applies only for the first 5 year period.]~~

~~[OLC Note: Is "for inflation" sufficiently precise? Check other references to this throughout.]~~

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

9x. (1) ~~Subject to subsection (1.1),~~ upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the ~~owner of the~~ investment asset owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

~~**Limitation**~~

~~(1.1) No clean energy adjustment shall be collected from a specified consumer before May 1, 2022.~~

~~[OLC Note: We say the same thing in different ways in several places – consider whether this needs to be repeated or if it could all be said just once and achieve the desired effect. See 12x (1.1) and 22 (1.1) para. 2.]~~

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the Fair Allocation Plan applicable at the time when the payment is due; and

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each investment asset owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

10x. (1) Any clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

[Note: Please confirm that the reference to the non-bypass will be left as is and that the intent is to pass through the entire charge on a volumetric basis (and not create a method to charge bypass consumers under a regulation).]

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor.

Determination of aggregate clean energy adjustment

11x. (1) The aggregate clean energy adjustment shall be an amount determined by:

1. calculating the expected finance amount of the owners of investment assets for a reference period under Schedule 1; and

2. applying the formula set out in section **[11x(4)]** to the amount determined in paragraph 1.

Determination of clean energy adjustment

~~11x.~~ (~~1~~2) ~~The Ontario Energy Board shall apply the method set out in Schedule 1 to determine the amount of the clean energy adjustment payable on a monthly basis by each electricity vendor on behalf of the electricity vendor's specified consumers~~The clean energy adjustment shall be a monthly amount per specified consumer calculated in accordance with the rate-based allocation methodology.

Regulation

(3) The regulations may prescribe rights, duties and obligations in regard to the determination of the aggregate clean energy adjustment and clean energy adjustment.

[~~OLC Note: We don't have to keep the contents of Schedule 1 separated out as a schedule. I just wanted to separate it out for now so that we could get some clarity around the steps occurring outside of the calculations, and putting it in a schedule helps with that. If you would prefer to insert it here, I can do so in a subsequent draft.~~]***Note to MOE - LSB: As of now, the process for calculating the clean energy adjustment (and communicating such information to the required parties) is as follows: (i) OPG calculates estimated finance costs and the T-1 true-up and passes this amount to IESO; (ii) IESO in turn communicates this amount to the OEB; (iii) OEB turns this amount into a rate as per the usual routine for RPP; (iv) the rate is communicated to the electricity vendors for invoicing.***

Once this process is settled, we need to confirm that the Act/regulations contemplate the proper mechanics for calculation and communication. The mechanics will also

notion of principles in a formula inform the assumptions? ✓ yes

have to provide guidance as to how non-RPP customers are to be charged (this may be discussed with the OEB).]

True up ~~amount~~formula

~~(2) The Ontario Energy Board may, in accordance with the regulations, adjust the amount determined under Schedule 1 from time to time to address the any difference between the amount of the clean energy adjustment payable in respect of the reference period and the amount of the clean energy adjustment collected as of the date of the determination.~~

~~[OLC Note: I had assumed that we didn't need to list the details of true-up calculation because this would all be handled in the regulations. If there are particular elements that you want to set out in the Act itself, let me know and I can work them in. (I see a list of possible items on page 20 of the instructions sent late evening of April 13th but I assumed these details would all appear in the regulations.) Also not sure if those instructions are still current as they also say that the true up "shall" be applied in respect of each reference period whereas I believe the latest instructions are for this to be an optional, discretionary exercise to be engaged in as the OEB considers appropriate.~~4) The formula referred to in **[paragraph 2 of subsection 11x(1)]** shall be prescribed by regulation and apply the following principles:

do we have the formula?

1. The aggregate clean energy adjustment will be calculated to ensure that the collections of the clean energy adjustment are adequate to pay expected finance amounts when due.

2. The aggregate clean energy adjustment will be calculated to take into account historical **[and reasonably foreseeable]** differences between amounts billed and amounts collected due to applicable taxes, consumer defaults and delays, billing lags, write-offs and other factors.

~~Please also confirm -- is it the OEB that should be doing the calculations in subs. (1) and (2) or should I be changing this to the FSM?]~~

3. The aggregate clean energy adjustment will be calculated to take into account historical **[and reasonably foreseeable]** variations in billings due to variations in electricity consumption.

~~**Communication to electricity vendors**~~

~~(4) The Ontario Energy Board shall communicate to each electricity vendor information relating to the clean energy adjustment to be allocated by the electricity vendor to each specified consumer in respect of a reference period.~~

~~[OLC Note: Just to confirm, the OEB sends this communication but then the IESO is the one that actually invoices the electricity vendor? ENE LSB to confirm roles here.]~~

IESO to invoice electricity vendors

12x. (~~2~~1) The IESO shall issue an invoice to each electricity vendor for ~~the~~all or a portion of the aggregate clean energy adjustment in accordance with the regulations .

[Note to MOE - LSB: Two points here:
1. the IESO isn't actually invoicing the electricity vendors (both the IESO and electricity vendors are not personally liable for the clean energy adjustment – they are simply providing a servicing/collection role.
2. That said, the process outlined in the previous note provides that the electricity vendors will determine each customer's clean energy adjustment based on information provided by the OEB. The role of the IESO should be to provide to the OEB the information provided to it by the financing entity regarding the financing amount due in the relevant period so as to allow the OEB to make the allocation (rate) determination. Consider the process used by IESO to communicate the GA amounts to the OEB for the RPP rate setting process and perhaps this process could run in parallel.]

IESO to collect

(~~3~~2) The IESO shall, as an agent of the investment asset ~~owner, make reasonably diligent efforts to~~owners, collect the clean energy ~~adjustment~~adjustments from electricity vendors in the same manner and to the same standard as it collects amounts from electricity vendors under [X].

[Note to MOE/LSB - Would Section 25.33 of the EA be an appropriate reference here?]

Collection account

(~~3.1~~2.1) The IESO shall establish an account in which to record its collection of the following:
[OLC note - Compare to s. 15x -- should the accounts be for "record of collection" or should the accounts be a place for IESO to "deposit and receive" amounts? Should be consistent?]

1. Amounts ~~remitted from accounts established under~~described in section [15x].

2. Payments made by specified consumers directly to the IESO as electricity vendor~~,~~ in respect of clean energy ~~adjustment~~adjustments.

[3. Portions of payments by specified consumers made directly to IESO as electricity vendor that are allocated to clean energy adjustments under subsection [14x (2)]. [***Note: Payments made to IESO in its capacity as an electricity vendor should be prorated where the amount is less than the full amount invoiced.***]

[4 Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.]

Deposit

(43) The IESO shall promptly deposit all amounts received [by it] in respect of ~~the~~ clean energy ~~adjustment~~adjustments into the account established under subsection (~~3.1~~2.1).

Same, held in trust

(~~2) The amounts collected are deemed to~~4) All amounts received by the IESO in respect of clean energy adjustments shall, until paid to or for the benefit of the investment asset owners in accordance with [(5) – IESO to Remit], be held in trust for the investment asset ~~owner~~owners or any secured party contemplated by section [27].

IESO to remit

(5) The IESO shall remit amounts received [by it] in respect of ~~the~~ clean energy ~~adjustment~~adjustments to or for the benefit of the investment asset ~~owner~~owners in accordance with the regulations.

~~**Collection of outstanding amounts, regulatory asset**~~

~~(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable Fair Allocation Plan, the IESO [may? Shall?] collect the difference from specified consumers.~~

~~**Electricity vendor to apply rate**~~

[Note: For now, former section 13x. ~~(1) Each electricity vendor shall, in accordance with the codes and orders of the Ontario Energy Board, determine the proportionate share of the~~***(1) deleted as the rate-based allocation methodology set out in section 11(x) may be be used to determine specified consumers' proportionate monthly clean energy adjustment*** ~~payable on a monthly basis by each of its specified consumers.~~***. To be considered.]***

Electricity vendor to invoice specified consumers

13x. (~~2~~1) The electricity vendor shall issue an invoice to each specified consumer for ~~the~~its applicable ~~amount of the~~ clean energy adjustment in accordance with the regulations.

Electricity vendor to collect

(~~3~~2) Each electricity vendor shall, as an agent of the IESO and the investment asset owners, make reasonably diligent efforts to collect clean energy adjustments from

specified consumers. For certainty, the electricity vendor shall have met its obligations to the investment asset owners to the extent it applies the [same standard of collection and enforcement against specified consumers as it applies to the collection of the amounts it collects on behalf of the IESO [under x].][*Note: We should consider whether there is another obligation of electricity vendors under the EA we could refer to here. We are not sure that the s.25.33 GA settlement mechanism would work here because at first instance, the LDCs bear the credit risk if RPP consumers do not pay their electricity bills. Further to our discussion with Stikeman this afternoon, the IESO and Stikeman are considering language to address this.*]

Pro rating of payments

14x. (1) This section applies if,

(a) an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices; and

(b) the amount paid is less than the total amount payable.

Same

(2) The electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices~~.~~ in respect of electricity charges for the same invoice period.

~~**Deposit**~~

~~(3) The~~[*Note: some LDCs combine electricity bills with other utilities, such as water. The intent is that the pro rata allocation applies to the amounts allocated to the electricity* ~~vendor shall deposit the~~ *portion of the bill. In other words, however a partial payment is allocated* ~~to~~*today for the electricity portion of the bill – that portion, would be applied to pay the non-CEA portion of the electricity bill and the clean energy adjustment* ~~into the account established under X.~~*portion of the bill on a pro rata basis.*]

Electricity vendor, ~~account~~held in trust

15x. (1) Each electricity vendor shall~~ establish and maintain an account into which the electricity vendor deposits or receives only the following~~, [until paid to IESO pursuant to [subsection (3)]] hold the following amounts in trust for the investment asset owners [or a secured party contemplated by section [27]]:

1. Payments ~~by~~received from or on behalf of specified consumers in respect of ~~the~~ clean energy ~~adjustment~~adjustments.

no direct invoicing by investment asset holder

2. Portions of payments ~~by~~received from by or on behalf of specified consumers that are allocated to ~~the~~ clean energy ~~adjustment~~adjustments under subsection [14x (2)].

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Electricity Vendor, Segregated Account

~~**Held in trust**~~

(2) ~~The amounts required to be deposited or received into the account are deemed to be held in trust for the investment asset owner.~~ If at any time an electricity vendor fails to comply with any of the requirements of Section [13x, 14x or 15x(1)], such electricity vendor shall thereafter be required to establish and maintain an account into which the electricity vendor deposits or receives only the amounts enumerated in [15x(1)].

Remittance to IESO

(~~5~~3) ~~The~~Each electricity vendor other than IESO shall remit amounts received [by it] in respect of ~~the~~ clean energy ~~adjustment~~adjustments to the IESO for the benefit of the investment asset ~~owner~~owners in accordance with the regulations.

PART IV
FAIR ALLOCATION PLAN AND FINANCING PLAN

MINISTER TO PREPARE FAIR ALLOCATION PLAN

Minister to prepare plan

8. (1) In order to fairly measure and allocate ~~amounts described in section 8.0.1 for a~~the clean energy costs and clean energy benefits in respect of each reference period occurring from a determination time to the program-end date, and among the specified consumers ~~for the purposes of this Act~~of each particular reference period, the Minister shall prepare and provide to the Lieutenant Governor in Council a written plan entitled the Fair Allocation Plan.

Amendments to the plan

(2) Subject to the approval of the Lieutenant Governor in Council, the Minister may amend the Fair Allocation Plan from time to time, as the Minister considers appropriate, having regard to the requirements of this Act.

Effective date

(3) The Fair Allocation Plan or an amendment to the plan takes effect on the day that the plan or the amendment, as the case may be, is approved by the Lieutenant Governor in Council.

Publication

(4) The Minister shall ensure that the Fair Allocation Plan and any amendments to the plan are made available to the public in a manner that the Minister considers appropriate.

~~**Amounts to be allocated**~~

~~**8.0.1** The amounts referred to in subsection 8 (1) are, in relation to a reference period,~~

~~(a) the costs incurred by the IESO previously or expected to be incurred by the IESO during the reference period and after the reference period in relation to,~~

~~(i) payments made or expected to be made under section 78.1 of the *Ontario Energy Board Act, 1998*, other than payments made under contracts with Bruce Power L.P. or Bruce Power A. L.P. or their successors or assigns, and~~

~~(ii) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*; and~~

~~(b) such other costs, benefits or amounts as may be prescribed, in respect of the clean energy initiative, made or received before the reference period or expected to be incurred during or after the reference period. ("French")~~

Allocation Principles

8.1 In preparing the Fair Allocation Plan ~~or~~and any amendments to the plan, the Minister shall specify a fair allocation calculation that shall have regard to the following allocation principles:

~~1. Costs of the clean energy initiative should be allocated among specified consumers during the period beginning on the day this Act comes into force and ending on April 30, 2047 or such later day as may be prescribed.~~

1. The clean energy benefits attributed to the specified consumers of a reference period should be determined based on *[Insert principles]*.
2. Clean energy costs allocated to the specified consumers of a reference period should be allocated equitably relative to the clean energy benefits attributed to the specified consumers of such reference period.
3. The fair allocation amount should include reasonable assumptions regarding *[(a) the time value of money or the rate of inflation, for the purpose of equating nominal amounts over time; (b) the expected number of specified consumers for*

each applicable reference period; and (c) the expected electricity consumption rates for each applicable reference period]. [10]

4. ~~2. The allocation of the costs among~~The [clean energy costs][clean energy benefits] allocated to the specified consumers of one reference period should be reasonably proportionate to the [clean energy costs][clean energy benefits ~~of the clean energy initiative to those~~] allocated to the specified consumers ~~over time~~of any other reference period.
5. ~~3.~~ [During a reference period, no specified consumer should bear an unreasonably disproportionate share of the ~~costs.~~estimated future clean energy costs allocated to the specified consumers of the reference period.] ***[Note: May be unnecessary if we specify that the rate-based allocation methodology will always apply.]***

~~4. To the extent that specified consumers have borne an unreasonably disproportionate share of the costs over periods that occurred before the coming into force of this Act, the allocation should provide for a fair adjustment for those specified consumers.~~

~~5. The allocation of costs among specified consumers over future reference periods should include reasonable assumptions about the time value of money, the rate of inflation, electricity consumption and the composition of specified consumers as a class of individuals.~~

~~[OLC note: I don't think the underlined phrase appears anywhere else – what is this supposed to be conveying?]~~

~~**Implementation**~~

Allocation of any Fair Adjustment

8.2 ~~The IESO shall ensure that the IESO funding shortfall during a reference period does not exceed the maximum amount set out for the~~If a fair adjustment has been made at or prior to a determination time in respect of a reference period, the Fair Allocation Plan shall specify the basis upon which an allocable portion of the value of such fair adjustment shall be included in the fair allocation amount calculated for each future reference period ~~in the Fair Allocation Plan~~.

[10] For example, a simplistic formulaic approach might be:

FAA = the amount (if any) by which (a) $[(GA\ reset_t + Fair\ Adjust_t) \times (1+i)^{t/2}] \times [Est.Pop_t / \sum Est.Pop_{(t=N)}] \times [Est.Use_t / \sum Est.Use_{(t=N)}]$, exceeds (b) $GA\ orig_t$, where:

$GA\ reset_t = \sum CEC_t/(1+i)^{t/2}$, divided by (N-t)

$Fair\ Adjust_t = \sum (FA\ Amt_P/(1+i)^{t-P/2})$, divided by (N-t)

$GA\ orig_t$ = clean energy portion of global adjustment otherwise determined

i = reference interest rate (e.g., Libor + •bps.)

N =60 (i.e., 30 years of semi-annual reference periods)

P = #reference period in which a Fair Adjustment is applicable.

FINANCIAL SERVICES MANAGER TO PREPARE FINANCING PLAN

Ontario Power Generation Inc. appointed as Financial Services Manager

8.3 Subject to section 12.1, Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Financial Services Manager to prepare plan

11. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan ~~for the purpose of ensuring that decisions made under this Act are cost effective and consistent with the Fair Allocation Plan~~to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred or potential transfers should be made.

~~**Consistency with Fair Allocation Plan**~~

Principles and assumptions in developing the plan

(2) ~~The Financing Plan in effect at any given time shall be consistent with the applicable Fair Allocation Plan.~~In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles and assumptions:

(a) incurrences should reasonably [align] the expected finance amounts] becoming due and payable during a reference period with the fair allocation amount determined for such reference period as of the time of such incurrence, in each case after reducing the fair allocation amount by the amount of any fair adjustment for such reference period;

(b) incurrences and transfers should be implemented on a cost effective basis and reflect prevailing market terms and conditions, in each case as reasonably determined by the Financial Services Manager;

(c) reasonable assumptions regarding *[(a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section 11(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred]*; and

(d) such other matters as may be prescribed.

Amendments to approved plan

(3) The Financial Services Manager may ~~propose amendments to~~amend the Financing Plan at any time on a basis that is consistent with the principles set forth in subsection (2).

[OLC note - still need to deem Financial Plan to be third party confidential information for the purposes of s. 17 of FIPPA? (Sorry I missed this in the previous version.] ***[Note: FP should be confidential, except that it should be made available for any review conducted under the Act.]***

(4) In respect of each reference period from [first 5 years], no finance amount shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless (a) the LGIC has determined not to make a fair adjustment for the reference period pursuant to section [7(1)] or (b) if a fair adjustment has been determined by the LGIC for the reference period, the finance amounts for the reference period would not exceed the fair allocation amount for the reference period minus the amount of such fair adjustment.

Implementation of Financing Plan

11.1 The Financial Services Manager shall ~~implement~~incur funding obligations and make transfers in material conformity with the Financing Plan. at the time of the incurrence or transfer. ***[Note: This should be tied to the paramountcy concept where, despite this provision, an incurrence or transfer purportedly incurred or made by the FSM will be effective. Consider a definitive basis on which to confirm with certainty that a funding obligation and transfer cannot be impugned – e.g., a FSM certification that could be tabled at a transaction closing.]***

~~**Contents of plan**~~

~~**12.** (1) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following:~~

1. ~~The allocation of costs of the clean energy initiative among specified consumers over reference periods, as described in the Fair Allocation Plan.~~
2. ~~The estimated IESO funding shortfall for each reference period.~~
3. ~~The funding obligations incurred as part of the consideration for the sale of the regulatory asset.~~
4. ~~The need for the clean energy adjustment payable by a specified consumer to be proportionate to the benefit that the specified consumer receives from the clean energy initiative.~~
5. ~~Reasonable compensation for the Financial Services Manager on terms that balance market terms and conditions with the interests of specified consumers.~~
6. ~~Such other matters as may be prescribed.~~

~~**Limitation**~~

~~(1.1) The Financing Plan shall not provide for the collection of the clean energy adjustment by specified consumers before May 1, 2022.~~
~~[OLC Note: As noted above, consider the fact that this is repetitive of 9x (1.1) and 22 (1.1) para. 2.]~~

~~**Special purpose financing entities**~~

~~(2) The Financing Plan may provide for the Financial Services Manager to,~~

~~(a) if the Financial Services Manager is Ontario Power Generation Inc., establish one or more special purpose financing entities under subsection 53.1 (1.2) of the *Electricity Act, 1998*, that may incur funding obligations; or~~

Financing entities

~~(b) if~~(2) The Financing Plan may provide for the Financial Services Manager ~~is appointed under section 12.1,~~to establish one or more ~~special purpose~~ financing entities ~~under subsection (3)~~ that may incur funding obligations and make transfers.
~~[OLC note: Above drafting is awkward and needs work but let me know if something like this might work.]~~

~~**Same**~~

~~(3) If the Financial Services Manager is appointed under section 12.1, it may create one or more special purpose entities in order to more efficiently conduct its activities under this Act.~~

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Ontario Energy Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Funding obligations and transfers are unaffected ~~by amendment to Fair Allocation Plan~~

(4) No ~~change to a~~ funding obligation ~~shall result from an amendment to the Fair Allocation Plan or Financing Plan that is made after the funding obligation has been incurred~~incurred and no transfer made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set forth in section 11(1).
~~[OLC Note: I think that subs. (4) above perhaps belongs in Part V, rather than here.]~~

~~[OLC Note: Consider Article 8 (9) entitled "incurrences are binding" -- I believe we have already stated in the Part dealing with the regulatory asset that the rights are enforceable etc. even if charges have been imposed in a manner that does not follow the Financing Plan. Is more drafting required? Please advise.]~~

Termination of appointment

12.1 (1) The Minister may ~~[~~by ~~what means? Written~~written order~~?]~~ terminate ~~an~~the appointment of an appointee as the Financial Services Manager under section ~~[~~8.3~~]~~ or subsection (2) if,

(a) the Minister has advised the appointee that the Financing Plan is either not consistent with the ~~Fair Allocation Plan~~principles set forth in section [11(2)] or not being implemented on a basis that is consistent with such principles;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(2) Upon terminating an appointment under subsection (1), the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

PART V
THE REGULATORY ASSET ~~[AND INVESTMENT ASSET]~~

~~Regulatory asset established~~

~~22. (1) The IESO has property rights and interests, which together constitute a regulatory asset, in the recovery of the IESO funding shortfall.~~

~~[OLC Note to draft - Is it sufficient to say "*property rights and interests in the recovery of the IESO funding shortfall*"? Does that convey the right to enforce other parties' obligations that would allow for the shortfall to be recovered by the IESO?]~~

~~Limitation~~

~~(1.1) The right to recover the IESO funding shortfall under subsection (1) is subject to the following limits:~~

~~1. The amount of the IESO funding shortfall recovered in respect of a reference period may not exceed the amount determined in the Fair Allocation Plan for~~

~~the reference period, minus the amount of the clean energy adjustment for the reference period.~~

~~[OLC Note: Will want to link up the language in para. 1 above with the language relating to this in provision above that authorizes the IESO to collect this amount (where some of the R.A. has not been sold) – s. 12x (6).]~~

~~[OLC Note: You mentioned that you are still working on para. 1 – concern re the need for an obligation to pay this amount.]~~

~~2. No part of the IESO funding shortfall shall be collected from specified consumers before May 1, 2022.~~

~~[OLC Note: As noted above – consider repetition here vs. s. 9x (1.1) and 12 (1.1)]~~

~~**Same**~~

~~(2) The establishment of the regulatory asset is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.~~

~~**Recording of IESO funding shortfall in books**~~

Establishing the IESO fair hydro variance account

22.1 (1) ~~Subject to the approval by order of the Ontario Energy Board, the IESO~~The Board shall issue an accounting order to approve the creation of an IESO fair hydro variance account, to authorize IESO to record the IESO funding shortfall from time to time in ~~its books, including adjustments resulting from any transfer of the regulatory asset.~~

~~**Order**~~

~~(2) The Ontario Energy Board may, in accordance with the regulations, by order specify how the IESO funding shortfall must be recorded.~~

~~**Recording in books determinative**~~ ~~(3) A recording in its books is determinative of the amount of IESO funding shortfall at the time of the recording~~the IESO fair hydro variance account and to authorize IESO to recover the IESO funding shortfall in accordance with Section [22(1)] [and the regulations].

No hearing

(~~4~~2) The order of the Ontario Energy Board shall be made in writing and without holding a hearing.

No appeals, etc.

(~~5~~3) No appeal lies from the order of the Ontario Energy Board.

~~**Judicial review**~~

~~(6) The *Judicial Review Procedures Act* does not apply to an order made under this section.~~

~~[OLC Note: I haven't checked to see if this subsection is used elsewhere but is this trying to say "no judicial review allowed"? Or are you trying to say "don't apply the procedures in the JRPA when you're doing a JR of the order". Of course we can't actually oust the courts so I'm just not sure what this is meant to do beyond subs. (5) above which takes care of no statutory appeal.]~~

IESO funding shortfall

22.2 (1) The IESO shall determine the IESO funding shortfall for each month in ~~a reference period by calculating the difference between~~ the following ~~amounts~~manner:

1. ~~The sum of all invoice amounts issued to specified consumers for the month. 2. The~~Calculate the sum of all invoice amounts that would have been issued to specified consumers for the month if ~~paragraphs 1 and 2 of section 7.2~~Part II of this Act did not apply.

~~[OLC Note: The value of any consideration received as part of a transfer should be reflected in this section -- see below para. 2 of subs. 23 (2) which says the payment should cause a reduction in the shortfall.]~~

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed. [***Note: We anticipate that IESO will provide liquidity to the financing entity in the first five years to cover interest and other short term funding costs of a financing entity, and the regulations will provide that the IESO funding shortfall will be grossed-up to include these amounts.***]

what the adjustments

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity used by specified consumers during such period, the IESO shall record an adjustment in the IESO fair hydro variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers in such period.

Recording of IESO funding shortfall

(3) IESO shall record the IESO funding shortfall from time to time, including adjustments resulting from recoveries made under section [22(1)] and any transfer of all or a portion of the regulatory asset under section [23(1)], in the IESO fair hydro variance account.

new 22.1(2)

Recording determinative

(4) A recording of the IESO funding shortfall in the IESO fair hydro variance account is determinative of the amount of IESO funding shortfall at the time of the recording.

how does this fit w/ 22.1(1)?

Regulatory asset established

22. (1) The IESO has the right, exercisable in accordance with this Act and the regulations to recover the IESO funding shortfall. [This right constitutes a regulatory asset and a property right.]

~~Same~~

~~(2) The determination under subsection (1) shall be made based on the amount of electricity actually used by specified consumers during the reference period.~~1.1) The IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect the IESO funding shortfall from specified consumers before May 1, 2022;[***Note: We expect the government to commit to provide liquidity to IESO during the first five years.***]

2. the process by which the IESO may recover the IESO funding shortfall shall be established by the Board having regard to the amount of the IESO funding shortfall from time to time~~ and the principles of the fair allocation plan; and~~

3. Such other restrictions as may be prescribed.

[OLC Note: As noted above - consider repetition here vs. s. 9x (1.1) and 12 (1.1)]

Transfer of regulatory asset

23. (1) The IESO may transfer~~ all or a portion of~~ the regulatory asset ~~in accordance with~~to any financing entity under the Financing Plan.

actor is FSM

Same

~~**Consideration**~~

(2) ~~The IESO may receive~~Upon receipt of any payment in consideration for the transfer of all or a portion of the regulatory asset~~, subject to the following rules:~~

~~1.~~ ~~The prospective investment asset owner shall pay to the IESO an amount equal to all or part of the IESO funding shortfall.~~ ~~2.~~ ~~Upon receipt of the payment~~, the IESO shall record the payment as a reduction of the IESO funding shortfall in ~~its books~~the IESO fair hydro variance account.

~~3.~~ (3) Upon a transfer of all or a portion of the regulatory asset, the financing entity acquires an investment interest to which this Act applies. Upon receipt of the payment, the IESO shall have no ~~continuing~~further right, title or interest in (except as expressly

provided herein), or ~~maintain any right to recover all or any part of the transferred regulatory asset.~~

~~**Investment asset****Regulatory asset deemed to be**~~any obligations in respect of, the portion of the regulatory asset transferred, or the corresponding investment ~~asset upon~~interest.

Validity of transfer

~~**23.1****25.** Upon~~(1) A transfer of ~~the regulatory asset~~all or a portion of ~~the~~a regulatory asset~~,~~ under this Act is a valid and enforceable sale and absolute assignment of the regulatory asset or the applicable portion ~~is deemed to be an~~thereof to the applicable investment asset owner, and the investment asset ~~and is~~or the applicable portion thereof shall be immediately vested in ~~the investment asset owner~~such transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall (or relevant portion thereof), and not merely as a pledge thereof, and upon such absolute transfer ~~the~~ IESO transferor shall retain no right, title or interest in regulatory asset (or relevant portion thereof) subject to the transfer, including all rights to recover the IESO funding shortfall. [OLC Note: I have reproduced the requested language for now but I don't understand what subs. (2) is saying that is different from subs. (1).][***Note: This language is intended to address recharacterization risk, and to clarify that the IESO retains no interest in the regulatory asset.***]

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.[***Note: If the regulatory asset or investment asset constitutes an "account" for purposes of the PPSA, then perfection would be required and we may want to specify PPSA treatment of these assets as intangibles in the same manner as we have done in the pledge section below.***]

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 transferee shall have priority over any liens in favour of such other persons.

PART VI
THE INVESTMENT ASSET

Establishment of investment asset

(2) An investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication: ~~[OLC Note: For the moment I have more or less just cut and pasted the language you proposed in instructions received on April 14th. If we have time, we should revisit the language.]~~

1. The right to impose, bill, invoice, collect and receive ~~the~~ clean energy ~~adjustment~~adjustments from specified consumers, [including the right to determine the amount of the aggregate clean energy adjustment in accordance with this Act].

2. The right to receive and collect all amounts in respect of ~~the~~ clean energy ~~adjustment~~adjustments that are imposed, billed and invoiced under this Act, including any ~~amounts that all~~ amounts in respect of ~~the~~ clean energy ~~adjustment~~adjustments that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice ~~the~~ clean energy ~~adjustment~~adjustments.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of ~~the~~ clean energy ~~adjustment~~adjustments, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of ~~the~~a clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

~~Same~~

~~(3) An investment asset is not affected by failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.~~

No set off, etc.

(4) The investment asset shall not be set off or reduced by any person in any circumstance, including~~.~~:

(a) by a consumer, an electricity vendor, an agent of the investment asset owner or an owner of distribution system assets in the Province;

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); and

(c) by any affiliate or successor of a person mentioned in clause (a).

Transfer of investment ~~asset~~interest

24. ~~The~~An investment asset owner may transfer all or a portion of its rights and interests in an investment ~~asset~~interest to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

[OLC Note: What is meant by "any other investment asset owner"? Do you mean to say anyone who already has the status of "investment asset owner" by virtue of the fact that the IESO has transferred a portion of the initial R.A. to that person previously?][***Yes – that's the concept.***]

Validity of transfer

25. (1) A transfer of ~~a regulatory asset or~~ an investment ~~asset~~interest under this Act ~~that is expressed to be a sale or an absolute assignment~~ is a valid and enforceable sale and absolute assignment of the ~~regulatory asset or~~ investment ~~asset, as the case may be,~~interest and confers upon the owner of the investment ~~asset~~interest acquired a valid property right and interest in, to and under the applicable investment ~~asset~~interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of ~~IESO's right to recover the IESO funding shortfall or~~ an investment asset owner's right, title and interest in, to and under an investment ~~asset~~interest, as applicable (or relevant portion thereof), and not merely as a pledge thereof, and upon such absolute transfer the transferor shall retain no right, title or interest in ~~regulatory asset or~~ the investment ~~asset~~interest (or relevant portion thereof) subject to the transfer, including all rights to ~~recover the IESO funding shortfall or~~ the investment ~~asset~~interest arising after such transfer.

[OLC Note: I have reproduced the requested language for now but I don't understand what subs. (2) is saying that is different from subs. (1).]

Deemed perfection, etc.

(3) At the time a transfer of ~~a regulatory asset or~~ an investment ~~asset~~interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by ~~the owner of~~ the investment asset owner shall have priority over any liens in favour of such other persons.

[Administration of investment asset

26. (1) The Financial Services Manager may administer ~~an~~the investment asset on behalf of the investment asset ~~owner~~owners.

[OLC note: Consider location of this section with other roles of FSM above.]*[Agree with this move.]*

Same

(1.1) The administration of ~~an~~the investment asset may include the following:

1. Providing information to the Ontario Energy Board in respect of the funding obligation and the determination of the aggregate clean energy adjustment [in accordance with section 11x]/[as may be prescribed by regulation].

2. Providing information to electricity vendors in respect of their obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(2) The Ontario Energy Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.]

Investment asset owner may grant pledge

27. (1) ~~The owner of an~~An investment asset owner may grant a ~~pledge to or in favour of a person in, to and~~security interest over all or a specified portion of its right, title and interest in, to and under the investment ~~asset in connection with~~interest to or in favour of any person to secure any funding obligation.

~~**Types of pledge**~~

~~(2) A pledge may be a lien, mortgage, charge, right of set-off or security interest.~~

Validity

(3) ~~The pledge may be made to secure a funding obligation and when~~A security interest granted under this Act shall be valid and enforceable in accordance with its terms~~and shall be effective to confer upon the person to whom the pledge is granted a valid security interest in, to and in respect of the investment asset in accordance with the terms of the pledge~~.

~~[OLC Note: You asked for a additional content relating to the PPSA, which I have not had time to review in any detail. Please review all subsections that contain the (x) below and advise what is needed. It seems to me that some of this content was already covered by some of the numbered subsections in this draft. Also please advise as to the updated language based on most recent drafting.]~~

Perfection and priority of pledges

(x) For purposes of the *Personal Property Security Act*, the ~~regulatory asset~~investment interest shall be intangible personal property and any ~~pledge made~~security interest granted by the owner of an investment ~~asset in respect of~~interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Same

(x) All provisions of the *Personal Property Security Act* shall apply to the ~~regulatory~~investment asset and each investment interest on the basis that it is intangible personal property, except to the extent otherwise provided in this section.

Same

(x) All proceeds of a related ~~[Investment Interest?]~~investment interest that are subject to the ~~pledge~~security interest that are received by the ~~owner of the~~applicable investment asset owner shall immediately be subject to the ~~pledge~~security interest, and the security interest in the proceeds shall be perfected pursuant to the *Personal Property Security Act.*

Same

(x) A ~~pledge~~security interest perfected under the *Personal Property Security Act* shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the ~~[Investment Interest?]~~investment interest subject to the ~~pledge~~security interest unless the ~~pledgee~~secured party has otherwise agreed in writing.

~~**Same**~~

~~(x) A pledgee shall have a perfected security interest in a related [Investment Interest?], including the owner of the investment asset's rights and interests in and to [the clean energy adjustment?] or other related proceeds in respect of the [Investment~~

~~Interest?] and that are deposited in any [which account?] or other account of any [Electricity Distributor, IESO, Alternative Servicer or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds].~~

Proceeds

(8) All proceeds of ~~the~~an investment ~~asset~~interest that are subject to the ~~pledge~~security interest and that are received by the applicable investment asset owner shall immediately be subject to the ~~pledge~~security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

~~[OLC Note: Isn't the above subs. (8) already covered by the general section in our "Miscellaneous" part that deals with "no further acts or approvals required"? (Article 12 (3) of Blakes doc.]~~

Perfection

(9) The ~~pledge~~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 ~~asset~~interest subject to the ~~Pledge~~security interest, subject to the written consent of the person to whom the ~~pledge~~security interest has been granted.

Same

(10) The person to whom the ~~pledge~~security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

Collective action required

28. If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [OLC Note: It seems that successors may need to be addressed here. Also Pledgees have not yet been addressed in this draft.]

Exercise of rights

29. The rights of ~~the~~an investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

34. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

35.1 For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.
[OLC Note: would there be any doubt about whether any investment asset owner is a Crown agent? Is that where this needs to be articulated instead?]

Sequestration

35.2 (1) A court in the Province may, upon application by an investment asset owner [or pledgee?], order the sequestration and payment of ~~the~~ clean energy ~~adjustment~~adjustments, collections and remittances, as applicable, for the benefit of the investment asset owner [or pledgee] by any person or entity authorized to collect ~~the~~ clean energy ~~adjustment~~adjustments, defaults on any required remittance of ~~the~~ clean energy ~~adjustment~~adjustments, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order.

Choice of law

37.1 The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, ~~the~~investment asset, clean energy ~~adjustment~~adjustments or the undertaking of the Crown under section ~~*~~[●] shall be the laws of the Province.

Conflict

38. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or ~~PLEDGE~~pledge,

[OLC Note: Please confirm that the underlined list of verbs is correct, taking into consideration the defined terms we are using in the draft Bill.]

No further approvals, etc.

39. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

97x. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

98x. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[1011]

99x. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

100x. The Lieutenant Governor in Council may make regulations,

(a) governing the calculation [true-up amount] and how the amount is to be applied to the aggregate clean energy adjustment.

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[OLC Note: reg-making powers to be dealt with in subsequent draft]

[1011] FLS - see s. 51 of the Electricity Act, 1998

PART VII[112]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the [Fair Hydro Act]~~:~~, and to engage in activities to facilitate the implementation of the FHA, including:

[OLC Note: Given that we are listing some FHA "objects" in the EA here, it would be a bit unusual to then prescribe additional FHA-related objects in the regulations under the FHA (as opposed to the regs under the EA). Would you want to list the FHA-related objects of the IESO in the FHA proper, which would then make it more logical for additional FHA-related objects to be set out in the regs under the FHA? Same considerations apply to the OPG objects below (amendments to s. 53.1).]

(q.1) to enter into agreements or arrangements with any person for the purposes of the FHA;

(q.2) to engage in activities related to making payments to and receiving payments as contemplated under the FHA and to engage in related settlement activities;

(q.3) to engage in activities related to the creation, transfer and administration of the regulatory asset created under the FHA, which activities may include,

[OLC Note: Why is "creation" listed above? Isn't that fully accomplished through the statute?]

(i) incurring liabilities in relation to the regulatory asset

(ii) transferring the regulatory asset for consideration;

(q.4) acting as a recovery agent under the FHA; [***Note: Consider need for an exemption under the Collections Agencies Act. Consider also in the context of the electricity vendors.***]

201x. Section 53.1 of the Act is amended by adding the following subsections:

[112] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

Same, [FHA]

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include the following, in addition to any other objects~~, relating to the FHA~~:

[OLC Note: I'm wondering if the proposed structure of setting out FHA objects as "in addition to" the general objects of the OPG will sufficiently communicate the idea that both sets of objects are to be carried out concurrently by the OPG.]

~~1. Exercising~~ q.0.1. to exercise the powers and rights and ~~performing~~to perform the duties and obligations assigned to it under ~~that Act.~~the [Fair Hydro Act], and to engage in activities to facilitate the implementation of the FHA, including:

~~2.~~ 1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by that Act subject to the right of reimbursement from amounts available to the financing entity.

~~3.~~2. Preparing reports on behalf of the financing entity.

~~4.~~3. Enforcing the rights of the financing entity.

~~5.~~4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

~~6.~~5. Exercising the powers and performing the duties of the Financial Services Manager under that Act.

6. Issuing non-equity securities in [Ontario Power Generation Inc. or a subsidiary thereof], for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the FHA

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act is amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply ~~in~~:

1. In respect of ~~amounts payable to~~any income, gain or profit of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of ~~its functions as the Financial Services Manager under [new Act].~~or by virtue of:

   (A) any services provided pursuant to the [new Act], including its functions as the Financial Services Manager under the [new Act]
   (B) acquiring, holding or disposing of any equity or debt financing provided to a [special purpose financing entity established under the [new Act]], including in respect of any interest or dividends paid or payable or otherwise accrued to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity or debt financing, or
   (C) acquiring, holding or disposing of any interest in a [special purpose financing entity established under the [new Act]], including in respect of any amounts paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

2. To a [special purpose financing entity established under the [new Act]] that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

[Note: For now we have inserted Torys' tax comments in their entirety for convenience of review; these comments need to be considered/reviewed.]

203x. Section 90 of the Act is amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply ~~in~~:

3. In respect of ~~amounts payable to~~any income, gain or profit of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of ~~its functions as the Financial Services Manager under the FHA.~~or by virtue of:

   (D) any services provided pursuant to the [new Act], including its functions as the Financial Services Manager under the [new Act]
   (E) acquiring, holding or disposing of any equity or debt financing provided to a [special purpose financing entity established under the [new Act]], including in respect of any interest or dividends paid or payable or otherwise accrued to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity or debt financing, or
   (F) acquiring, holding or disposing of any interest in a [special purpose financing entity established under the [new Act]], including in respect of any amounts

paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

4. To a [special purpose financing entity established under the [new Act]] that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

[Note: For now we have inserted Torys' tax comments in their entirety for convenience of review; these comments need to be considered/reviewed.]

[OLC Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 71 of the Act is amended by adding the following subsection

[OLC Note - still need to draft new subs. 70 (2.1) - instructions on pp. 8-9 of Rider instructions rec'd April 14th]

PART VII
COMMENCEMENT AND SHORT TITLE

Commencement

103x. This Act comes into force on [insert commencement rule]

Short title

104x. The short title of this Act is the *[TBD], 2017.*

SCHEDULE 1
METHOD FOR DETERMINING FINANCE AMOUNT OF CLEAN ENERGY ADJUSTMENT FOR A REFERENCE PERIOD

Finance Amount

1. The finance amount of the clean energy adjustment for a reference period shall be determined by calculating the sum of the following:

1. The sum of all ~~payments made by owners of an investment asset [~~amounts that are payable during the reference period~~?]~~ by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the investment asset owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

~~[OLC Note: Para. 1 is the definition of "repayment" from the Blakes doc. However, that definition include bracketed text that says: (*including making Finance Reserve Deposits*). I don't understand this because (1) Finance Reserve Deposit is listed as a separate line item in the definition of "finance amount" (see para. 4 below). In order to avoid duplication, can we exclude "finance reserve deposits" from para. 1?]~~

2. The sum of all funding costs for the reference period, as determined under section 2 to this Schedule.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners ~~of investement assets~~ to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

~~[OLC Note: Para. 3 is the definition of "redemption amount" from the Blakes doc.]~~
[OLC Note: What is meant by "make-whole" -- need some assistance in order to translate this term accurately. Do you have any examples of bilingual legislation where this term has been used?]

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable by ~~owners~~or on behalf of investment ~~assets~~asset owners for the reference period that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

~~[OLC Note: Para. 5 is based on the definition of "additional funding charges".]~~

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

1. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of ~~owners of~~ investment ~~assets~~asset owners during the reference period in respect

of all funding obligations, including ~~the following:~~such amounts as may be prescribed;

~~i. Standby commitment fees or charges paid to any lender.~~

~~ii. Credit enhancement fees or charges paid to any credit enhancer.~~

~~iii. Liquidity fees or charges paid to any liquidity provider.~~

~~iv. Payments, including termination payments, made under derivatives.~~

~~v. Deposits made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a funding obligation.~~

2. Calculate the sum of (i) the aggregate of all amounts received by or on behalf of ~~the owners of~~ investment ~~assets~~asset owners during the reference period in respect of ~~a funding obligation, including reimbursement of any amounts referred to in subparagraphs 1 i to v.~~all funding obligations, and (ii) such other or different amounts as may be prescribed;

~~[OLC Note: Para. 2 is the definition of "finance receipts" in the Blakes doc.]~~

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

~~[OLC Note: This section is a modification of the definitions provided in the Blakes document for "Finance Reserve Deposits" and "Finance Reserve Withdrawals". The proposed definition of "FR deposit" involved a subtraction of the "FR withdrawal" so the term 'deposit' was not really descriptive of a pure deposit but rather the balance.]~~

1. Calculate the sum of all amounts deposited ~~[to what account?]~~by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn from the account by or on behalf of investment asset owners during the reference period from deposits previously made ~~[e.g. during a previous reference period?]~~ as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Expected Finance Amount

4. The expected finance amount for a reference period shall be determined by estimating, prior to the start of a reference period, the sum of the amounts described in paragraphs 1 to 4 in section 1 of this Schedule.

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Legend:	
Insertion	
~~Deletion~~	
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Split/Merged cell	
Padding cell	

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Deletions	364
Moved from	20
Moved to	20
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Format changed	0
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