Blakes

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CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act" ~~– Part V.2~~

Article 1 – Purpose[1]

~~IESO has entered into Power Contracts with Generators. The agreed-upon reference prices and quantities set out therein were determined based on commitments made by IESO to provide Generators with long-term price certainty, so as~~The Province has and continues to encourage the construction and development of facilities for the ~~purpose of~~ 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 ~~and~~, feed in tariff and other similar programs (the "Green Generation Initiative"). ~~[The terms of the Power Contracts were intended to approximate the anticipated useful life of the related generation assets]; however, it has been determined that the useful life of many of these assets will be well in excess of the actual term of the related Power Contracts and will extend over more than one generation of ratepayers.~~ The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will benefit present and future ~~ratepayers of the Province. Currently, market prices for electricity are less than the reference prices set out in the Power Contracts, leaving a gap in funding which is funded by charging consumers a "Global Adjustment" (part of which is available to IESO to pay this shortfall).~~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.

~~Each month, the IESO determines the Global Adjustment payable by consumers for the consumption~~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. ~~A component of the Global Adjustment is the amount by which the reference prices in the Power Contracts~~ 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 ~~for the quantities of electricity specified under the Power Contracts for the relevant period[2]. The relationship between the past, present and future benefits to Ratepayers from~~, 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~~, on the one hand, and the costs of~~ will be well in

[1] ~~Consider the scope and breadth of the Purpose section. This text is considered to be useful to establish the legislative basis for the statute, which text will be useful in the event of a challenge.~~

[2] ~~Consider modifying this to also refer to gas contracts and hydroelectric contracts, which provide for mechanics that are not based on contracts for differences.~~

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 borne by past, present and future Ratepayers through their respective allocations of the Global Adjustment, on the other hand, do not necessarily reflect an equitable allocation of such benefits and costs over time, with the result that an adjustment may be appropriate to address inter-generational fairness considerations. Such an adjustment should reflectwill 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 can be applied from time to time in order to establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative across present and future Ratepayers. A plan to allocate such costs and benefits equitably across present and future Ratepayers may be developed based on those principles and parameters (aRetail Consumers (the "Fair Allocation Plan").

If athe Fair Allocation Plan determines that the equitable allocation of the Global Adjustment to the Ratepayerscosts associated with the Green Generation Initiative to the Retail Consumers of a particular time period in respect of the Power Contracts should be reduced below the amount otherwise determined,that currently would be charged based on the Green Costs Adjustment, then the amount payable by such Ratepayers to Electricity Distributors in respect of such period,Retail Consumers and in turn by the Electricity Distributors to theavailable to IESO, would will, in the aggregate, be less than the amount payable by the IESO to the Generators under the Power Contractsgenerators in respect of such period. If the difference is greater than any net Power Contract surpluses available to IESO from earlier periods, IESO will have a funding shortfall.[3] In order for IESO to cover such a funding shortfall for a period,In this case IESO will need to obtain funding from another source, which could include funding from third party sources operating in public and private capital markets to cover such a shortfall. If a funding obligation is incurred in order to enable theby IESO to cover such a funding 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 will be incurred and maywill become payable in one or more otherfuture periods. It will be necessary to provideIn order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding obligations and to pay related funding costs with certainty when the funding obligationsamounts when they become due and payable. This Part, this Act imposes irrevocable and non-bypassable financial obligations of Ratepayerson 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, which will take the form of the Regulatory Asset contemplated in this Part andAct, which will constitute property rights and interests. TheInterests in the Regulatory Asset willmay be sold and absolutely assigned and will belongby IESO to one or more newly created financing entities, which in turn will finance their purchase of such Regulatory Assetacquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf thesuch financing entities by an administrativea financial services agent (initially OPG), under the Financing Plan

[3] Confirm whether any RPP forecasting variance is to be included in (i) a funding shortfall; and (ii) related IESO financing costs to be included in Transition Charges.]

contemplated in this ~~Part~~Act. The Financing Plan will seek to reasonably match the payment obligations arising under such funding obligations ~~and~~, to be borne by the future ~~Ratepayers~~Retail Consumers of the period in which such payment obligations become due, with the ~~costs and~~ benefits of the Green Generation Initiative ~~charged~~allocated to such future ~~Ratepayers~~Retail Consumers under the Fair Allocation Plan.

The purpose of this ~~Part~~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 ~~Ratepayers~~Retail Consumers on an equitable and cost effective basis.

Article 2 - Definitions

In this ~~Part~~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 ~~Administrative~~Financial Services Agent whose records shall be determinative for the purposes of this ~~Part in~~Act except to the ~~absence~~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 ~~the Regulatory Asset Owners~~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 ~~Administrative~~Financial Services Agent on behalf of, ~~a Regulatory Asset Owner~~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 ~~a Regulatory Asset Owner~~the Absolute Assignee or incurred by on behalf of ~~a Regulatory Asset Owner~~the Absolute Assignee under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the ~~Administrative~~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 ~~a Regulatory Asset Owner~~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 ~~of~~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.

~~"Administrative Agent" means [OPG] or, following any Replacement Event, such other person or persons who may be appointed as the administrative agent of the Regulatory Asset Owner under the Financing Plan in compliance with the requirements set out in Schedule 2.~~

"Allocation Factor" means, in respect of a ~~Ratepayer~~Retail Consumer for a Reference Period, the number (expressed as a percentage) determined in respect of the ~~Ratepayer~~Retail Consumer by ~~[IESO]~~the OEB based on the application of the Attribution Methodology in respect of the Reference Period.[4]1

"Alternative Collection Agent" means a person appointed under Section 5(11) and in compliance with the requirements set out in Schedule 2 to assume the collection activities and activities of any Electricity Distributor or IESO under Article 5, as agent for and on behalf of the Regulatory Asset Owners.

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners.

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[5]2 means the methodology specified in the Fair Allocation Plan for allocating the Period Transition Charges for a Reference Period to ~~the~~ individual ~~Ratepayers~~Retail Consumers of the applicable ~~Ratepayer~~Retail Consumer Group based on its Allocation Factor.

~~"Bypass Charge" means [To be developed].~~[6]

"Collected Amount Adjustment" means, in respect of a ~~Reference~~True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the ~~Administrative~~Financial Services Agent, as applicable, equal to (a) the Estimate of the

[4] ~~Consider basing~~[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 ~~would~~may be identified and ~~rolled into~~caught by the True-Up.

[5] ~~A key question will be how the overall costs will be spread across the rate base. For example, the~~[2] This allocation may be volumetric ~~or not,~~ or some combination of a flat amount and a volumetric charge. ~~This will also impact any discussion regarding any bypass (e.g., grid exit) charge in connection with the bypass discussion~~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.

[6] ~~Consideration needs to be given to any amount that will be charged to a ratepayer who successfully bypasses (e.g., leaves the grid). In allocating Transition Charges, considerations would include whether to reserve Bypass Charges and spread them over the life of the program, and correspondingly how to factor those into the calculation of Transition Charges.~~

Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[~~7~~3]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) and each Pledgee that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.[4]

"Delegate" means the person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act.

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of ~~all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of a Regulatory Asset Owner's right, title and interest in, to and under the Regulatory Asset~~an Investment Interest to an Absolute Assignee pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which a Regulatory Asset Owner effects a Disposition to an Absolute Assignee.

"Electricity Distributor" means, in respect of a Service Area, the rate regulated distributor licensed ~~by the OEB~~under Part V of the *Ontario Energy Board Act, 1998* in respect of such Service Area, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to IESO or if applicable the Alternative Collection Agent in accordance with Section 5(3) , including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by ~~an~~any of a Electricity Distributor (or in its stead, by an Alternative Servicer) ~~or~~, by the Servicer or by a Retailer, in each case to a Retail Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to a distribution network in the Electricity Distributor's designated Service Area and in respect of applicable Transition Charges to be charged to the Retail Consumer under this Act.

"Estimate" means~~,~~ (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the ~~Administrative Agent~~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

[~~7~~3] This would pick up adjustments based on actual collection experience, changes in the ~~Consumer Base~~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.

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 ~~Part in~~Act except to the ~~absence~~extent of a manifest calculation error.

~~"Fair Allocation Plan" [has the meaning given in Article 1].~~"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, ~~in respect of~~for a Reference Period in respect of an Absolute Assignee, the sum (without duplication) of the following amounts ~~for~~that are or become payable during the Reference Period in respect of the Absolute Assignee: (a) Repayments; (b) Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.~~"Finance Receipts" means, for a Reference Period, all amounts received by or on behalf of the Regulatory Asset Owners during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Regulatory Asset Owners under derivatives and any 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 a Funding Obligation.~~

"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.[8] under the Financing Plan.[6]

"Financing Plan" means the written plan [prepared by the Administrative Agent]Financial Services Agent on behalf of each Absolute Assignee in compliance with Article 89 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 in order to fund a Funding Shortfallby 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 (ij) the cash flows arising from time to time or otherwise derived from the Regulatory Assetan 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 Regulatory Asset OwnerAbsolute Assignee during the Reference Period in respect of allits Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to aits Funding ObligationObligations, exceeds (b) the aggregate of all Finance Receiptsamounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Absolute Assignee under derivatives and any Finance Reserve Withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the payment of the Funding Costs payable in respect of a Funding Obligation for the Reference Period.

[5] Discuss whether to accommodate multiple Financial Services Agents. MOE to consider.

[8] OPG has suggested[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. These raise issues for consideration by the stakeholders.

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including each obligation to pay: principal, interest, premiums and other financing ~~charges, indebtedness,~~charge payments; pass-through payments; payment obligations arising under or in respect of derivatives~~,~~; payment obligations owing to service providers, ~~administrative agents~~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 ~~taxes payable in connection with the foregoing)~~Additional Funding Charges incurred by or on behalf of ~~a Regulatory Asset Owner~~the Absolute Assignee under the Financing Plan ~~in order to fund a Funding Shortfall for a Reference Period~~, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.[9]

~~"Funding Shortfall" means, for a Reference Period, (a) the amount, if any, by which (i) the IESO Power Contract Net Payment for the Reference Periods, exceeds (ii) the GA Power Contract Contribution for Reference Period, minus (b) the IESO Applied Surplus for the Reference Period.~~[10]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.

~~"GA Power Contract Contribution" means, for a Reference Period, the aggregate of the payments to be made by the applicable Ratepayer Group in respect of the portion of the Global Adjustment [attributable to the Power Contracts] in accordance with the Fair Allocation Plan.~~[11]

"Generator" means a generator of electricity that is subject to ~~[this~~the *Electricity Act*~~]~~[12]~~,~~ *1998*.

"Global Adjustment" ~~means the amount calculated from time to time under [Section • of the *Electricity Act*], which includes among other things an amount determined in respect of the costs associated with the Green Generation Initiative, including amounts attributable to the Power Contracts.~~[13]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]~~.1.

~~[9] OPG has asked whether this should include IESO finance arrangements.~~

~~[10] Consider whether to simplify by referring to the calculations of GA, with vs. without Fair. The issue would be that Fair is then linked into the GA calculation specifically, rather than to the specific assets that are subject to revised amortization under Fair. The constitutional position requires a clear nexus to the assets. Also, confirm whether RPP forecasting variances are to be included.~~

~~[11] IESO to confirm its ability to allocate a shortfall in a given month between what it receives and what it owes under the GA, in order to calculate (a) existing volume-based variances which are rolled into subsequent month GA and trued-up every 6 months under RPP, (b) existing variances attributable to OREC which are funded by the Province, and (c) new variances attributable to Fair Hydro program.]~~[1]

~~[12] Revise once determine whether this will be a standalone Act or remain part of the *Electricity Act*. "Generator is a defined term in other legislation (OEB Act, Electricity Act) so this should ultimately be a distinct term such as "FH Generator" to avoid confusion.~~

~~[13] Note that if adjustments for Fair Hydro program are to be applied after existing GA adjustments, then this may need a new name (such as "FH Adjustment").~~[1]

"IESO" means the Independent Electricity System Operator created pursuant to ~~[insert].~~Part II of the *Electricity Act, 1998*.

"IESO ~~Applied Surplus~~Available Amount" means, for a Reference Period, the lesser of (a) the amount~~,~~ ~~(~~if any~~,)~~ by which (i) the ~~IESO Power Contract Net Payment~~Maximum Transition Charge Amount for the Reference Period, exceeds (ii) ~~the GA Power Contract Contribution~~Period Finance Amount for the Reference Period, and (b) the IESO ~~Unapplied Surplus on the last day of the immediately preceding Reference Period.~~ Retained Interest Amount as of the [35th] day prior to the first day of a Reference Period plus any IESO Financing Costs that are due and payable and remain unpaid as of the [35th] day prior to the first day of a Reference Period.

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO during the month pursuant to section • of the *Electricity Act*.

"IESO Financing Costs" means, for a Reference Period, the financing costs (if any) incurred by IESO pursuant to Section 8(4) in order to finance its ownership of the IESO Retained Interest during the Reference Period.

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[7]; provided that if the amount of any such shortfall is determined to have been based on incomplete information, variances or estimates that were inaccurate, an adjustment shall be made in determining the amount of any subsequent shortfall for the month in which the inaccuracy is identified.

"IESO ~~Power Contract Net Payment" means, for a Reference Period, the amount by which (a) the sum of amounts payable by IESO to the Generators under all Power Contracts for the Reference Period, exceeds (b) the sum of amounts payable by the Generators to IESO under all Power Contracts for the Reference Period.~~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 Power Contract Net Receipt" means, for a Reference Period, the amount by which (a) the sum of amounts payable by the Generators to IESO under all Power Contracts for the Reference Period, exceeds (b) the sum of amounts payable by IESO to the Generators under all Power Contracts for the Reference Period.~~

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative

[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.

how? if HOEP rises?

Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO ~~Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for [managing the Province's power system].~~Retained Interest" means IESO's right, title and ownership interest (if any) in, to and under the Regulatory Asset, which shall exclude each Investment Interest.

"IESO Retained Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, plus (b) the sum of all IESO Funding Costs incurred prior to the day in accordance with Section 8(4), minus (c) the net proceeds received by IESO from or on behalf of each Absolute Assignee as consideration for the Disposition of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee prior to the day, and minus (d) the IESO Recoveries received by IESO prior to the day.

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition, which ownership interest may include (without limitation) ownership of a specified portion on a divided basis of the assets comprising the Regulatory Asset and ownership of an undivided ownership interest in the Regulatory Asset, in each case as may be described in the applicable Disposition Document.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Finance Amounts due and payable by all Absolute Assignees in respect of the month.

"Maximum IESO Recovery" means, for a month, the amount (if any) by which (a) the IESO Remittances for the month, exceed (b) the sum of all Finance Amounts that are due and payable by Absolute Assignees in respect of the month.

"Maximum Transition Charge Amount" means, for a Reference Period, (a) the aggregate amount of Future Fair Share of Green Transition Benefits that are allocable to the applicable Retail Consumer Group in accordance with the Fair Allocation Plan, divided by (b) the applicable Reference Period Length.

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

~~"IESO Unapplied Surplus" means, at a particular time, the amount, if any, by which (a) the sum of (i) all IESO Power Contract Net Receipts for Reference Periods occurring prior to the time, and (ii) all GA Power Contract Contributions for Reference Periods occurring prior to the time, exceeds (b) the sum of (i) all IESO Power Contract Net~~

~~Payments for Reference Periods occurring prior to the time, and (ii) all IESO Applied Surpluses for Reference Periods occurring prior to the time.~~ 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 ~~Transition Charge~~Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount and (b) the True-Up Amount in respect of the immediately preceding Reference Period.

"Period Transition Charges" means, for a Reference Period, the sum of (a) the Period Finance Charges for the Reference Period and (b) the IESO Available Amount for the Reference Period.

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by ~~a Regulatory Asset Owner~~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 ~~Regulatory Asset~~Investment Interest.

"Pledgee" means a person to whom ~~a Regulatory Asset Owner~~an Absolute Assignee grants a Pledge.

~~"Power Contracts" means long-term power contracts entered into by IESO with certain Generators, under which IESO has agreed to pay such Generators amounts, determined in respect of quantities of electricity over specified periods, to the extent that applicable market prices for such quantities of electricity during a specified period are less than specified reference prices for such quantities of electricity, and, correspondingly, Generators have agreed to pay IESO amounts if the market prices for such quantities exceed the applicable reference prices for such quantities.~~[14]Program End Date" means •, [2047].

"Province" means the Province of Ontario.

~~"Ratepayer" means present and future [retail] consumers of electricity [in the Province] who are [RPP][or OREC-eligible] consumers, which shall include all such retail consumers 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.~~[15]

~~[14] Consider expanding to include PPAs that are not contracts for differences. Should this contemplate the possibility of additional or amended power contracts?~~

~~[15] Need to describe consumers in a fashion that is broad and not weakened by a bypass risk. Consider terminology to align with the description of the eligible customer class provided by the Ministry, e.g., same as OREC-eligible consumers except for consumers served by Independent Power Authorities (who do not pay GA). Also, consider use of the word "retail", to avoid limiting to customers of retailers and confirm removal of reference to transmission-connected customers.~~

~~"Ratepayer Group" means, in relation to a Reference Period, the Ratepayers who receive Electricity Invoices[16] during the Reference Period.~~

"Redemption Amount" means the amount payable by or on behalf of ~~a Regulatory Asset Owner~~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 ~~[Legislation Implementation~~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 ~~that a~~, 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 ~~a Regulatory Asset Owner~~the Absolute Assignee by applying the net proceeds obtained by the ~~Regulatory Asset Owner~~Absolute Assignee incurring one or more other Funding Obligations.

"Regulatory Asset" means the property ~~right~~rights and ~~interest~~interests described in Section 6(1), ~~or if the context requires, a specified portion or undivided interest in such property right and interest that is described in the applicable Disposition Document~~which collectively is comprised of the IESO Retained Interest and each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; (b) for the Servicer, any bank account into which ~~the Servicer~~IESO deposits or receives Transition Charges, Electricity Distributor Remittances or IESO Remittances; and (c) if applicable, for the Alternative Collection Agent, any bank account into which the Alternative Collection Agent deposits or receives Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each of (a) IESO, as owner of (and to the extent ~~that it has retained any ownership interest in, to or under the Regulatory Asset~~of) the IESO Retained Interest and (b) each Absolute Assignee, ~~to the extent that it has acquired and owns any ownership interest (including a specified portion on a divided basis or by way of an undivided interest) in, to or under the Regulatory Asset~~as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively ~~all of the Regulatory Asset Owners~~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). ~~For greater certainty, where one Regulatory Asset Owner owns the entirety of the Regulatory Asset, "Regulatory Asset Owners" refers to this Regulatory Asset Owner.~~

[16] ~~Expand to include eligible consumers who are not customers of Electricity Distributors (e.g., suite-metered customers).~~

~~"Related Generation Assets" means the [facilities, plants and equipment] constructed, acquired or developed in connection with the Green Generation Initiative.~~

"Related Rights" means~~, with respect to a Regulatory Asset Owner's Regulatory Asset,~~ all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Regulatory Asset.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in ~~relation to~~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 ~~Regulatory Asset Owner~~Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by ~~a Regulatory Asset Owner~~an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Retail Consumer" means:

(a) present and future consumers of electricity in the Province who are (i) consumers designated under section 79.16 of[, and O.Reg 95/05 under,] the *Ontario Energy Board Act, 1998*, or (ii) hold or are deemed to hold an "eligible account" under the *Ontario Rebate for Electricity Consumers Act, 2016*, other than any such consumer who has a contract with a Retailer who uses Retailer Consolidated Billing; and

(b) present and future Retailers who use Retailer Consolidated Billing,

and each case includes all such consumers and Retailers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO.

"Retail Consumer Group" means, in relation to a Reference Period, the Retail Consumers who receive Electricity Invoices during the Reference Period.

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

"Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.

"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is licensed to distribute electricity in accordance with ~~[this~~the *Electricity Act*[17]~~]~~, *1998*.

"Servicer" means ~~[To be determined]~~IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset ~~Owner [To be determined – collective invoicing agent, and consider expanding].~~Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means, for a ~~Ratepayer~~Retail Consumer in respect of a Reference Period, ~~the sum of~~ (a) ~~[one-sixth] of~~ the Period Transition Charge, (b) multiplied by its Allocation Factor ~~and (b) any Bypass Charge charged to the Ratepayer~~ in respect of the Reference Period, divided by (c) the applicable Reference Period Length.

"Transition Charge Collection" means any amount received or deemed by this ~~Part~~Act to have been received upon the collection of a Transition Charge paid by or on behalf of a ~~Ratepayer~~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 ~~Administrative~~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 ~~10~~11(2).

~~"Unrecovered Transition Costs" means the [unrecovered][unamortized] costs incurred in connection with the creation, adoption and implementation of the Green Generation Initiative, including any negative value of the Power Contracts and [other].~~[18]

Article 3 – Transition Charges

(1) ~~Ratepayer~~**Retail Consumer Obligation to Pay a Transition Charge** – Each ~~Ratepayer~~Retail Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such ~~Ratepayer~~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.

[17] ~~Revise once determine whether this will be a standalone Act or remain part of the *Electricity Act*.~~

[18] ~~Note that this is the term that describes the "asset" that we are amortizing over a longer period of time.~~

(2) **Indebtedness of ~~Ratepayers~~Retail Consumers** – Until paid, a Transition Charge charged to a ~~Ratepayer~~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 ~~Ratepayer~~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 ~~Ratepayer~~Retail Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the ~~Ratepayer~~Retail Consumer under the Electricity Invoice or otherwise.[~~19~~9]

(3) **No Set-Off or Reduction** – A ~~Ratepayer~~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 ~~Ratepayer~~Retail Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) **Allocation of ~~Ratepayer~~Retail Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a ~~Ratepayer~~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 ~~8~~9(3)) are deemed to be irrevocable, final and effective without any further action, ~~in~~except to the ~~absence~~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.

[8] Determine if this is critical for rating and markets. Logistics under consideration.

[~~19~~9] ~~Torys suggests that we not create a debtor/creditor relationship between ratepayers and regulatory asset owners. Instead, ratepayers would only have relationships with electricity distributors and the Fair program would rely on consumers paying distributors and distributors to collecting those amounts and remitting them to IESO. The current draft goes further to bridge the investors more directly with ratepayers. There are differences in the approaches, including reliance from a credit perspective on the LDCs (rather than an ability to replace the individual LDCs with the investors choice). This depends on the credit analysis, and comfort that a later requirement will not be accommodated without a change in the legislation.~~ 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. ~~Consideration should be given to whether that achieves the same direct relationship and whether the effectiveness of the current regulatory licensing regime should be suggested as the basis~~Consider if it is helpful to integrate the existing regulatory scheme for ~~a market-based credit decision.~~invoicing and collections (regarding RPP) in the legislation.

~~(6) [Anti-avoidance; No-by-pass – Transition Charges charged to a Ratepayer in respect of any Finance Amount incurred under with the Financing Plan applicable at the time the related Funding Obligation was incurred may not be avoided and shall be [non-by-passable].]~~

Article 4 – Invoicing of Transition Charges[20]

(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 ~~Ratepayer~~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 ~~Ratepayer~~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 ~~Ratepayer~~Retail Consumer.

(2) Calculation of the Period Transition Charge – Not later than [35] days prior to the first day of a Reference Period, each ~~Regulatory Asset Owner~~Absolute Assignee (or the ~~Administrative~~Financial Services Agent on its behalf) shall provide the ~~Servicer~~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 ~~Servicer or if applicable the Alternative Servicer~~[21]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 ~~Regulatory Asset Owners, which~~Absolute Assignees and based on such amounts specified by IESO or Successor IESO, which calculations, information and amounts shall be determinative ~~in~~, except to the ~~absence~~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 ~~Servicer or if applicable the Alternative Servicer~~OEB shall apply the Attribution Methodology to determine the Allocation Factor for each ~~Ratepayer~~Retail Consumer of the applicable ~~Ratepayer~~Retail Consumer Group.

(4) Notice of Transition Charges – Not later than 20 days prior to the first day of a Reference Period, the ~~Servicer or if applicable the Alternative Servicer~~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 ~~Ratepayer~~Retail Consumer of the applicable ~~Ratepayer~~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 ~~Ratepayer by the Servicer~~Retail Consumer and specified as such in an Electricity Invoice shall be

[20] ~~Details concerning Invoicing of Transition Charges (Article 4) and Collections and Remittances (Article 5) are complex. Consider how much of this can be addressed through regulations, or if acceptable based on existing OEB license conditions/codes, IESO market rules/manuals, etc.~~

[21] ~~Should this be a designated government official, rather than an agent appointed by investors?~~

determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, ~~in~~except to the ~~absence~~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 ~~Regulatory Asset Owners~~Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners.

(9) ~~**Regulatory Asset Owners**~~**Absolute Assignees have Standing** – The ~~Regulatory Asset Owners~~Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to ~~Ratepayers~~Retail Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges. Any court of the Province ~~[and the OEB]~~ shall have jurisdiction over any actions brought before it by the ~~Regulatory Asset Owners~~Absolute Assignees in relation to any such failure.[22]

(10) **No Set-Off or Reduction –** No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(11) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor~~,~~ or any Alternative Servicer ~~or any [Alternative Collection Agent]~~ to ensure that Transition Charges are properly charged to ~~Ratepayers~~Retail Consumers and specified as such in Electricity Invoices.

[22] ~~Consider having such matters first go through the OEB, particularly if the obligation to bill, collect or remit is deemed to be a condition of license for distributors, IESO, retailers and unit sub-metering providers, which would be enforceable provisions under the OEB Act and within OEB jurisdiction to enforce.~~

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 ~~Ratepayers~~Retail Consumers in respect of Transition Charges charged to such ~~Ratepayers~~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 ~~Ratepayers~~Retail Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[11] Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for ~~each~~the Regulatory Asset ~~Owner~~Owners.

(3) **Electricity Distributor Remittances** – On each [applicable Remittance Date], an Electricity Distributor shall remit all Transition Charge Collections received by it from ~~Ratepayers~~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 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 ~~Ratepayers~~Retail Consumers that pay their Electricity Invoices directly to ~~the Servicer.~~[23]IESO.[12]

(5) **Segregation of Electricity Distributor Remittances** – IESO and if applicable the Alternative Collection Agent shall [promptly] segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, IESO or if applicable any Alternative Collection Agent shall hold such amounts in trust for ~~each~~the Regulatory Asset ~~Owner~~Owners.

(6) **IESO Remittances** – On each [Settlement Date][24]13], IESO and if applicable the Alternative Collection Agent shall remit all amounts on deposit in its Regulatory Asset Account (a) first, to or to the account of the ~~Regulatory Asset Owner~~Absolute Assignees an amount equal to the Investment Remittance for the related month and (b) second, to IESO (including by IESO retaining such amount) an amount equal to the lesser of (i) the Maximum IESO Recovery for the related month and (ii) the IESO Retained Interest Amount as of the Settlement Date.

[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.
[23]12 Consider building this obligation into a deemed condition of licence for the IESO.
[24]13 Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) ~~Successors of~~ **IESO Successor** ~~– Any successor of~~ 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[2514], then such person shall, if requested by the ~~Regulatory Asset Owners~~Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to ~~Ratepayers~~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 ~~Ratepayers~~Retail Consumers 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~~Act; (c) exercise all enforcement rights of the ~~Regulatory Asset Owners or Pledgee~~Absolute Assignees for the benefit of ~~a Regulatory Asset Owner or Pledgee~~an Absolute Assignee; and (~~e~~d) remit any Transition Charge Collections to the ~~Regulatory Asset Owner or Pledgee~~Absolute Assignees or Pledgees, as applicable, each in accordance with its ~~Regulatory Asset~~Investment Interest.

(10) ~~**Regulatory Asset Owners**~~**Absolute Assignees have Standing** – The ~~Regulatory Asset Owners and any Pledgee~~Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Alternative ~~Servicer~~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 ~~Ratepayers~~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 ~~[and the OEB]~~ shall have jurisdiction over any actions brought before it by the ~~Regulatory Asset Owners~~Absolute Assignees in relation to any such failure. [26]

(11) **Appointment of an Alternative Collection Agent** – If a Replacement Event occurs in respect of any Electricity Distributor or IESO, the ~~Regulatory Asset Owners~~Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations otherwise required to be undertaken by such Electricity Distributor or IESO, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the

[2514] This is in anticipation of a possible future restructuring of the distribution system. ~~Also, this would cover any OREC-eligible customer (market participant) of IESO.~~

[26] ~~Consider having such matters first go through the OEB, particularly if the obligation to bill, collect or remit is deemed to be a condition of license for distributors, IESO, retailers and unit sub-metering providers, which would be enforceable provisions under the OEB Act and within OEB jurisdiction to enforce.~~

Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor or IESO, as applicable. Any Electricity Distributor or IESO, as applicable, that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the ~~Regulatory Asset Owners~~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 ~~Ratepayer~~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.~~27~~15

(13) **Sequestration** – If any Electricity Distributor, IESO, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by ~~the Regulatory Asset Owners or Pledgee~~and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the ~~applying party~~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 ~~Regulatory Asset Owners or Pledgee~~Absolute Assignees, each with respect to its ~~Regulatory Asset.~~ Investment Interest, and the Pledgees as applicable.[16]

(14) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by ~~the Regulatory Asset Owner~~some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

(1) **Composition** – The Regulatory Asset shall constitute ~~an existing, present~~a current and irrevocable property right and interest consisting, collectively, of the following rights and interests ~~of a Regulatory Asset Owner in the following~~ (without duplication):

~~27~~15 Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a ~~Ratepayer~~Retail Consumer reduces its payment of Transition Charges, despite this language~~, and same~~. Same for Electricity Distributor Remittances and IESO Remittances.

[16] Consider adding or substituting this provision for a right to appoint a receiver.

a. the right of ~~a Regulatory Asset Owner to record its portion of the Regulatory Asset in its accounts~~IESO (i) to record its IESO Retained Interest in its accounts in accordance with Section 8(1), having a stated amount from time to time equal to the IESO Retained Interest Amount; and (ii) to receive IESO Recoveries from time to time in accordance with Section 5(6)(b);

b. the right to impose, bill, invoice, collect and receive Transition Charges from ~~Ratepayers~~Retail Consumers, including the right to determine the amount of Transition Charges in accordance with this ~~Part~~Act;

c. the right to enforce the obligations and indebtedness of each ~~Ratepayer~~Retail Consumer to pay the Transition Charges charged to the ~~Ratepayer~~Retail Consumer from time to time in accordance with Article ~~2,~~3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices;

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of IESO or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 45;

f. the right to enforce the duties and obligations of IESO and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the 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 45;

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 ~~contract or by~~ operation of any applicable law of the Province~~]~~, a Disposition by ~~a Regulatory Asset Owner~~IESO to an Absolute Assignee made under the Financing Plan ~~pursuant to a Disposition Document~~, or by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with ~~its~~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 ~~Regulatory Asset~~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. ~~[A Disposition shall not be subject to recharacterization or challenge on any other basis and the validity of a Disposition shall not be affected or impaired by: (a) the commingling of Transition Charge Collections or other proceeds from Transition Charges with other amounts; (b) the retention of any interest (including any partial, residual or subordinated interest, whether direct or indirect) in the Regulatory Asset by the transferring Regulatory Asset Owner; (c) any right to repurchase the Regulatory Asset in favour of the transferring Regulatory Asset Owner; (d) any recourse that an Absolute Assignee may have against the transferring Regulatory Asset Owner; (e) any indemnification rights or obligations provided by the transferring Regulatory Asset Owner; (f) any obligation of the transferring Regulatory Asset Owner to collect and remit Transition Charge Collections on behalf of an Absolute Assignee, including but not limited to, any retention by the transferring Regulatory Asset Owner to bare legal title for the purpose of collecting Transition Charges; or (g) the ascribed or intended treatment of the Disposition by the transferring Regulatory Asset Owner or the Absolute Assignee on any different basis including for tax, financial reporting or other purposes.]~~[28], and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the Investment Interest subject to the Disposition, including all rights under the Investment Interest arising after such Disposition.

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the transferring Regulatory Asset Owner and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the transferring Regulatory Asset Owner, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

[28] ~~Consider if helpful to investors, or delete.~~

(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 ~~contract or by~~ operation of any applicable law of the Province~~]~~, a Pledge by ~~a Regulatory Asset Owner~~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 ~~Regulatory Asset~~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** - ~~Any Pledge made by a~~For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset ~~Owner~~shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation ~~incurred under the Financing Plan shall be perfected, valid and binding from the time when the Pledge is made and shall be valid and binding as against the Regulatory Asset, the Regulatory Asset Owner making the Pledge and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the Regulatory Asset or the pledging Regulatory Asset Owner, irrespective of whether such persons have notice of the Pledge and the security interests of the Pledgee under such Pledge shall have priority over any liens in favour of such other persons. All proceeds of the Regulatory Asset~~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 ~~Regulatory Asset Owner~~Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected~~, without any physical delivery thereof, registration of any financing statement with respect thereto~~ pursuant to the ~~[~~PPSA~~]~~ ~~or any other further act.~~[29] [17] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may ~~subsequently~~ attach to the property rights and interests in the ~~Regulatory Asset~~Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. ~~Any~~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. ~~[A Pledgee~~All provisions of the PPSA shall ~~cause a financing statement to be filed in respect of a Pledge on the basis that~~apply to the Regulatory Asset on the basis that it is ~~"~~intangible~~"~~ personal property, ~~for informational purposes only under the [PPSA].~~except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and

[2917] 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.

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 ~~right~~rights and ~~interest~~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 ~~joint~~]coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement.[30]

Article 7 – Establishment of the Fair Allocation Plan[3118]

(1) Adoption of the Fair Allocation Plan – The [~~Minister of Energy~~][32]Delegate may , [by written ~~order~~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 ~~Part~~Act, [except if amended, amended and restated or terminated by a further written ~~order issued~~declaration made by the ~~Minister of Energy~~Delegate in compliance with Section ~~•~~]7(4).

(2) Principles and Parameters[33] – A Fair Allocation Plan shall seek to allocate ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits across present and future ~~Ratepayer~~Retail Consumer Groups on a basis that the ~~Minister of Energy~~Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters[34]:

1. ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits should be allocated over ~~a period not to exceed the later of (a) the estimated remaining useful life of the Related Generating Assets and (b) the remaining term of IESO's commitments under the Power Contracts~~the period ending on the ~~Program~~ End Date.

2. The Fair Allocation Plan should specify the Reference Periods ~~(e.g., 6 month periods),~~ for the purpose of identifying applicable ~~Ratepayer~~Retail Consumer Groups and allocating ~~among them responsibility to bear the Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits among them on a relative basis over time.

[30] ~~This is necessary to ensure that if there are multiple regulatory asset owners and pledgees, they will be coordinated in the application of their rights of enforcement, etc.~~

[3118] 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 ~~Power Contracts~~procurement contracts and not invest in extending service lives to secure further ~~power~~procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

[32] ~~Input required. If the MOE is given this power, conform to applicable authorities (e.g., plans and directives).~~

[33] ~~Consideration will be given as to whether these details should be included in the Regulation.~~

[34] ~~We have provided a few examples of what could be the basic principles. These will depend on market considerations, the Province's decision on the required amount of detail and the ability to sustain the legal basis for the program. These examples are not meant to suggest the appropriate balance – just illustrative to advance a discussion among the stakeholders.~~

3. The share of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits allocable to a particular ~~Ratepayer~~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 ~~Ratepayer~~Retail Consumer Group over such Reference Period.

4. The ~~estimated Unrecovered~~share of Future Fair Share of Green Transition ~~Costs~~Benefits to be allocated to a ~~Ratepayer~~Retail Consumer Group and any future ~~Ratepayer~~Retail Consumer Group at a particular time should not exceed the ~~estimated value of the Related Generating Assets based on their remaining useful lives or terms~~Estimated Future Green Transition Benefits, measured in respect of the ~~period~~Reference Periods following such particular time and to the Program End Date.

5. No future ~~Ratepayer~~Retail Consumer Group should ~~bear~~be allocated an unreasonably disproportionate share of ~~the Unrecovered~~Estimated Future Green Transition ~~Costs~~Benefits. Except in exceptional circumstances or in the case of any ~~backward-looking adjustment made~~reallocation of an Over-Assessed Amount as contemplated in 7, below, the ~~share of the Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits to be allocated under a Fair Allocation Plan to any future ~~Ratepayer~~Retail Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate]*[35].

6. ~~A reasonable estimate of the rate of inflation~~The time value of money should be ~~applied~~reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal ~~amount of Unrecovered Transition Costs to be allocable to Ratepayer~~allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Retail Consumer Groups over time.

7. ~~Backward-looking adjustments to a~~To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may ~~be made to achieve a fair distribution among Ratepayers of the benefits of the Green Generation Initiative.~~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 ~~an objective methodology (~~the "Attribution Methodology"~~)~~ for the purposes of allocating the Period

[35] ~~Consider if a quantitative limit needs to be included in the legislation.~~

Transition Charges across ~~all of~~ the ~~Ratepayers~~Retail Consumers of a particular ~~Ratepayer~~Retail Consumer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that ~~are~~is considered by the ~~Minister of Energy~~Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation.

(4) ~~[Confirmation][Review] of the Fair Allocation Plan – [OEB?][36]~~**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 ~~Financing Plan~~[37]IESO Retained Interest

(1) **Maintain Books of Account** – IESO may maintain books of account to record the IESO Retained Interest Amount and all adjustments thereto from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset.

(2) **Limitation on Additions** – IESO shall not record additions to the IESO Retained Interest Amount in respect of IESO Funding Shortfalls (a) if such additions are restricted by the terms of any Disposition Document or the Collective Action Agreement, or (b) on or after •, 2017.

too soon

(3) **Dispositions** – IESO may effect a Disposition to an Absolute Assignee if (a) the Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; (c) the Financial Services Agent confirms in writing that the Disposition is permitted under the Financing Plan; and (d) the net proceeds payable to IESO from the sale of the related Investment Interest would not exceed the IESO Retained Interest Amount immediately before the time of such Disposition.

(4) **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any Investment Interest subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party and IESO shall not assert any such right or interest or take or omit to take any action to exercise or enforce its rights or interests under the IESO Retained Interest if such action or omission would impede or obstruct the rights of any Absolute Assignee or a Pledgee to enforce its rights and interests in any Investment Interest, except if IESO is expressly permitted to take or omit to take such action, respectively, under the related Disposition Document or the Collective Rights Agreement.

(5) **IESO Financing Costs** – IESO shall be entitled in good faith to incur reasonable financing costs (including interest and other reasonable financing charges) reflecting

[36] ~~Any approvals or consents by the OEB will be obtained before any Funding Obligation that is dependent on such approval or consent is incurred. Any such approval or consent will be irrevocable and non-appealable. Any regulatory action occurring after any incurrence will not affect the related Funding Obligation or underlying rights in the Regulatory Asset.~~

[37] ~~Consideration will be given as to whether these details should be included in the Regulation.~~

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 ~~and~~, Implement and Amend the Financing Plan** – ~~In compliance with a [written order][*MOE to confirm process.*]~~ of the ~~Minister of Energy, the Administrative Agent shall~~The Financial Services Agent shall be authorized to prepare, implement and ~~propose~~amend the ~~adoption of a~~ Financing Plan. If the ~~Administrative~~Financial Services Agent is unwilling or unable to prepare and propose the adoption of ~~a~~the Financing Plan, the ~~Minister of Energy~~Delegate may by written ~~order~~declaration designate one or more other persons who shall be authorized to prepare ~~and~~, implement ~~such a~~and amend the Financing Plan.

(2) ~~Required~~ **Terms and Conditions of the Financing Plan** – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions ~~that have the effect of allocating the Unrecovered Transition Costs across present and future Ratepayer Groups on a basis that is consistent with the Fair Allocation Plan~~. The Financing Plan shall ~~be consistent with~~have regard to the principles~~, requirements and conditions~~ and parameters set forth in Schedule 3 and such other conditions and requirements as may be specified in a written ~~order~~declaration of the ~~Minister of Energy~~ [Delegate or in accordance with the Regulation].

(3) ~~**Power to Review and Approve the Financing Plan** – The Minister of Energy may, by written order, designate one or more persons to review the Financing Plan and to review and assess the consistency of the Funding Obligations incurred with such Financing Plan, and the Minister of Energy may specify requirements in respect of such review in such written order. The Administrative Agent, or such other person(s) as may be designated by written order of the Minister of Energy made pursuant to Section 8(1), shall make any such amendments to the Financing Plan, and submit a revised Financing Plan to the designated reviewer for approval within [the time period specified in such written order]/[[•] days of such written order].[***Consider periodic amendments to the Financing Plan following an annual review; provided that amendments cannot affect the existing Funding Obligations. Consider the level of oversight the MoE/OEB will have over this process?***]~~**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) ~~**Approval of Financing Plan** – The **[OEB]** shall have the power to and shall approve or disapprove of the Financing Plan based solely on whether the Financing Plan is consistent with (i) the principles, parameters, requirements and conditions set forth in Schedule 3, (ii) such other conditions and requirements as may be specified in a written order of the Minister of Energy [or in accordance with the Regulation] [and (iii) the Fair Allocation Plan]. If the **[OEB]** approves the Financing Plan, then such Financing Plan shall be implemented by the Administrative Agent. If the OEB disapproves of the Financing Plan or otherwise fails to approve the Financing Plan, then the Administrative Agent shall re-submit the Financing Plan with such amendments as the Administrative~~

~~Agent shall consider necessary for the Financing Plan to be approved by the OEB.~~[38] **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)~~ ~~**Consistency with the Fair Allocation Plan** – Funding Obligations should only be incurred if Repayments and Funding Costs would be borne by present and future Designated Ratepayers on a basis that is [generally] consistent with their respective allocations of the costs and benefits of the Green Generation Initiative contemplated in the Fair Allocation Plan. In that regard, at the time of setting the Fair Allocation Plan for any particular period, the aggregate amount payable during future Reference Periods on account of Funding Obligations incurred on or before the date on which a new Funding Obligation is incurred should not exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Ratepayer Group contemplated in the Fair Allocation Plan. If, despite the foregoing, the Administrative Agent determines that 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 Ratepayer Group under the then current Fair Allocation Plan, the Financing Plan shall require the Administrative Agent to make diligent efforts 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, if such a Refinancing or deferral is determined to be available the Financing Plan shall require the Administrative Agent to make diligent efforts to implement such Refinancing or deferral on a basis that is consistent with the Fair Allocation Plan.~~

~~(5)~~ ~~(6) **Establishment of Special Purpose Entities** – If the implementation of the Financing Plan contemplates the establishment of one or more special purpose finance entities to incur Funding Obligations as a Financing Entity under the Financing Plan, as an Absolute Assignee and on a basis that limits the recourse for the payment of such Funding Obligations to such Absolute Assignee's interest in, to and under the Regulatory Asset, the Administrative Agent shall have regard to the characteristics specified in Schedule 4 in establishing such special purpose entity.]~~**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) ~~(7)~~ **Obligation to Apply IESO Remittances** – The ~~Administrative~~Financial Services Agent shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the ~~Regulatory Asset Owners~~Absolute Assignees, or otherwise in respect of or

[38] ~~Once the Financing Plan is reviewed and approved there would be no further OEB review. If there is opportunity for further review, such review will have no impact on prior issued debt. Any further financings would be put on hold until such review is completed (during which time the IESO would again need to fund the shortfall on an interim basis and obtain necessary funding).~~[1]

as proceeds from ~~the Regulatory Asset~~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.[39]

(7) ~~(8)~~ **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, ~~and~~any Alternative Collection Agent, the ~~Administrative~~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 ~~Part~~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) ~~(9)~~ **Incurrences are Binding** – ~~Despite any failure to adhere to the Financing Plan or to comply with any requirement of this Part,~~Notwithstanding anything to the contrary in this Act, each Disposition made to or by an Absolute Assignee and all amounts payable or becoming due and payable by or on behalf of ~~a Regulatory Asset Owner~~an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation, shall be binding for the purposes of this ~~Part~~Act, including in determining the amount of related Transition Charges, despite any impairment or defect resulting from such failure.

[Article ~~9~~10 – Compliance Matters[4019]

(1) **Right of the [OEB] to Inspect Books and Records** - For the purpose of investigating compliance with the provisions of this ~~Part~~Act, the [OEB] shall have the right, jurisdiction, power and authority to examine the books and records of ~~any person who is or may become obligated or have duties that arise under this Part or any Funding Obligation~~*[Insert names if any]*.

~~(2)~~ ~~**Power to Investigate Compliance and Impose Regulatory Sanctions** - Subject to the limitations set forth regarding the irrevocability of Transition Charges and the Undertaking of the Lieutenant Governor in Council, nothing in this Part shall (a) prevent or preclude the [OEB] from investigating the compliance of any person who is or may become obligated or have duties that arise under this Part [or any Funding Obligation] with the terms and conditions of this Part and requiring compliance by such person therewith; or (b) prevent or preclude the [OEB] or any successor regulator from imposing regulatory sanctions against any person who is or may become obligated or have duties that arise under this Part for its failure to comply with the terms and conditions of this Part[41].~~

(2) ~~(3)~~ **[~~Other Rating~~OPG's Rate Settings** – When setting other rates for or in respect of ~~any person who is or may become obligated or have duties that arise under this Part,~~

[39] ~~We need to work in the idea that there may be Finance Reserve Deposits or other amounts that remain after paying Finance Amounts. Those surplus amounts should be credited back to Ratepayers.~~

[4019] 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 ~~is~~and any potential role for the Auditor General is still under consideration.

[41] ~~Consider scope of OEB regulation and whether a Financing Entity should be subject to this sort of provision in any event.~~

~~including any Electricity Distributor, IESO, Generator or the Administrative Agent, nothing in this Part shall prevent the [OEB] or any successor regulator from taking~~OPG, the OEB shall not take into account (a) the ~~collection by or attribution to such person of~~ 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.~~]~~[42]; (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]

Article ~~10~~11 – Undertaking of the Lieutenant Governor in Council[43]21

(1) **No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections** – The [Lieutenant Governor in Council] shall not in any way take or permit any action to reduce, impair, postpone or terminate the obligation of ~~Ratepayers~~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 ~~hereunder~~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) ~~(2) Undertaking and Agreement – The Lieutenant Governor in Council shall 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, billed, invoiced, collected and remitted for the benefit of the ~~Regulatory Asset Owners, including any~~ Absolute ~~Assignee from time to time, and~~Assignees or any Pledgee from time to time~~[, including through the introduction of any bill or the passing of any legislation or regulation]~~.;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination

[42] ~~OPG has indicated that the risks and cost consequences to OPG of being an~~[20] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Administrative Agent ~~or of consolidating a Financing Entity for accounting purposes should not be considered by the OEB in setting the regulated payment amounts for~~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. ~~To be discussed.]~~

[43] ~~Under consideration~~[21] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes.

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) ~~[If IESO becomes insolvent or otherwise incapable of performing its obligations under this Part, an IESO Successor will be established that is capable of performing such obligations in order that the Regulatory Asset Owners may appoint the IESO Successor as an Alternative Servicer or Alternative Collection Agent. Regulatory Asset Owners shall be fully~~**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 ~~10(2) for any loss suffered by the Regulatory Asset Owner as a result of such failure.~~[44]11.[22]~~]~~

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid.

(6) ~~(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*].

Article ~~11~~12 – Regulations

Regulations may be made under this ~~Part~~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 ~~a Regulatory Asset Owner~~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 ~~Costs~~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 ~~Part~~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;

[4422] Requested by Torys. For discussion.

(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 ~~Part~~Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by ~~a Regulatory Asset Owner~~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 ~~12~~13- Miscellaneous[~~45~~23]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this ~~Part~~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 ~~Part~~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 ~~Part~~Act shall be required with respect to the actions to be taken in compliance with this ~~Part~~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 ~~Part~~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 ~~Part~~Act, if any provision of this ~~Part~~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 ~~Part~~Act that is taken by any person who is or may become obligated or have duties that arise under this ~~Part~~Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this ~~Part~~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 ~~Part~~Act are intended to be

[~~45~~23] OPG would like the specific amendments related to OPG to be included in the Bill.]

severable and that the Legislature would have enacted this ~~Part~~Act even if any Article, Section, paragraph or subparagraph of this ~~Part~~Act held to be unconstitutional or invalid had not been included in this ~~Part~~Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3[24]

Principles, and Parameters, ~~Requirements and Conditions~~ for Establishing the Financing Plan

The ~~Financing Plan shall have regard to the~~ following principles, and parameters, ~~requirements and conditions:[*Consider others.*]~~ provide a guideline as to what a Financing Plan should address:

(1) ~~the Financing Plan shall,~~ in respect of each Reference Period, ~~describe~~make reference to the allocations of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits to each Reference Group ~~as~~ contemplated by the Fair Allocation Plan;

(2) ~~the Administrative Agent shall make a good faith~~ estimate ~~of the~~IESO Funding Shortfalls for each Reference Period, ~~based on the terms of the Power Contracts and assumptions considered to be reasonable respecting forward market prices for electricity~~;

(3) ~~the Administrative Agent shall describe~~consider alternative funding arrangements ~~considered to be~~ suitable ~~for the purpose of funding~~to fund the estimated IESO Funding Shortfalls, including ~~by reference to~~ short term and/or long term Funding Obligations ~~that could reasonably be incurred by the Regulatory Asset Owners for such purpose~~;

(9) ~~(4) such Funding Obligations shall reflect~~consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that ~~the effect of incurring such Funding Obligations would be that the~~ payments made ~~thereunder in respect of each~~for a Reference Period ~~(including the anticipated Finance Amounts becoming payable in relation to such Funding Obligations) would~~ reasonably correspond to the allocations of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~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) ~~the Financing Plan shall reflect the outcome of a financial model that incorporates~~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 ~~Ratepayer~~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); ~~[*Consider what outputs from OPG will be tested by the OEB and when. The modelling in the Financing Plan may permit the OEB to check progress against the model from*~~

[24] Awaiting input from Torys based on OPG mark-up of Financing Plan sections.

~~*time to time, which may provide a basis for the MoE/OEB to require a review/amendment to the Financing Plan if the ongoing operation of the program results in significant deviation from the model. Consider whether this flexibility is desirable.*~~]

(6) ~~the Administrative Agent, for and on behalf of each Regulatory Asset Owner, shall seek to~~ 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 ~~Regulatory Asset Owners~~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 ~~a Regulatory Asset Owner~~an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the ~~Administrative~~Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations ~~shall~~should not obligate ~~a Regulatory Asset Owner~~an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits to the applicable Reference Group under the Fair Allocation Plan;

c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the ~~Administrative~~Financial Services Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the ~~Administrative~~Financial Services Agent shall cause the applicable ~~Regulatory Asset Owner~~Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the ~~Administrative~~Financial Services Agent will select counterparties under any transaction to be entered into by ~~a Regulatory Asset Owner~~an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note

trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the ~~Administrative~~Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the ~~Administrative~~Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(7) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding ~~Shortfall~~Shortfalls from time to time on a basis that is consistent with the allocations of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits to applicable Reference Groups under the Fair Allocation Plan;

(8) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(9) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the ~~Administrative~~Financial Services Agent and other agents and service providers to the ~~Regulatory Asset Owners~~Absolute Assignees may be determined, allocated and paid;

(10) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(11) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(12) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(13) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(14) the basis upon which any Disposition may be made or effected by ~~a Regulatory Asset Owner~~an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(15) ~~a description of each~~describe the requirements applicable to any special purchase entity that will purchase ~~the Regulatory Asset from the IESO~~an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities ~~having regard to the parameters in Schedule 4~~; and

(16) the basis on which any Pledge may be given or effected.

~~Schedule 4~~

~~Creation of any Special Purpose Entity to become a Regulatory Asset Owner]~~

~~(1) Powers and Abilities:~~

~~a. No part of the revenue or assets of a Regulatory Asset Owner shall enure to the benefit or be distributable to its trustees, officers or directors, as the case may be, or any other private persons, except as may be provided for actual services rendered;~~

~~b. Each Regulatory Asset Owner shall be authorized to:~~

~~i. incur the Funding Obligations contemplated by a Financing Plan and use the proceeds thereof to purchase or acquire, and to own, hold and use the Regulatory Asset;~~

~~ii. contract for servicing of the Restructuring Asset and any bonds contemplated by a Financing Plan and for administrative services; and~~

~~iii. pledge the Regulatory Asset to secure the Funding Obligations incurred by the Regulatory Asset Owner;~~

~~c. So long as any Funding Obligations contemplated under a Financing Plan are outstanding, a Regulatory Asset Owner shall not be authorized to merge or consolidate, directly or indirectly, with any person or entity;~~

~~d. a Regulatory Asset Owner shall not have the power or authority to incur or guarantee or otherwise become obligated to pay any debt or obligations other than what is contemplated under a Financing Plan;~~

~~e. a Regulatory Asset Owner shall cause the proceeds obtained by incurring any Funding Obligation to be placed in one or more separate accounts and used only to purchase the Regulatory Asset and pay any costs as provided for in a Financing Plan; and~~

~~f. so long as the Regulatory Asset is pledged to secure Funding Obligations, the Regulatory Asset Owner must apply revenues from the collection of Transition Charges only to repay such Funding Obligations and other costs as provided for in a Financing Plan.~~

~~(2) Governance of Regulatory Asset Owner – A Regulatory Asset Owner shall be created having regard to the following principles:[*OPG to confirm if SPE will be a trust or another type of entity.*]~~

a. ~~[Number of trustees]~~

b. ~~[Replacement of trustees; vacancies; appointment of successors]~~

c. ~~[Removal of trustees for neglect of duty or misconduct]~~

d. ~~[Quorum and meetings]~~

e. ~~[Fiduciary duty]~~

f. ~~[Isolation, separateness and other "non-consolidation" and "bankruptcy remoteness" criteria]~~

g. ~~[Delegation of powers and duties to administrative agents]~~

h. ~~[Delegation of powers and duties to administrative agents]~~

(17)

Document comparison by Workshare Compare on Monday, April 10, 2017 11:00:11 PM

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Document 2 ID	PowerDocs://TOR_2528/23107566/9
Description	TOR_2528-#23107566-v9-"Fair_Hydro_Act"
Rendering set	Standard

Legend:	
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Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	596
Deletions	610
Moved from	25
Moved to	25
Style change	0
Format changed	0
Total changes	1256

~~Internal~~Comment Draft: April ~~4~~6, 2017

CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro" – Part V.2

Article 1 – Purpose[1]

IESO has entered into Power C
and ~~future~~ quantities set out the
provide Generators with long
construction and development
generation of electricity using
gas-fired generation, renewabl
Province's various procurem
Generation Initiative"). [The t
anticipated useful life of the r
the useful life of many of the
Power Contracts and will exte
benefits of the Green Genera
present and future ratepayer
than the reference prices s
funded by charging ~~ratepay~~
IESO to pay this shortfall).

reference prices
made by IESO to
ge the ~~long-term~~
erm operation and
gies such as new
ncluding under the
rams (the "Green
to approximate the
en determined that
term of the related
yers. The long-term
efited and will benefit
or electricity are less
in funding which is
which is available to

Each month, the IESO determines the Global Adjustment payable by consumers for the consumption of electricity in the Province. A component of the Global Adjustment is the amount by which the reference prices in the Power Contracts exceed the market price for electricity for the quantities of electricity specified under the Power Contracts for the relevant period[2]. The relationship between the past, present and future benefits to Ratepayers from the Green Generation Initiative, on the one hand, and the costs of the Green Generation Initiative borne by past, present and future Ratepayers through their respective allocations of the Global Adjustment, on the other hand, do not necessarily reflect an equitable allocation of such benefits and costs over time, with the result that an adjustment may be appropriate to address inter-generational fairness considerations. Such an adjustment should reflect principles and parameters that can be applied from time to time in order to establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative across present and future Ratepayers. A plan to allocate such costs and benefits equitably across present and future Ratepayers may be developed based on those principles and parameters (a "Fair Allocation Plan").

If a Fair Allocation Plan determines that the equitable allocation of the Global Adjustment to the Ratepayers of a particular time period in respect of the Power Contracts should be reduced below the amount otherwise determined, the amount payable by such Ratepayers to Electricity Distributors in respect of such period, and in turn by the Electricity Distributors to the IESO, would, in the aggregate, be less than the amount payable by the IESO to the Generators under the Power Contracts in respect of such period. If the difference is greater than any net Power

[1] Consider the scope and breadth of the Purpose section. This text is considered to be useful to establish the legislative basis for the statute, which text will be useful in the event of a challenge.

[2] Consider modifying this to also refer to gas contracts and hydroelectric contracts, which provide for mechanics that are not based on contracts for differences.

Contract surpluses available to IESO from earlier periods, IESO will have a funding shortfall.[3] In order for IESO to cover such a funding shortfall for a period, IESO will need to obtain funding from another source, which could include funding from third party sources operating in public and private capital markets. If a funding obligation is incurred in order to enable the IESO to cover a funding 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 will be incurred and may become payable in one or more other periods.

It will be necessary to provide a reliable and committed source of cash flows to enable IESO to repay such funding obligations and to pay related funding costs with certainty when the funding obligations become due and payable. This Part imposes irrevocable and non-bypassable financial obligations of Ratepayers to pay amounts incurred in respect of such funding obligations when they become due and payable~~. Such~~ and establishes a right to invoice and collect such amounts . The right and interest in and to collect such financial obligations ~~will constitute property rights and interests~~, which will take the form of the Regulatory Asset contemplated in this Part and will constitute property rights and interests. The Regulatory Asset will be sold and absolutely assigned and will belong to one or more newly created financing entities, which in turn will finance their purchase of such Regulatory Asset by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf the financing entities by an administrative agent (initially OPG), under the ~~Treasury~~Financing Plan contemplated in this Part. The ~~Treasury~~Financing Plan will seek to reasonably match the payment obligations arising under funding obligations and borne by the future Ratepayers of the period in which such payment obligations become due, with the costs and benefits of the Green Generation Initiative ~~attributed~~charged to such future Ratepayers under the Fair Allocation Plan.

The purpose of this Part is to establish the basis upon which intergenerational fairness can be achieved by ~~attributing~~charging the costs and benefits of the Green Generation Initiative to present and future Ratepayers on an equitable and cost effective basis.

Article 2 - Definitions

In this Part:

> "Absolute Assignee" means a person to whom a Regulatory Asset Owner ~~assigns, transfers, conveys, sells, contributes, sets over, exchanges or disposes all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the transferring Regulatory Asset Owner's right, title and interest in, to and in respect of the Regulatory Asset~~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 Administrative Agent whose records shall be determinative for the purposes of this Part in the absence of a manifest calculation error.
>
> "Additional Funding Charges" means, for a Reference Period, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any

[3] Confirm whether any RPP forecasting variance is to be included in (i) a funding shortfall; and (ii) related IESO financing costs to be included in Transition Charges.]

applicable tax amounts) that are or become payable by the ~~Regulated~~Regulatory Asset ~~Owner~~Owners during the Reference Period and that were incurred or committed to directly or indirectly in connection with the incurrence of Funding Obligations under the ~~Treasury~~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 Administrative Agent on behalf of, ~~the~~a Regulatory Asset Owner under the ~~Treasury~~Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on ~~the~~a Regulatory Asset Owner or incurred by on behalf of ~~the~~a Regulatory Asset Owner under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Administrative Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the ~~Treasury~~Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative ~~Invoicing Agent~~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~~a Regulatory Asset Owner; (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 of director fees; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (~~m~~o) any rating agency fees; and (~~n~~p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith for recovery and payment under the ~~Treasury~~Financing Plan.

"Administrative Agent" means [OPG] or, following any Replacement Event, such other person or persons who may be appointed as the administrative agent of the Regulatory Asset Owner under the ~~Treasury~~Financing Plan in compliance with the requirements set out in Schedule 2.

"Allocation Factor" means, in respect of a Ratepayer for a Reference Period, the number (expressed as a percentage) determined in respect of the Ratepayer by [IESO] based on the application of the Attribution Methodology in respect of the Reference Period.[4]

"Alternative Collection Agent" means a person appointed under Section 5(11) and in compliance with the requirements set out in Schedule 2 to assume the collection activities and activities of any Electricity Distributor or IESO under Article 5, as agent for and on behalf of the Regulatory Asset ~~Owner~~Owners.

"Alternative ~~Invoicing Agent~~Servicer" means a person appointed under Section 4(8) to assume the ~~invoicing and other activities of any Electricity Distributor~~obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset ~~Owner~~Owners.

[4] Consider basing this on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those would be identified and rolled into the True-Up.

"Attribution Methodology"[15] means the methodology specified in the Fair Allocation Plan for allocating the Period Transition Charges for a Reference Period to the individual Ratepayers of the applicable Ratepayer Group based on its Allocation Factor.

"Bypass Charge" means [To be developed].[6]

"Collected Amount Adjustment" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Servicer or the Administrative 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.[27]

~~["Consumer Base" means, for a Reference Period, the total number of Ratepayers in the Ratepayer Group determined by the Administrative Agent as of the [30th] day immediately preceding the first day of the Reference Period.]~~

"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.

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of a Regulatory Asset Owner's right, title and interest in, to and under the Regulatory Asset to an Absolute Assignee pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which a Regulatory Asset Owner effects a Disposition to an Absolute Assignee.

"Electricity Distributor" means, in respect of a Service Area, the distributor ~~of electricity to residences located in~~licensed by the OEB in respect of such Service Area.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to IESO or if applicable the Alternative Collection Agent in accordance with Section 5(3) , including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the

[15] A key question will be how the overall costs will be spread across the rate base. For ~~simplicity, overall costs could be spread across the rate base based on a *per capita* (ratepayer) concept. This would generally mean that all consumers who are invoiced in a month would pay the same Transition Charge, and to the extent that the invoiced amounts (i.e., the Transition Charges billed for a month) are higher or lower than the actual costs, due to a change in the Consumer 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 consumers), the divisor for the Transition Charge will need to be modified~~example, the allocation may be volumetric or not, or some combination of a flat amount and a volumetric charge. This will also impact any discussion regarding any bypass (e.g., grid exit) charge in connection with the bypass discussion.

[6] Consideration needs to be given to any amount that will be charged to a ratepayer who successfully bypasses (e.g., leaves the grid). In allocating Transition Charges, considerations would include whether to reserve Bypass Charges and spread them over the life of the program, and correspondingly how to factor those into the calculation of Transition Charges.

[27] This would pick up adjustments based on actual collection experience, changes in the Consumer Base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by an Electricity Distributor (or in its stead, an Alternative ~~Invoicing Agent)~~Servicer) or by the Servicer in respect of electricity charges and related services and amounts incurred, assessed or ~~attributed~~charged in respect of ~~a residence located~~connectivity to a distribution network in the Electricity Distributor's designated Service Area.

"Estimate" means, 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 Administrative Agent 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 Part in the absence of a manifest calculation error.

"Fair Allocation Plan" [has the meaning given in Article ~~1.~~1].

"Finance Amount" means, in respect of a Reference Period, the sum (without duplication) of the following amounts for the Reference Period: (a) Repayments; (b) Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Receipts" means, for a Reference Period, all amounts received by or on behalf of the Regulatory Asset ~~Owner~~Owners during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Regulatory Asset ~~Owner~~Owners under derivatives and any 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 a Funding Obligation.

"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 ~~Treasury~~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 ~~Treasury~~Financing Plan.

"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.[8]

"Financing Plan" means the written plan [prepared by the Administrative Agent] in compliance with Article 8 to set forth the basis upon which, among other things: (a) any Disposition may be made or effected; (b) any Funding Obligations may be incurred in order to fund a Funding Shortfall, 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) the establishment and operation of any Financing Entity; and (i) the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied.

"Funding Costs" means, for a Reference Period, 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 Regulatory Asset Owner during the Reference Period in respect of all Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a Funding Obligation, exceeds (b) the aggregate of all Finance Receipts for the Reference Period.

"Funding Obligation" means each payment obligation (including principal, interest and other financing charges, 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 and all taxes payable in connection with the foregoing) incurred by or on behalf of ~~the~~a Regulatory Asset Owner under the ~~Treasury~~Financing Plan in order to fund a Funding Shortfall for a Reference Period, including any Refinancing of another such payment obligation.[9]

"Funding Shortfall" means, for a Reference Period, (a) the amount, if any, by which (i) the IESO Power Contract Net Payment for the Reference Periods, exceeds (ii) the GA Power Contract Contribution for Reference Period, minus (b) the IESO Applied Surplus for the Reference Period.[10]

[8] OPG has suggested that the legislation 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. These raise issues for consideration by the stakeholders.

[9] OPG has asked whether this should include IESO finance arrangements.

[10] Consider whether to simplify by referring to the calculations of GA, with vs. without Fair. The issue would be that Fair is then linked into the GA calculation specifically, rather than to the specific assets that are subject to revised amortization under Fair. The constitutional position requires a clear nexus to the assets. Also, confirm whether RPP forecasting variances are to be included.

Scott

"GA Power Contract Contribution" means, for a Reference Period, the aggregate of the payments to be made by the applicable Ratepayer Group in respect of the portion of the Global Adjustment [attributable to the Power Contracts] in accordance with the Fair Allocation Plan.[11]

"Generator" means a generator of electricity that is subject to [this Act][12].

"Global Adjustment" means the amount calculated from time to time under [Section • of the *Electricity Act*], which includes among other things an amount determined in respect of the costs associated with the Green Generation Initiative, including amounts attributable to the Power Contracts.[13]

"Green Generation Initiative" [has the meaning given in Article ~~1.~~1].

"IESO" means the Independent Electricity System Operator created pursuant to [insert].

"IESO Applied Surplus" means, for a Reference Period, the lesser of (a) the amount, if any, by which (i) the IESO Power Contract Net Payment for the Reference ~~Periods~~Period, exceeds (ii) the GA Power Contract Contribution for the Reference Period and (b) the IESO Unapplied Surplus on the last day of the immediately preceding Reference Period.

"IESO Power Contract Net Payment" means, for a Reference Period, the amount by which (a) the sum of amounts payable by IESO to the Generators ~~to IESO~~ under all Power Contracts for the Reference Period, exceeds (b) the sum of amounts payable by the Generators to IESO under all Power Contracts for the Reference Period.

"IESO Power Contract Net Receipt" means, for a Reference Period, the amount by which (a) the sum of amounts payable by the Generators to IESO under all Power Contracts for the Reference Period, exceeds (b) the sum of amounts payable by IESO to the Generators ~~to IESO~~ under all Power Contracts for the Reference Period.

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset ~~Owner~~Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for [managing the Province's power system].

[11] IESO to confirm its ability to allocate a shortfall in a given month between what it receives and what it owes under the GA, in order to calculate (a) existing volume-based variances which are rolled into subsequent month GA and trued-up every 6 months under RPP, (b) existing variances attributable to OREC which are funded by the Province, and (c) new variances attributable to Fair Hydro program.]

[12] Revise once determine whether this will be a standalone Act or remain part of the *Electricity Act*. "Generator is a defined term in other legislation (OEB Act, Electricity Act) so this should ultimately be a distinct term such as "FH Generator" to avoid confusion.

[13] Note that if adjustments for Fair Hydro program are to be applied after existing GA adjustments, then this may need a new name (such as "FH Adjustment").

"IESO Unapplied Surplus" means, at a particular time, the amount, if any, by which (a) the sum of (i) all IESO Power Contract Net Receipts for Reference Periods occurring prior to the time, and (ii) all GA Power Contract Contributions for Reference Periods occurring prior to the time, exceeds (b) the sum of (i) all IESO Power Contract Net Payments for Reference Periods occurring prior to the time, and (ii) all IESO Applied Surpluses for Reference Periods occurring prior to the time.

"Period Transition Charge" 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.

"Pledge" means a lien, mortgage, charge~~, right of set-off~~ or security interest granted to or in favour of a Pledgee by a Regulatory Asset Owner 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 Regulatory Asset.

"Pledgee" means a person to whom ~~[or for whose benefit]~~ a Regulatory Asset Owner grants a Pledge.

"Power Contracts" means long-term power contracts entered into by IESO with certain Generators, under which IESO has agreed to pay such Generators amounts, determined in respect of quantities of electricity over specified periods, to the extent that applicable market prices for such quantities of electricity during a specified period are less than specified reference prices for such quantities of electricity, and, correspondingly, Generators have agreed to pay IESO amounts if the market prices for such quantities exceed the applicable reference prices for such quantities.[314]

"Province" means the Province of Ontario.

"Ratepayer" means present and future [retail] consumers of electricity [in the Province] who are [RPP][or OREC-eligible] consumers, which shall include all such retail consumers 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.[415]

"Ratepayer Group" means, in relation to a Reference Period, the Ratepayers who receive Electricity Invoices[16] during the Reference Period.

[314] Consider expanding to include PPAs that are not contracts for differences. Should this contemplate the possibility of additional or amended power contracts?

[415] Need to describe consumers in a fashion that is broad and not weakened by a bypass risk. Consider terminology to align with the description of the eligible customer class provided by the Ministry, e.g., same as OREC-eligible consumers except for consumers served by Independent Power Authorities (who do not pay GA). Also, consider use of the word "retail", to avoid limiting to customers of retailers and confirm removal of reference to transmission-connected customers.

[16] Expand to include eligible consumers who are not customers of Electricity Distributors (e.g., suite-metered customers).

"Redemption Amount" means the amount payable by or on behalf of a Regulatory Asset Owner to redeem, prepay or repurchase a Funding Obligation, 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 [Legislation Implementation Date] to (and including) June 30, 2017, (b) each six month period commencing [~~July~~May 1st and ~~January~~November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Refinancing" means that a Funding Obligation is repaid or repurchased for cancellation by or on behalf of ~~the Regulated~~a Regulatory Asset Owner by applying the net proceeds obtained by the ~~Regulated~~Regulatory Asset Owner incurring one or more other Funding Obligations.

"Regulatory Asset" means the property right and interest described in Section 6(1), or if the context requires, a specified portion or undivided interest in such property right and interest that is described in the applicable Disposition Document.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; (b) for ~~IESO~~the Servicer, any bank account into which ~~IESO~~the Servicer 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~~, collectively,~~ each of (a) IESO, to the extent that it has retained any ownership interest in, to or under the Regulatory Asset and (b) each Absolute Assignee, to the extent that it has acquired and owns any ownership interest (including a specified portion on a divided basis or by way of an undivided interest) in, to or under the Regulatory Asset, ~~which~~and "Regulatory Asset Owners" means collectively all of the Regulatory Asset Owners, 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). For greater certainty, where one Regulatory Asset Owner owns the entirety of the Regulatory Asset, "Regulatory Asset Owners" refers to this Regulatory Asset Owner.

"Related Generation Assets" means the [facilities, plants and equipment] constructed, acquired or developed in connection with the Green Generation Initiative.

"Related Rights" means, with respect to a Regulatory Asset Owner's Regulatory Asset, all rights of any kind (whether in tort, contract or otherwise) ~~of the Regulatory Asset Owner~~ that attach or are attendant or incidental to any of the other property rights or interests that comprise ~~the~~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 in accordance with any Funding Obligation or, if no such day is specified in relation to 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 Finance Reserve Deposit) of, all or a portion of the amount advanced to the Regulatory Asset Owner under a Funding Obligation.

"Repayment" means a payment by a Regulatory Asset Owner made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is ~~[permitted]~~licensed to distribute electricity ~~to residences~~ in accordance with [this Act[17]].

"Servicer" means [To be determined], as agent for and on behalf of the Regulatory Asset Owner [To be determined – collective invoicing agent, and consider expanding].

"Settlement Date" means the [last Business Day of any month].

~~"Treasury Plan" means the written plan prepared by the Administrative Agent in compliance with Article 8 to set forth the basis upon which, among other things: (a) any Disposition may be made or effected; (b) any Funding Obligations may be incurred in order to fund a Funding Shortfall, 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; and (h) the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied.~~

"Transition Charge" means, for a Ratepayer in respect of a Reference Period, the sum of (a) [one-sixth] of the Period Transition Charge~~, [divided by the Consumer Base[5]]~~, multiplied by its Allocation Factor and (b) any Bypass Charge charged to the Ratepayer in respect of the Reference Period.

"Transition Charge Collection" means any amount received or deemed by this Part to have been received upon the collection of a Transition Charge paid by or on behalf of a Ratepayer, 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 Administrative 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.

"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.

[17] Revise once determine whether this will be a standalone Act or remain part of the *Electricity Act*.
~~[5] See footnote 1, above.~~

"Undertaking of the Lieutenant Governor in Council" means the undertaking of the Lieutenant Governor in Council given under Section 10(2).

"Unrecovered Transition Costs" means the [unrecovered][unamortized] costs incurred in connection with the creation, adoption and implementation of the Green Generation Initiative, including any negative value of the Power Contracts and [other].[18]

Article 3 – Transition Charges

(1) **Ratepayer Obligation to Pay a Transition Charge** – Each Ratepayer shall pay each Transition Charge ~~attributed~~charged to it ~~and specified as such~~ in any Electricity Invoice issued to such Ratepayer by its Electricity Distributor or by an Alternative ~~Invoicing Agent~~Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) **Indebtedness of Ratepayers** – Until paid, a Transition Charge ~~attributed~~charged to a Ratepayer ~~and recorded~~ 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 Ratepayer to the Regulatory Asset ~~Owner~~Owners (each with respect to its Regulatory Asset). Such indebtedness shall constitute a single and separate debt obligation owing by the Ratepayer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Ratepayer under the Electricity Invoice or otherwise.[19]

(3) **No Set-Off or Reduction** – A Ratepayer 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 Ratepayer by its Electricity Distributor, ~~the~~any Regulatory Asset Owner or any other person.

(4) **Allocation of Ratepayer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a Ratepayer 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.

[18] Note that this is the term that describes the "asset" that we are amortizing over a longer period of time.

[19] Torys suggests that we not create a debtor/creditor relationship between ratepayers and regulatory asset owners. Instead, ratepayers would only have relationships with electricity distributors and the Fair program would rely on consumers paying distributors and distributors to collecting those amounts and remitting them to IESO. The current draft goes further to bridge the investors more directly with ratepayers. There are differences in the approaches, including reliance from a credit perspective on the LDCs (rather than an ability to replace the individual LDCs with the investors choice). This depends on the credit analysis, and comfort that a later requirement will not be accommodated without a change in the legislation. 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. Consideration should be given to whether that achieves the same direct relationship and whether the effectiveness of the current regulatory licensing regime should be suggested as the basis for a market-based credit decision.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred under the ~~Treasury~~Financing Plan (including any adjustments based on modifications to such Funding Obligations made in compliance with the ~~Treasury~~Financing Plan or as a result of amendments to the ~~Treasury~~Financing Plan made in accordance with Section 8(3)) are deemed to be irrevocable, final and effective without any further action, in the absence 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 ~~Treasury~~Financing Plan. In no case shall a Funding Obligation incurred under the ~~Treasury~~Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(6) **[Anti-avoidance; No-by-pass** – Transition Charges ~~attributed~~charged to a Ratepayer in respect of any Finance Amount incurred under with the ~~Treasury~~Financing Plan applicable at the time the related Funding Obligation was incurred may not be avoided and shall be [non-by-passable].]

Article 4 – Invoicing of Transition Charges[20]

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative ~~Invoicing Agent~~Servicer shall, as an agent of the Regulatory Asset ~~Owner~~Owners, specify the Transition Charge to be ~~attributed~~charged to a Ratepayer 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 ~~Invoicing Agent~~Servicer to the Ratepayer 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 ~~deemed to have been imposed on and billed to~~binding on the applicable Ratepayer.

(2) **Calculation of the Period Transition Charge** – Not later than [35] days prior to the first day of a Reference Period, each Regulatory Asset Owner (or the Administrative Agent on its behalf) shall provide the Servicer with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. Not later than one month prior to the first day of a Reference Period, ~~[IESO]~~[6]the Servicer or if applicable the ~~[~~Alternative ~~Collection Agent]~~[7]Servicer[21] 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 Regulatory Asset Owners, which shall be determinative in the absence of manifest calculation error or misstatement.

[20] Details concerning Invoicing of Transition Charges (Article 4) and Collections and Remittances (Article 5) are complex. Consider how much of this can be addressed through regulations, or if acceptable based on existing OEB license conditions/codes, IESO market rules/manuals, etc.

~~[6] IESO's role will need to be discussed. Not sure if this mechanism is an IESO role or perhaps it's an OEB role. That will need to be discussed with the stakeholders. Currently, the rates for this class of customer are established by the OEB every six months having regard to the projections etc., of GA, and any variances from the prior period. This might end up fitting into that regime (although presumably we wouldn't want it to be built into the rate like GA is today- ie., it would be a separate line item). This section will also need to catch "bypass" customers.~~

~~[7]~~[21] Should this be a designated government official, rather than an agent appointed by investors?

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, ~~[IESO]~~the Servicer or if applicable the ~~[~~Alternative ~~Collection Agent]~~Servicer shall apply the Attribution Methodology to determine the ~~Transition Charges to be attributed to the Ratepayers~~Allocation Factor for each Ratepayer of the applicable Ratepayer Group.

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, ~~[IESO]~~the Servicer or if applicable the ~~[~~Alternative ~~Collection Agent]~~Servicer shall inform each Electricity Distributor and if applicable any Alternative ~~Invoicing Agent~~Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each Ratepayer of the applicable Ratepayer Group who has a billing address in the Electricity Distributor's Service Area.

(5) **Adjustments** – The amount of any Transition Charge ~~attributed~~charged to a Ratepayer by ~~[IESO]~~the Servicer 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, in the absence 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) ~~Successors of~~ **IESO Successor** – Any ~~successor of~~ 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 ~~Invoicing Agent~~Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the Regulatory Asset ~~Owner shall~~Owners shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative ~~Invoicing Agent~~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 ~~Invoicing Agent~~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 ~~Invoicing Agent~~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 ~~Invoicing Agent~~Servicer to perform such obligations and duties on behalf of the Regulatory Asset ~~Owner~~Owners.

(9) **Regulatory Asset ~~Owner has~~Owners have Standing** – The Regulatory Asset ~~Owner~~Owners may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative ~~Invoicing Agent~~Servicer or any other person who may be authorized to issue Electricity Invoices to Ratepayers for a failure to impose, attribute, charge, bill or invoice Transition Charges. Any court of the Province [and the OEB] shall have jurisdiction over

any actions brought before it by ~~a~~the Regulatory Asset ~~Owner~~Owners in relation to any such failure.[22]

(10) **No Set-Off or Reduction** – No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(11) ~~(10)~~ **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, any Alternative ~~Invoicing Agent~~Servicer or any [Alternative Collection Agent] to ensure that Transition Charges are properly ~~attributed~~charged to Ratepayers 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 ~~Owner~~Owners, undertake [diligent efforts] to collect amounts owing by Ratepayers in respect of Transition Charges ~~attributed~~charged to such Ratepayers 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 Ratepayers and deposit such Transition Charge Collections into its Regulatory Asset Account. Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall ~~be deemed to~~ hold such amounts in trust for ~~the~~each Regulatory Asset Owner.

(3) **Electricity Distributor Remittances** – On each [applicable Remittance Date], an Electricity Distributor shall remit all Transition Charge Collections received by it from Ratepayers 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 shall, as an agent of the Regulatory Asset ~~Owner~~Owners, undertake [diligent][reasonable] ~~efforts]~~ to accept and collect Electricity Distributor Remittances~~.~~ from Electricity Distributors and Transition Charge Collections from Ratepayers that pay their Electricity Invoices directly to the Servicer.[23]

(5) **Segregation of Electricity Distributor Remittances** – IESO and if applicable the Alternative Collection Agent shall [promptly] segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, IESO or if applicable any Alternative Collection Agent shall ~~be deemed to~~ hold such amounts in trust for ~~the~~each Regulatory Asset Owner.

[22] Consider having such matters first go through the OEB, particularly if the obligation to bill, collect or remit is deemed to be a condition of license for distributors, IESO, retailers and unit sub-metering providers, which would be enforceable provisions under the OEB Act and within OEB jurisdiction to enforce.

[23] Consider building this obligation into a deemed condition of licence for the IESO.

(6) **IESO Remittances** – On each [Settlement Date][24], IESO and if applicable the Alternative Collection Agent shall remit all amounts on deposit in its Regulatory Asset Account to or to the account of the Regulatory Asset Owner.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **Successors of IESO** – Any successor of IESO 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[825], then such person shall, if requested by the Regulatory Asset ~~Owner~~Owners, be obligated to act diligently to (a) facilitate the invoicing and ~~collect~~collection of any Transition Charges 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~~Owners or Pledgee for the benefit of ~~the~~a Regulatory Asset Owner or Pledgee; and (e) remit any Transition Charge Collections to the Regulatory Asset Owner or Pledgee, as applicable, each in accordance with its Regulatory Asset.

(10) **Regulatory Asset ~~Owner has~~Owners have Standing** – The Regulatory Asset ~~Owner~~Owners and any Pledgee may bring actions against any Electricity Distributor, IESO, Alternative ~~Invoicing Agent~~Servicer, 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 Ratepayers 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 [and the OEB] shall have jurisdiction over any actions brought before it by ~~a~~the Regulatory Asset ~~Owner~~Owners in relation to any such failure.[26]

(11) **Appointment of an Alternative Collection Agent** – If a Replacement Event occurs in respect of any Electricity Distributor or IESO, the Regulatory Asset ~~Owner~~Owners 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

[24] Consider frequency of remittances in light of rating requirements.

[825] This is in anticipation of a possible future restructuring of the distribution system. Also, this would cover any OREC-eligible customer (market participant) of IESO.

[26] Consider having such matters first go through the OEB, particularly if the obligation to bill, collect or remit is deemed to be a condition of license for distributors, IESO, retailers and unit sub-metering providers, which would be enforceable provisions under the OEB Act and within OEB jurisdiction to enforce.

collection, segregation and remittance obligations otherwise required to be undertaken by such Electricity Distributor or IESO, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor or IESO, as applicable. Any Electricity Distributor or IESO, as applicable, that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the Regulatory Asset ~~Owner~~Owners.

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of ~~the~~a Regulatory Asset Owner, ~~any~~an Absolute Assignee and ~~any~~a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any Ratepayer, 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.~~]~~[27]

(13) ~~[~~**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 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 ~~a~~the Regulatory Asset ~~Owner~~Owners or Pledgee and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Regulatory Asset ~~Owner~~Owners 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 Transition Charges, as applicable.]~~, each with respect to its Regulatory Asset.

(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 the Regulatory Asset Owner.

Article 6 – The Regulatory Asset

[27] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a Ratepayer reduces its payment of Transition Charges, despite this language, and same for Electricity Distributor Remittances and IESO Remittances.

(1) **Composition** – The Regulatory Asset shall constitute ~~a~~an existing, present property right and interest ~~of the~~consisting, collectively, of the following rights and interests of a Regulatory Asset Owner in the following (without duplication):

a. the right of a Regulatory Asset Owner to record its portion of the Regulatory Asset in its accounts;

b. the right to impose, bill, invoice, collect and receive Transition Charges from Ratepayers, including the right to determine the amount of Transition Charges in accordance with this Part;

c. ~~a.~~ the ~~present and future~~right to enforce the obligations and indebtedness of each Ratepayer to pay the Transition Charges ~~attributed~~charged to the Ratepayer from time to time in accordance with Article 2, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices;

d. ~~b.~~ the ~~present and future~~right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative ~~Invoicing Agent~~Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. ~~c.~~ the ~~present and future~~right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of IESO or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 4;

f. ~~d.~~ the ~~present and future~~right to enforce the duties and obligations of IESO and if applicable the Alternative Collection Agent to ~~accept~~collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the ~~account~~accounts of the Regulatory Asset ~~Owner~~Owners, each with respect to its 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 4;

g. ~~e.~~ the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. ~~f.~~ all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. ~~g.~~ all Related Rights; and

j. ~~h.~~ all ~~proceeds of or derived from the foregoing.~~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.

~~The~~A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, ~~attributed~~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 contract or by operation of any applicable law of the Province], a Disposition by a Regulatory Asset Owner made under the ~~Treasury~~Financing Plan pursuant to a Disposition Document shall be permitted and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Absolute Assignee a valid property right and interest in, to and under the Regulatory Asset (or relevant portion thereof) in accordance with the terms of such Disposition~~[~~, provided that the ~~description of Regulatory Asset in the agreement giving effect to the Disposition expressly refers to this Part]. [Other than as required by the Treasury Plan, no consent of any person shall be required to give effect to a Disposition.]~~ 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. [A Disposition shall not be subject to recharacterization or challenge on any other basis and the validity of a Disposition shall not be affected or impaired by: (a) the commingling of Transition Charge Collections or other proceeds from Transition Charges with other amounts; (b) the retention of any interest (including any partial, residual or subordinated interest, whether direct or indirect) in the Regulatory Asset by the transferring Regulatory Asset Owner; (c) any right to repurchase the Regulatory Asset in favour of the transferring Regulatory Asset Owner; (d) any recourse that an Absolute Assignee may have against the transferring Regulatory Asset Owner; (e) any indemnification rights or obligations provided by the transferring Regulatory Asset Owner; (f) any obligation of the transferring Regulatory Asset Owner to collect and remit Transition Charge Collections on behalf of an Absolute Assignee, including but not limited to, any retention by the transferring Regulatory Asset Owner to bare legal title for the purpose of collecting Transition Charges; or (g) the ascribed or intended treatment of the Disposition by the transferring Regulatory Asset Owner or the Absolute Assignee on any different basis including for tax, financial reporting or other purposes.]][28]

(3) ~~Deemed~~ **Perfection and Priority of Dispositions** – ~~At the time a~~Any Disposition ~~is made, the absolute assignment of the property rights and~~of an interest in ~~the~~a Regulatory Asset ~~subject to the Disposition shall be deemed to have been and~~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

[28] Consider if helpful to investors, or delete.

interests acquired by the Absolute Assignee under such Disposition shall ~~have priority over~~be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province [or any consent requirement applicable to a Pledge that may arise by contract or by operation of any applicable law of the Province], a Pledge by a Regulatory Asset Owner may be made to secure any 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 Regulatory Asset in accordance with the terms of the Pledge~~[, provided that the description of Regulatory Asset in the agreement giving effect to the Pledge expressly refers to this Part]~~. Other than as required by the ~~Treasury~~Financing Plan, no consent of any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) ~~Deemed~~ **Perfection and Priority of Pledges** - Any Pledge made by a Regulatory Asset Owner in respect of a Funding Obligation incurred under the ~~Treasury~~Financing Plan ~~shall be 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 Regulatory Asset, the Regulatory Asset Owner making the Pledge and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the Regulatory Asset or the pledging Regulatory Asset Owner, irrespective of whether such persons have notice of the Pledge and the security interests of the Pledgee under such Pledge shall have priority over any liens in favour of such other persons. All proceeds of the Regulatory Asset that are subject to such a Pledge that are received by the Regulatory Asset Owner shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected, without any physical delivery thereof, registration of any financing statement with respect thereto pursuant to the [PPSA] or any other further act.[29] A 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 Regulatory Asset subject to the Pledge unless the Pledgee has otherwise agreed in writing. Any Pledgee shall have a perfected security interest in Transition Charge Collections or other related proceeds 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. [A Pledgee shall cause a financing statement to be filed in respect of a Pledge on the basis that the Regulatory Asset is "intangible" property, for informational purposes only under 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.

(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. In no circumstance may the specified portions of the rights

[29] 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.

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) ~~(7)~~ **Collective Action Required** – If a Regulatory Asset Owner's right and interest 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 joint] basis with each other Regulatory Asset Owner~~, and any agreement among all of the Regulatory Asset Owners in furtherance of such collective action shall be valid and binding on each Regulatory Asset Owner and each Absolute Assignee, Pledgee and successor of a Regulatory Asset Owner in accordance with its terms.~~ in accordance with the Collective Rights Agreement.[30]

Article 7 – Establishment of the Fair Allocation Plan[31]

(1) Adoption of the Fair Allocation Plan – The [Minister of Energy][32] may by written order 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 Part, [except if amended, amended and restated or terminated by a further written order issued by the Minister of Energy [in compliance with Section •].

(2) Principles and Parameters[33] – A Fair Allocation Plan shall seek to allocate Unrecovered Transition Costs across present and future Ratepayer Groups on a basis that the Minister of Energy, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters[934]:

1. Unrecovered Transition Costs should be allocated over a period not to exceed the later of (a) the estimated remaining useful life of the Related Generating Assets and (b) the remaining term of IESO's commitments under the Power Contracts.

2. The Fair Allocation Plan should specify the Reference Periods (e.g., 6 month periods), for the purpose of identifying applicable Ratepayer Groups and allocating among them responsibility to bear the Unrecovered Transition Costs on a relative basis over time.

3. The share of Unrecovered Transition Costs allocable to a particular Ratepayer Group in respect of a Reference Period should be proportionate to a reasonable

[30] This is necessary to ensure that if there are multiple regulatory asset owners and pledgees, they will be coordinated in the application of their rights of enforcement, etc.

[31] The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all 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 Power Contracts and not invest in extending service lives to secure further power contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

[32] Input required. If the MOE is given this power, conform to applicable authorities (e.g., plans and directives).

[33] Consideration will be given as to whether these details should be included in the Regulation.

[934] We have provided a few examples of what could be the basic principles. These will depend on market considerations, the Province's decision on the required amount of detail and the ability to sustain the legal basis for the program. These examples are not meant to suggest the appropriate balance – just il lustrative to advance a discussion among the stakeholders.

assessment of the benefits of the Green Generation Initiative to the Ratepayer Group over such Reference Period.

4. The estimated Unrecovered Transition Costs to be allocated to a Ratepayer Group and any future Ratepayer Group at a particular time should not exceed the estimated value of the Related Generating Assets based on their remaining useful lives or terms, measured in respect of the period following such particular time.

5. No future Ratepayer Group should bear an unreasonably disproportionate share of the Unrecovered Transition Costs. Except in exceptional circumstances or in the case of any backward-looking adjustment made as contemplated in 7, below, the share of the Unrecovered Transition Costs to be allocated under a Fair Allocation Plan to any future Ratepayer Group should have regard to [Insert formula if a year-over-year maximum amount is determined to be appropriate][~~10~~35] .

6. A reasonable estimate of the rate of inflation should be applied to equate the relative values of the nominal amount of Unrecovered Transition Costs to be allocable to Ratepayer Groups over time.

7. Backward-looking adjustments to a Fair Allocation Plan may be made to achieve a fair distribution among Ratepayers of the benefits of the Green Generation Initiative ~~to that Ratepayer Group over an applicable Reference Period, including to provide an abatement to one or more Ratepayer Groups to the extent that one or more earlier Ratepayer Groups are considered by the Minister of Energy to have borne an unfair share of the Unrecovered Transition Costs~~.

(3) Attribution Methodology – The Fair Allocation Plan [shall] specify an objective methodology (the "Attribution Methodology") for the purposes of allocating the Period Transition Charges across all of the Ratepayers of a particular Ratepayer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that are considered by the Minister of Energy to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation. ~~[may have regard to considerations such as their relative electricity usage rates and usage patterns; the relative geographic density of individual Ratepayer's residence *[See basis for GA allocation method for other principles]]*~~

(4) [Confirmation][Review] of the Fair Allocation Plan – [OEB?][36]

Article 8 – The ~~Treasury~~Financing Plan[37]

(1) Power to Prepare and Implement the ~~Treasury~~Financing Plan – In compliance with a [written order][***MOE to confirm process.***] of the Minister of Energy, the Administrative Agent shall prepare and propose the adoption of a ~~Treasury~~Financing Plan. If the Administrative Agent is unwilling or unable to prepare and propose the adoption of a

~~10~~35 Consider if a quantitative limit needs to be included in the legislation.

36 Any approvals or consents by the OEB will be obtained before any Funding Obligation that is dependent on such approval or consent is incurred. Any such approval or consent will be irrevocable and non-appealable. Any regulatory action occurring after any incurrence will not affect the related Funding Obligation or underlying rights in the Regulatory Asset.

37 Consideration will be given as to whether these details should be included in the Regulation.

~~Treasury~~Financing Plan, the Minister of Energy may by written order designate one or more other persons to prepare and implement such a ~~Treasury~~Financing Plan.

(2) **Required Terms and Conditions of the ~~Treasury~~Financing Plan** – The ~~Treasury~~Financing Plan shall establish the basis for funding decisions that have the effect of allocating the Unrecovered Transition Costs across present and future Ratepayer Groups on a basis that is consistent with the Fair Allocation Plan. The ~~Treasury~~Financing Plan shall be consistent with the principles, parameters, requirements and conditions set forth in Schedule 3 and such other conditions and requirements as may be specified in a written order of the Minister of Energy [or in accordance with the Regulation].

(3) **Power to Review and Approve the ~~Treasury~~Financing Plan** – The Minister of Energy may, by written order, designate one or more persons to review the ~~Treasury~~Financing Plan and to review and assess the consistency of the Funding Obligations incurred with such ~~Treasury~~Financing Plan, and the Minister of Energy may specify requirements in respect of such review in such written order. The Administrative Agent, or such other person(s) as may be designated by written order of the Minister of Energy made pursuant to Section 8(1), shall make any such amendments to the ~~Treasury~~Financing Plan, and submit a revised ~~Treasury~~Financing Plan to the ~~[OEB]~~designated reviewer for approval within [the time period specified in such written order]/[[•] days of such written order].[***Consider periodic amendments to the ~~Treasury~~Financing Plan following an annual review; provided that amendments cannot affect the existing Funding Obligations. Consider the level of oversight the MoE/OEB will have over this process?***]

(4) **Approval of ~~Treasury~~Financing Plan** – The **[OEB]** shall have the power to and shall approve or disapprove of the ~~Treasury~~Financing Plan based solely on whether the ~~Treasury~~Financing Plan is consistent with (i) the principles, parameters, requirements and conditions set forth in Schedule 3, (ii) such other conditions and requirements as may be specified in a written order of the Minister of Energy [or in accordance with the Regulation] [and (iii) the Fair Allocation Plan]. If the **[OEB]** approves the ~~Treasury~~Financing Plan, then such ~~Treasury~~Financing Plan shall be implemented by the Administrative Agent. If the OEB disapproves of the ~~Treasury~~Financing Plan or otherwise fails to approve the ~~Treasury~~Financing Plan, then the Administrative Agent shall re-submit the ~~Treasury~~Financing Plan with such amendments as the Administrative Agent shall consider necessary for the ~~Treasury~~Financing Plan to be approved by the OEB.[38]

(5) **Consistency with the Fair Allocation Plan** - Funding Obligations should only be incurred if Repayments and Funding Costs would be borne by present and future Designated Ratepayers on a basis that is [generally] consistent with their respective allocations of the costs and benefits of the Green Generation Initiative contemplated in the Fair Allocation Plan. In that regard, at the time of setting the Fair Allocation Plan for any particular period, the aggregate amount payable during future Reference Periods on account of Funding Obligations incurred on or before the date on which a new Funding Obligation is incurred should not exceed the allocation of the costs and benefits of the

[38] Once the Financing Plan is reviewed and approved there would be no further OEB review. If there is opportunity for further review, such review will have no impact on prior issued debt. Any further financings would be put on hold until such review is completed (during which time the IESO would again need to fund the shortfall on an interim basis and obtain necessary funding).[1]

Green Generation Initiative to the applicable Ratepayer Group contemplated in the Fair Allocation Plan. If, despite the foregoing, the Administrative Agent determines that 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 Ratepayer Group under the then current Fair Allocation Plan, the ~~Treasury~~Financing Plan shall require the Administrative Agent to make diligent efforts 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, if such a Refinancing or deferral is determined to be available the ~~Treasury~~Financing Plan shall require the Administrative Agent to make diligent efforts to implement such Refinancing or deferral on a basis that is consistent with the Fair Allocation Plan.

(6) Establishment of Special Purpose Entities – If the implementation of the ~~Treasury~~Financing Plan contemplates the establishment of one or more special purpose finance entities to incur Funding Obligations as a Financing Entity under the ~~Treasury~~Financing Plan, as an Absolute Assignee and on a basis that limits the recourse for the payment of such Funding Obligations to such Absolute Assignee's interest in, to and under the Regulatory Asset, the Administrative Agent shall have regard to the characteristics specified in Schedule 4 in establishing such special purpose entity.]

(7) Obligation to Apply IESO Remittances – The Administrative Agent shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Regulatory Asset ~~Owner~~Owners, or otherwise in respect of or as proceeds from the Regulatory Asset shall only be applied or used to pay Finance Amounts when they are due and payable and for no other purpose.[~~11~~39]

(8) Non-Recourse – The ~~Treasury~~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 ~~Invoicing Agent~~Servicer, and Alternative Collection Agent, the Administrative 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 Part or expressly 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].]

(9) Incurrences are Binding – Despite any failure to adhere to the ~~Treasury~~Financing Plan or to comply with any requirement of this Part, all amounts payable or becoming due and payable by or on behalf of ~~the~~a Regulatory Asset Owner under or in connection with any obligation purporting to be a Funding Obligation, shall ~~be deemed to~~ be binding for the purposes of this Part, including in determining the amount of Transition Charges, despite any impairment or defect resulting from such failure.

Article 9 – Compliance Matters[40]

[~~11~~39] We need to work in the idea that there may be Finance Reserve Deposits or other amounts that remain after paying Finance Amounts. Those surplus amounts should be credited back to Ratepayers.

[40] 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 is under consideration.

(1) **Right of the [OEB] to Inspect Books and Records** - For the purpose of investigating compliance with the provisions of this Part, the [OEB] shall have the right, jurisdiction, power and authority to examine the books and records of any person who is or may become obligated or have duties that arise under this Part or any Funding Obligation.

(2) **Power to Investigate Compliance and Impose Regulatory Sanctions** - Subject to the limitations set forth regarding the irrevocability of Transition Charges and the Undertaking of the Lieutenant Governor in Council, nothing in this Part shall (a) prevent or preclude the [OEB] from investigating the compliance of any person who is or may become obligated or have duties that arise under this Part [or any Funding Obligation] with the terms and conditions of this Part and requiring compliance by such person therewith; or (b) prevent or preclude the ~~authority~~[OEB] or any successor regulator from imposing regulatory sanctions against any person who is or may become obligated or have duties that arise under this Part for its failure to comply with the terms and conditions of this Part[41].

(3) **[Other Rating Settings** – When setting other rates for or in respect of any person who is or may become obligated or have duties that arise under this Part, including any Electricity Distributor, IESO, Generator or the Administrative Agent, nothing in this Part shall prevent the [OEB] or any successor regulator from taking into account the collection by or attribution to such person of administrative or servicing fees in excess of the actual incremental costs incurred by such person of providing administrative or servicing services.][42]

Article 10 – Undertaking of the Lieutenant Governor in Council[43]

(1) **No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections** – The [Lieutenant Governor in Council ~~may~~] shall 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[,including through the introduction of any bill or the passing of any legislation or regulation]. 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[,including through the introduction of any bill or the passing of any legislation or regulation].

(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~~shall 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~~Owners,

[41] Consider scope of OEB regulation and whether a Financing Entity should be subject to this sort of provision in any event.

[42] OPG has indicated that the risks and cost consequences to OPG of being an Administrative Agent or of consolidating a Financing Entity for accounting purposes should not be considered by the OEB in setting the regulated payment amounts for OPG. To be discussed.]

[43] Under consideration.

including any Absolute Assignee from time to time, and any Pledgee from time to time[,including through the introduction of any bill or the passing of any legislation or regulation].

[If IESO becomes insolvent or otherwise incapable of performing its obligations under this Part, an IESO Successor will be established that is capable of performing such obligations in order that the Regulatory Asset Owners may appoint the IESO Successor as an Alternative Servicer or Alternative Collection Agent. Regulatory Asset Owners shall be fully compensated for any failure by the Lieutenant Governor in Council to comply with its undertakings and agreements in this Article 10(2) for any loss suffered by the Regulatory Asset Owner as a result of such failure.[44]]

(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*].

Article 11 – Regulations

Regulations may be made under this Part 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 ~~expectations~~requirements of the Province associated with ~~any Regulated~~a Regulatory Asset Owner incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Costs; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a ~~Treasury~~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 Part;

(c) to set out reasonable ~~expectations~~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 Part [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by ~~the~~a Regulatory Asset Owner 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 ~~Treasury~~Financing Plan.

[44] Requested by Torys. For discussion.

Article 12- Miscellaneous[45]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Part 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 Part 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 Part shall be required with respect to the actions to be taken in compliance with this Part, including under the ~~Treasury~~Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Part or the ~~Treasury~~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 ~~Treasury~~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 Part, if any provision of this Part 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 Part that is taken by any person who is or may become obligated or have duties that arise under this Part ~~[or under any Funding Obligation]~~ and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Part 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 Part are intended to be severable and that the Legislature would have enacted this Part even if any Article, Section, paragraph or subparagraph of this Part held to be unconstitutional or invalid had not been included in this Part.

[45] OPG would like the specific amendments related to OPG to be included in the Bill.]

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3

Principles, Parameters, Requirements and Conditions for Establishing the ~~Treasury~~Financing Plan

The ~~Treasury~~Financing Plan shall have regard to the following principles, parameters, requirements and conditions:[***Consider others.***]

(1) the ~~Treasury~~Financing Plan shall, in respect of each Reference Period, describe the allocations of Unrecovered Transition Costs to each Reference Group as contemplated by the Fair Allocation Plan;

(2) the Administrative Agent shall make a good faith estimate of the Funding Shortfalls for each Reference Period, based on the terms of the Power Contracts and assumptions considered to be reasonable respecting forward market prices for electricity;

(3) the Administrative Agent shall describe alternative funding arrangements considered to be suitable for the purpose of funding the estimated Funding Shortfalls, including by reference to short term and/or long term Funding Obligations that could reasonably be incurred by the Regulatory Asset ~~Owner~~Owners for such purpose;

(4) such Funding Obligations shall reflect quantities, maturities, payment obligations, prepayment or redemption rights and such other features so that the effect of incurring such Funding Obligations would be that the payments made thereunder in respect of each Reference Period (including the anticipated Finance Amounts becoming payable in relation to such Funding Obligations) would reasonably correspond to the allocations of Unrecovered Transition Costs to the applicable Reference Group under the Fair Allocation Plan;

(5) the ~~Treasury~~Financing Plan shall reflect the outcome of a financial model that incorporates the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges ~~attributed~~charged to a hypothetical Ratepayer 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); [***Consider what outputs from OPG will be tested by the OEB and when. The modelling in the ~~Treasury~~Financing Plan may permit the OEB to check progress against the model from time to time, which may provide a basis for the MoE/OEB to require a review/amendment to the ~~Treasury~~Financing Plan if the ongoing operation of the program results in significant deviation from the model. Consider whether this flexibility is desirable.***]

(6) the Administrative Agent, for and on behalf of each Regulatory Asset Owner, shall seek to 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 Regulatory Asset ~~Owner[s]~~Owners will require committed access to short term liquidity to cover estimated 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 a Regulatory Asset Owner to repay an amount in relation to a Reference Period that would have the effect of the ~~Treasury~~Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Unrecovered Transition Costs to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the Administrative Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations shall not obligate a Regulatory Asset Owner to repay an amount in relation to a Reference Period that would have the effect of the ~~Treasury~~Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Unrecovered Transition Costs to the applicable Reference Group under the Fair Allocation Plan;

c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Administrative Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Administrative Agent shall cause the ~~[~~applicable~~]~~ Regulatory Asset Owner to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the Administrative Agent will select counterparties under any transaction to be entered into by a Regulatory Asset Owner, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the Administrative Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Administrative Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(7) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and

other Funding Costs, and the need to maintain a stable funding platform to finance the Funding Shortfall from time to time on a basis that is consistent with the allocations of Unrecovered Transition Costs to applicable Reference Groups under the Fair Allocation Plan;

(8) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(9) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Administrative Agent and other agents and service providers to the Regulatory Asset ~~Owner[s]~~Owners may be determined, allocated and paid;

(10) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(11) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(12) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(13) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(14) the basis upon which any Disposition may be made or effected by a Regulatory Asset Owner, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(15) a description of each special purchase entity that will purchase the Regulatory Asset from the IESO, including proposed capitalization, governance, and restrictions on their powers and activities having regard to the parameters in Schedule 4; and

(16) the basis on which any Pledge may be given or effected.

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Schedule 4

Creation of any Special Purpose Entity to become a Regulatory Asset Owner]

(1) Powers and Abilities:

a. No part of the revenue or assets of a Regulatory Asset Owner shall enure to the benefit or be distributable to its trustees, officers or directors, as the case may be, or any other private persons, except as may be provided for actual services rendered;

b. Each Regulatory Asset Owner shall be authorized to:

i. incur the Funding Obligations contemplated by a ~~Treasury~~Financing Plan and use the proceeds thereof to purchase or acquire, and to own, hold and use the Regulatory Asset;

ii. contract for servicing of the Restructuring Asset and any bonds contemplated by a ~~Treasury~~Financing Plan and for administrative services; and

iii. pledge the Regulatory Asset to secure the Funding Obligations incurred by the Regulatory Asset Owner;

c. So long as any Funding Obligations contemplated under a ~~Treasury~~Financing Plan are outstanding, ~~the~~a Regulatory Asset Owner shall not be authorized to merge or consolidate, directly or indirectly, with any person or entity;

d. ~~the~~a Regulatory Asset Owner shall not have the power or authority to incur or guarantee or otherwise become obligated to pay any debt or obligations other than what is contemplated under a ~~Treasury~~Financing Plan;

e. ~~the~~a Regulatory Asset Owner shall cause the proceeds obtained by incurring any Funding Obligation to be placed in one or more separate accounts and used only to purchase the Regulatory Asset and pay any costs as provided for in a ~~Treasury~~Financing Plan; and

f. so long as the Regulatory Asset is pledged to secure Funding Obligations, the Regulatory Asset Owner must apply revenues from the collection of Transition Charges only to repay such Funding Obligations and other costs as provided for in a ~~Treasury~~Financing Plan.

(2) Governance of Regulatory Asset Owner – ~~The~~A Regulatory Asset Owner ~~shall~~ shall be created having regard to the following principles:[***OPG to confirm if SPE will be a trust or another type of entity.***]

a. **[Number of trustees]**

b. **[Replacement of trustees; vacancies; appointment of successors]**

c. **[Removal of trustees for neglect of duty or misconduct]**

d. **[Quorum and meetings]**

e. **[Fiduciary duty]**

f. **[Isolation, separateness and other "non-consolidation" and "bankruptcy remoteness" criteria]**

g. **[Delegation of powers and duties to administrative agents]**

h. **[Delegation of powers and duties to administrative agents]**

Document comparison by Workshare Compare on Friday, April 07, 2017 1:14:41 AM

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Document 2 ID	PowerDocs://TOR_2528/23107566/8
Description	TOR_2528-#23107566-v8-Part_V.2_of_the_Electricity_Act_(Fair_Hydro)
Rendering set	Standard

Legend:	
Insertion	
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Moved cell	
Split/Merged cell	
Padding cell	

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Insertions	389
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Moved to	7
Style change	0
Format changed	0
Total changes	693

can we use OEB's adjustment of RPP as their approval for accounting requirements

can you provide multiple potential asset curves

follow up Dan - did OEB say what did they see?

feedback - dealer compensation - this item in bill will interest be allowed immediately
yes - but need to be able to collect interest + can't capitalize it
after 1st 5 yrs, no cap on recovery
discuss on the allocation curve
does the interest component need to meet the regulatory framework
fair allocation plan as principal curve & interest clocks down that
OEB models are diff. plan in the curve
risk: the term line → may not provide certainty - return to tell + rating agencies

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"Fair Hydro" – Part V.2

Article 1 – Purpose

IESO has entered into Power Contracts with Generators. The agreed-upon reference prices and future quantities set out therein were determined based on commitments made by IESO to provide Generators with long-term price certainty, so as to encourage the long-term construction and development of facilities for the purpose of generating electricity 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 and feed in tariff programs (the "Green Generation Initiative"). The terms of the Power Contracts were intended to approximate the anticipated useful life of the related generation assets; however, it has been determined that the useful life of many of these assets will be well in excess of the actual term of the related Power Contracts and will extend over more than one generation of ratepayers. The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will benefit present and future ratepayers of the Province. Currently, market prices for electricity are less than the reference prices set out in the Power Contracts, leaving a gap in funding which is funded by charging ratepayers a "Global Adjustment" (part of which is available to IESO to pay this shortfall).

Each month, the IESO determines the Global Adjustment payable by consumers for the consumption of electricity in the Province. A component of the Global Adjustment is the amount by which the reference prices in the Power Contracts exceed the market price for electricity for the quantities of electricity specified under the Power Contracts for the relevant period. The relationship between the past, present and future benefits to Ratepayers from the Green Generation Initiative, on the one hand, and the costs of the Green Generation Initiative borne by past, present and future Ratepayers through their respective allocations of the Global Adjustment, on the other hand, do not necessarily reflect an equitable allocation of such benefits and costs over time, with the result that an adjustment may be appropriate to address inter-generational fairness considerations. Such an adjustment should reflect principles and parameters that can be applied from time to time in order to establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative across present and future Ratepayers. A plan to allocate such costs and benefits equitably across present and future Ratepayers may be developed based on those principles and parameters (a "Fair Allocation Plan").

If a Fair Allocation Plan determines that the equitable allocation of the Global Adjustment to the Ratepayers of a particular time period in respect of the Power Contracts should be reduced below the amount otherwise determined, the amount payable by such Ratepayers to Electricity Distributors in respect of such period, and in turn by the Electricity Distributors to the IESO, would, in the aggregate, be less than the amount payable by the IESO to the Generators under the Power Contracts in respect of such period. If the difference is greater than any net Power Contract surpluses available to IESO from earlier periods, IESO will have a funding shortfall. In order for IESO to cover such a funding shortfall for a period, IESO will need to obtain funding from another source, which could include funding from third party sources operating in public and private capital markets. If a funding obligation is incurred in order to enable the IESO to cover a funding 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 will be incurred and may become payable in one or more other periods.

It will be necessary to provide a reliable and committed source of cash flows to enable IESO to repay such funding obligations and to pay related funding costs with certainty when the funding obligations become due and payable. This Part imposes irrevocable and non-bypassable financial obligations of Ratepayers to pay amounts incurred in respect of such funding obligations when they become due and payable. Such financial obligations will constitute property rights and interests, which will take the form of the Regulatory Asset contemplated in this Part. The Regulatory Asset will be sold and absolutely assigned and will belong to one or more newly created financing entities, which in turn will finance their purchase of such Regulatory Asset by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf the financing entities by an administrative agent (initially OPG), under the Treasury Plan contemplated in this Part. The Treasury Plan will seek to reasonably match the payment obligations arising under funding obligations and borne by the future Ratepayers of the period in which such payment obligations become due, with the costs and benefits of the Green Generation Initiative attributed to such future Ratepayers under the Fair Allocation Plan.

The purpose of this Part is to establish the basis upon which intergenerational fairness can be achieved by attributing the costs and benefits of the Green Generation Initiative to present and future Ratepayers on an equitable and cost effective basis.

Article 2 - Definitions

In this Part:

> "Absolute Assignee" means a person to whom a Regulatory Asset Owner assigns, transfers, conveys, sells, contributes, sets over, exchanges or disposes all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the transferring Regulatory Asset Owner's right, title and interest in, to and in respect of the Regulatory Asset.
>
> "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 Administrative Agent whose records shall be determinative for the purposes of this Part in the absence of a manifest calculation error.
>
> "Additional Funding Charges" means, for a Reference Period, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by the Regulated Asset Owner during the Reference Period and that were incurred or committed to directly or indirectly in connection with the incurrence of Funding Obligations under the Treasury 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 Administrative Agent on behalf of, the Regulatory Asset Owner under the Treasury Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on the Regulatory Asset Owner or incurred by on behalf of the

Regulatory Asset Owner under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Administrative Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Treasury Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Invoicing Agent, 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 Regulatory Asset Owner; (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 placement fees, underwriting fees, fees and related issuing expenses; (m) any rating agency fees; and (n) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith for recovery and payment under the Treasury Plan.

"Administrative Agent" means [OPG] or, following any Replacement Event, such other person or persons who may be appointed as the administrative agent of the Regulatory Asset Owner under the Treasury Plan in compliance with the requirements set out in Schedule 2.

"Alternative Collection Agent" means a person appointed under Section 5(11) and in compliance with the requirements set out in Schedule 2 to assume the collection activities and activities of any Electricity Distributor or IESO under Article 5, as agent for and on behalf of the Regulatory Asset Owner.

"Alternative Invoicing Agent" means a person appointed under Section 4(8) to assume the invoicing and other activities of any Electricity Distributor under Article 4, as agent for and on behalf of the Regulatory Asset Owner.

"Attribution Methodology"[1] means the methodology specified in the Fair Allocation Plan for allocating the Period Transition Charges for a Reference Period to the individual Ratepayers of the applicable Ratepayer Group.

"Collected Amount Adjustment" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Administrative Agent 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.[2]

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[1] A key question will be how the overall costs will be spread across the rate base. For simplicity, overall costs could be spread across the rate base based on a *per capita* (ratepayer) concept. This would generally mean that all consumers who are invoiced in a month would pay the same Transition Charge, and to the extent that the invoiced amounts (i.e., the Transition Charges billed for a month) are higher or lower than the actual costs, due to a change in the Consumer 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 consumers), the divisor for the Transition Charge will need to be modified.

[2] This would pick up adjustments based on actual collection experience, changes in the Consumer Base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

["Consumer Base" means, for a Reference Period, the total number of Ratepayers in the Ratepayer Group determined by the Administrative Agent as of the [30th] day immediately preceding the first day of the Reference Period.]

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of a Regulatory Asset Owner's right, title and interest in, to and under the Regulatory Asset to an Absolute Assignee.

"Electricity Distributor" means, in respect of a Service Area, the distributor of electricity to residences located in such Service Area.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to IESO or if applicable the Alternative Collection Agent in accordance with Section 5(3) , including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by an Electricity Distributor (or in its stead, an Alternative Invoicing Agent) in respect of electricity charges and related services and amounts incurred, assessed or attributed in respect of a residence located in the Electricity Distributor's designated Service Area.

"Estimate" means, 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 Administrative Agent 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 Part in the absence of a manifest calculation error.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, in respect of a Reference Period, the sum (without duplication) of the following amounts for the Reference Period: (a) Repayments; (b) Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Receipts" means, for a Reference Period, all amounts received by or on behalf of the Regulatory Asset Owner during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Regulatory Asset Owner under derivatives and any 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 a Funding Obligation.

"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 Treasury 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 Treasury Plan.

"Funding Costs" means, for a Reference Period, 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 Regulatory Asset Owner during the Reference Period in respect of all Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a Funding Obligation, exceeds (b) the aggregate of all Finance Receipts for the Reference Period.

"Funding Obligation" means each payment obligation (including 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) incurred by or on behalf of the Regulatory Asset Owner under the Treasury Plan in order to fund a Funding Shortfall for a Reference Period, including any Refinancing of another such payment obligation.

"Funding Shortfall" means, for a Reference Period, (a) the amount, if any, by which (i) the IESO Power Contract Net Payment for the Reference Periods, exceeds (ii) the GA Power Contract Contribution for Reference Period, minus (b) the IESO Applied Surplus for the Reference Period.

"GA Power Contract Contribution" means, for a Reference Period, the aggregate of the payments to be made by the applicable Ratepayer Group in respect of the portion of the Global Adjustment attributable to the Power Contracts in accordance with the Fair Allocation Plan.

"Generator" means a generator of electricity that is subject to this Act.

"Global Adjustment" means the amount calculated from time to time under [Section • of the *Electricity Act*], which includes among other things an amount determined in respect of the costs associated with the Green Generation Initiative, including amounts attributable to the Power Contracts.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO Applied Surplus" means, for a Reference Period, the lesser of (a) the amount, if any, by which (i) the IESO Power Contract Net Payment for the Reference Periods,

exceeds (ii) the GA Power Contract Contribution for Reference Period and (b) the IESO Unapplied Surplus on the last day of the immediately preceding Reference Period.

"IESO Power Contract Net Payment" means, for a Reference Period, the amount by which (a) the sum of amounts payable by IESO to the Generators to IESO under all Power Contracts for the Reference Period, exceeds (b) the sum of amounts payable by the Generators to IESO under all Power Contracts for the Reference Period.

"IESO Power Contract Net Receipt" means, for a Reference Period, the amount by which (a) the sum of amounts payable by the Generators to IESO under all Power Contracts for the Reference Period, exceeds (b) the sum of amounts payable by IESO to the Generators to IESO under all Power Contracts for the Reference Period.

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owner in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO Unapplied Surplus" means, at a particular time, the amount, if any, by which (a) the sum of (i) all IESO Power Contract Net Receipts for Reference Periods occurring prior to the time, and (ii) all GA Power Contract Contributions for Reference Periods occurring prior to the time, exceeds (b) the sum of (i) all IESO Power Contract Net Payments for Reference Periods occurring prior to the time, and (ii) all IESO Applied Surpluses for Reference Periods occurring prior to the time.

"Period Transition Charge" 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.

"Pledge" means a lien, mortgage, charge, right of set-off or security interest granted to or in favour of a Pledgee by a Regulatory Asset Owner 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 Regulatory Asset.

"Pledgee" means a person to whom [or for whose benefit] a Regulatory Asset Owner grants a Pledge.

"Power Contracts" means long-term power contracts entered into by IESO with certain Generators, under which IESO has agreed to pay such Generators amounts, determined in respect of quantities of electricity over specified periods, to the extent that applicable market prices for such quantities of electricity during a specified period are less than specified reference prices for such quantities of electricity, and, correspondingly, Generators have agreed to pay IESO amounts if the market prices for such quantities exceed the applicable reference prices for such quantities.[3]

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[3] Should this contemplate the possibility of additional or amended power contracts?

"Province" means the Province of Ontario.

"Ratepayer" means present and future [retail] consumers of electricity [in the Province] who are [RPP][or OREC-eligible] consumers, which shall include all such retail consumers who are connected 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 IESO.[4]

"Ratepayer Group" means, in relation to a Reference Period, the Ratepayers who receive Electricity Invoices during the Reference Period.

"Redemption Amount" means the amount payable by or on behalf of a Regulatory Asset Owner to redeem, prepay or repurchase a Funding Obligation, 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 [Legislation Implementation Date] to (and including) June 30, 2017, (b) each six month period commencing [July 1st and January 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Refinancing" means that a Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Regulated Asset Owner by applying the net proceeds obtained by the Regulated Asset Owner incurring one or more other Funding Obligations.

"Regulatory Asset" means the property right and interest described in Section 6(1).

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; (b) for IESO, any bank account into which IESO deposits or receives Electricity Distributor 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, collectively, (a) IESO, to the extent that it has retained any ownership interest in, to or under the Regulatory Asset and (b) each Absolute Assignee, to the extent that it has acquired and owns any ownership interest (including a specified portion on a divided basis or by way of an undivided interest) in, to or under the Regulatory Asset, which 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 Generation Assets" means the [facilities, plants and equipment] constructed, acquired or developed in connection with the Green Generation Initiative.

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[4] Need to describe consumers in a fashion that is broad and not weakened by a bypass risk.

"Related Rights" means all rights of any kind (whether in tort, contract or otherwise) of the Regulatory Asset Owner that attach or are attendant or incidental to any of the other property rights or interests that comprise the 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 in accordance with any Funding Obligation or, if no such day is specified in relation to 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 Finance Reserve Deposit) of, all or a portion of the amount advanced to the Regulatory Asset Owner under a Funding Obligation.

"Repayment" means a payment by a Regulatory Asset Owner made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is [permitted] to distribute electricity to residences in accordance with this Act.

"Settlement Date" means the [last Business Day of any month].

"Treasury Plan" means the written plan prepared by the Administrative Agent in compliance with Article 8 to set forth the basis upon which, among other things: (a) any Disposition may be made or effected; (b) any Funding Obligations may be incurred in order to fund a Funding Shortfall, 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; and (h) the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied.

"Transition Charge" means, in respect of a Reference Period, [one-sixth] of the Period Transition Charge, [divided by the Consumer Base[5]].

"Transition Charge Collection" means any amount received or deemed by this Part to have been received upon the collection of a Transition Charge paid by or on behalf of a Ratepayer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

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[5] See footnote 1, above.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Administrative 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.

"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 10(2).

"Unrecovered Transition Costs" means the [unrecovered][unamortized] costs incurred in connection with the creation, adoption and implementation of the Green Generation Initiative, including any negative value of the Power Contracts and [other].

Article 3 – Transition Charges

(1) **Ratepayer Obligation to Pay a Transition Charge** – Each Ratepayer shall pay each Transition Charge attributed to it and specified as such in any Electricity Invoice issued to such Ratepayer by its Electricity Distributor or by an Alternative Invoicing Agent under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) **Indebtedness of Ratepayers** – Until paid, a Transition Charge attributed to a Ratepayer and recorded 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 indebtedness of the Ratepayer to the Regulatory Asset Owner. Such indebtedness shall constitute a single and separate debt obligation owing by the Ratepayer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Ratepayer under the Electricity Invoice or otherwise.

(3) **No Set-Off or Reduction** – A Ratepayer 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 Ratepayer by its Electricity Distributor, the Regulatory Asset Owner or any other person.

Restructuring property, transition charges, transition charge revenues, and the interests of an assignee, bondholder, financing party or any other person in restructuring property or in transition charge revenues, are not subject to setoff, counterclaim, surcharge or defense by a servicer, any consumer, the authority, LIPA or any successor owner of the transmission and distribution system assets or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of the authority, LIPA or any successor owner of the T&D system assets, any affiliate thereof or any other entity or otherwise (s. 7 para 1(e))

(4) **Allocation of Ratepayer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a Ratepayer 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.

To the extent that any consumer makes a partial payment of a bill containing both transition charges and any other charges, such payment shall be allocated pro rata between the transition charges and the other charges unless the consumer specifies that a greater proportion of such payment is to be allocated to the transition charges, except that the other charges shall be reduced by the amount of any claims of setoff, counterclaim, surcharge or defense for purposes of such allocation (s. 7 para 1(e))

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred under the Treasury Plan (including any adjustments based on modifications to such Funding Obligations made in compliance with the Treasury Plan or as a result of amendments to the Treasury Plan made in accordance with Section 8(3)) are deemed to be irrevocable, final and effective without any further action. 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 Treasury Plan. In no case shall a Funding Obligation incurred under the Treasury Plan be affected by a subsequent amendment to the Fair Allocation Plan.

On issuance of the bonds, the transition charges (including any adjustments as provided in the financing order) are deemed established by the authority as irrevocable, final and effective without further action (s. 3, para 8)

(6) **[Anti-avoidance; No-by-pass** – Transition Charges attributed to a Ratepayer in respect of any Finance Amount incurred under with the Treasury Plan applicable at the time the related Funding Obligation was incurred may not be avoided and shall be [non-by-passable].]

For so long as bonds issued pursuant to a financing order are outstanding, and the related approved restructuring costs have not been paid in full, the transition charges authorized in the financing order shall be non-bypassable and shall apply to all consumers connected to the transmission and distribution system assets and taking electric delivery service located within the service area, whether or not the consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the transmission and distribution system assets and whether or not the transmission and distribution system assets continue to be owned by LIPA (s. 5 para 5(c))

Article 4 – Invoicing of Transition Charges

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Invoicing Agent shall, as an agent of the Regulatory Asset Owner, specify the Transition Charge to be attributed to a Ratepayer 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 Invoicing Agent to the Ratepayer 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 deemed to have been imposed on and billed to the applicable Ratepayer.

(2) **Calculation of the Period Transition Charge** – Not later than one month prior to the first day of a Reference Period, [IESO][6] or if applicable the [Alternative Collection Agent][7] shall calculate the Period Transition Charge applicable to the Reference Period.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, [IESO] or if applicable the [Alternative Collection Agent] shall apply the Attribution Methodology to determine the Transition Charges to be attributed to the Ratepayers of the applicable Ratepayer Group.

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, [IESO] or if applicable the [Alternative Collection Agent] shall inform each Electricity Distributor and if applicable any Alternative Invoicing Agent of the Transition Charges to be specified in the Electricity Invoices to be issued to each Ratepayer of the applicable Ratepayer Group who has a billing address in the Electricity Distributor's Service Area.

(5) **Adjustments** – The amount of any Transition Charge attributed to a Ratepayer by [IESO] 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, in the absence 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, bill and invoice the Transition Charges.

Any successor owner of the transmission and distribution system assets and any successor servicer shall be bound by the requirements of this act and shall perform and satisfy all obligations of a servicer in the same manner and to the same extent under a financing order as did LIPA and the initial servicer, including, without limitation, the obligation to impose, bill and collect the transition charges and to pay such collections to the person entitled to receive the transition charge revenues (s. 7, para 1(f))

(7) **Successors of IESO** – Any successor of IESO 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.

Any successor owner of the transmission and distribution system assets and any successor servicer shall be bound by the requirements of this act and shall perform and satisfy all obligations of a servicer in the same manner and to the same extent under a financing order as did

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[6] IESO's role will need to be discussed. Not sure if this mechanism is an IESO role or perhaps it's an OEB role. That will need to be discussed with the stakeholders. Currently, the rates for this class of customer are established by the OEB every six months having regard to the projections etc., of GA, and any variances from the prior period. This might end up fitting into that regime (although presumably we wouldn't want it to be built into the rate like GA is today- ie., it would be a separate line item). This section will also need to catch "bypass" customers.

[7] Should this be a designated government official, rather than an agent appointed by investors?

LIPA and the initial servicer, including, without limitation, the obligation to impose, bill and collect the transition charges and to pay such collections to the person entitled to receive the transition charge revenues (s. 7, para 1(f))

(8) **Appointment of an Alternative Invoicing Agent** – If a Replacement Event occurs in respect of any Electricity Distributor, the Regulatory Asset Owner shall be permitted, by an instrument in writing, to appoint an Alternative Invoicing Agent 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 Invoicing Agent 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 Invoicing Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Invoicing Agent to perform such obligations and duties on behalf of the Regulatory Asset Owner.

(9) **Regulatory Asset Owner has Standing** – The Regulatory Asset Owner may bring actions against any Electricity Distributor, IESO, Alternative Invoicing Agent or any other person who may be authorized to issue Electricity Invoices to Ratepayers for a failure to impose, attribute, bill or invoice Transition Charges. Any court of the Province [and the OEB] shall have jurisdiction over any actions brought before it by a Regulatory Asset Owner in relation to any such failure.

The owner of restructuring property, or the trustee representing holders of restructuring bonds, shall be expressly permitted hereby to bring actions against any owner of the transmission and distribution system assets, any third-party biller, or any other entity authorized to bill or collect transmission and distribution rates, any consumers in the service area or any other person or entity for failure to impose, bill, pay or collect any transition charges constituting part of the restructuring property then held pledged as security for such restructuring bonds or for enforcement of any other provision of this act or the applicable financing order (s. 15, para (a))

Except as provided in section three of this act, any court and the authority shall have jurisdiction over any actions for failure to impose, bill, pay or collect any transition charges or for enforcement of other provision of this act or any restructuring cost financing order (s. 15 para (b))

(10) **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, any Alternative Invoicing Agent or any [Alternative Collection Agent] to ensure that Transition Charges are properly attributed to Ratepayers 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 Owner, undertake [diligent efforts] to collect amounts owing by Ratepayers in respect of Transition Charges attributed to such Ratepayers 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 Ratepayers and deposit such Transition Charge Collections into its Regulatory Asset Account. Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall be deemed to hold such amounts in trust for the Regulatory Asset Owner.

(3) **Electricity Distributor Remittances** – On each [applicable Remittance Date], an Electricity Distributor shall remit all Transition Charge Collections received by it from Ratepayers 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 shall, as an agent of the Regulatory Asset Owner, undertake [diligent efforts] to accept and collect Electricity Distributor Remittances.

(5) **Segregation of Electricity Distributor Remittances** – IESO and if applicable the Alternative Collection Agent shall [promptly] segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, IESO or if applicable any Alternative Collection Agent shall be deemed to hold such amounts in trust for the Regulatory Asset Owner.

(6) **IESO Remittances** – On each [Settlement Date], IESO and if applicable the Alternative Collection Agent shall remit all amounts on deposit in its Regulatory Asset Account to or to the account of the Regulatory Asset Owner.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **Successors of IESO** – Any successor of IESO 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 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[8], 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 Transition Charges applicable to Ratepayers in its applicable service area, including all consumers connected to the electricity distribution system assets and taking

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[8] This is in anticipation of a possible future restructuring of the distribution system. Also, this would cover any OREC-eligible customer (market participant) of IESO.

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 Transition Charge Collections to the Regulatory Asset Owner or Pledgee, as applicable.

Any owner of transmission and distribution system assets, any servicer, any third-party biller and any other entity that bills or collects transmission and distribution rates shall simultaneously impose, bill and collect any transition charges applicable to consumers in the service area, including all consumers connected to the transmission and distribution system assets and taking electric delivery service located within the service area, shall allocate partial payments by consumers as provided in this act, shall terminate service to non-paying consumers on the same basis as termination of service is permitted for non-payment of transmission and distribution rates, shall exercise all enforcement rights of the owner or pledgee of the restructuring property for the benefit of such owner or pledgee, and shall remit any transition charge revenue to the owner or pledgee of the restructuring property (s. 8 para 2(b))

(10) **Regulatory Asset Owner has Standing** – The Regulatory Asset Owner and any Pledgee may bring actions against any Electricity Distributor, IESO, Alternative Invoicing 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 Ratepayers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances under Article 5. Any court of the Province [and the OEB] shall have jurisdiction over any actions brought before it by a Regulatory Asset Owner in relation to any such failure.

The owner of restructuring property, or the trustee representing holders of restructuring bonds, shall be expressly permitted hereby to bring actions against any owner of the transmission and distribution system assets, any third-party biller, or any other entity authorized to bill or collect transmission and distribution rates, any consumers in the service area or any other person or entity for failure to impose, bill, pay or collect any transition charges constituting part of the restructuring property then held pledged as security for such restructuring bonds or for enforcement of any other provision of this act or the applicable financing order (s. 15, para (a))

Any court may hear actions for enforcement of the act - Except as provided in section three of this act, any court and the authority shall have jurisdiction over any actions for failure to impose, bill, pay or collect any transition charges or for enforcement of other provision of this act or any restructuring cost financing order (s. 15 para (b))

(11) **Appointment of an Alternative Collection Agent** – If a Replacement Event occurs in respect of any Electricity Distributor or IESO, the Regulatory Asset Owner shall be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations otherwise required to be undertaken by such Electricity Distributor or IESO, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor or IESO, as applicable. Any Electricity Distributor or IESO, as applicable, that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests

in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the Regulatory Asset Owner.

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of the Regulatory Asset Owner, any Absolute Assignee and any Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense by any Ratepayer, 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.]

Restructuring property, transition charges, transition charge revenues, and the interests of an assignee, bondholder, financing party or any other person in restructuring property or in transition charge revenues, are not subject to setoff, counterclaim, surcharge or defense by a servicer, any consumer, the authority, LIPA or any successor owner of the transmission and distribution system assets or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of the authority, LIPA or any successor owner of the T&D system assets, any affiliate thereof or any other entity or otherwise (s. 7 para 1(e))

(13) **[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 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 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 Transition Charge 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 Transition Charges, as applicable.]

If the owner of the transmission and distribution system assets, servicer, third-party biller, or any other person or entity authorized to collect transition charges, defaults on any required remittance of transition charge revenues, any court in the state, upon application by an interested party and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the transition charge revenues for the benefit of the owners or pledgees of restructuring property. The order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to a servicer, authority, LIPA or any successor owner of the T&D system assets or any affiliate thereof or of any other person or entity (s. 7 para 1(d))

(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 the Regulatory Asset Owner.

If and to the extent that third parties are allowed to bill and/or collect any transition charges, the authority, any successor regulator, and any owner of the transmission and distribution system assets will take steps to ensure non-bypassability and minimize the likelihood of default by third-party billers, which generally would include:

- operational standards and minimum credit requirements for any such third-party biller to minimize likelihood of defaults
- a finding that, regardless of who is responsible for billing, consumers shall continue to be responsible for transition charges
- if a third party meters and bills for the transition charges, that the owner of the transmission and distribution system assets and any servicer must have access to information on billing to perform its obligations as servicer,
- in the case of a default by a third-party biller, billing responsibilities must be promptly transferred to another party to minimize potential losses
- the failure of consumers to pay transition charges shall allow service termination by the owner of the transmission and distribution system assets on behalf of the SPV of the consumers failing to pay transition charges in accordance with service termination rules and orders applicable to transmission and distribution rate (s. 16)

Article 6 – The Regulatory Asset

(1) **Composition** – The Regulatory Asset shall constitute a property right and interest of the Regulatory Asset Owner in the following:

a. the present and future obligations and indebtedness of each Ratepayer to pay Transition Charges attributed to the Ratepayer from time to time in accordance with Article 2, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices;

b. the present and future obligations of each Electricity Distributor and if applicable the Alternative Invoicing Agent to impose, attribute, bill and invoice the Transition Charges in accordance with Article 4;

c. the present and future obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of IESO or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 4;

d. the present and future obligations of IESO and if applicable the Alternative Collection Agent to accept Electricity Distributor Remittances and to remit IESO Remittances to or to the account of the Regulatory Asset Owner, 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 4;

e. all Transition Charge Collections;

f. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

g. all Related Rights; and

h. all proceeds of or derived from the foregoing.

The Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, attributed, 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.

Restructuring property that is created pursuant to a financing order shall constitute an existing, present property right, notwithstanding the fact that the imposition and collection of transition charges will depend on further acts that have not yet occurred, including but not limited to: (i) LIPA or any successor owner of the transmission and distribution system assets delivering electric energy or related services, (ii) a servicer performing servicing functions relating to the collection of transition charges, or (iii) the level of future consumption of electric energy. Restructuring property shall exist whether or not transition charges have been imposed, billed, accrued or collected and notwithstanding the fact that the value or amount of the restructuring property is dependent on the future provision of service to customers by LIPA or any successor owner of the transmission and distribution system asset (s. 7 para 1(a))

(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 contract or by operation of any applicable law of the Province], a Disposition by a Regulatory Asset Owner made under the Treasury Plan shall be permitted and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Absolute Assignee a valid property right and interest in, to and under the Regulatory Asset (or relevant portion thereof) in accordance with the terms of such Disposition [, provided that the description of Regulatory Asset in the agreement giving effect to the Disposition expressly refers to this Part]. [Other than as required by the Treasury Plan, no consent of any person shall be required to give effect to a Disposition.] 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. A Disposition shall not be subject to recharacterization or challenge on any other basis and the validity of a Disposition shall not be affected or impaired by: (a) the commingling of Transition Charge Collections or other proceeds from Transition Charges with other amounts; (b) the retention of any interest (including any partial, residual or subordinated interest, whether direct or indirect) in the Regulatory Asset by the transferring Regulatory Asset Owner; (c) any right to repurchase the Regulatory Asset in favour of the transferring Regulatory Asset Owner; (d) any recourse that an Absolute Assignee may have against the transferring Regulatory Asset Owner; (e) any indemnification rights or obligations provided by the transferring Regulatory Asset Owner; (f) any obligation of the transferring Regulatory Asset Owner to collect and remit Transition Charge Collections on behalf of an Absolute Assignee, including but not limited to, any retention by the

transferring Regulatory Asset Owner to bare legal title for the purpose of collecting Transition Charges; or (g) the ascribed or intended treatment of the Disposition by the transferring Regulatory Asset Owner or the Absolute Assignee on any different basis including for tax, financial reporting or other purposes.

Any transfer, sale, conveyance, assignment, grant of a security interest in or pledge of restructuring property by the authority, the SPV, or other financing entity, to the extent previously approved in a financing order, does not require the prior consent and approval of any other person or entity under the public service law or any other law. (s. 7 para 1(c))

A transfer of all or any portion of restructuring property, which the parties in the governing documentation have expressly stated to be a sale or other absolute transfer, in a transaction approved in a financing order, shall be treated as an absolute transfer of all of the transferor's right, title, and interest (as in a true sale), and not as a pledge or other financing, of the restructuring property, other than for federal, state and local income and franchise tax purposes (s. 7 para 3(a))

The description of restructuring property in a sale or transfer agreement is sufficient if and only if the description refers to this act and the financing order (s. 7 para 3(b))

The characterization of the sale, assignment or transfer as an absolute transfer and true sale and the corresponding characterization of the property interest of the purchaser, shall not adversely be affected or impaired by, among other things, the occurrence of any of the following factors: (i) commingling of revenues or other proceeds from transition charges with other amounts; (ii) the retention by the seller of: (A) a partial or residual interest, including an equity interest, in the restructuring property, whether direct or indirect, or whether subordinate or otherwise; or (B) the right to recover costs associated with taxes, payments in lieu of taxes, franchise fees or license fees imposed on the collection of transition charges; (iii) any recourse that the purchaser may have against the seller; (iv) any indemnification rights, obligations or repurchase rights made or provided by the seller; (v) the obligation of the seller to collect transition charges on behalf of an assignee, including but not limited to, any retention by the seller to bare legal title for the purpose of collecting transition charges; (vi) the treatment of the sale, assignment or transfer for tax, financial reporting or other purposes; (vii) any subsequent order of the authority amending a financing order; or (viii) any application of the true-up adjustment mechanism (s. 7 para 3(c))

(3) **Deemed Perfection and Priority of Dispositions** – At the time a Disposition is made, the absolute assignment of the property rights and interest in the Regulatory Asset subject to the Disposition shall be deemed to have been and 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 have priority over any liens in favour of such other persons.

Any transfer of an interest in restructuring property shall be perfected, vested, valid and binding from the time when the transfer is made. Such transfer shall be perfected, vested, valid and binding as against the transferor, all parties having claims of any kind in tort, contract or otherwise against the transferor, and all other transferees of the transferor, irrespective of whether such parties have notice thereof and shall be superior to any judicial liens or other liens obtained by such claimants or transferees (s. 7 para 3(b))

(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 contract or by operation of any applicable law of the Province], a Pledge by a Regulatory Asset Owner may be made to secure any 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 Regulatory Asset in accordance with the terms of the Pledge[, provided that the description of Regulatory Asset in the agreement giving effect to the Pledge expressly refers to this Part]. Other than as required by the Treasury Plan, no consent of any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

All or any portion of restructuring property may be pledged to secure the payment of restructuring bonds, amounts payable to financing parties, amounts payable to holders of restructuring bonds, amounts payable under any ancillary agreement and other ongoing financing costs (s. 7 para 1(c))

Any transfer, sale, conveyance, assignment, grant of a security interest in or pledge of restructuring property by the authority, the SPV, or other financing entity, to the extent previously approved in a financing order, does not require the prior consent and approval of any other person or entity under the public service law or any other law. (s. 7 para 1(c))

(5) **Deemed Perfection and Priority of Pledges** - Any Pledge made by a Regulatory Asset Owner in respect of a Funding Obligation incurred under the Treasury Plan shall be 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 Regulatory Asset Owner making the Pledge and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the pledging Regulatory Asset Owner, irrespective of whether such persons have notice of the Pledge and the security interests of the Pledgee under such Pledge shall have priority over any liens in favour of such other persons. All proceeds of the Regulatory Asset that are subject to such a Pledge that are received by the Regulatory Asset Owner shall immediately be subject to the such Pledge, and such proceeds shall be perfected, without any physical delivery thereof, registration of any financing statement with respect thereto pursuant to the [PPSA] or any other further act. A 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 Regulatory Asset subject to the Pledge unless the Pledgee has otherwise agreed in writing. Any Pledgee shall have a perfected security interest in Transition Charge Collections or other related proceeds 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. [A Pledgee shall cause a financing statement to be filed in respect of a Pledge for informational purposes only under the [PPSA].

Any pledge of restructuring property or proceeds thereof, made by the owner of restructuring property, shall be perfected, valid and binding from the time when the pledge is made. The proceeds so pledged and thereafter received by the owner of restructuring property shall immediately be subject to the lien of such pledge, and such lien shall be perfected, without any physical delivery thereof or further act. (s. 7 para 2)

The description of the restructuring property in a pledge or security agreement and any financing statement is sufficient if and only if the description refers to this Act and the financing order creating such restructuring property. No instrument by which a pledge or lien is created pursuant to this subdivision need be recorded in order to perfect such pledge or lien. (s. 7 para 2)

A pledge of restructuring property is a continuously perfected security interest and has priority over any other lien, created by operation of law or otherwise, that may subsequently attach to that restructuring property or proceeds thereof unless the holder of any such lien has agreed in writing otherwise. Any pledgee of restructuring property shall have a perfected security interest in the amount of all restructuring property revenues or other proceeds that are deposited in any deposit account or other account of the servicer or other entity in which restructuring property revenues or other proceeds have been commingled with other funds. Any other security interest that may apply to restructuring revenues or other proceeds shall be terminated when such revenues or proceeds are transferred to a segregated account for an assignee or a financing party. (s. 7 para 2)

Proceeds of restructuring property are subject to a lien; the lien of any such pledge shall be perfected, valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the owner of restructuring property irrespective of whether such parties have notice thereof and shall be superior to any judicial liens or other liens obtained by such claimants or transferees (s. 7 para 2)

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Collective Action Required** – If a Regulatory Asset Owner's right and interest 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 joint] basis with each other Regulatory Asset Owner, and any agreement among all of the Regulatory Asset Owners in furtherance of such collective action shall be valid and binding on each Regulatory Asset Owner and each Absolute Assignee, Pledgee and successor of a Regulatory Asset Owner in accordance with its terms.

Article 7 – Establishment of the Fair Allocation Plan

(1) **Adoption of the Fair Allocation Plan** – The Minister of Energy may by written order 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 Part, except if amended, amended and restated or terminated by a further written order issued by the Minister of Energy [in compliance with Section •].

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Unrecovered Transition Costs across present and future Ratepayer Groups on a basis that the

Minister of Energy, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters[9]:

1. Unrecovered Transition Costs should be allocated over a period not to exceed the later of (a) the estimated remaining useful life of the Related Generating Assets and (b) the remaining term of IESO's commitments under the Power Contracts.

2. The Fair Allocation Plan should specify the Reference Periods (e.g., 6 month periods), for the purpose of identifying applicable Ratepayer Groups and allocating among them responsibility to bear the Unrecovered Transition Costs on a relative basis over time.

3. The share of Unrecovered Transition Costs allocable to a particular Ratepayer Group in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to the Ratepayer Group over such Reference Period.

4. The estimated Unrecovered Transition Costs to be allocated to a Ratepayer Group and any future Ratepayer Group at a particular time should not exceed the estimated value of the Related Generating Assets based on their remaining useful lives or terms, measured in respect of the period following such particular time.

5. No future Ratepayer Group should bear an unreasonably disproportionate share of the Unrecovered Transition Costs. Except in exceptional circumstances or in the case of any backward-looking adjustment made as contemplated in 7, below, the share of the Unrecovered Transition Costs to be allocated under a Fair Allocation Plan to any future Ratepayer Group should have regard to [Insert formula if a year-over-year maximum amount is determined to be appropriate][10].

6. A reasonable estimate of the rate of inflation should be applied to equate the relative values of the nominal amount of Unrecovered Transition Costs to be allocable to Ratepayer Groups over time.

7. Backward-looking adjustments to a Fair Allocation Plan may be made to achieve a fair distribution among Ratepayers of the benefits of the Green Generation Initiative to that Ratepayer Group over an applicable Reference Period, including to provide an abatement to one or more Ratepayer Groups to the extent that one or more earlier Ratepayer Groups are considered by the Minister of Energy to have borne an unfair share of the Unrecovered Transition Costs.

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[9] We have provided a few examples of what could be the basic principles. These will depend on market considerations, the Province's decision on the required amount of detail and the ability to sustain the legal basis for the program. These examples are not meant to suggest the appropriate balance – just illustrative to advance a discussion among the stakeholders.

[10] Consider if a quantitative limit needs to be included in the legislation.

(3) **Attribution Methodology** – The Fair Allocation Plan shall specify an objective methodology (the "Attribution Methodology") for the purposes of allocating the Period Transition Charges across all of the Ratepayers of a particular Ratepayer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that are considered by the Minister of Energy to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation. [may have regard to considerations such as their relative electricity usage rates and usage patterns; the relative geographic density of individual Ratepayer's residence *[See basis for GA allocation method for other principles]]*

(4) **[Confirmation][Review] of the Fair Allocation Plan** – [OEB?]

Article 8 – The Treasury Plan

(1) **Power to Prepare and Implement the Treasury Plan** – In compliance with a [written order][***MOE to confirm process.***] of the Minister of Energy, the Administrative Agent shall prepare and propose the adoption of a Treasury Plan. If the Administrative Agent is unwilling or unable to prepare and propose the adoption of a Treasury Plan, the Minister of Energy may by written order designate one or more other persons to prepare and implement such a Treasury Plan.

(2) **Required Terms and Conditions of the Treasury Plan** – The Treasury Plan shall establish the basis for funding decisions that have the effect of allocating the Unrecovered Transition Costs across present and future Ratepayer Groups on a basis that is consistent with the Fair Allocation Plan. The Treasury Plan shall be consistent with the principles, parameters, requirements and conditions set forth in Schedule 3 and such other conditions and requirements as may be specified in a written order of the Minister of Energy [or in accordance with the Regulation].

(3) **Power to Review and Approve the Treasury Plan** – The Minister of Energy may, by written order, designate one or more persons to review the Treasury Plan and to review and assess the consistency of the Funding Obligations incurred with such Treasury Plan, and the Minister of Energy may specify requirements in respect of such review in such written order. The Administrative Agent, or such other person(s) as may be designated by written order of the Minister of Energy made pursuant to Section 8(1), shall make any such amendments to the Treasury Plan, and submit a revised Treasury Plan to the **[OEB]** for approval within [the time period specified in such written order]/[[•] days of such written order].[***Consider periodic amendments to the Treasury Plan following an annual review; provided that amendments cannot affect the existing Funding Obligations. Consider the level of oversight the MoE/OEB will have over this process?***]

(4) **Approval of Treasury Plan** – The **[OEB]** shall have the power to and shall approve or disapprove of the Treasury Plan based solely on whether the Treasury Plan is consistent with (i) the principles, parameters, requirements and conditions set forth in Schedule 3, (ii) such other conditions and requirements as may be specified in a written order of the Minister of Energy [or in accordance with the Regulation] [and (iii) the Fair Allocation Plan]. If the **[OEB]** approves the Treasury Plan, then such Treasury Plan shall be implemented by the Administrative Agent. If the OEB disapproves of the Treasury Plan or otherwise fails to approve the Treasury Plan, then the Administrative Agent shall re-

submit the Treasury Plan with such amendments as the Administrative Agent shall consider necessary for the Treasury Plan to be approved by the OEB.

(5) **Consistency with the Fair Allocation Plan** - Funding Obligations should only be incurred if Repayments and Funding Costs would be borne by present and future Designated Ratepayers on a basis that is [generally] consistent with their respective allocations of the costs and benefits of the Green Generation Initiative contemplated in the Fair Allocation Plan. In that regard, at the time of setting the Fair Allocation Plan for any particular period, the aggregate amount payable during future Reference Periods on account of Funding Obligations incurred on or before the date on which a new Funding Obligation is incurred should not exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Ratepayer Group contemplated in the Fair Allocation Plan. If, despite the foregoing, the Administrative Agent determines that 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 Ratepayer Group under the then current Fair Allocation Plan, the Treasury Plan shall require the Administrative Agent to make diligent efforts 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, if such a Refinancing or deferral is determined to be available the Treasury Plan shall require the Administrative Agent to make diligent efforts to implement such Refinancing or deferral on a basis that is consistent with the Fair Allocation Plan.

(6) **Establishment of Special Purpose Entities** – If the implementation of the Treasury Plan contemplates the establishment of one or more special purpose finance entities to incur Funding Obligations under the Treasury Plan, as an Absolute Assignee and on a basis that limits the recourse for the payment of such Funding Obligations to such Absolute Assignee's interest in, to and under the Regulatory Asset, the Administrative Agent shall have regard to the characteristics specified in Schedule 4 in establishing such special purpose entity.]

(7) **Obligation to Apply IESO Remittances** – The Administrative Agent shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Regulatory Asset Owner, or otherwise in respect of or as proceeds from the Regulatory Asset shall only be applied or used to pay Finance Amounts when they are due and payable and for no other purpose.[11]

So long as the restructuring property remains pledged to secure the bonds, revenues from the collection of transition charges shall be applied solely to the repayment of bonds and other ongoing financing costs (s. 7 para `(c))

(8) **Non-Recourse** – The Treasury 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 Invoicing Agent, and Alternative Collection Agent, the Administrative Agent, the OEB, the Province or the Lieutenant Governor in Council,

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[11] We need to work in the idea that there may be Finance Reserve Deposits or other amounts that remain after paying Finance Amounts. Those surplus amounts should be credited back to Ratepayers.

other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Part or expressly 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].]

Bonds shall be without recourse to the credit or any assets of the authority, LIPA and the SPV, other than the restructuring property and other assets and revenues of the SPV as specified in the pertinent financing order (s. 6 para 1)

Bonds issued pursuant to a financing order and the act shall not constitute a debt, general obligation or a pledge of the faith and credit or taxing power of the state... All restructuring bonds must contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the state of New York is pledged to the payment of the principal of, or interest on, this bond." (s. 6 para 3)

(9) **Incurrences are Binding** – Despite any failure to adhere to the Treasury Plan or to comply with any requirement of this Part, all amounts payable or becoming due and payable by or on behalf of the Regulatory Asset Owner under or in connection with any obligation purporting to be a Funding Obligation, shall be deemed to be binding for the purposes of this Part, including in determining the amount of Transition Charges, despite any impairment or defect resulting from such failure.

Any failure of any financing entity to apply the proceeds of restructuring bonds, or proceeds from the sale of restructuring property, in a reasonable, prudent and appropriate manner or otherwise comply with any provision of this act shall not invalidate, impair or affect any restructuring cost financing order, restructuring property, transition charge, or restructuring bonds (s. 8, para 2(a))

Article 9 – Compliance Matters

(1) **Right of the [OEB] to Inspect Books and Records** - For the purpose of investigating compliance with the provisions of this Part, the [OEB] shall have the right, jurisdiction, power and authority to examine the books and records of any person who is or may become obligated or have duties that arise under this Part or any Funding Obligation.

For the purpose of investigating compliance with the provisions of this act and the applicable restructuring cost financing order, the authority shall have the right, jurisdiction, power and authority to examine the books and records of LIPA or any successor owner of the transmission and distribution system assets, the SPV, any other financing entity, any servicer, any third-party biller and any other person or entity that owns restructuring property or has the right to impose, bill or collect transition charges until the bonds issued pursuant to the financing order have been paid in full and all financing costs relating to such bonds have been paid in full (s. 8 para 1(a))

(2) **Power to Investigate Compliance and Impose Regulatory Sanctions** - Subject to the limitations set forth regarding the irrevocability of Transition Charges and the Undertaking of the Lieutenant Governor in Council, nothing in this Part shall (a) prevent or preclude the [OEB] from investigating the compliance of any person who is or may become obligated or have duties that arise under this Part [or any Funding Obligation] with the terms and conditions of this Part and requiring compliance by such person therewith; or (b) prevent or preclude the authority or any successor regulator from

imposing regulatory sanctions against any person who is or may become obligated or have duties that arise under this Part for its failure to comply with the terms and conditions of this Part.

Subject to the limitations set forth regarding the irrevocability of financing orders and the state pledge, nothing in this subdivision shall (i) affect the authority to apply the true up adjustment mechanism; (ii) prevent or preclude the authority from investigating the compliance of any owner of the transmission and distribution system assets and of any financing entity with the terms and conditions of a financing order and requiring compliance therewith; or (iii) prevent or preclude the authority or any successor regulator from imposing regulatory sanctions against any owner of the transmission and distribution system assets for failure to comply with the terms and conditions of a financing order or the requirements of this act (s. 8 para 1(b))

(3) **[Other Rating Settings** – When setting other rates for or in respect of any person who is or may become obligated or have duties that arise under this Part, including any Electricity Distributor, IESO, Generator or the Administrative Agent, nothing in this Part shall prevent the [OEB] or any successor regulator from taking into account the collection by or attribution to such person of administrative or servicing fees in excess of the actual incremental costs incurred by such person of providing administrative or servicing services.]

When setting other rates for any owner of the transmission and distribution system assets, nothing in this act shall prevent the authority or any successor regulator from taking into account the collection by such owner of servicing fees in excess of incremental costs of providing servicing services, or the collection by such owner of administration fees in excess of incremental costs of providing administration services; provided that this would not result in a recharacterization of the tax, accounting, and other intended characteristics of the financing, including, but not limited to, either of the following: (i) treating bonds as debt for federal income tax purposes; or (ii) treating any transfer of the restructuring property to the restructuring bond issuer or to any other financing entity as a true sale for bankruptcy purposes (s. 8 para 1(b))

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.

After the issuance of bonds, the state may not in any way take or permit any action to reduce, impair, postpone or terminate the transition charges approved in the financing order or impair the restructuring property or the collection or recovery of transition charge revenues, either directly or indirectly by taking transition charges into account when setting other rates for any owner of the transmission and distribution system assets; nor shall the amount of revenues arising with respect to restructuring property be subject in any way to reduction, impairment, postponement or termination. (s. 3, para 7)

(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.

The state pledges to and agrees with the holders of bonds, any assignee and all financing entities that the state will not in any way take or permit any action that limits, alters or impairs the value of restructuring property or, except as required by the adjustment mechanism described in the restructuring cost financing order, reduce, alter or impair transition charges that are imposed, collected and remitted for the benefit of the owners of restructuring bonds, any assignee, and all financing entities, until any principal, interest and redemption premium in respect of restructuring bonds, all ongoing financing costs and all amounts to be paid to an assignee or financing party under an ancillary agreement are paid or performed in full (s. 9, para (a))

(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*].

Any person who issues restructuring bonds is permitted to include the state pledge in the restructuring bonds, ancillary agreements and documentation related to the issuance and marketing of the restructuring bonds (s. 9, para (b))

Article 11 – Regulations

Regulations may be made under this Part 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 expectations of the Province associated with any Regulated Asset Owner incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Costs; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Treasury 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 Part;

(c) to set out reasonable expectations 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 Part [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by the Regulatory Asset Owner 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 Treasury Plan.

Article 12- Miscellaneous

(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.

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 any restructuring property, transition charge or restructuring cost financing order, shall be the laws of the state of New York (s. 10)

(2) **Conflict of law** – In the event of conflict between this Part 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 Part shall govern to the extent of the conflict.

In the event of conflict between this act and any other law regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any pledge of, security interest in or transfer of restructuring property, this act shall govern to the extent of the conflict. (s. 11)

In the event of conflict between this act and the public service law, the Long Island power authority act or any other law, this act shall govern to the extent of the conflict. (s. 11)

(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 Part shall be required with respect to the actions to be taken in compliance with this Part, including under the Treasury Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Part or the Treasury 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 Treasury Plan.

Notwithstanding any provisions of law to the contrary, no approvals, notices or authorizations other than those specified in this act shall be required with respect to any financing order, and the transactions and contracts authorized in or contemplated by this act or any financing order, including but not limited to the incurrence and payment of any financing costs, the incurrence or payment of any approved restructuring costs, the issuance of bonds, the sale or other transfer of restructuring property, and any contracts and expenses incurred to facilitate the preparation of any restructuring cost financing order (s. 11)

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Part, if any provision of this Part 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 Part that is taken by any person who is or may become obligated or have duties that arise under this Part [or under any Funding Obligation] and any such action shall remain in full force and effect.

Effective on the date that restructuring bonds are first issued 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 the authority, LIPA, the SPV, any owner of transmission and distribution system assets, an assignee, a collection agent, a financing party, a holder of restructuring bonds or a party to an ancillary agreement and any such action shall remain in full force and effect (s. 12)

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Part 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 Part are intended to be severable and that the Legislature would have enacted this Part even if any Article, Section, paragraph or subparagraph of this Part held to be unconstitutional or invalid had not been included in this Part.

If any section, subdivision, 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 section, subdivision, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including, without limitation, the irrevocability of a financing order issued pursuant to this act, the validity of the issuance of restructuring bonds, the imposition of transition charges, the transfer or assignment of restructuring property or the collection and recovery of revenues from transition charges. 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 section, subdivision, paragraph or subparagraph of this act held to be unconstitutional or invalid had not been included in this act (s. 14)

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3

Principles, Parameters, Requirements and Conditions for Establishing the Treasury Plan

The Treasury Plan shall have regard to the following principles, parameters, requirements and conditions:[***Consider others.***]

(1) the Treasury Plan shall, in respect of each Reference Period, describe the allocations of Unrecovered Transition Costs to each Reference Group as contemplated by the Fair Allocation Plan;

(2) the Administrative Agent shall make a good faith estimate of the Funding Shortfalls for each Reference Period, based on the terms of the Power Contracts and assumptions considered to be reasonable respecting forward market prices for electricity;

(3) the Administrative Agent shall describe alternative funding arrangements considered to be suitable for the purpose of funding the estimated Funding Shortfalls, including by reference to short term and/or long term Funding Obligations that could reasonably be incurred by Regulatory Asset Owner for such purpose;

(4) such Funding Obligations shall reflect quantities, maturities, payment obligations, prepayment or redemption rights and such other features so that the effect of incurring such Funding Obligations would be that the payments made thereunder in respect of each Reference Period (including the anticipated Finance Amounts becoming payable in relation to such Funding Obligations) would reasonably correspond to the allocations of Unrecovered Transition Costs to the applicable Reference Group under the Fair Allocation Plan;

(5) the Treasury Plan shall reflect the outcome of a financial model that incorporates the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges attributed to a hypothetical Ratepayer 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); [***Consider what outputs from OPG will be tested by the OEB and when. The modelling in the Treasury Plan may permit the OEB to check progress against the model from time to time, which may provide a basis for the MoE/OEB to require a review/amendment to the Treasury Plan if the ongoing operation of the program results in significant deviation from the model. Consider whether this flexibility is desirable.***]

(6) the Administrative Agent, for and on behalf of each Regulatory Asset Owner, shall seek to 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 Regulatory Asset Owner[s] will require committed access to short term liquidity to cover estimated 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 a Regulatory Asset Owner to repay an amount in relation to a Reference Period that would have the effect of the

Treasury Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Unrecovered Transition Costs to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the Administrative Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations shall not obligate a Regulatory Asset Owner to repay an amount in relation to a Reference Period that would have the effect of the Treasury Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Unrecovered Transition Costs to the applicable Reference Group under the Fair Allocation Plan;

c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Administrative Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Administrative Agent shall cause the [applicable] Regulatory Asset Owner to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the Administrative Agent will select counterparties under any transaction to be entered into by a Regulatory Asset Owner, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the Administrative Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Administrative Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(7) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the Funding Shortfall from time to time on a basis that is consistent with the allocations of Unrecovered Transition Costs to applicable Reference Groups under the Fair Allocation Plan;

(8) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(9) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Administrative Agent and other agents and service providers to the Regulatory Asset Owner[s] may be determined, allocated and paid;

(10) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(11) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(12) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(13) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(14) the basis upon which any Disposition may be made or effected by a Regulatory Asset Owner, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(15) a description of each special purchase entity that will purchase the Regulatory Asset from the IESO, including proposed capitalization, governance, and restrictions on their powers and activities having regard to the parameters in Schedule 4; and

(16) the basis on which any Pledge may be given or effected.

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Schedule 4

Creation of any Special Purpose Entity to become a Regulatory Asset Owner]

(1) Powers and Abilities:

a. No part of the revenue or assets of a Regulatory Asset Owner shall enure to the benefit or be distributable to its trustees, officers or directors, as the case may be, or any other private persons, except as may be provided for actual services rendered;

b. Each Regulatory Asset Owner shall be authorized to:

i. incur the Funding Obligations contemplated by a Treasury Plan and use the proceeds thereof to purchase or acquire, and to own, hold and use the Regulatory Asset;

ii. contract for servicing of the Restructuring Asset and any bonds contemplated by a Treasury Plan and for administrative services; and

iii. pledge the Regulatory Asset to secure the Funding Obligations incurred by the Regulatory Asset Owner;

c. So long as any Funding Obligations contemplated under a Treasury Plan are outstanding, the Regulatory Asset Owner shall not be authorized to merge or consolidate, directly or indirectly, with any person or entity;

d. the Regulatory Asset Owner shall not have the power or authority to incur or guarantee or otherwise become obligated to pay any debt or obligations other than what is contemplated under a Treasury Plan;

e. the Regulatory Asset Owner shall cause the proceeds obtained by incurring any Funding Obligation to be placed in one or more separate accounts and used only to purchase the Regulatory Asset and pay any costs as provided for in a Treasury Plan; and

f. so long as the Regulatory Asset is pledged to secure Funding Obligations, the Regulatory Asset Owner must apply revenues from the collection of Transition Charges only to repay such Funding Obligations and other costs as provided for in a Treasury Plan.

(2) Governance of Regulatory Asset Owner – The Regulatory Asset Owner shall shall be created having regard to the following principles:[***OPG to confirm if SPE will be a trust or another type of entity.***]

a. **[Number of trustees]**

b. **[Replacement of trustees; vacancies; appointment of successors]**

c. [Removal of trustees for neglect of duty or misconduct]

d. [Quorum and meetings]

e. [Fiduciary duty]

f. [Isolation, separateness and other "non-consolidation" and "bankruptcy remoteness" criteria]

g. [Delegation of powers and duties to administrative agents]

h. [Delegation of powers and duties to administrative agents]

Internal Draft: April ~~2~~,4, 2017

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"Fair Hydro" – Part V.2

Article 1 – Purpose

IESO has entered into Power Contracts with Generators. The agreed-upon reference prices and future quantities set out therein were determined based on commitments made by IESO to provide Generators with long-term price certainty, so as to encourage the long-term construction and development of facilities for the purpose of generating electricity 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 and feed in tariff programs (the "Green Generation Initiative"). The terms of the Power Contracts were intended to approximate the anticipated useful life of the related generation assets; however, it has been determined that the useful life of many of these assets will be well in excess of the actual term of the related Power Contracts and will extend over more than one generation of ratepayers. The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will benefit present and future ratepayers of the Province. Currently, market prices for electricity are less than the reference prices set out in the Power Contracts, leaving a gap in funding which is funded by charging ratepayers a "Global Adjustment" (part of which is available to IESO to pay this shortfall).

Each month, the IESO determines the Global Adjustment payable by consumers for the consumption of electricity in the Province. A component of the Global Adjustment is the amount by which the reference prices in the Power Contracts exceed the market price for electricity for the quantities of electricity specified under the Power Contracts for the relevant period. The relationship between the past, present and future benefits to Ratepayers from the Green Generation Initiative, on the one hand, and the costs of the Green Generation Initiative borne by past, present and future Ratepayers through their respective allocations of the Global Adjustment, on the other hand, do not necessarily reflect an equitable allocation of such benefits and costs over time, with the result that an adjustment may be appropriate to address inter-generational fairness considerations. Such an adjustment should reflect principles and parameters that can be applied from time to time in order to establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative across present and future Ratepayers. A plan to allocate such costs and benefits equitably across present and future Ratepayers may be developed based on those principles and parameters (a "Fair Allocation Plan").

If a Fair Allocation Plan determines that the equitable allocation of the Global Adjustment to the Ratepayers of a particular time period in respect of the Power Contracts should be reduced below the amount otherwise determined, the amount payable by such Ratepayers to Electricity Distributors in respect of such period, and in turn by the Electricity Distributors to the IESO, would, in the aggregate, be less than the amount payable by the IESO to the Generators under the Power Contracts in respect of such period. If the difference is greater than any net Power Contract surpluses available to IESO from earlier periods, IESO will have a funding shortfall. In order for IESO to cover such a funding shortfall for a period, IESO will need to obtain funding from another source, which could include funding from third party sources operating in public and private capital markets. If a funding obligation is incurred in order to enable the IESO to cover a funding 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 will be incurred and may become payable in one or more other periods.

It will be necessary to provide a reliable and committed source of cash flows to enable IESO to repay such funding obligations and to pay related funding costs with certainty when the funding obligations become due and payable. This Part imposes irrevocable and non-bypassable financial obligations of Ratepayers to pay amounts incurred in respect of such funding obligations when they become due and payable. Such financial obligations will constitute property rights and interests, which will take the form of the Regulatory Asset contemplated in this Part. The Regulatory Asset will be sold and absolutely assigned and will belong to one or more newly created financing entities, which in turn will finance their purchase of such Regulatory Asset by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf the financing entities by an administrative agent (initially OPG), under the Treasury Plan contemplated in this Part. The Treasury Plan will seek to reasonably match the payment obligations arising under funding obligations and borne by the future Ratepayers of the period in which such payment obligations become due, with the costs and benefits of the Green Generation Initiative attributed to such future Ratepayers under the Fair Allocation Plan.

The purpose of this Part is to establish the basis upon which intergenerational fairness can be achieved by attributing the costs and benefits of the Green Generation Initiative to present and future Ratepayers on an equitable and cost effective basis.

Article 2 - Definitions

In this Part:

"Absolute Assignee" means a person to whom a Regulatory Asset Owner assigns, transfers, conveys, sells, contributes, sets over, exchanges or disposes all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the transferring Regulatory Asset Owner's right, title and interest in, to and in respect of the Regulatory Asset.

"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 Administrative Agent whose records shall be determinative for the purposes of this Part in the absence of a manifest calculation error.

"Additional Funding Charges" means, for a Reference Period, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by the Regulated Asset Owner during the Reference Period and that were incurred or committed to directly or indirectly in connection with the incurrence of Funding Obligations under the Treasury 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 Administrative Agent on behalf of, the Regulatory Asset Owner under the Treasury Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on the Regulatory Asset Owner or incurred by on behalf of the

Regulatory Asset Owner under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Administrative Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Treasury Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Invoicing Agent, 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 Regulatory Asset Owner; (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 placement fees, underwriting fees, fees and related issuing expenses; (m) any rating agency fees; and (n) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith for recovery and payment under the Treasury Plan.

"Administrative Agent" means [OPG] or, following any Replacement Event, such other person or persons who may be appointed as the administrative agent of the Regulatory Asset Owner under the Treasury Plan in compliance with the requirements set out in Schedule 2.

"Alternative Collection Agent" means a person appointed under Section 5(11) and in compliance with the requirements set out in Schedule 2 to assume the collection activities and activities of any Electricity Distributor or IESO under Article 5, as agent for and on behalf of the Regulatory Asset Owner.

"Alternative Invoicing Agent" means a person appointed under Section 4(8) to assume the invoicing and other activities of any Electricity Distributor under Article 4, as agent for and on behalf of the Regulatory Asset Owner.

"Attribution Methodology"[1] means the methodology specified in the Fair Allocation Plan for allocating the Period Transition Charges for a Reference Period to the individual Ratepayers of the applicable Ratepayer Group.

"Collected Amount Adjustment" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Administrative Agent equal to (a) the Estimate of the Finance Amount for the ~~Reference~~True-Up Period, minus (b) the sum of all Transition Charge Collections for the ~~Reference~~True-Up Period.[2]

["Consumer Base" means, for a Reference Period, the total number of Ratepayers in the Ratepayer Group determined by the Administrative Agent as of the [~~third] Business Day~~30th] day immediately preceding the first day of the Reference Period.]

[1] A key question will be how the overall costs will be spread across the rate base. For simplicity, overall costs could be spread across the rate base based on a *per capita* (ratepayer) concept. This would generally mean that all consumers who are invoiced in a month would pay the same Transition Charge, and to the extent that the invoiced amounts (i.e., the Transition Charges billed for a month) are higher or lower than the actual costs, due to a change in the Consumer 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 consumers), the divisor for the Transition Charge will need to be modified.

[2] This would pick up adjustments based on actual collection experience, changes in the Consumer Base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of a Regulatory Asset Owner's right, title and interest in, to and under the Regulatory Asset to an Absolute Assignee.

"Electricity Distributor" means, in respect of a Service Area, the distributor of electricity to residences located in such Service Area.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to IESO or if applicable the Alternative Collection Agent in accordance with Section 5(3) , including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by an Electricity Distributor (or in its stead, an Alternative Invoicing Agent) in respect of electricity charges and related services and amounts incurred, assessed or attributed in respect of a residence located in the Electricity Distributor's designated Service Area.

"Estimate" means, 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 Administrative Agent 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 Part in the absence of a manifest calculation error.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, in respect of a Reference Period, the sum (without duplication) of the following amounts for the Reference Period: (a) Repayments; (b) Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Receipts" means, for a Reference Period, all amounts received by or on behalf of the Regulatory Asset Owner during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Regulatory Asset Owner under derivatives and any 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 a Funding Obligation.

"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 Treasury 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 Treasury Plan.

"Funding Costs" means, for a Reference Period, 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 Regulatory Asset Owner during the Reference Period in respect of all Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a Funding Obligation, exceeds (b) the aggregate of all Finance Receipts for the Reference Period.

"Funding Obligation" means each payment obligation (including 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) incurred by or on behalf of the Regulatory Asset Owner under the Treasury Plan in order to fund a Funding Shortfall for a Reference Period, including any Refinancing of another such payment obligation.

"Funding Shortfall" means, for a Reference Period, (a) the amount, if any, by which (i) the IESO Power Contract Net Payment for the Reference Periods, exceeds (ii) the GA Power Contract Contribution for Reference Period, minus (b) the IESO Applied Surplus for the Reference Period.

"GA Power Contract Contribution" means, for a Reference Period, the aggregate of the payments to be made by the applicable Ratepayer Group in respect of the portion of the Global Adjustment attributable to the Power Contracts in accordance with the Fair Allocation Plan.

"Generator" means a generator of electricity that is subject to this Act.

"Global Adjustment" means the amount calculated from time to time under [Section • of the *Electricity Act*], which includes among other things an amount determined in respect of the costs associated with the Green Generation Initiative, including amounts attributable to the Power Contracts.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO Applied Surplus" means, for a Reference Period, the lesser of (a) the amount, if any, by which (i) the IESO Power Contract Net Payment for the Reference Periods, exceeds (ii) the GA Power Contract Contribution for Reference Period and (b) the IESO Unapplied Surplus on the last day of the immediately preceding Reference Period.

"IESO Power Contract Net Payment" means, for a Reference Period, the amount by which (a) the sum of amounts payable by IESO to the Generators to IESO under all Power Contracts for the Reference Period, exceeds (b) the sum of amounts payable by the Generators to IESO under all Power Contracts for the Reference Period.

"IESO Power Contract Net Receipt" means, for a Reference Period, the amount by which (a) the sum of amounts payable by the Generators to IESO under all Power Contracts for the Reference Period, exceeds (b) the sum of amounts payable by IESO to the Generators to IESO under all Power Contracts for the Reference Period.

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owner in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO Unapplied Surplus" means, at a particular time, the amount, if any, by which (a) the sum of (i) all IESO Power Contract Net Receipts for Reference Periods occurring prior to the time, and (ii) all GA Power Contract Contributions for Reference Periods occurring prior to the time, exceeds (b) the sum of (i) all IESO Power Contract Net Payments for Reference Periods occurring prior to the time, and (ii) all IESO Applied Surpluses for Reference Periods occurring prior to the time.

"Period Transition Charge" 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.

"Pledge" means a lien, mortgage, charge, right of set-off or security interest granted to or in favour of a Pledgee by a Regulatory Asset Owner 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 Regulatory Asset.

"Pledgee" means a person to whom [or for whose benefit] a Regulatory Asset Owner grants a Pledge.

"Power Contracts" means long-term power contracts entered into by IESO with certain Generators, under which IESO has agreed to pay such Generators amounts, determined in respect of quantities of electricity over specified periods, to the extent that applicable market prices for such quantities of electricity during a specified period are less than specified reference prices for such quantities of electricity, and, correspondingly, Generators have agreed to pay IESO amounts if the market prices for such quantities exceed the applicable reference prices for such quantities.[3]

"Province" means ~~Her Majesty~~ the ~~Queen in right~~Province of Ontario.

"Ratepayer" means present and future [retail] consumers of electricity [in ~~Ontario~~the Province] who are [RPP][or OREC-eligible] consumers, which shall include all such retail consumers who are connected to the transmission and distribution system assets located in ~~Ontario~~the Province and who are taking electric delivery service within

[3] Should this contemplate the possibility of additional or amended power contracts?

~~Ontario~~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 IESO.[4]

"Ratepayer Group" means, in relation to a Reference Period, the Ratepayers who receive Electricity Invoices during the Reference Period.

"Redemption Amount" means the amount payable by or on behalf of a Regulatory Asset Owner to redeem, prepay or repurchase a Funding Obligation, 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 [Legislation Implementation Date] to (and including) June 30, 2017, (b) each six month period commencing [July 1st and January 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Refinancing" means that a Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Regulated Asset Owner by applying the net proceeds obtained by the Regulated Asset Owner incurring one or more other Funding Obligations.

"Regulatory Asset" means the property right and interest described in Section 6(1).

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the ~~an~~ Electricity Distributor deposits or receives Transition Charge Collections; (b) for IESO, any bank account into which IESO deposits or receives Electricity Distributor 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, collectively, (a) IESO, to the extent that it has retained any ownership interest in, to or under the Regulatory Asset and (b) each Absolute Assignee, to the extent that it has acquired and owns any ownership interest (including a specified portion on a divided basis or by way of an undivided interest) in, to or under the Regulatory Asset, which 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 Generation Assets" means the [facilities, plants and equipment] constructed, acquired or developed in connection with the Green Generation Initiative.

"Related Rights" means all rights of any kind (whether in tort, contract or otherwise) of the Regulatory Asset Owner that attach or are attendant or incidental to any of the other property rights or interests that comprise the 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 in accordance with any Funding Obligation or, if no such

[4] Need to describe consumers in a fashion that is broad and not weakened by a bypass risk.

day is specified in relation to 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 Finance Reserve Deposit) of, all or a portion of the amount advanced to the Regulatory Asset Owner under a Funding Obligation.

"Repayment" means a payment by a Regulatory Asset Owner made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is [permitted] to distribute electricity to residences in accordance with this Act.

"Settlement Date" means the [last Business Day of any month].

"Treasury Plan" means the written plan prepared by the Administrative Agent in compliance with Article 8 to set forth the basis upon which, among other things: (a) any Disposition may be made or effected; (b) any Funding Obligations may be incurred in order to fund a Funding Shortfall, 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; and (h) the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied.

"Transition Charge" means, in respect of a Reference Period, [one-sixth] of the Period Transition Charge, [divided by the Consumer Base[5]].

"Transition Charge Collection" means any amount received or deemed by this Part to have been received upon the collection of a Transition Charge paid by or on behalf of a Ratepayer, 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 Administrative Agent equal to (a) the Estimate of the Finance Amount for the ~~Reference~~related True-Up Period, minus (b) the Actual Finance Amount for ~~the Reference~~such related True-Up Period, plus (c) the Collected Amount Adjustment.

"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.

[5] See footnote 1, above.

"Undertaking of the ~~Province~~Lieutenant Governor in Council" means the undertaking of the ~~Province~~Lieutenant Governor in Council given under Section 10(2).

"Unrecovered Transition Costs" means the [unrecovered][unamortized] costs incurred in connection with the creation, adoption and implementation of the Green Generation Initiative, including any negative value of the Power Contracts and [other].

Article 3 – Transition Charges

(1) **Ratepayer Obligation to Pay a Transition Charge** – Each Ratepayer shall pay each Transition Charge attributed to it and specified as such in any Electricity Invoice issued to such Ratepayer by its Electricity Distributor or by an Alternative Invoicing Agent under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) **Indebtedness of Ratepayers** – Until paid, a Transition Charge attributed to a Ratepayer and recorded 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 indebtedness of the Ratepayer to the Regulatory Asset Owner. Such indebtedness shall constitute a single and separate debt obligation owing by the Ratepayer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Ratepayer under the Electricity Invoice or otherwise.

(3) **No Set-Off or Reduction** – A Ratepayer 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 Ratepayer by its Electricity Distributor, the Regulatory Asset Owner or any other person.

(4) **Allocation of Ratepayer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a Ratepayer 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 ~~deeded~~deemed to constitute a Transition Charge Collection.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred ~~in compliance with~~under the Treasury Plan (including any adjustments based on modifications to such Funding Obligations made in compliance with the Treasury Plan or as a result of amendments to the Treasury Plan made in accordance with Section 8(3)) are deemed to be irrevocable, final and effective without any further action. 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 ~~in accordance with~~under the Treasury Plan. In no case shall a Funding Obligation incurred under the Treasury Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(6) **[Anti-avoidance; No-by-pass** – Transition Charges attributed to a Ratepayer in respect of any Finance Amount incurred under with the Treasury Plan applicable at the time the related Funding Obligation was incurred may not be avoided and shall be [non-by-passable].]

Article 4 – Invoicing of Transition Charges

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Invoicing Agent shall, as an agent of the Regulatory Asset Owner, specify the Transition Charge to be attributed to a Ratepayer 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 Invoicing Agent to the Ratepayer 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 deemed to have been imposed on and billed to the applicable Ratepayer.

(2) **Calculation of the Period Transition Charge** – Not later than one month prior to the first day of a Reference Period, [IESO][6] or if applicable the [Alternative Collection Agent][7] shall calculate the Period Transition Charge applicable to the Reference Period.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, [IESO] or if applicable the [Alternative Collection Agent] shall apply the Attribution Methodology to determine the Transition Charges to be attributed to the Ratepayers of the applicable Ratepayer Group.

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, [IESO] or if applicable the [Alternative Collection Agent] shall inform each Electricity Distributor and if applicable any Alternative Invoicing Agent of the Transition Charges to be specified in the Electricity Invoices to be issued to each Ratepayer of the applicable Ratepayer Group who has a billing address in the Electricity Distributor's Service Area.

(5) **Adjustments** – The amount of any Transition Charge attributed to a Ratepayer by [IESO] 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, in the absence 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, bill and invoice the Transition Charges.

(7) **Successors of IESO** – Any successor of IESO shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4

[6] IESO's role will need to be discussed. Not sure if this mechanism is an IESO role or perhaps it's an OEB role. That will need to be discussed with the stakeholders. Currently, the rates for this class of customer are established by the OEB every six months having regard to the projections etc., of GA, and any variances from the prior period. This might end up fitting into that regime (although presumably we wouldn't want it to be built into the rate like GA is today- ie., it would be a separate line item). This section will also need to catch "bypass" customers.

[7] Should this be a designated government official, rather than an agent appointed by investors?

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 Invoicing Agent** – If a Replacement Event occurs in respect of any Electricity Distributor, the Regulatory Asset Owner shall be permitted, by an instrument in writing, to appoint an Alternative Invoicing Agent 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 Invoicing Agent 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 Invoicing Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Invoicing Agent to perform such obligations and duties on behalf of the Regulatory Asset Owner.

(9) **Regulatory Asset Owner has Standing** – The Regulatory Asset Owner may bring actions against any Electricity Distributor, IESO, Alternative Invoicing Agent or any other person who may be authorized to issue Electricity Invoices to Ratepayers for a failure to impose, attribute, bill or invoice Transition Charges. Any court of the Province [and the OEB] shall have jurisdiction over any actions brought before it by a Regulatory Asset Owner in relation to any such failure.

(10) **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, any Alternative Invoicing Agent or any [Alternative Collection Agent] to ensure that Transition Charges are properly attributed to Ratepayers 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 Owner, undertake [diligent efforts] to collect amounts owing by Ratepayers in respect of Transition Charges attributed to such Ratepayers 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 Ratepayers and deposit such Transition Charge Collections into its Regulatory Asset Account. Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall be deemed to hold such amounts in trust for the Regulatory Asset Owner.

(3) **Electricity Distributor Remittances** – On each [applicable Remittance Date], an Electricity Distributor shall remit all Transition Charge Collections received by it from Ratepayers 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 shall, as an agent of the Regulatory Asset Owner, undertake [diligent efforts] to accept and collect Electricity Distributor Remittances.

(5) **Segregation of Electricity Distributor Remittances** – IESO and if applicable the Alternative Collection Agent shall [promptly] segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, IESO or if applicable any Alternative Collection Agent shall be deemed to hold such amounts in trust for the Regulatory Asset Owner.

(6) **IESO Remittances** – On each [Settlement Date], IESO and if applicable the Alternative Collection Agent shall remit all amounts on deposit in its Regulatory Asset Account to or to the account of the Regulatory Asset Owner.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **Successors of IESO** – Any successor of IESO 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 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 ~~Ontario~~the Province or invoices or collects electricity distribution rates in ~~Ontario~~the Province[8], 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 Transition Charges 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 Transition Charge Collections to the Regulatory Asset Owner or Pledgee, as applicable.

(10) **Regulatory Asset Owner has Standing** – The Regulatory Asset Owner and any Pledgee may bring actions against any Electricity Distributor, IESO, Alternative Invoicing Agent, any owner of electricity distribution system assets in ~~Ontario~~the Province or any other person who may be authorized to collect electricity distribution and use charges from Ratepayers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances under Article 5. Any court of the Province [and the OEB] shall have jurisdiction over any actions brought before it by a Regulatory Asset Owner in relation to any such failure.

[8] This is in anticipation of a possible future restructuring of the distribution system. Also, this would cover any OREC-eligible customer (market participant) of IESO.

(11) **Appointment of an Alternative Collection Agent** – If a Replacement Event occurs in respect of any Electricity Distributor or IESO, the Regulatory Asset Owner shall be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations otherwise required to be undertaken by such Electricity Distributor or IESO, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor or IESO, as applicable. Any Electricity Distributor or IESO, as applicable, that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to ~~an~~and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the Regulatory Asset Owner.

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of the Regulatory Asset Owner, any Absolute Assignee and any Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense~~0~~ by any Ratepayer, 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.]

(13) **[Sequestration** – If any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in ~~Ontario~~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 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 Transition Charge 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 Transition Charges, as applicable.]

(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 the Regulatory Asset Owner.

Article 6 – The Regulatory Asset

(1) Composition – The Regulatory Asset shall constitute a property right and interest of the Regulatory Asset Owner in the following:

a. the present and future obligations and indebtedness of each Ratepayer to pay Transition Charges attributed to the Ratepayer from time to time in accordance with Article 2, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices;

b. the present and future obligations of each Electricity Distributor and if applicable the Alternative Invoicing Agent to impose, attribute, bill and invoice the Transition Charges in accordance with Article 4;

c. the present and future obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of IESO or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 4;

d. the present and future obligations of IESO and if applicable the Alternative Collection Agent to accept Electricity Distributor Remittances and to remit IESO Remittances to or to the account of the Regulatory Asset Owner, 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 4;

e. all Transition Charge Collections;

f. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

g. all Related Rights; and

h. all proceeds of or derived from the foregoing.

The Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, attributed, 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 contract or by operation of any applicable law of the Province], a Disposition by a Regulatory Asset Owner made under the Treasury Plan shall be permitted and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Absolute Assignee a valid property right and interest in, to and under the Regulatory Asset (or relevant portion thereof) in accordance with the terms of such Disposition [, provided that the description of Regulatory Asset in the agreement giving effect to the Disposition expressly refers to this Part]. [Other than as required by the Treasury Plan, no consent of any person shall be required to give effect to a Disposition.] 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. A Disposition shall not be subject to recharacterization or challenge on any other basis and the validity of a Disposition shall not be affected or impaired by: (a) the commingling of ~~revenues~~Transition Charge Collections or other proceeds from Transition Charges with other amounts; (b) the retention of any interest (including any partial, residual or subordinated interest, whether direct or indirect) in the Regulatory Asset by the transferring Regulatory Asset Owner; (c) any right to repurchase the Regulatory Asset in favour of the transferring Regulatory Asset Owner; (d) any recourse that an Absolute Assignee may have against the transferring Regulatory Asset Owner; (e) any indemnification rights or obligations provided by the transferring Regulatory Asset Owner; (f) any obligation of the transferring Regulatory Asset Owner to collect and remit Transition Charge Collections on behalf of an Absolute Assignee, including but not limited to, any retention by the transferring Regulatory Asset Owner to bare legal title for the purpose of collecting Transition Charges; or (g) the ascribed or intended treatment of the Disposition by the transferring Regulatory Asset Owner or the Absolute Assignee on any different basis including for tax, financial reporting or other purposes.

(3) **Deemed Perfection and Priority of Dispositions** – At the time a Disposition is made, the absolute assignment of the property rights and interest in the Regulatory Asset subject to the Disposition shall be deemed to have been and 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 have priority over any liens in favour of such other persons.

(4) Validity of Pledges – Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province [or any consent requirement applicable to a Pledge that may arise by contract or by operation of any applicable law of the Province], a Pledge by a Regulatory Asset Owner may be made to secure any 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 Regulatory Asset in accordance with the terms of the Pledge[, provided that the description of Regulatory Asset in the agreement giving effect to the Pledge expressly refers to this Part]. Other than as required by the Treasury Plan, no consent of any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Deemed Perfection and Priority of Pledges** - Any Pledge made by a Regulatory Asset Owner in ~~accordance with~~respect of a Funding Obligation incurred under the Treasury Plan shall be 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 Regulatory Asset Owner making the Pledge and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the pledging Regulatory Asset Owner, irrespective of whether such persons have notice of the Pledge and the security interests of the Pledgee under such Pledge shall have priority over any liens in favour of such other persons. All proceeds of the Regulatory Asset that are subject to such a Pledge that are received by the Regulatory Asset Owner shall immediately be subject to the such Pledge, and such proceeds shall be perfected, without any physical delivery

thereof, registration of any financing statement with respect thereto pursuant to the [PPSA] or any other further act. A 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 Regulatory Asset subject to the Pledge unless the Pledgee has otherwise agreed in writing. Any Pledgee shall have a perfected security interest in ~~revenues~~Transition Charge Collections or other related proceeds 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 ~~revenues or~~Transition Charge Collections or such other proceeds with other funds. [A Pledgee shall cause a financing statement to be filed in respect of a Pledge for informational purposes only under 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.

(7) **Collective Action Required** – If a Regulatory Asset Owner's right and interest 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 joint] basis with each other Regulatory Asset Owner, and any agreement among all of the Regulatory Asset Owners in furtherance of such collective action shall be valid and binding on each Regulatory Asset Owner and each Absolute Assignee, Pledgee and successor of a Regulatory Asset Owner in accordance with its terms.

Article 7 – Establishment of the Fair Allocation Plan

(1) **Adoption of the Fair Allocation Plan** – The Minister of Energy may by written order 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 Part, except if amended, amended and restated or terminated by a further written order issued by the Minister of Energy [in compliance with Section •].

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Unrecovered Transition Costs across present and future Ratepayer Groups on a basis that the [Minister of Energy,] ~~in its sole and absolute discretion~~, determines to be equitable, having regard to the following principles and parameters[9]:

1. Unrecovered Transition Costs should be allocated over a period not to exceed the later of (a) the estimated remaining useful life of the Related Generating Assets and (b) the remaining term of IESO's commitments under the Power Contracts.

2. The Fair Allocation Plan should specify the Reference Periods (e.g., 6 month periods), for the purpose of identifying applicable Ratepayer Groups and

[9] We have provided a few examples of what could be the basic principles. These will depend on market considerations, the Province's decision on the required amount of detail and the ability to sustain the legal basis for the program. These examples are not meant to suggest the appropriate balance – just illu strative to advance a discussion among the stakeholders.

allocating among them responsibility to bear the Unrecovered Transition Costs on a relative basis over time.

3. The share of Unrecovered Transition Costs allocable to a particular Ratepayer Group in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to the Ratepayer Group over such Reference Period.

4. The estimated Unrecovered Transition Costs to be allocated to a Ratepayer Group and any future Ratepayer Group at a particular time should not exceed the estimated value of the Related Generating Assets based on their remaining useful lives or terms, measured in respect of the period following such particular time.

5. No future Ratepayer Group should bear an unreasonably disproportionate share of the Unrecovered Transition Costs. Except in exceptional circumstances or in the case of any backward-looking adjustment made as contemplated in 7, below, the share of the Unrecovered Transition Costs to be allocated under a Fair Allocation Plan to any future Ratepayer Group should have regard to [Insert formula if a year-over-year maximum amount is determined to be appropriate][10].

6. A reasonable estimate of the rate of inflation should be applied to equate the relative values of the nominal amount of Unrecovered Transition Costs to be allocable to Ratepayer Groups over time.

7. Backward-looking adjustments to a Fair Allocation Plan may be made to achieve a fair distribution among Ratepayers of the benefits of the Green Generation Initiative to that Ratepayer Group over an applicable Reference Period, including to provide an abatement to one or more Ratepayer Groups to the extent that one or more earlier Ratepayer Groups are considered by the Minister of Energy to have borne an unfair share of the Unrecovered Transition Costs.

(3) Attribution Methodology – The Fair Allocation Plan shall specify an objective methodology (the "Attribution Methodology") for the purposes of allocating the Period Transition Charges across all of the Ratepayers of a particular Ratepayer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that are considered by the Minister of Energy to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation. [may have regard to considerations such as their relative electricity usage rates and usage patterns; the relative geographic density of individual Ratepayer's residence *[See basis for GA allocation method for other principles]]*

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

Article 8 – The Treasury Plan

(1) Power to Prepare and Implement the Treasury Plan – ~~The~~In compliance with a [written order][***MOE to confirm process.***] of the Minister of Energy, the Administrative Agent shall prepare and propose the adoption of a Treasury Plan ~~that is consistent with the principles, parameters, requirements and conditions set forth in Schedule 3,~~

[10] Consider if a quantitative limit needs to be included in the legislation.

~~together with and subject to such conditions and requirements as may be specified in a further written order of the Minister of Energy or in accordance with the Regulation.~~ If the Administrative Agent is unwilling or unable to prepare and propose the adoption of a Treasury Plan, the Minister of Energy may by written order designate one or more other persons to prepare and implement such a Treasury Plan.

(2) **Required Terms and Conditions of the Treasury Plan** – The Treasury Plan shall establish the basis for funding decisions that have the effect of allocating the Unrecovered Transition Costs across present and future Ratepayer Groups on a basis that is consistent with the Fair Allocation Plan. The Treasury Plan shall be consistent with the principles, parameters, requirements and conditions set forth in Schedule ~~C~~3 and such other conditions and requirements as may be specified in a written order of the Minister of Energy [or in accordance with the Regulation].

(3) **Power to Review and Approve the Treasury Plan** – The Minister of Energy may, by written order, designate one or more persons to review ~~and, if considered necessary, require and prescribe amendments of~~ the Treasury Plan and to review and assess the consistency of the Funding Obligations incurred with such Treasury Plan, and the Minister of Energy may specify ~~conditions and~~ requirements in respect of such review ~~and prescriptions as may be~~ in such written order. The Administrative Agent, or such other person(s) as may be designated by written order of the Minister of Energy made pursuant to Section 8(1), shall make any such amendments to the Treasury Plan, and submit a revised Treasury Plan to the **[OEB]** for approval within [the time period specified in such written order~~.~~]/[[•] days of such written order].[***Consider periodic amendments to the Treasury Plan following an annual review; provided that amendments cannot affect the existing Funding Obligations. Consider the level of oversight the MoE/OEB will have over this process?***]

(4) Approval of Treasury Plan – The **[OEB]** shall have the power to and shall approve or disapprove of the Treasury Plan based solely on whether the Treasury Plan is consistent with (i) the principles, parameters, requirements and conditions set forth in Schedule 3, (ii) such other conditions and requirements as may be specified in a written order of the Minister of Energy [or in accordance with the Regulation] [and (iii) the Fair Allocation Plan]. If the **[OEB]** approves the Treasury Plan, then such Treasury Plan shall be implemented by the Administrative Agent. If the OEB disapproves of the Treasury Plan or otherwise fails to approve the Treasury Plan, then the Administrative Agent shall re-submit the Treasury Plan with such amendments as the Administrative Agent shall consider necessary for the Treasury Plan to be approved by the OEB.

(5) ~~(4)~~ **Consistency with the Fair Allocation Plan** - Funding Obligations should only be incurred if Repayments and Funding Costs would be borne by present and future Designated Ratepayers on a basis that is [generally] consistent with their respective allocations of the costs and benefits of the Green Generation Initiative contemplated in the Fair Allocation Plan. In that regard, at the time of setting the Fair Allocation Plan for any particular period, the aggregate amount payable during future Reference Periods on account of Funding Obligations incurred on or before the date on which a new Funding Obligation is incurred should not exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Ratepayer Group contemplated in the Fair Allocation Plan. If, despite the foregoing, the Administrative Agent determines that 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 Ratepayer Group under the then current Fair Allocation Plan, the Treasury Plan shall require the Administrative Agent to make diligent efforts 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, if such a Refinancing or deferral is determined to be available the Treasury Plan shall require the Administrative Agent to make diligent efforts to implement such Refinancing or deferral on a basis that is consistent with the Fair Allocation Plan.

(6) **Establishment of Special Purpose Entities** – If the implementation of the Treasury Plan contemplates the establishment of one or more special purpose finance entities to incur Funding Obligations under the Treasury Plan, as an Absolute Assignee and on a basis that limits the recourse for the payment of such Funding Obligations to such Absolute Assignee's interest in, to and under the Regulatory Asset, the Administrative Agent shall have regard to the characteristics specified in Schedule 4 in establishing such special purpose entity.]

(7) ~~(5)~~ **Obligation to Apply IESO Remittances** – The Administrative Agent shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Regulatory Asset Owner, or otherwise in respect of or as proceeds from the Regulatory Asset shall only be applied or used to pay Finance Amounts when they are due and payable and for no other purpose.[11]

(8) ~~(6)~~ **Non-Recourse** – The Treasury 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 Invoicing Agent, and Alternative Collection Agent, the Administrative Agent, the OEB ~~or~~, 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 Part or expressly 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].]

(9) ~~(7)~~ **Incurrences are Binding** – Despite any failure to adhere to the Treasury Plan or to comply with any requirement of this Part, all amounts payable or becoming due and payable by or on behalf of the Regulatory Asset Owner under or in connection with any obligation purporting to be a Funding Obligation, shall be deemed to be binding for the purposes of this Part, including in determining the amount of Transition Charges, despite any impairment or defect resulting from such failure.

Article 9 – Compliance Matters

(1) **Right of the [OEB] to Inspect Books and Records** - For the purpose of investigating compliance with the provisions of this Part, the [OEB] shall have the right, jurisdiction, power and authority to examine the books and records of any person who is or may become obligated or have duties that arise under this Part or any Funding Obligation.

[11] We need to work in the idea that there may be Finance Reserve Deposits or other amounts that remain after paying Finance Amounts. Those surplus amounts should be credited back to Ratepayers.

(2) **Power to Investigate Compliance and Impose Regulatory Sanctions** - Subject to the limitations set forth regarding the irrevocability of Transition Charges and the Undertaking of the ~~Province~~Lieutenant Governor in Council, nothing in this Part shall (a) prevent or preclude the [OEB] from investigating the compliance of any person who is or may become obligated or have duties that arise under this Part [or any Funding Obligation] with the terms and conditions of this Part and requiring compliance by such person therewith; or (b) prevent or preclude the authority or any successor regulator from imposing regulatory sanctions against any person who is or may become obligated or have duties that arise under this Part for its failure to comply with the terms and conditions of this Part.

(3) **[Other Rating Settings** – When setting other rates for or in respect of any person who is or may become obligated or have duties that arise under this Part, including any Electricity Distributor, IESO, Generator or the Administrative Agent, nothing in this Part shall prevent the [OEB] or any successor regulator from taking into account the collection by or attribution to such person of administrative or servicing fees in excess of the actual incremental costs incurred by such person of providing administrative or servicing services.]

Article 10 – Undertaking of the ~~Province~~Lieutenant Governor in Council

(1) **No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections** – The ~~Province~~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 ~~Province~~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 ~~Province~~Lieutenant Governor in Council.

(2) **Undertaking and Agreement** – The ~~Province~~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 ~~Province~~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 ~~Province~~Lieutenant Governor in Council, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 11 – Regulations

Regulations may be made under this Part 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 expectations of the Province associated with any Regulated Asset Owner incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Costs; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Treasury 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 Part;

(c) to set out reasonable expectations 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 Part [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by the Regulatory Asset Owner 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 Treasury Plan.

Article 12- Miscellaneous

(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 ~~Ontario~~the Province.

(2) **Conflict of law** – In the event of conflict between this Part 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 Part 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 Part shall be required with respect to the actions to be taken in compliance with this Part, including under the Treasury Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Part or the Treasury 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 Treasury Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Part, if any provision of this Part 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 Part that is taken by any person who is or may become obligated or have duties that arise under this Part [or under any Funding Obligation] and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Part 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 Part are intended to be severable and that the Legislature would have enacted this Part even if any Article, Section, paragraph or subparagraph of this Part held to be unconstitutional or invalid had not been included in this Part.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3

Principles, Parameters, Requirements and Conditions for Establishing the Treasury Plan

~~**Section [X] – Procedure to Adopt a**~~

The Treasury Plan shall have regard to the following principles, parameters, requirements and conditions:[***Consider others.***]

(1) ~~**Submission of Treasury Plan** – The person(s) designated by written order of the Minister of Energy under Section 8(1) shall prepare a Treasury Plan and submit it to the Minister of Energy and any person designed by the Minister of Energy under Section 8(2) to review such Treasury Plan [within the time period specified in such written order]/[within [•] days of such written order]. Such person(s) shall implement any changes proposed under Section [X](3) and submit the revised Treasury Plan to the [OEB] for approval within [within the time period specified in such written order]/[within [•] days of such written order].~~the Treasury Plan shall, in respect of each Reference Period, describe the allocations of Unrecovered Transition Costs to each Reference Group as contemplated by the Fair Allocation Plan;

(2) ~~**Content of Treasury Plan** – Any Treasury Plan shall have regard to the following specifications:~~the Administrative Agent shall make a good faith estimate of the Funding Shortfalls for each Reference Period, based on the terms of the Power Contracts and assumptions considered to be reasonable respecting forward market prices for electricity;

(3) the Administrative Agent shall describe alternative funding arrangements considered to be suitable for the purpose of funding the estimated Funding Shortfalls, including by reference to short term and/or long term Funding Obligations that could reasonably be incurred by Regulatory Asset Owner for such purpose;

(4) such Funding Obligations shall reflect quantities, maturities, payment obligations, prepayment or redemption rights and such other features so that the effect of incurring such Funding Obligations would be that the payments made thereunder in respect of each Reference Period (including the anticipated Finance Amounts becoming payable in relation to such Funding Obligations) would reasonably correspond to the allocations of Unrecovered Transition Costs to the applicable Reference Group under the Fair Allocation Plan;

(5) the Treasury Plan shall reflect the outcome of a financial model that incorporates the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges attributed to a hypothetical Ratepayer 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); [***Consider what outputs from OPG will be tested by the OEB and when. The modelling in the Treasury Plan may permit the OEB to check progress against the model from time to time, which may provide a basis for the MoE/OEB to require a review/amendment to the Treasury***

Plan if the ongoing operation of the program results in significant deviation from the model. Consider whether this flexibility is desirable.]

(6) the Administrative Agent, for and on behalf of each Regulatory Asset Owner, shall seek to 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 Regulatory Asset Owner[s] will require committed access to short term liquidity to cover estimated 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 a Regulatory Asset Owner to repay an amount in relation to a Reference Period that would have the effect of the Treasury Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Unrecovered Transition Costs to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the Administrative Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations shall not obligate a Regulatory Asset Owner to repay an amount in relation to a Reference Period that would have the effect of the Treasury Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Unrecovered Transition Costs to the applicable Reference Group under the Fair Allocation Plan;

c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Administrative Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Administrative Agent shall cause the [applicable] Regulatory Asset Owner to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the Administrative Agent will select counterparties under any transaction to be entered into by a Regulatory Asset Owner, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the Administrative Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard

to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Administrative Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(7) ~~a. A description of how the incurrence of Funding Obligations by present and future Designated Ratepayers will be~~the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the Funding Shortfall from time to time on a basis that is consistent with ~~their respective~~the allocations of ~~costs and benefits as contemplated in~~Unrecovered Transition Costs to applicable Reference Groups under the Fair Allocation Plan;

~~b. The form, amount and timing of Funding Obligations under the Treasury Plan; and~~

(8) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(9) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Administrative Agent and other agents and service providers to the Regulatory Asset Owner[s] may be determined, allocated and paid;

(10) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(11) ~~c.~~ the ~~entities involved in the incurrence of Funding Obligations and execution of the Treasury Plan.~~basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

~~(3) **Review of Treasury Plan**– The Minister of Energy, or the person(s) designated by written order of the Minister of Energy under Section 8(2), shall review the Treasury Plan submitted in accordance with Section [X](1) and propose any changes to such Treasury Plan that are necessary or desirable to align the Treasury Plan with the requirements set out the [Minister's Order].~~

~~(4) **Approval of Treasury Plan** – The **[OEB]** shall have the power to and shall approve or disapprove of the Treasury Plan based solely on whether the Treasury Plan includes the specifications contemplated under Section [X](2) and whether those specifications [accord with] the assumptions, conditions, requirements and standards set out in the Treasury Plan and the order(s) of the Minister of Energy issued under Section 8(1) and 8(2). If the **[OEB]** fails to approve or disapprove any Treasury Plan within [30] days of [receiving such Treasury Plan],[12] the Treasury Plan is deemed to have been approved.~~

~~[12] Consider whether the Minister's order should set out timelines for each of steps contemplates by this Section [X], or whether these time periods should be hard-coded into the legislation.~~

(12) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(13) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(14) the basis upon which any Disposition may be made or effected by a Regulatory Asset Owner, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(15) a description of each special purchase entity that will purchase the Regulatory Asset from the IESO, including proposed capitalization, governance, and restrictions on their powers and activities having regard to the parameters in Schedule 4; and

(16) the basis on which any Pledge may be given or effected.

~~Section [X] —~~

CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

Schedule 4

Creation of ~~the [OPG Financing Entity~~any Special Purpose Entity to become a Regulatory Asset Owner~~]~~

(1) ~~Creation of the [OPG Financing Entity] – The person(s) designated by written order of the Minister of Energy under Section 8(1) to implement a Treasury Plan may [create] one or many entities, each known as a "OPG Financing Entity" having regard to the following principles:~~**Powers and Abilities**:

a. No part of the revenue or assets of a ~~OPG Financing Entity~~Regulatory Asset Owner shall enure to the benefit or be distributable to its trustees, officers or directors, as the case may be, or any other private persons, except as may be provided for actual services rendered;

b. ~~OPG Financing Entity~~Each Regulatory Asset Owner shall be authorized to:

i. ~~issue bonds~~incur the Funding Obligations contemplated by a Treasury Plan and use the proceeds thereof to purchase or acquire, and to own, hold and use the Regulatory Asset;

ii. contract for servicing of the Restructuring Asset and any bonds contemplated by a Treasury Plan and for administrative services; and

iii. pledge the Regulatory Asset to secure ~~bonds contemplated by a Treasury Plan.~~the Funding Obligations incurred by the Regulatory Asset Owner;

c. So long as any ~~bonds~~Funding Obligations contemplated under a Treasury Plan are outstanding, ~~OPG Financing Entity~~the Regulatory Asset Owner shall not be authorized to merge or consolidate, directly or indirectly, with any person or entity~~.~~;

d. ~~OPG Financing Entity~~the Regulatory Asset Owner shall not have the power or authority to incur or guarantee or otherwise become obligated to pay any debt or obligations other than what is contemplated under a Treasury Plan~~.~~;

e. ~~OPG Financing Entity~~the Regulatory Asset Owner shall cause the proceeds ~~of any bond issuance contemplated under a Treasury Plan~~obtained by incurring any Funding Obligation to be placed in one or more separate accounts and used only to purchase the Regulatory Asset and pay any costs as provided for in a Treasury Plan~~.~~; and

f. ~~S~~so long as the Regulatory Asset is pledged to secure ~~bonds issued under a Treasury Act, the OPG Financing Entity~~Funding Obligations, the Regulatory Asset Owner must apply revenues from the collection of Transition Charges only to repay ~~bonds~~such Funding Obligations and other costs as provided for in a Treasury Plan.

(2) **Governance of ~~[OPG Financing Entity]~~** ~~– A person or persons that effect the creation of OPG Financing Entity shall design the governance of OPG Financing Entity~~**Regulatory Asset Owner** – The Regulatory Asset Owner shall shall be created having regard to the following principles:[***OPG to confirm if SPE will be a trust or another type of entity.***]

a. **[Number of trustees]**

b. **[Replacement of trustees; vacancies; appointment of successors]**

c. **[Removal of trustees for neglect of duty or misconduct]**

d. **[Quorum and meetings]**

e. **[Fiduciary duty]**

f. **[Isolation, separateness and other "non-consolidation" and "bankruptcy remoteness" criteria]**

g. **[Delegation of powers and duties to administrative agents]**

h. **[Delegation of powers and duties to administrative agents]**

Document comparison by Workshare Compare on Wednesday, April 05, 2017 9:13:18 AM

Input:	
Document 1 ID	PowerDocs://TOR_2528/23107566/5
Description	TOR_2528-#23107566-v5-Part_V.2_of_the_Electricity_Act_(Fair_Hydro)
Document 2 ID	PowerDocs://TOR_2528/23107566/7
Description	TOR_2528-#23107566-v7-Part_V.2_of_the_Electricity_Act_(Fair_Hydro)
Rendering set	Standard

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

Statistics:	
	Count
Insertions	147
Deletions	90
Moved from	6
Moved to	6
Style change	0
Format changed	0
Total changes	249

Calwell, Carolyn (ENERGY/MEDEI/MRI)

From: JACKSON, ADAM <ADAM.JACKSON@blakes.com>
Sent: May-02-17 5:15 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Johnson, Paul (ENERGY/MEDEI/MRI)
Cc: ASHBOURNE, STEPHEN
Subject: RE: enforcement

Hi Carolyn,

Apologies for the delay in getting back to you, but I have been tied up on another urgent matter.

We propose to add a new provision to give the investment asset owners standing to bring an action. This is broadly consistent with the approach in the New York legislation, but note that an order can only be made against an electricity vendor, the IESO or the Financial Services Manager, and not against the ratepayers or the Province. The words are also broadly consistent with Section 253 of the OBCA, in case you are trying to find precedent language from existing Ontario legislation.

"Where an electricity vendor, the IESO or the Financial Services Manager does not comply with this Act or the regulations, an investment interest owner may, in addition to any other right the investment interest owner has, apply to the Superior Court of Justice for an order directing the person to comply with, or restraining the person from acting in breach of, any provisions thereof , and for an order to compensating the investment interest owner."

We also propose to amend the regulatory power to contemplate compensation for a breach of any provision of the Act, which gives some flexibility to direct the compensation regime at a later date. We anticipate that the compensation regime in the regulations may ultimately refer to a breach of the pledge in Section 5xx.

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

Steve and I have discussed, and we think this approach balances the various interests. Feel free to call either of us if you'd like to discuss.

Thanks,
Adam

Adam Jackson
adam.jackson@blakes.com
Dir: 416-863-4324

-----Original Message-----
From: Calwell, Carolyn (ENERGY/MEDEI/MRI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: Tuesday, May 02, 2017 12:56 PM
To: JACKSON, ADAM; Johnson, Paul (ENERGY/MEDEI/MRI)
Cc: ASHBOURNE, STEPHEN
Subject: RE: enforcement

Hi Adam - where is your thinking on this one. Leg Counsel is pushing us and I see Oslers has commented again. We need any fix you can offer, asap. Thanks.

Carolyn

-----Original Message-----
From: JACKSON, ADAM [mailto:ADAM.JACKSON@blakes.com]
Sent: April-28-17 6:17 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Cc: ASHBOURNE, STEPHEN
Subject: Re: enforcement

Hi Carolyn,

On reflection, I wanted to flag that this right to seek compensation is more limited than the rights afforded to investment asset owners under the comparative US legislation (which contemplates that the courts can make other orders).

We'll give some further thought to this section on standing. It may be one of the items that we need to revisit at committee.

Thanks,
Adam

On Apr 28, 2017, at 5:56 PM, JACKSON, ADAM <ADAM.JACKSON@blakes.com<mailto:ADAM.JACKSON@blakes.com>> wrote:

Hi Paul,

I am not sure that the cross-reference to Section 25 is correct. Section 25 talks about the right to invoice and collect the clean energy adjustments, but the remedy should be tied to a failure by the electricity vendor or IESO to actually invoice, collect and remit those amounts.

Thanks,
Adam

On Apr 28, 2017, at 4:47 PM, Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca<mailto:Paul.Johnson3@ontario.ca>> wrote:

Hi Adam.

On further consultation with Leg Counsel and MAG, the issue was raised that, under the Standing Orders, "Regulations should not impose a fine, imprisonment or other penalty". We've re-drafted the language to frame the remedy as a right of compensation:

The LGIC may make regulations providing for a right of compensation for investment interest owners affected by a breach of s25 and the manner in which such a right may be enforced under this Act.

Please let me know if you have any concerns with the edits.

Paul

From: Johnson, Paul (ENERGY/MEDEI/MRI)
Sent: Friday, April 28, 2017 1:59 PM
To: 'JACKSON, ADAM'; Calwell, Carolyn (ENERGY/MEDEI/MRI); ASHBOURNE, STEPHEN
Cc: STOKES, BRYSON; WILSON, JUDY
Subject: RE: enforcement

I sent the following two options to MAG for their input (they were fine with either one). The first punts everything to the regulations. The second places the bare cause of action in the statute proper and moves the types of remedy to be prescribed by regulation.

- The LGIC may make regulations prescribing the manner in which investment interest owners may enforce their rights under this Act, including their enforcement rights in Section 25.XX(1).

-or-

- (1) An application may be made to the Superior Court of Justice for a determination that any person has not complied with, or is not complying with, this Act.

- (2) The LGIC may make regulations prescribing the orders a court may make to restrain the conduct complained of or to compensate a person who makes an application under subsection (1).

Please let me know if there are any preferences and I will send instructions to Legislative Counsel.

Paul

Paul Johnson | A/Deputy Director | Legal Services | ENERGY | MEDG | MRIS | MOI | ACCESSIBILITY 18th Floor, 56 Wellesley Street West, Toronto ON M7A 2E7 | Tel: 416-325-1834
This communication is subject to solicitor-client privilege.

From: JACKSON, ADAM [mailto:ADAM.JACKSON@blakes.com]
Sent: Friday, April 28, 2017 1:05 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); ASHBOURNE, STEPHEN
Cc: STOKES, BRYSON; WILSON, JUDY; Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: RE: enforcement

Thanks, Carolyn. That was our initial reaction as well.

Adam

Adam Jackson
adam.jackson@blakes.com<mailto:adam.jackson@blakes.com>
Dir: 416-863-4324
From: Calwell, Carolyn (ENERGY/MEDEI/MRI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: Friday, April 28, 2017 12:49 PM
To: JACKSON, ADAM; ASHBOURNE, STEPHEN
Cc: STOKES, BRYSON; WILSON, JUDY; Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: RE: enforcement

Thanks, Adam. I'm getting squeamish about this provision. At this point, I would feel better buying some time and pushing this into a regulation.

From: JACKSON, ADAM [mailto:ADAM.JACKSON@blakes.com]
Sent: April-28-17 12:40 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); ASHBOURNE, STEPHEN
Cc: STOKES, BRYSON; WILSON, JUDY; Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: RE: enforcement

Hi Carolyn,

Here is an alternative proposal based on s.253 of the OBCA:

"Where a person does not comply with this Act or the regulations, an investment interest owner, any creditor of an investment interest owner or any Financial Services Manager may, in addition to any other right the investment interest owner, the creditor of an investment interest owner or the Financial Services Manager has, apply to the Superior Court of Justice for an order directing the person to comply with, or restraining the person from acting in breach of, any provisions thereof, and for an order to compensating the investment interest owner, creditor of an investment interest owner or Financial Services Manager, and upon such application the court may so order and make any further order it thinks fit."

This language preserves the reference to "make any order it thinks fit" at the end of the section, but you could argue that this discretion of courts should be read in the context of the words that come before, which may limit what the court would reasonably do in the circumstances.

Feel free to call if you'd like to discuss.

Thanks,
Adam

Adam Jackson
adam.jackson@blakes.com<mailto:adam.jackson@blakes.com>
Dir: 416-863-4324
From: Calwell, Carolyn (ENERGY/MEDEI/MRI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: Friday, April 28, 2017 11:26 AM
To: JACKSON, ADAM; ASHBOURNE, STEPHEN
Cc: STOKES, BRYSON; WILSON, JUDY; Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: RE: enforcement

This is what our MAG colleague proposed.

* An application may be made to the Superior Court of Justice for a determination that any person has not complied with, or is not complying with, this Act and, upon such application, the court may make any order it thinks fit, including an order restraining the conduct complained of and an order to compensate an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager.
* An appeal lies to the Court of Appeal from any order made by the court under this section.

Paul, please weigh in.

From: JACKSON, ADAM [mailto:ADAM.JACKSON@blakes.com]
Sent: April-28-17 11:24 AM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); ASHBOURNE, STEPHEN
Cc: STOKES, BRYSON; WILSON, JUDY
Subject: RE: enforcement

Hi Carolyn,

I prefer the second option, which gives us an opportunity to flesh the enforcement mechanics out in the regs.

The first proposal is too broad - to say that a court can make any order it sees fit introduces too much uncertainty.

Thanks,
Adam

Adam Jackson
adam.jackson@blakes.com<mailto:adam.jackson@blakes.com>
Dir: 416-863-4324

<image001.gif>

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: Friday, April 28, 2017 10:07 AM
To: ASHBOURNE, STEPHEN; JACKSON, ADAM

Cc: STOKES, BRYSON; WILSON, JUDY
Subject: enforcement

Hi - I spoke to Torys and OPG about their standing and remedies language. I propose instead the following:

(x) An application may be made to the Superior Court of Justice for a determination that any person has not complied with, or is not complying with, this Act. and, upon such application, the court may make any order it thinks fit.

There is a chance that this will cause a problem for my Ministry of the Attorney General colleauges. As a second option, Torys proposes:

LGIC may.(x) prescribe the manner in which investment interest owners may enforce their rights under this Act, including their enforcement rights in Section 25.XX(1).

Does either option cause you any concern?

Carolyn Calwell
Legal Director
MAG Civil Law Division
Ministries of Energy / Economic Development & Growth / Research, Innovation & Science / Infrastructure / Accessibility
416-212-8392

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Calwell, Carolyn (ENERGY/MEDEI/MRI)

From: BEAGAN FLOOD, CATHY <CATHY.BEAGANFLOOD@blakes.com>
Sent: May-02-17 4:57 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); WILSON, JUDY
Cc: HOGG, PETER
Subject: RE: Two Constitutional Issues

Privileged and Confidential

Carolyn,

Our concern about 7xx(1) results from the SCC's decision in Confédération des syndicats nationaux v. Canada (Attorney General), [2008] 3 SCR 511, 2008 SCC 68 ("CSN"), which dealt with unemployment insurance premiums. The SCC held that the premiums were valid regulatory charges in years when they were set under section 66 of the Act, which provided:

The Commission shall, with the approval of the Governor in Council on the recommendation of the Minister and the Minister of Finance, set the premium rate for each year at a rate that the Commission considers will, to the extent possible,

(a) ensure that there will be enough revenue over a business cycle to pay the amounts authorized to be charged to the Employment Insurance Account; and
(b) maintain relatively stable rate levels throughout the business cycle.

The SCC held the principles in s. 66 connected the premium to the regulatory scheme, such that it was valid even in years when the account ran a significant surplus.

However, there were three years in which the Act was amended to have the premiums set directly by Cabinet – without regard to the principles set out in s. 66. The SCC held that in those 3 years, the premiums were a tax and not a regulatory charge, because the legal connection between the premium setting system and the regulatory scheme ceased to exist.

We agree with you that the purpose clause will always guide and constrain discretion given to the LGIC or any other delegate; however, the contrast between 7xx(2) and 7xx(1) is problematic, because in (2) the rates after 2021 must be set having regard to principles one would expect given the preamble and purpose clause, but by implication those principles aren't considerations in 2018-2021. Even apart from the contrast between (1) and (2), we are worried that the current 7xx(1) looks too much like the 3 years in CSN in which the premiums were found to constitute a tax.

On 8xx(2), we'd propose:

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 whether any estimate, projection or other input in calculating the clean energy adjustment was erroneous or out-of-date at the time of the calculation or is subsequently amended, updated or corrected.

I note that the preservation of the requirement to pay despite subsequent amendments is also covered off in part by 15xx(6) in version 18 of the draft legislation ("(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."), as well as in 16xx(7) in the mark-up Steve sent you at 1 pm.

I'm happy to discuss further if that would be helpful.

Catherine Beagan Flood
Partner
cbe@blakes.com
Office: 416-863-2269
Mobile: 416-209-9478

-----Original Message-----
From: Calwell, Carolyn (ENERGY/MEDEI/MRI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: Tuesday, May 02, 2017 12:49 PM
To: WILSON, JUDY
Cc: BEAGAN FLOOD, CATHY; HOGG, PETER
Subject: RE: Two Constitutional Issues

Thank you, Judy, Peter and Cathy.

On 7xx(1), it would help me to better understand why the preamble and purpose clauses do not go far enough? I understood both of these provisions to be overarching context for all of the rate setting that we are doing, including rates in all of Part II. If they don't go far enough, can we not use the regulations, which the section enables in the context of the methodology, to establish these principles? Perhaps you can help me understand the risk of not making the change more precisely.

Regarding 8xx(2), we discussed extensively various standards that we could apply to the Financial Services Manager in determining the clean energy adjustments. OPG and those with market insight were worried about introducing an avenue by which clean energy adjustments could be challenged. I am open to this change, but I am at a loss as to how to strike the balance between market needs and the interests of rate payers. If you can propose specific language to amend this section, I am open to it.

The bill has now been sent for editing and French translation, so we will only be able to make edits through motion at clause by clause.

Carolyn

-----Original Message-----
From: WILSON, JUDY [mailto:JUDY.WILSON@blakes.com]
Sent: May-02-17 11:11 AM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Cc: BEAGAN FLOOD, CATHY; HOGG, PETER

Subject: Two Constitutional Issues

Peter and Cathy are down to these two issues:

1. Section 7xx(1) needs to establish principles for the setting of the rates after April 30, 2018 and before June 30, 2021. The other alternative is to say (2) applies any time after April 30, 2018 (and the CEA would just be zero).

2. Section 8xx(2) which looks like it is preserving a right to be unfair. It should really be narrowed to a circumstance where notwithstanding that efforts have been made to make a fair allocation, the allocation ends up being wrong, the lenders are protected from a reversal.

We appear to be okay other than these two issues (but they are worried about these two)

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Intergenerational Fairness in Hydro Rates Act, 2017 (draft)

IESO Issues

1. We have received advice from KPMG that it is critical to the ability of IESO to book a regulatory asset (which in turn is critical to the overall transaction) that the statutory language ensures that IESO has an effective right of recovery in respect of any IESO Funding Shortfall not transferred to the SPV. In our view, recovery by the IESO should be determined by OEB in accordance with the regulations and/or the Fair Allocation Plan. To this end, the IESO proposes that s 25.33 of the EA/O Reg 430/04 be amended, as necessary, to provide for the IESO to record the IESO Funding Shortfall amount in a variance account and to provide for the OEB to eliminate and dispose of the variance account balance as part of the RPP adjustment process under the OEB Act, with such necessary OEB accounting order.

22. (1) The IESO has property rights and interests, which together constitute a regulatory asset, in the recovery of the IESO funding shortfall. (1.1) The right to recover the IESO funding shortfall under subsection (1) is subject to the following limits: 1. The amount recovered in respect of a reference period may not exceed the amount by which the [fair allocation] in respect of a reference period exceeds the amount of the clean energy adjustment for the reference period. 2. No part of the funding shortfall shall be recovered before May 1, 2022. (2) The establishment of the regulatory asset is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment. 22.1 (1) Subject to the approval by order of the Ontario Energy Board, the IESO shall record the IESO funding shortfall from time to time in its books. (2) The Ontario Energy Board may, in accordance with the regulations, by	22. (1) The IESO has the right, exercisable in accordance with this Act and the regulations to recover the IESO funding shortfall. [This right constitutes a regulatory asset and a property right.] NTD: to the extent qualification as a regulatory asset is an accounting judgment there may be little value in attempting to dictate that result by statute. However, the use of a defined term "regulatory asset" for other purposes is fine. Is the intent that Sections (1.1)(1) and (1.1)(2) would limit the recovery rights of the Investment Asset Owner or just the IESO in respect of the regulatory asset. Any material express limitation or condition attached to the IESO right of recovery based on the fair allocation plan is likely to be problematic as impairing the effective right of recovery. If this is the result then IESO may be treated as an equity holder and may not be able to recognize the regulatory asset. In addition, Section (1.1) 1 appears to reintroduce the concept that IESO's

order specify how the IESO funding shortfall must be recorded.	funding shortfall amount ranks subsequent to the clean energy adjustment amount such that the recovery of the IESO's funding shortfall in a reference period is limited to whatever space is left under the fair allocation curve. . If the right to record the shortfall is subject to an OEB order, that order may need to be obtained in advance This language and structure may not be definitive enough to provide for a real right of recovery of any regulatory asset amount held by the IESO. The statute should provide that the IESO be required to record the funding shortfall in a variance account (without having to obtain OEB approval) and that the OEB be required, as prescribed by regulation, to provide for recovery of the variance amounts recorded - presumably the regulation could provide when, after 2022, and in what manner (i.e., over what period of time) the IESO can recover any regulatory asset amount. OEB, by accounting order, would establish an IESO [fair hydro] variance account and indicate what IESO shortfalls may be included in it. The OEB is not approving each funding shortfall. The OEB's role in recovery would be to include the funding shortfall variance in future prices so IESO may recover it. In Section 6, OEB also needs to continue to determine what RPP price would have been payable but for the price set by Section 6. This is needed so LDCs know what amount would have been invoiced, so IESO in turn, based on information provided by LDCs, can determine the funding shortfall.

8.2 The IESO and the Financial Services Manager shall not, at any time, exceed the limits set out in the applicable Fair Allocation Plan.	Note that Section 7 restricts prices increases to inflation forever. We suggest redrafting this to delete "for inflation" in paragraph 2. Section 8.2 is unclear with respect to what limits cannot be exceeded. It introduces uncertainty with respect to the IESO right to record a shortfall and the IESO right of recovery. It may therefore prejudice the accounting treatment.

2. In our view, the IESO should become and remain the owner of a distinct asset, defined as the Regulatory Asset. Upon a "transfer" of all or a portion of this Regulatory Asset, the Investment Asset owner acquires an Investment Asset. On this construct the IESO is not a co-owner with the Investment Asset owner of an asset, the IESO's portion of which is the Regulatory Asset and the Investment Asset's owners potion of which is the Investment Asset. The IESO, based on conversations with KPMG, believes that it obtains a better result from an accounting perspective if it owns a distinct asset, as opposed to a co-ownership interest which is likely to be treated as a residual or subordinated interest.

23. (1) The IESO may transfer the regulatory asset in accordance with the Financing Plan. 23.1 Upon transfer of the regulatory asset or a portion of the regulatory asset, the regulatory asset or portion is deemed to be an investment asset and is vested in the investment asset owner.	NTD: The IESO right to transfer should not be subject to compliance with the Financing Plan. Consider corresponding amendment to Section 8.1 (1.1) so that the Fair Allocation Plan and the Financing Plan do not limit the ability of the IESO to transfer, or collect in respect of, a Regulatory Asset which has already arisen.

"regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, **the portion of the regulatory asset that is not deemed to be an investment asset;** "investment asset" means all or part of the regulatory asset that is deemed to be an investment asset under section x;	23. The IESO may, from time to time, transfer all or any portion of the regulatory asset. Upon a transfer of all or a portion of the regulatory asset, the investment asset owner acquires an investment asset to which this Act applies. Any such transfer shall be without recourse to the IESO and upon any such transfer the IESO (or any person claiming through the IESO) shall have no further right, title or interest in (except as express provided herein) or any obligations in respect of, the portion of the regulatory asset transferred, or the corresponding investment asset. "regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, **the portion of the regulatory asset that has not been transferred;** "investment asset" the investment asset established under section x;

3. We think that further particulars will be required in relation to the definition of the Funding Shortfall. Therefore we would add reference to "as prescribed by regulations" to address the need to provide for any variance/true up. We also need regulations to address recovery of IESO funding costs (which at moment legislation does not address).

22.2 (1) The IESO shall determine the IESO funding shortfall for each month in a reference period by calculating the difference between the following amounts: 1. The sum of all invoice amounts issued to specified consumers for the month. 2. The sum of all invoice amounts that would have been issued to	22.2 (1) The IESO shall determine the IESO funding shortfall for each month in a reference period in accordance with the regulations. NTD: We think that the reference to a "reference period "is unnecessary. Alternatively make provision for the addition or subtraction of additional amounts as further prescribed by

specified consumers for the month if paragraphs 1 and 2 of section 7.2 did not apply. (2) The determination under subsection (1) shall be made based on the amount of electricity actually used by specified consumers during the reference period.	regulations.

4. For a number of reasons it is difficult to treat the transaction between the IESO and the Financing Trust as a transaction which is in law a transfer, sale or assignment. That terminology implies the transfer of property from one person to another. First, there remains uncertainty at law (even with the revised "fishing licence language") with respect to the whether the Investment Asset acquired by the Investment Asset Owner is property. Second, there is a higher level of uncertainty with respect to whether the Regulatory Asset is property, given that the Regulatory Asset does not have the same level of certainty of recovery as does the Investment Asset, and lacks some of the ancillary rights attached to the Investment Asset. Third, even if both the Regulatory Asset and the Investment Interest constitute property, there is a continuity gap between them since the rights acquired by the Investment Owner are different from the rights disposed of by the IESO.

We think that the best way of proceeding is for the Act to state specifically that upon any "transfer", the IESO has no further rights in the Regulatory Asset, or portion thereof transferred and the Investment Asset Owner acquires the corresponding Investment Interest free of any adverse claim. Since, in both cases, these rights are a creature of statute, it is hard to see how such a stipulation could realistically be challenged. However, in order to avoid circularity, the term "transfer" needs to be defined more broadly so that it is not dependent upon there being a transfer at common law.

"transfer" means an assignment, conveyance, disposition or sale.	"transfer" means (i) in relation to the regulatory asset, or any portion thereof, any act of IESO which states that is a "transfer" of all or any portion of the regulatory asset for purposes of this Act or any other act of the IESO by which the IESO purports to dispose of its interest in all or any portion of the regulatory asset and, as a result, constitute a named person the owner of an investment asset under this Act and (ii) in relation to an investment

	asset or any portion thereof ...., and, in each case, transferred shall have a corresponding meaning.
25. (1) A transfer of a ~~regulatory asset or~~ an investment asset under this Act that is expressed to be a sale or an absolute assignment is a valid and enforceable sale and absolute assignment of the regulatory asset or investment asset, as the case may be, and confers upon the owner of the investment asset acquired a valid property right and interest in, to and under the applicable investment asset in accordance with the terms of the transfer. (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. (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.	Probably unnecessary, at least in relation to the Regulatory Asset, because of the effect given to a transfer of the Regulatory Asset in Section 23. In any event, because of the differences in the definition of "transfer" and because discontinuity is an issue for the Regulatory Asset but not for the Investment Interest, we would suggest that there be separate provisions dealing with the transfer of the Regulatory Asset and the Investment Interest. NTD: not sure that there is any value in deeming a transfer to be absolute.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the owner of the investment asset shall have priority over any liens in favour of such other persons.	NTD: Perfection not likely relevant. Transfer should be free of any adverse claim.

5. While the electricity distributors can be sub-servicers of IESO as servicer, IESO can assume no responsibility for their performance obligations. Again, we are advised that this is critical from an accounting perspective.

13x. (1) Each electricity vendor shall [in accordance with the regulations?] determine the proportionate share of clean energy adjustments payable on a monthly basis by each of its specified consumers. (2) The electricity vendor shall issue an invoice to each specified consumer for the applicable amount of clean energy adjustments in accordance with the regulations. (3) Each electricity vendor shall, as an agent of the IESO, make reasonably diligent efforts to collect clean energy adjustments from specified consumers.	(4) The IESO shall not be liable to the Investment Asset Owner, any pledgee, or any person claiming through the Investment Asset Owner or any pledgee, for any failure to collect or remit, or any other breach or failure to perform, by any electricity vendor. Do we need to address the very limited circumstance of the IESO as an electricity vendor? Section 13x(1) does not appear to contemplate a volumetric rate, but rather the LDC determining a fixed amount payable by each of its consumers.

6. For constitutional reasons related to the federal bankruptcy power, limit the unnecessary use of "deeming provisions".

Section 15x (2) The amounts required to be deposited or received into the account are deemed to be held in trust for the investment asset owner.	(2) The amounts deposited into the account, until paid in accordance with this Act and the regulations, shall be held in trust by the applicable electricity vendor for the investment asset owner.
Section 12 (2) The amounts collected are deemed to be held in trust for the investment asset owner.	(2) The amounts received by the IESO from electricity vendors pursuant to Section x until paid in accordance with this Act and the regulations shall be held in trust by the IESO for the investment asset owner.
23.1 Upon transfer of the regulatory asset or a portion of the regulatory asset, the regulatory asset or portion is deemed to be an investment asset and is vested in the investment asset owner.	…Upon a transfer of all or a portion of the regulatory asset, the investment asset owner acquires an investment asset to which this Act applies and the IESO (or any person claiming through the IESO) has no further right, title or interest in the portion of the regulatory asset transferred, or in the corresponding investment asset.
Section 25 (3) At the time a transfer of a regulatory	Delete, see new Section 23.

asset or an investment asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.	
"investment asset" means all or part of the regulatory asset that is deemed to be an investment asset under section x; ("French")	"investment asset" the investment asset established under section x;
"regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, the portion of the regulatory asset that is not deemed to be an investment asset;	"regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, the portion of the regulatory asset that has not been transferred;

7. Does the clean energy adjustment determine the amount payable in respect of both the Regulatory Asset and the Investment Asset? If so, any subordination or other arrangement that results in the IESO receiving a residual interest may impact de-recognition. In our view, this calculation should exclude the IESO, and the IESO should have a separate right of recovery assessed by the OEB.

"clean energy adjustment" means...	Should specify that this is the amount required by the Investment Asset Owner and does not relate to IESO's right of recovery. Consistent with this, Schedule 1 is defined in relation to the funding and other costs of the owner of the investment asset.
11x. (1) The Ontario Energy Board shall apply the method set out in Schedule 1 to determine the amount of the clean energy adjustment payable on a monthly basis by each electricity vendor on behalf of the electricity vendor's specified	Regarding section 11x(2), IESO recommends adding variance tracking so that the financing entity can communicate any variance (positive or negative) to the OEB. This should also be included in Schedule 1 as an input to determining the amount of clean energy

consumers. (2) The Ontario Energy Board may adjust the amount determined under Schedule 1 from time to time to address the any difference between the amount of the clean energy adjustment payable in respect of the reference period and the amount of the clean energy adjustment collected as of the date of the determination. (3) The Lieutenant Governor in Council may make regulations governing the calculation under subsection (2) and how the amount is to be applied to the clean energy adjustment. (4) The Ontario Energy Board shall communicate to each electricity vendor information relating to the clean energy adjustment to be allocated by the electricity vendor to each specified consumer in respect of a reference period.	adjustment for a reference period.

8. In order to ensure that the Disposition results in the de-recognition of the "regulatory asset" on IESO's books (and that the Disposition not be treated as a financing transaction) it is important the Disposition) by IESO to the financing trust be without recourse to IESO and that all collection obligations on the part of IESO be on a reasonable efforts, or consistent efforts, basis only. Therefore, clarify that the IESO's trust and remittance obligations are limited to amounts actually received by it. IESO's obligation to segregate and remit should be conditional upon receipt of the corresponding amounts from the electricity vendors.

Section 12 (4) The IESO shall promptly deposit all amounts received in respect of clean energy adjustments into the account established under subsection (3.1). (2) The amounts collected are deemed to be held in trust for the investment asset owner.	Section 12 (4) The IESO shall promptly deposit all amounts received by it from electricity vendors pursuant to Section x into the account established under subsection (3.1). (2) The amounts received by the IESO from electricity vendors pursuant to Section x until paid in accordance with

IESO can't receive some amts directly

(5) The IESO shall remit amounts received in respect of clean energy adjustments to or for the benefit of the regulatory asset owner in accordance with the regulations.	this Act and the regulations shall be held in trust by the IESO for the investment asset owner. (5) The IESO shall remit amounts received in respect of clean energy adjustments to or for the benefit of the regulatory asset owner in accordance with the regulations. Regarding section 11x(2), IESO recommends adding variance tracking so that the financing entity can communicate any variance (positive or negative) to the OEB. This should also be included in Schedule 1 as an input to determining the amount of clean energy adjustment for a reference period.

9. Daily remittances are not consistent with the operation of the system and may not be practical. At the very least, this should be left open to be addressed in the commercial documents.

Section 12x (4) The IESO shall promptly deposit all amounts received in respect of clean energy adjustments into the account established under subsection (3.1).	Define "promptly", or provide that it is to be specified in the Regulations. The invoicing contemplated by section 12(2) regulations should be done based on IESO's monthly settlement process. It would appear that this is the case; section 13(1) references LDCs determining clean energy adjustment on a monthly basis. (4) contains a Note about considering daily segregation or remittances. IESO does not believe daily remittances are necessary. Daily remittances would add additional complexity and cost to the settlement process. It is not clear that LDCs would be able to move to daily remittances without substantial cost and effort.

	The risk of a particular LDC going bankrupt is small. If an LDC does go bankrupt, daily remittances merely minimizes risk of a month of remittances for that one LDC, which the Financing Entity can recover in a future period in any event through the True Up.

10. Consider the extent to which deeming provision are required in connection n with the operation of the PPSA. The number of deeming provisions raises the issue of whether the security interest provided for is one provided for by statute or one provided for by the PPSA. For the most part, once the application of the PPSA is provided for, the perception, priority and proceeds rules in the PPSA ought to be allowed to operate (and should not prejudice the transaction).

27. (1) The owner of an investment asset may grant a pledge to or in favour of a person in, to and over all or a specified portion of its right, title and interest in, to and under the investment asset in connection with any funding obligation.	Use PPSA term "security interest"
(2) A pledge may be a lien, mortgage, charge, right of set-off or security interest.	Redundant. In any event, the reference to set-off is not relevant or appropriate. Why not use PPSA terminology.
(3) The pledge may be made to secure a funding obligation **and when granted shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the person to whom the pledge is granted a valid security interest in, to and in respect of the investment asset in accordance with the terms of the pledge.**	Redundant and may prejudice the conclusion that a conventional PPSA security interest is intended,
(x) All proceeds of a related [Investment Interest?] that are subject to the pledge that are received by the owner of the investment asset shall immediately be subject to the pledge, and the security interest in the proceeds shall be perfected pursuant to the Personal Property Security Act.	Redundant, except to the extent it is contemplated to expand the PPSA concept of "proceeds". Consider

(x) A pledge perfected under the Personal Property Security Act shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the [Investment Interest?] subject to the pledge unless the pledgee has otherwise agreed in writing.	whether that can or should be done. Redundant, the priority rules in the PPSA should be sufficient,
(x) A pledgee shall have a perfected security interest in a related investment interest, including the owner of the investment asset's rights and interests in and to [the clean energy adjustment?] or other related proceeds in respect of the investment interest and that are deposited in any [which account?] or other account of any [Electricity Distributor, IESO, Alternative Servicer or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds].	Redundant, except to the extent it is contemplated to expand the PPSA concept of "proceeds". Consider whether that can or should be done.
(8) All proceeds of the investment asset that are subject to the pledge and that are received by the investment asset owner shall immediately be subject to the pledge and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.	Redundant, except to the extent it is contemplated to expand the PPSA concept of "proceeds". Consider whether that can or should be done.
(9) The pledge shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment asset subject to the Pledge, subject to the written consent of the person to whom the pledge has been granted.	
(10) The person to whom the pledge has been granted shall have a perfected	

security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.	

11. Partial payments by retail customers to electricity distributors should be allocated to Transition Charges on a ratable basis, and once allocated shall be segregated.

14x. (1) This section applies if, (a) an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices; and (b) the amount paid is less than the total amount payable. (2) The electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices. (3) The electricity vendor shall deposit the portion of the payment allocated to clean energy adjustments into the account established under X.	Correct.

12. In order not to impair the ability of the IESO to dispose of its interest in the Regulatory Asset and in order not to impair the financibility of the Investment Interest by the Trust, subsequent actions and compliance with allocation plan and

the financing plan should not be a condition of the effectiveness of any aspects of the transaction.

(6) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.	(6) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a **transfer, funding obligation or grant of a security interest** that was effected or incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

13. Provide legislative basis for provision of commercial undertakings of the sort which may be required for purposes of h financial close.

200x. (1) Subsection 6 (1) of the Electricity Act, 1998 would be amended by adding the following clauses:	
(q.1) to enter into agreements or arrangements with [any special purpose financing entities established under (name of new Fair Hydro Act?)];	Retain specific objects but add a general object "to engage in activities to facilitate the implementation of the Fair Hydro Act, including:..."
(q.2) to engage in activities related to making payments to and receiving payments from [any special purpose financing entities established under (name of new Fair Hydro Act?)], as required under that Act, and to engage in related settlement activities;	
(q.3) to engage in activities related to the transfer of the regulatory asset created under [(name of new Fair Hydro Act?)], which activities may include,	
(i) incurring liabilities in relation to the regulatory asset	
(ii) transferring the regulatory asset to [any special purpose financing	NTD: incorporate the expanded

entities established under (name of new Fair Hydro Act?)];	definition of "transfer"
(iii) transferring the regulatory asset to third parties;	NTD: "and the "transfer thereof"
(q.4) acting as a recovery agent under the [(name of new Fair Hydro Act?)];	NTD: consider need a for authority to enter into, if required, underwriting agreements and sign offering documents
	NTD: Consider need for exemption under *Collections Agencies Act.*

Fair Hydro Plan

IESO Issues

1. We have received advice from KPMG that it is critical to the ability of IESO to book a regulatory asset (which in turn is critical to the overall transaction) that the statutory language ensures that IESO has an effective right of recovery in respect of any IESO Funding Shortfall not transferred to the SPV. The IESO proposes that s 25.33 of the EA/O Reg 430/04 be amended, as necessary, to provide for the IESO to record the IESO Funding Shortfall amount in a variance account and to provide for the OEB to eliminate and dispose of the variance account balance as part of the RPP adjustment process under the OEB Act , with such necessary OEB accounting order.

2. As currently defined, the definition of the term "IESO Funding Shortfall" references an amount and not an IESO right of recovery. There needs to be a defined term or concept referencing the IESO right of recovery in respect of the shortfall, since that is what we are selling. This right of recovery needs to be divisible since it may be transferred in part and from time to time. As used in the context of a sale by us (which is how it is mostly used) the defined term should reference the concept and not the amount. The amount is relevant to the trust as purchaser, since it drives the right of recovery.

3. Amend definition of "Disposition" and "Disposition Documents" so as to eliminate circularity. As the terms are currently defined, they only operate if there is in fact an effective disposition. Torys have agreed to provide revised draft language. In addition, since the asset has been bifurcated, the IESO should not be referred to as disposing of the Regulatory Asset. In effect, the IESO disposes of its rights in respect of the Funding Shortfall and the Trust acquires the Regulatory Asset.

4. Provide that any sale (or other transfer or Disposition) by IESO to the financing trust is without recourse to IESO and provide that all collection obligations are on a reasonable efforts, or consistent efforts, basis only.

   (a) Section 5(1) is to be amended to eliminate "shall collect".

   (b) Section 5(3) to be amended to eliminate obligation to remit on an invoiced rather than collections basis.

   (c) Section 5(4) to be amended to eliminate "shall collect".

   (d) In Section 5(2), the defined term "Transition Charge Collections" is misused since it references collections by an Absolute Assignee.

5. Redefine relationship between IESO as servicer and the electricity distributors as sub-servicers. While the electricity distributors can be sub-servicers of IESO as servicer, IESO can assume no responsibility for their performance obligations. Again, we are advised that this is critical from an accounting perspective.

6. Clarify or delete the concept of "Deemed Collections". In our view, there should be no Deemed Collections expect in the narrow case where a collecting party has benefitted from a set-off. This again goes to whether there is a full risk transfer and is important to the accounting analysis.

7. IESO does not support daily remittances and daily remittances are not consistent with the operation of the system. At the very least, this should be left open to be addressed in the commercial documents.

8. Consider manner of calculation of "Repayments" in relation to the "Finance Amount". As drafted, principal repayments owed in a Reference Period drive the Finance Amount and therefore the Period Transition Charges. Repayments are defined as net of payments made by applying the proceeds of a Refinancing. Estimates should be calculated on the basis of anticipated Refinancings and therefore should be expressed some basis on which Repayments are anticipated. As well, a refinancing effected subsequent to the Relevant Period should factor into the True-Up.

9. The terms "Alternative Servicer" and "Alternative Collection Agent" are used inconsistently. The Alternative Servicer stands in the place of IESO and should have not responsibility for invoicing or collecting from customers (see Sections 4(1), 4(4) and 5(2)). The "Alternative Collection Agent "should be used as the person who acts in place of the electricity distributors (see Section 5(2)). It may also be appropriate to better distinguish bills sent by IESO to electricity distributors from invoices sent be electricity to retail customers.

10. Partial payments by retail customers to electricity distributors should be allocated to Transition Charges on a ratable basis, and once allocated shall be segregated. We propose that electricity distributors continue as at present to pay on a billed basis, but that an adjustment be made subsequently in their favour out of the Transition Charges Account on account of uncollected Transition Charges. IESO would then remit the net amount. This allows maximum usage of the existing system while still passing the credit risk to the Trust. Uncollected amounts should roll into the True Up. In any event, all of this should be left for the regs.

11. Making the prudential security provided by the electricity distributors available to secure Transition Charge remittance obligations would require a significant review of documents, an assessment of the amount of the security and possible revisions of existing documents. Given the True Up we do not regard this as a necessary element.

In any event it should not be provided for in the legislation and if actually required should be addressed in the regs or in the commercial documents.

12. Provide legislative basis for provision of commercial undertakings of the sort provided for in NTDs set out in Article 6. Undertakings of this sort should be negotiated concurrently with financial close and should not be provided for in the legislation.

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Building a better working world

Mr. Phil Bosco
Manager, Technical Services Conservation & Corporate Relations
Independent Electricity System Operator
120 Adelaide Street West, Suite 1600
Toronto ON, M5H 1T1

January 19, 2017

Dear Mr. Bosco:

We have completed our engagement to assist you with understanding the accounting treatment for conservation and demand initiative costs. Our engagement was performed in accordance with our Statement of Work dated January 10, 2017 under our Agreement during the period January 13 to January 19, 2017.

Results of our work

Based on our procedures performed during the period January 13 to January 19, 2017, we prepared the attached Report for your use. Management of the Company reviewed these documents for completeness, accuracy and reasonableness. Decisions regarding the Company's application of CPA Public Sector Accounting Standards ("PSAS") were made solely by the Company's management.

Background

Under the Statement of Work, our scope of services was to assist you with understanding the accounting for conservation incentive costs. The Ministry of Energy is currently exploring a potential financing arrangement for conservation and demand management ("CDM") initiative programs that would see the IESO borrow funds from the Ontario Financing Authority ("OFA") to fund eligible CDM costs.

Scope of our work

In connection with our engagement, we held discussions with and made inquiries of the IESO's personnel. We also obtained and read the Company's financial statements, certain limited accounting records, and certain computations prepared by the IESO.

The procedures performed by us is included in our Statement of Work. There were no differences between the procedures set forth in this Report and those set forth in our Statement of Work.

Our work was performed under the direction of yourself and was based on inquiries of, and discussions with, you. We have not sought to confirm the accuracy of the data or the information and explanations provided by management.

We did not provide a professional opinion on the application of accounting principles pursuant to Chartered Professional Accountants of Canada ("CPA Canada") or the AICPA's Standards for Reports on the Application of Accounting Principles (as amended and interpreted).

The procedures that we performed were advisory in nature and do not constitute an audit or review in accordance with CPA Canada, PCAOB or AICPA auditing or attestation standards, nor do they constitute an examination of prospective financial statements in accordance with standards established by the American Institute of Certified Public Accountants. Additionally, the procedures do not address the effectiveness of internal controls over financial reporting under National Instrument 52-109 issued by the Canadian Securities Administrators or Section 404 of the Sarbanes-Oxley Act. Accordingly, we express no opinion or any other form of assurance on the historical or prospective financial statements, management representations or other data of the Company included in or underlying the accompanying information. While we believe the information obtained is substantially responsive to your request, we are not in a position to assess its sufficiency for your purposes. In addition, we have no responsibility to update the Report for events or circumstances occurring after the date of the Report.

Our work has been limited in scope and time, and more detailed procedures may reveal issues that this engagement has not.

Restrictions on the use of our Report

This Report is intended solely for the information and use of the management of the IESO, and is not intended to be and should not be used by anyone other than these specified parties. EY therefore assumes no responsibility to any user of the Report other than IESO. Any other persons who choose to rely on our Report do so entirely at their own risk.

We appreciate the cooperation and assistance provided to us during the course of our work. If you have any questions, please call Nadira Singh at (416) 943-3896 or me at (416) 943-2094.

Sincerely,

Ernst & Young LLP

Shannon O'Mahony, CPA, CA
Partner

IESO – Accounting for Conservation Costs

i. Background

The Independent Electricity System Operator ("IESO") is in the process of evaluating the accounting implications of a potential change to the recovery method of conservation costs.

IESO is a non-profit entity, owned by the government of Ontario, and is governed by the Ministry of Energy ("Minister") and operates pursuant to a license granted by the Ontario Energy Board ("OEB"). As part of the IESO's operations, it is required to submit its proposed expenditures, revenue requirements and fees for the coming year to the OEB for review and approval. The submission may be made only with the approval of the IESO business plan by the Ministry of Energy.

As part of the IESO's operations, it facilitates conservation and demand management ("CDM") initiatives in Ontario, whereby local distribution companies ("LDC") incur expenditures in accordance with the CDM guidelines prescribed by the IESO. The IESO then reimburses the LDCs on a dollar-for-dollar basis. Currently, the IESO is reimbursed through the global adjustment mechanism the fiscal year in which the expenditure is incurred as outlined in Ontario regulation 429/04 Adjustments under the Act and as provided by the Minister per the directive dated March 31, 2014, *2015-2020 Conservation First Framework*. The IESO receives this reimbursement from the LDCs who collect the global adjustments directly from ratepayers. The calculation of the global adjustment is the difference between the Hourly Ontario Electricity Price ("HOEP") and:

- Ontario Power Generation's regulated nuclear and hydro generation;
- IESO (including former Ontario Power Authority) contracts with generators and suppliers of conservation;
- Contracted rates administered by the Ontario Electricity Financial Corporation paid to existing generators.

The Ministry of Energy has granted authority to the IESO to collect the CDM incentive costs as part of the global adjustment.

The Ministry of Energy is currently exploring a potential financing arrangement for CDM programs that would see the IESO borrow funds from the Ontario Financing Authority ("OFA") to fund eligible CDM costs. This loan would be recognized as a financial liability by IESO. The CDM costs would then be recovered through the global adjustment over an extended period of time. The accounting alternatives for the underlying CDM costs and the loan interest in accordance with Public Sector Accounting Standards is discussed herein.

ii. Accounting guidance

Presently, the IESO accounts for CDM costs as an asset at the time an invoice is received from the entity that has incurred the CDM expenditure eligible for reimbursement (e.g. DR Asset; CR Accounts Payable to the LDC). At the end of each month, the IESO takes the sum of the amounts requested for reimbursement and includes this sum in its submission in the calculation of the total global adjustment for the month. Once the global adjustment is calculated by the IESO, the amount is charged to customers by the LDCs (on the IESO's behalf) and the IESO receives the funds in the subsequent month.

To address the accounting considerations of the inclusion of the CDM costs in the global adjustment over an extended recovery period (that will be determined by the Minister), the IESO must consider the guidance prescribed by the CPA Public Sector Accounting Standards ("PSAS"). PSAS does not provide specific

guidance to address the accounting for assets that will be recovered through rates from various customers over future years

In the absence of PSAS that specifically applies to a transaction, professional judgement is required to apply an appropriate accounting policy that is consistent with primary sources and financial statement concepts of PSAS. Other accounting pronouncements may be useful but are not required to be consulted as noted in paragraphs 18 to 22 of PS 1150 *Generally accepted accounting principles* which addresses other sources that may be referenced:

> .19 *Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASAB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.*
>
> .20 *When a public sector reporting entity chooses to consult a source described in paragraph PS 1150.19, it applies professional judgment and evaluates the source in the context of the relative manner in which the standard setter requires its pronouncements to be applied, as well as in the context of the related pronouncement. When an accounting standard setter does not have a conceptual framework that is similar to the concepts referred to in paragraph PS 1150.05(b), the public sector reporting entity needs to ensure that the selected source is consistent with those concepts.*

Consequently, to evaluate the accounting considerations of the accounting for CDM costs being evaluated by the IESO, other sources of GAAP may be considered. The following sources of GAAP were reviewed to determine whether specific guidance was provided addressing the recognition of assets related to regulatory activities:

1) Accounting Standards for Private Enterprises ("ASPE") as issued by the Canadian Accounting Standards Board ("AcSB")/ CPA provides the following guidance:

   AcG 19 *Disclosures by entities subject to rate regulation* provides guidance related to the presentation of financial information related to entities with rate regulated activities *when a separate asset or liability has been recognized solely as a result of the effects of rate regulation (AcG 19* paragraph 7(c)).

2) The guidance issued by the US Governmental Accounting Standards Board ("US GASB") does not address the accounting for regulated activities.

3) US GAAP, as issued by the Financial Accounting Standards Board ("FASB") does provide guidance to address such activities in ASC 980 *Regulated Operations*, addresses the recognition of regulatory assets.

4) IFRS as issued by the IASB no longer precludes the recognition of regulatory assets and liabilities a rate-regulated entity's financial statements. Rather, the IASB issued a standard, IFRS 14 *Regulatory deferral accounts*, which provides the following relevant guidance:

   Paragraph 2(a) of IFRS 14 notes that the objective of the Standard was to:

limit changes to the accounting policies that were applied in accordance with previous generally accepted accounting principles (previous GAAP) for regulatory deferral account balances, which are primarily related to the presentation of these accounts;

Additionally, paragraph 10 of IFRS 14 notes:

Paragraphs 11–12 of IAS 8 specify sources of requirements and guidance that management is required or permitted to consider in developing an accounting policy for an item, if no relevant Standard applies specifically to that item. This Standard exempts an entity from applying paragraph 11 of IAS 8 to its accounting policies for the recognition, measurement, impairment and derecognition of regulatory deferral account balances. Consequently, entities that recognise regulatory deferral account balances, either as separate items or as part of the carrying value of other assets and liabilities, in accordance with their previous GAAP, are permitted to continue to recognise those balances in accordance with this Standard through the exemption from paragraph 11 of IAS 8, subject to any presentation changes required by paragraphs 18–19 of this Standard.

This IFRS was issued in response to North American entities potentially transitioning to IFRS, because there was a lack of guidance that permitted the continued separate accounting treatment for regulatory assets and liabilities recognized as a result of rate regulated activities. The guidance above, permits rate-regulated entities upon first-time adoption of IFRS to continue to recognize regulatory assets and liabilities in accordance with the framework that was applied previously (i.e. generally, entities recognized assets in accordance with the guidance of ASC 980 (US entities) or AcG 19 (Canadian entities)).

Given the above-noted guidance, an entity can look to the other accounting frameworks while also ensuring that when judgment is applied, the resulting accounting policy is not inconsistent with the accounting guidance of PSAS. For this reason, the evaluation of accounting considerations in the development of the proposed accounting treatment for the recovery of CDM costs, is considered in the following order:

1) Can an asset be recognized in accordance with PS 1000 *Financial statement concepts* as prescribed by PSAS?

2) Can the IESO reference the guidance of other accounting frameworks to support the recognition of the reimbursement of CDM costs as an asset?

3) Failing the above, is the most appropriate accounting treatment to recognize the reimbursement of CDM costs as an expense of the current period and simply recognize revenue in future periods when the cost is recovered?

1. Qualification of reimbursement of CDM costs as an asset in accordance with PSAS:

Although PSAS does not specifically address the recognition of costs incurred that will be recovered through regulatory operations in future periods, this does not result in the conclusion that such costs cannot be recognized as an asset. In particular, paragraph 5 of PS 1150 notes:

.05 *When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In*

these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:

(a) the primary sources of GAAP; and

(b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000.

In this case, the IESO would consider whether an asset could be supported by the guidance noted in PS 1000 *Financial statement concepts*, as follows:

Recognition of an asset

Paragraphs 35-37:

.35 *Assets are economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained.*

.36 *Assets have three essential characteristics:*

a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;

b) the public sector entity can control the economic resource and access to the future economic benefits; and

c) the transaction or event giving rise to the public sector entity's control has already occurred. [Former paragraph PS 1000.36 retained in Archived Pronouncements.]

.37 *An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:*

(a) no future economic benefit;

(b) future economic benefit, but the government cannot obtain it; or

(c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred.

In evaluating the costs incurred by the IESO to reimburse the LDCs, an argument could be made to support the recognition of the costs as an asset as the costs meet the three essential characteristics prescribed by PS 1000. Particularly:

- ***Future economic benefits*** – the CDM costs incurred by the IESO are made to reimburse eligible expenditures from market participants or third-party delivery agents (e.g. an LDC). The IESO can expect to generate future economic benefits from the reimbursement of these expenditures because: a) it has a license with the OEB to operate as a system operator and recover reasonable costs incurred (as noted below) and b) it is mandated by the Minister to charge ratepayers the global adjustment, which results in future cash inflows to recover the reimbursed costs.

  Paragraph 13 of PS 3210 *Assets* notes:

  .13 *The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to*

provide goods and services, redistribute wealth or settle liabilities. Benefits in the form of cash inflows relate to resources, such as loans receivable, inventory for resale and portfolio investments. Also, some public sector resources generate cash inflows because they have user fees associated with them.

The global adjustment that is charged to ratepayers and calculated by the IESO is not subject to the review or approval of the Ontario Electricity Board ("OEB"). Accordingly, there is limited risk with respect to the IESO's ability to recover the reimbursement costs incurred – even if the costs are recovered over an extended period of time, as the OEB does not have the ability to reject the recovery of these costs. While risk is limited, the recovery of the CDM expenditures reimbursed by the IESO is dependent on future transactions with electricity customers.

Also, while not specifically governed by the OEB, the IESO's license with the OEB provides that reasonable costs of its activities will be recovered:

> 13 *Fees and Charges*
>
> 13.1 *The Licensee may impose fees and charges to recover the cost of its activities in accordance with an order of the Board, or as permitted by law.*
>
> 14 *Books of Accounts and Financial Reporting*
>
> 14.3 *Unless otherwise provided by law, the Licensee shall, no less than 60 days before the beginning of the Licensee's fiscal year submit the Licensee's proposed expenditure and revenue requirements for the following fiscal year and the fees it proposes to charge during that year to the Board for review and approval. The Licensee's submission shall include a copy of the Licensee's annual business plan for the fiscal year as approved by the Minister under section 24 of the Electricity Act*

Through its mandate from the Ministry of Energy, which provides the IESO with the right to recover costs, in combination with the IESO's license with the OEB, to the extent that CDM costs are incurred (past transaction) in accordance with the IESO's mandate from the Ministry of Energy, these cash inflows (and thus, future economic benefits) are expected to be recovered.

- ***Public sector entity control's economic resource and access to economic benefits*** – The IESO controls access to the future cash inflows that are generated from the incurrence of the CDM expenditures, as it is the IESO who has the mandate from the Ministry of Energy to incur these CDM costs and it is also the IESO who has the directive from this Minister to recover the CDM costs through the global adjustment mechanism charged to rate payers. Specifically, the Electricity Act 1998 notes the following:

> ***Electricity pricing to reflect costs***
>
> ***IESO to make adjustments***
>
> *25.33 (1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,*
>
> a. *amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998; and*
>
> b. *amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract. 2014, c. 7, Sched. 7, s. 8 (1).*

Paragraph 16 of PS 3210 provides additional guidance regarding control of an economic resource and access to future economic benefits, which notes that the public entity:

> a) *Can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows;*
>
> b) *Can deny or regulate access to those benefits by others; and*
>
> c) *Is exposed to the risks associated with the economic resource.*

As outlined previously, the IESO has control over the economic resource, as it is the sole entity that is entitled to the cash inflows from ratepayers[1]. Furthermore, while risk is limited, the IESO is exposed to the risk associated with the economic resource – as the Ministry of Energy could change their directive or calculation of the global adjustment, or there could be a change in the economic environment (as discussed above) and thus, alter the ability of the IESO to recover the costs.

- ***Transaction or event giving rise to public sector entity's control has already occurred*** – When evaluating whether a transaction or event gives rise to control, paragraphs 26 and 27 of PS 3210 provides helpful guidance:

> *The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities.*
>
> *Meeting the eligibility criteria under an authorized transfer often determines the past transaction or event giving rise to control of an economic resource in non-exchange contracts or agreements. Shared cost agreements (reimbursement arrangements) are an example where the control of an economic resource arises when the recipient incurs eligible expenditures.*
>
> Consistent with the guidance in paragraph 26, control over the economic benefits of the IESO's reimbursement via the global adjustment mechanism from the LDC occurs once the IESO has distributed funds to the LDC. At this point in time, the IESO has incurred a cash outflow for which it is entitled to recover through the global adjustment as prescribed by the Ministry of Energy and the Electricity Act1998.

Based on the characteristics, as prescribed by PS 1000 and the additional guidance of PS 3210, the cash outflows disbursed by the IESO to reimburse CDM costs to LDCs could meet the definition of an asset in PS 1000.

In accordance with the principles of PSAS, there are generally two types of assets that the IESO may consider recognizing 1) financial asset; or 2) non-financial asset. To classify the asset, it must fall into one of the two categories.

Financial asset

> .39 ***Financial assets*** *are assets that could be used to discharge existing liabilities or finance future operations and are not for consumption in the normal course of operations.*

[1] Although the administrative framework provides that LDCs invoice the global adjustment to ratepayers on the IESO's behalf, the IESO has sole entitlement to the cash inflows that result from the global adjustment. All global adjustment amounts collected by LDCs are required to be submitted to the IESO.

.40 *A financial asset is any asset that is:*

a) cash;

b) a realizable asset that is convertible to cash;

c) a contractual right to receive cash or another financial asset from another party;

d) a contractual right to exchange financial instruments with another party under conditions that are potentially favourable to the government;

e) an equity instrument of another entity;

f) an investment in a government business enterprise or government business partnership;

g) a financial claim on an outside organization or individual; or

h) an inventory or item for sale that meets the criteria in FINANCIAL STATEMENT PRESENTATION, paragraph PS 1201.055.

Based on the guidance of PS 1000, paragraphs 39 and 40, it may be difficult to substantiate the IESO's reimbursement of costs is a financial asset. The costs incurred by the IESO creates a right to recover costs as mandated by the Ministry of Energy. However, there is no contract with a specific ratepayer who ultimately reimburses the IESO for the costs incurred if the IESO calculates the global adjustment (i.e. its recovery mechanism) and this amount is then disbursed to all ratepayers in Ontario (regardless of whether an individual ratepayer benefited from the cost incurred). Furthermore, to the extent that a current ratepayer moves outside of Ontario, it could in fact result in a new ratepayer having to incur the additional charge to permit the IESO to recover its costs. It is difficult to argue that there is a contractual right to receive cash from another party, because legislation and the regulatory framework result in the right to future cash inflows from a pool of ratepayers.

An alternative view may be that the LDCs represent the counterparty to the IESO whereby the LDC is responsible for paying the IESO the global adjustment whether or not payment is ultimately received from the ratepayer. In this circumstance, the IESO can argue that a financial asset should be recognized for its contractual right to receive cash is from each specific LDC. An assessment of who is obligated for the global adjustment (e.g. an assessment of whether the LDC is the agent facilitating cash collection or is the entity obligated to pay the amount) would need to support this alternative.

Non-Financial asset

.41 *Non-financial assets include tangible capital assets, and other assets such as prepaid expenses and inventories of supplies.*

.42 *Non-financial assets are acquired, constructed or developed assets that do not normally provide resources to discharge existing liabilities, but instead:*

(a) are normally employed to deliver government services;

(b) may be consumed in the normal course of operations; and

(c) are not for sale in the normal course of operations.

Another accounting treatment could be a 'non-financial asset' in accordance with paragraphs 41 and 42 of PS 1000. This accounting treatment may be supportable under the PSAS guidance as an 'other asset'. The

reimbursement of CDM costs, results in the incurrence of an upfront cost in which the entity will benefit from economic benefits over a period of time.

Subsequent measurement of a non-financial asset

To the extent that the recognition of an asset is supported under the framework discussed above, the entity would then be required to draw the asset down over the recovery period (i.e. as cash is collected from ratepayers through the global adjustment mechanism). The presentation of the 'draw' down of the asset is dependent upon the IESO's accounting for the global adjustment. To the extent that funds received from the global adjustment are recognized in revenue rather than to directly reduce the asset then the IESO might consider recognizing the draw-down of the asset as a reduction in revenues. Nonetheless, depending on the IESO's view of its role (i.e. principal versus agent) or its view of the nature of costs incurred, an alternative accounting treatment may result. For instance, if the IESO is an agent, then it may reduce the asset balance directly for those amounts collected by way of the global adjustment rather than recording two separate entries for the recognition of revenue (i.e. global adjustment) and reduction of revenue (i.e. over the recovery period). At this time, the IESO has not completed a principal versus agency assessment.

2. Reference to other accounting frameworks:

As previously noted above, other accounting frameworks as issued by the AcSB, FASB and IASB provide accounting guidance related to the recognition of expenditures as an asset due to rate regulated operations. When referencing the other frameworks, it is important that the costs qualify as an asset under the framework set forth by PSAS to ensure that the principles of PSAS are not violated, and only then can reference to other frameworks be made to record the reimbursement of costs as an asset.

As the IASB and AcSB do not provide detailed guidance, the IESO could argue that the costs incurred meet the specific criteria established by ASC 980-340-25-1 as follows:

> *Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:*
>
> *a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.*
>
> *b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.*
>
> *A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later*

The guidance provided by US GAAP notes that to the extent that a regulator provides reasonable assurance of the existence of an asset, then the entity should capitalize the incurred cost that would have otherwise been expensed. In this case, the Ministry of Energy has provided that the IESO will be able to recover its costs through the global adjustment mechanism[2]. As a result, the IESO can support meeting criterion a) of 980-340-25-1 that it is probable that future revenue will equal the cost capitalized as the IESO will include those reimbursed CDM costs in its calculation of the global adjustment charged to rate payers. Furthermore, the IESO can support criterion b) is met, because the future recovery relates only to those costs paid by the IESO to reimburse eligible CDM costs.

[2] Section 1.7 of the directive from the Ministry of Energy dated March 31, 2014 titled *2015-2020 Conservation First Framework* provides that the Ontario Power Authority (now merged into the IESO) may "*recover payments made under the Province-Wide Distributor CDM Programs and Local Distributor CDM Programs from the Global Adjustment Mechanism up to the budget established…*"

To further support this accounting position, there are system operators (i.e. similar to the IESO) in the United States who recognize regulatory assets. As an example, ISO New England Inc., a not-for-profit organization that regulates the flow of transactions in accordance with the Federal Energy Regulatory Commission ("FERC") recognizes regulatory assets for those costs incurred subject to rate recovery mechanisms. The ISO New England Inc. operates in a very similar manner to the IESO, in that both organizations are government regulated, system operators who manage the flow of electricity transactions and are not-for-profit. While ISO New England Inc. prepares its financial statements in accordance with US GAAP, rather than GASB, ISO New England Inc.'s treatment of regulatory items is indicative that the capitalization of expenditures related to regulated activities is not an unreasonable treatment for entities of this nature.

As the application of the hierarchy is a choice and not a requirement, another entity with the same fact pattern could account for the recovery of CDM expenditures differently.

Subsequent measurement of asset

To the extent that the recognition of an asset is supported under the framework discussed above, the entity would then draw the asset down over the recovery period (i.e. as cash is collected from ratepayers through the global adjustment mechanism). The presentation of the draw down of the asset is dependent upon the IESO's accounting for the global adjustment. To the extent that funds received from the global adjustment are recognized in revenue then the IESO might consider recognizing the recovery of the asset as a reduction in revenues (contra revenue account). Nonetheless, depending on the IESO's view of its role (i.e. principal vs. agent) or its view of the nature of costs incurred, an alternative accounting treatment may result. For instance, if the IESO is an agent, then it may reduce the asset balance directly for those amounts collected by way of the global adjustment – rather than recording two separate entries for the recognition of revenue (i.e. global adjustment) and reduction of revenue (i.e. recovery of asset).

3. Expensing expenditures as incurred

Failing the ability to argue that an asset can be recognized from alternatives (1) and (2) above, the IESO would be required to record the reimbursement of an LDC's eligible CDM expenditures as an expense in the period incurred.

Paragraphs 49 to 51 of PS 1000 provide the following guidance related to expenses:

> .49 *Expenses, including losses, are decreases in economic resources, either by way of decreases in assets or increases in liabilities, resulting from the operations, transactions and events of the accounting period.*
>
> .50 *Expenses include the cost of economic resources consumed in and identifiable with the operations of the accounting period. For example, the cost of tangible capital assets is amortized to expenses as the assets are used in delivering government programs (see TANGIBLE CAPITAL ASSETS, Section PS 3150). Expenses do not include debt repayments or transfers to other governmental units in the government reporting entity.*
>
> .51 *Losses can arise from peripheral or incidental transactions and events affecting a government. Such transactions and events include the disposition of assets purchased for use and not for resale, and the liquidation or refinancing of debt.*

By referencing paragraphs 49 to 51, it can be noted that the reimbursement of an LDC's CDM expenditures do indeed result in an immediate decrease in the IESO's economic resources – as noted in paragraph 49. If it cannot be substantiated that an asset can be recorded due to the future economic benefits expected to be received through the global adjustment – these expenditures must be recorded as an expense.

4. Accounting for interest costs

The accounting for interest costs related to the loan being considered to finance the IESO's recovery of CDM costs incurred over an extended period of time would be dependent on how the Ministry of Energy proposes that the IESO will recover these costs. To the extent that the Minister revises the calculation of the global adjustment, then the IESO may be able to recognize an asset for these costs (i.e. see the arguments listed in sections (1) and (2) above).

If the Ministry of Energy proposes that the IESO recover the interest costs through the revenue requirement, the IESO will need to evaluate its ability to recover the interest costs through future rates. To the extent that the there is significant risk associated with recovering these costs, interest costs should be recognized as an expense in the current period. Otherwise, the IESO may be able to capitalize the interest costs as an asset by applying the arguments in sections (1) and (2) noted above.

If a recovery mechanism is not established for the interest costs related to the loan, the interest costs would be recognized as an expense of the current period.