

Project: FT2018

Ministry of Energy:

Original Hard Copies

Box 12 of 13

Motion Number(s) 13

Division: Legal

Custodian: Dan Shear

Maksymuik, Amanda (ENERGY)

Subject: Equitable Allocation Forecasts
Location: Teleconference

Start: Tue 04/11/2017 10:30 AM
End: Tue 04/11/2017 11:30 AM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Kulasinghe, Meineka (MEDG/MRIS)

Required Attendees: Shear, Dan (ENERGY); Rehob, James (ENERGY); O'Riordan, Eamon (ENERGY);
stephen.ashbourne@blakes.com; bryson.stokes@blakes.com; judy.wilson@blakes.com;
Cayley, Daniel (ENERGY); Christie, Tim (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI);
Kacaba, Jennifer (ENERGY)

Optional Attendees: Malecki, Justin (ENERGY)

Update: The teleconference has been updated to April 11th, 2017 (tomorrow) from 10:30 AM to 11:30 AM.

The following line has been booked for the Equitable Allocation Forecasts conference call:

Toll-free dial-in number: 1-866-633-1033
Local dial-in number: 416-212-8013
Conference ID: 3839784#

Thanks,

Meineka Kulasinghe

Legal Secretary

Ministries of Energy / Economic Development & Growth /
Research, Innovation & Science / Infrastructure / Accessibility

Legal Services Branch

56 Wellesley Street West, 5th Floor

Toronto, ON M7A 2E7

Maksymuik, Amanda (ENERGY)

Subject: fair hydro - cap and trade - 7:45pm

Start: Tue 04/11/2017 5:00 PM

End: Tue 04/11/2017 5:30 PM

Recurrence: (none)

Organizer: Kacaba, Jennifer (ENERGY)

Blakes M&A

Issue is more concept of gov't
standing behind

Apr 11/2017

- Contract for only future.
- Underbills / agree that is contract
- 11(2) anything that impacts investor interest

Difference between Veterans

↳ preamble - tie in trying to fill
in gap - in Corp. broader,
construct
- fair

- near cost adjustment - ties into
contract
- fair plan too

Def'n → immune future
concept that regularly does
subsidy

now

- Investment interest

- (KSO retained interest)

⇒ 4 key def'n

① 25% side part given costs

② estimated future given transfer
debt

estimated past given time

have regard to FAP

def'n over assessed amt. → p. 11

- amt by which assessed
amt exceeds past amt

def'n of deposit - moved.

electricity distribb

green - moved

blue - now

red - still out

- admin spent times financial report

- fundy thing only relate to
P&G asset.

(KSO doesn't want)

- future fair share of peer benefits

↳ this is piggy bank

→ replaced costs of several
transfer costs

==
no more ~~reference~~ to power controls

Sten - they shall be paid
'save' of payment was
that left

- Norman saying -

① program end date

② fundy shortfall not more
beyond certain date

Stein - need concept of fully
debt.
- Coz could say absolute
assure shall form
fully debt.

Page 21 - right of ESO to record work

- end date always,

- ESO mechanism - put in
- right of recording
- at meeting ESO notes in

pg. 10 - keep deft
- current interest - out
pay interest

-
Mortgage date - when set come
defined on mortgage date

- forced consent changes

↳ hold off drafting

- ~~value paper~~ - retail case

- regulatory asset - tweaks

3-5 - very little change

5-6 - ~~less~~ recovery

5-9 - deletion of (C)

scrubbing rights to ~~less~~

Hot 2-

(3) perfect - But the deal
perfect of PPA - any
unambiguous

FAD - unrecovered trust costs
future benefits.

- principles and parameters -
- editing of FTT

- rather than other curve - don't
acknowledge - need place to
take int. sent pre-2007
issues, (\$3.5 B + consumer
costs)

- 7(4) amends.

- 1K50 retained interest

(1)
(2)
(3)

1K50 affect disposal to trust
if trust agrees to be bound

UK - whether legis needs to clarify
rights in a certain way
- agreed terms get enforceable
- could equally say, any
agreed recognised as
enforceable
(concept of FTT agreement very valid)

DS - if consumers aren't paying bills,
how does LKSO decide who
gets paid?

SA - actually collecting get
priority

- how voluntarily paid

↳ if shortfall - I get some, U get some, S get some
↳ money goes to admin
adjusting

2(3) - disposal asset, collective
rights.

- not proceed - LKSO can't
sell more than it has.

- LKSO doesn't have interest
once sold.

LS) - LKSO add costs of
recovery.

LG) - If LKSO needs
recovery this info

(9) - ~~currently~~ accepted

- 2 - ONCE there is an asset that
have to finance in accordance
in plan.
- NO obligation to finance. - not
entitled to finance.

OTG with to set up plan.

Put in post to fund 50%

once have asset need
to finance in accordance
in CAP.

if OTG currently to be services
agent -

Plan has to be issued before
debt.

- plan has to be short term
- ↳
- kicked off staff on privacy plan

Compliance matters

- ↳ OEB has limited rights
- rights to look at records

amendment to OEBA - enforceable provisions

OTG rate setting

- unregulated source of cash.

→ ~~can~~ admin. fee.

understanding

regulatory power

- ↳ types of things used to cover.

- RPP has to go down in amount
the FAD ..

- structure feedbacks transfer -
if you do following steps 1650
can create regulatory asset
17 ppg bank part of FAD
→ so if lefts. it - there 13 pp
to in

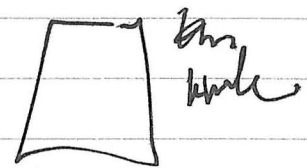
Stress doc.
→ 150 pp. 11 → overassessed
amt

→ together provide amt spend
over.

- overassessed amt
way 1
spant of FAD

So - by its nature costs/benefit
looks like unprofitable thing
- when can't they add up

- for example - unit done
by yr 10
25 follows



- those years spent.
- F&B pushed down
for 5 yrs to recognize
costs overpaid.

↓
general
fund
alloc.

- pick up overpaid / taken
out.

Constituted. after.

~ kept for balance sheet audit

~ whether up or out but 1-5 yrs
in legs

~ risk that puts pressure
on accounts

CC-

May I dozent to TB identify risks
L accent. treatment
L large risks

- will have opp. to discuss prob. with curve.
- if consit. will say Thank you
- leg. drifted to protect you in future, short term

SA - legis. unable in long term
→ to deal E gap issue
person

DS - cultural drop, a couple yrs of CPI.

CC - identify risk can't go beyond

SA - do we have to slow exchange

= 25 a result of this loss money
coming in
calculated based on old way
of doing GA.

→ promiz. is manner reply
first five years
→ in reg. Δ made to
implement FAP,

7.1- 7.5 → move back at into Reg.

FAP → principles

- May 1 - Oct 31 - ~~add~~ RB to take
at of RPP.

- 7.2 is yr 1

- move rate of infl to increases
to reg.

- FAP be revised if factor alters
curve. - in very limited
circumstances.

Q - whether adjustment to plan
overrides reg?

CC reg - make act.

a plan can't override reg
↳ rate of inflat. has to be
somewhere

↳ ~~reg~~ reg. leads to I style
↳ reg power for 2+.

↳ trad. inflation increases?

- discovery what to know to be in
plan in a reg.

- mkt sees "FAP"

CC - gov't needs to show weekly
commit.

left by year 1 this way
11. 2-5 in a reg

→ one at a time.
→

SA by peng rate. →

Maksymuik, Amanda (ENERGY)

Subject: Ontario Fair Hydro Plan
Location: 199 Bay St. - 40th Floor, Blakes

Start: Mon 04/10/2017 10:00 AM
End: Mon 04/10/2017 4:00 PM

Recurrence: (none)

Meeting Status: Accepted

Organizer: Calwell, Carolyn (ENERGY/MEDEI/MRI)

Required Attendees: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); michael.boll@ieso.ca; Kim Marshall

Optional Attendees: 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; 'Veinot, Cindy (TBS)'; 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)

Update

This meeting has been extended from 2:00pm until 4:00pm.

Hi Everyone,

This will be a meeting to discuss the Ontario Fair Hydro Plan (OFHP).

The meeting will be held at Blakes and the main contact on site will be Lindsay Dicks (416-863-4347 or Lindsay.Dicks@blakes.com). Please inform Lindsay if there will be additional people attending from your group because she will need to pass this information along to their security desk.

To the representatives from OPG, please forward this meeting invitation to your respective outside counsel for their attendance.

Any materials available for this meeting will be provided in a future update.

If you are unable to attend in person, please use the following conference call information:

Toll-free dial-in number: 1-866-633-1033

Local dial-in number: 416-212-8013

Conference ID: 3164921#

If there are any additional scheduling needs or updates, please contact Joseph Pau (416-326-1018 or Joseph.Pau@ontario.ca).

Thanks,

Maksymuik, Amanda (ENERGY)

Subject: Ontario Fair Hydro Plan
Location: 199 Bay St. - 40th Floor, Blakes

Start: Mon 04/10/2017 10:00 AM
End: Mon 04/10/2017 4:00 PM

Recurrence: (none)

Meeting Status: Accepted

Organizer: Calwell, Carolyn (ENERGY/MEDEI/MRI)

Required Attendees: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); michael.boll@ieso.ca; Kim Marshall

Optional Attendees: 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.albred@ontarioenergyboard.ca; Petsche, Nadine (TBS)

Update

This meeting has been extended from 2:00pm until 4:00pm.

Hi Everyone,

This will be a meeting to discuss the Ontario Fair Hydro Plan (OFHP).

The meeting will be held at Blakes and the main contact on site will be Lindsay Dicks (416-863-4347 or Lindsay.Dicks@blakes.com). Please inform Lindsay if there will be additional people attending from your group because she will need to pass this information along to their security desk.

To the representatives from OPG, please forward this meeting invitation to your respective outside counsel for their attendance.

Any materials available for this meeting will be provided in a future update.

If you are unable to attend in person, please use the following conference call information:

Toll-free dial-in number: 1-866-633-1033

Local dial-in number: 416-212-8013

Conference ID: 3164921#

If there are any additional scheduling needs or updates, please contact Joseph Pau (416-326-1018 or Joseph.Pau@ontario.ca).

Thanks,

- Carolyn introduction

April 10/2017

- OGC →

↳ Trust - document of control.

Principles - white paper with
table of 22 country requests
- key principles

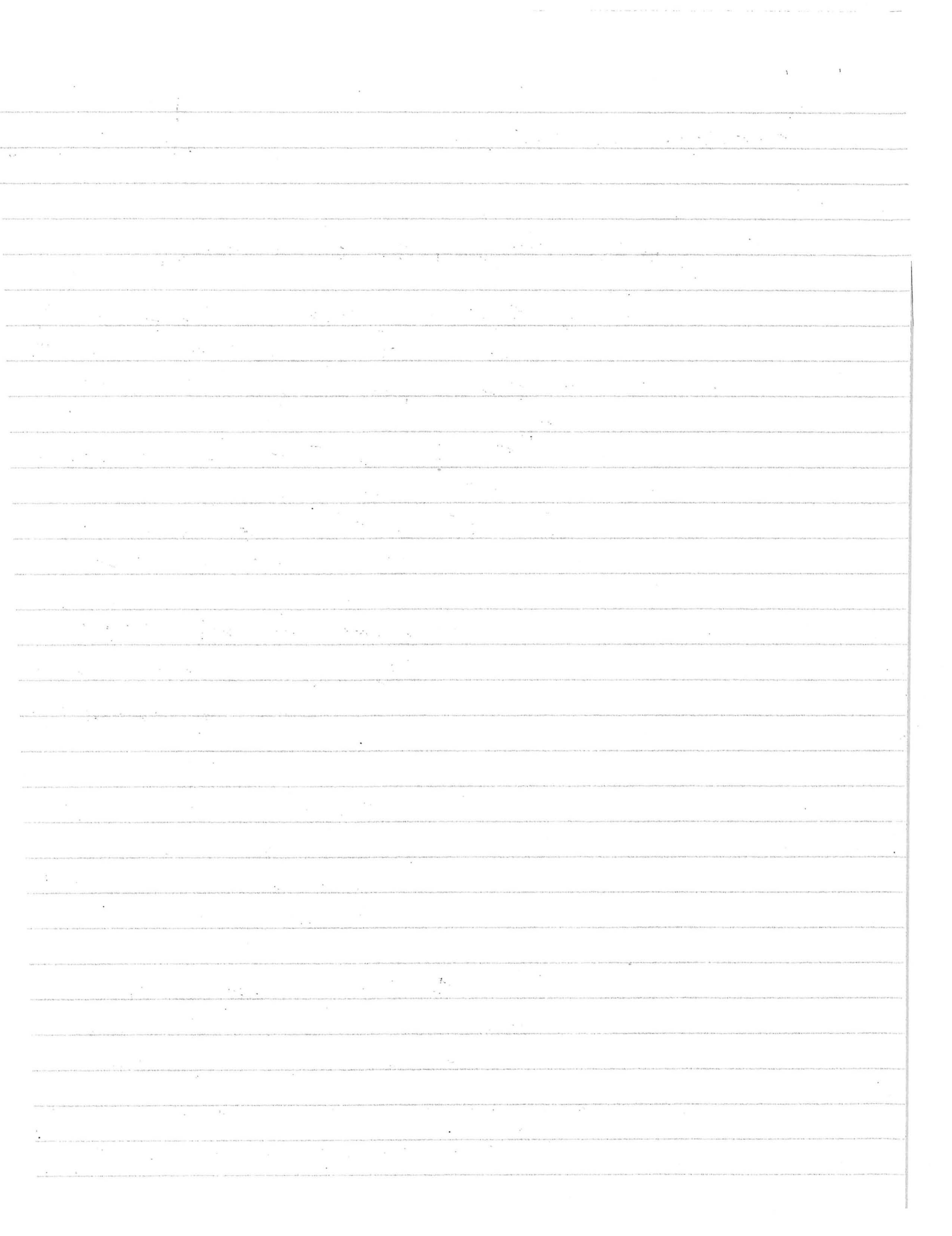
① OGC can't be agent
of finance

2 ↳ can't be ~~agent~~
direct from finance

↳ consolid. of trust
asks trust - would
negate purpose of
22 country.

→ Source of taxes
may be seen as
under agent of
finance

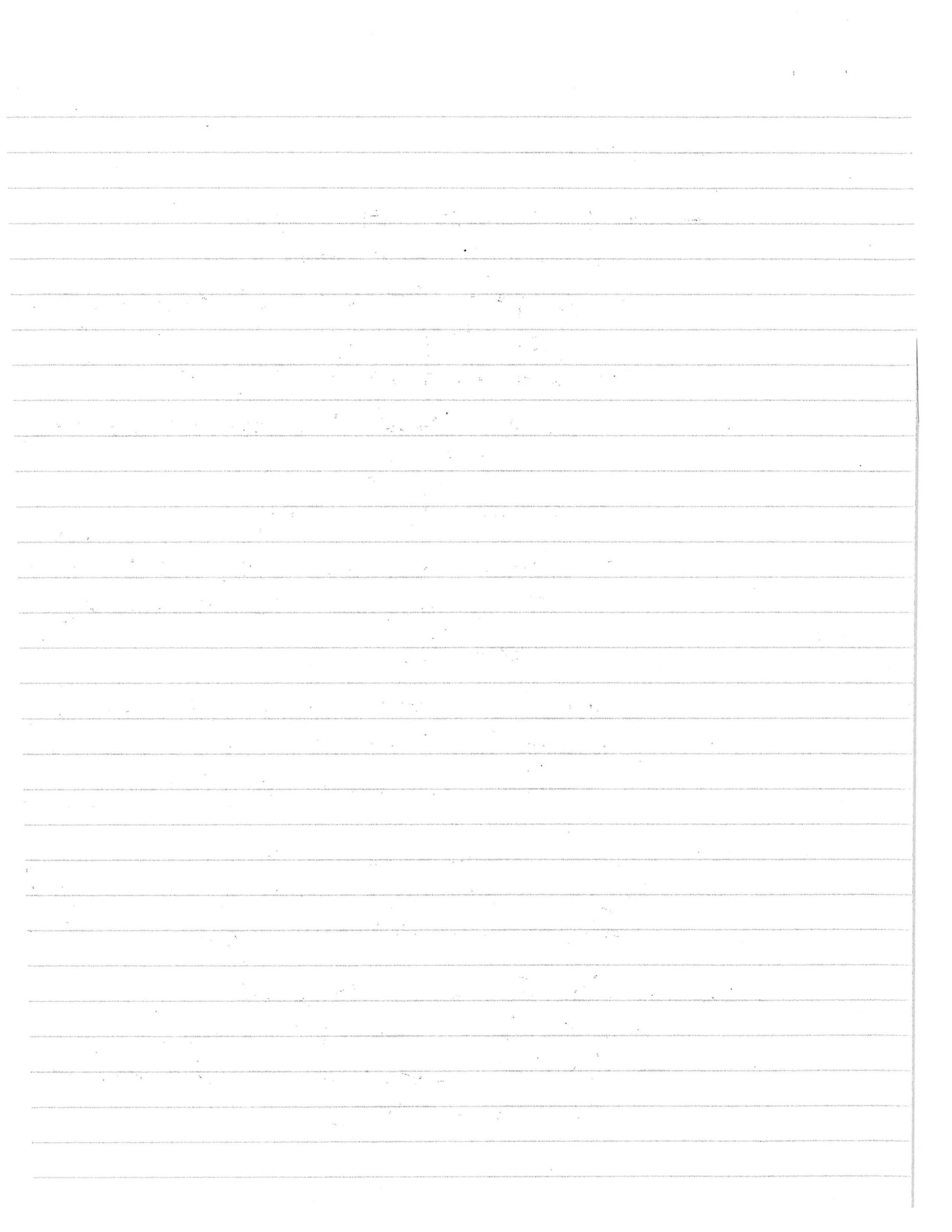
→ 22 country - would double
taxes for OGC to
consolidate trust -
request to consolidate.
Don't know accepted



- left, near.
- Stone - area of grey
 - fatal flow decaying
 - helpful to see what you see, 25 fatal.
 - not typical environment
 - very useful differences for Stone.
 - accounting call.
 - huge demand then this to expect something.
- when you look at sheets, left not to see the right side & come to right side.

PG - not definite - one is missing but is still - used something at somewhere else.

Stone - UK 2 GAT 0000
 - primary beefery -
 - who would it be other than UK



TD - looks at asset approach

Long - whether counter can be
used.

α - solve security issue - if
we can - go through sell,
counter party

Long many more assets - wanted
to these -
- off balance sheet option - is
prob that -

St - 3 specific work streams -
- residual work up,
- collect list from dealers,
- AB issue

- Michaels workup,

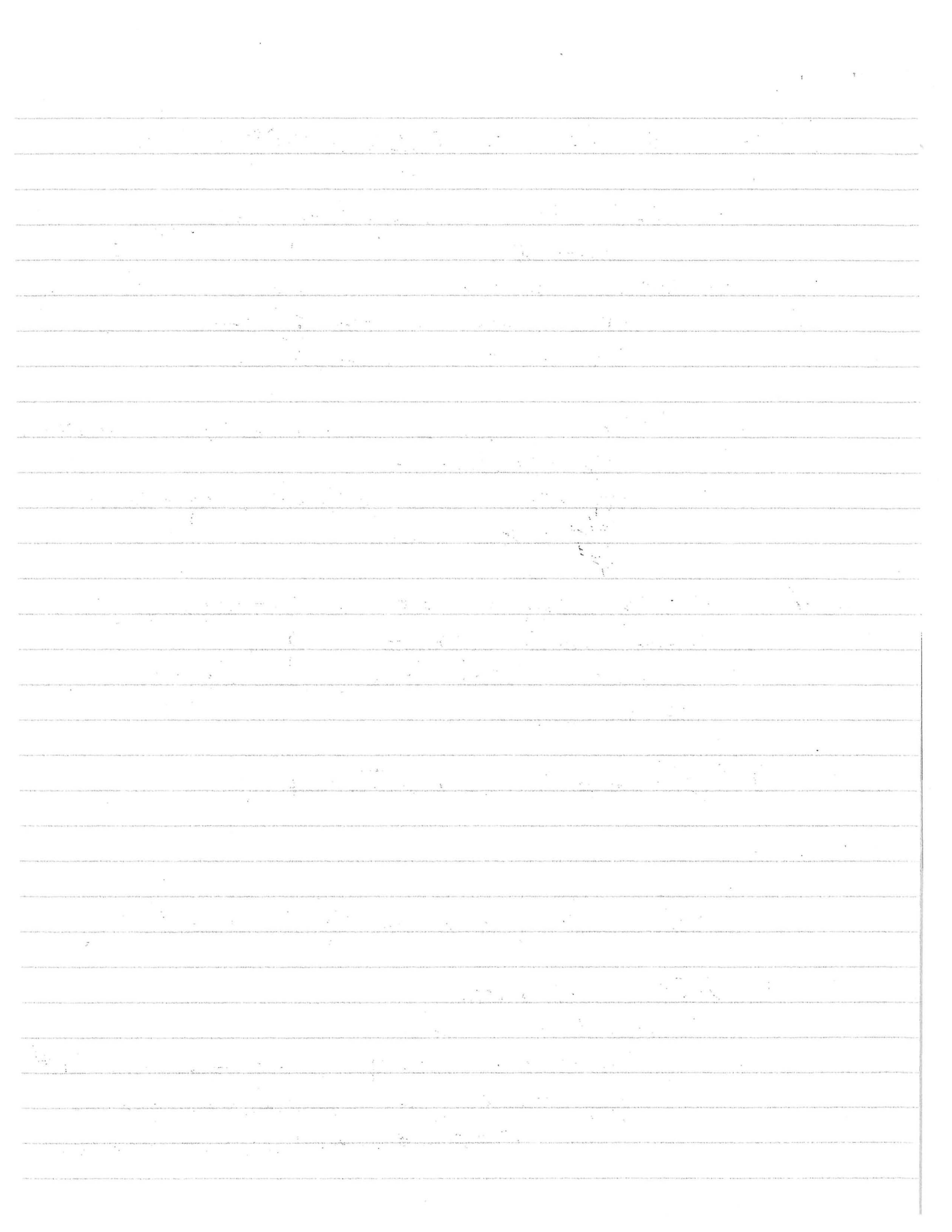
Elliot

- critical issues for dealer

① Market disrupt

- dealers victim

② prob. step in pay of debt
③ right to recover from
watermark right away



- CIBC - ex. development facility
- structure for team take out if asset doesn't come back
 - can't finance plentiful.
 - need to

Carely - easier for province to step in.

CIBC don't want to be stuck for 15-20 yrs w/o getting paid

- flexibility in security needed not required to capital

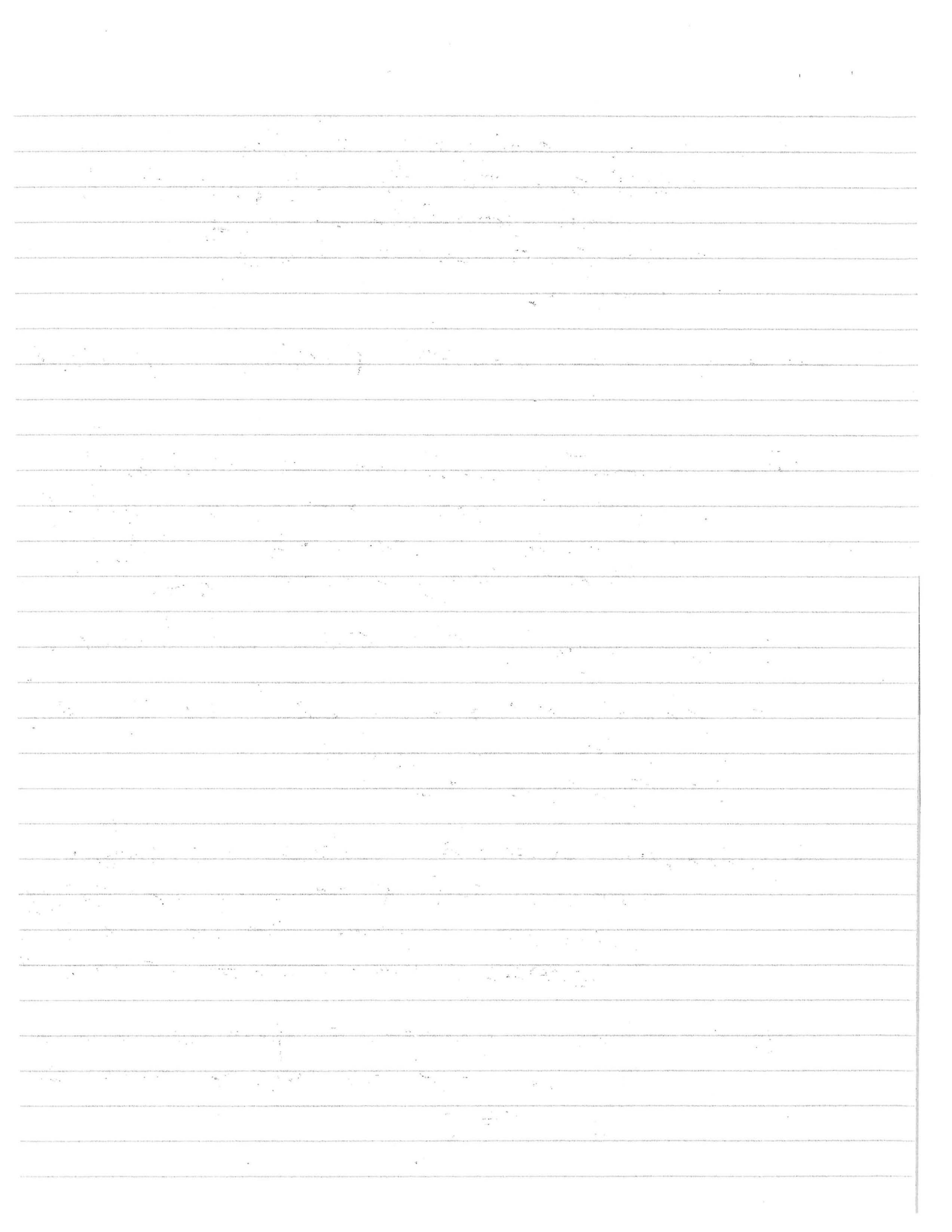
CC - in legs? or care vocal teams?

- some could be dealt to through current table
- on the table

Michael - maybe able to defer values of provincial bridge

- province needs to do what necessary for existing treatment

~~or~~ more protect province province harder to argue consolidated by ~~or~~



13.10 - present for inclusion - federal

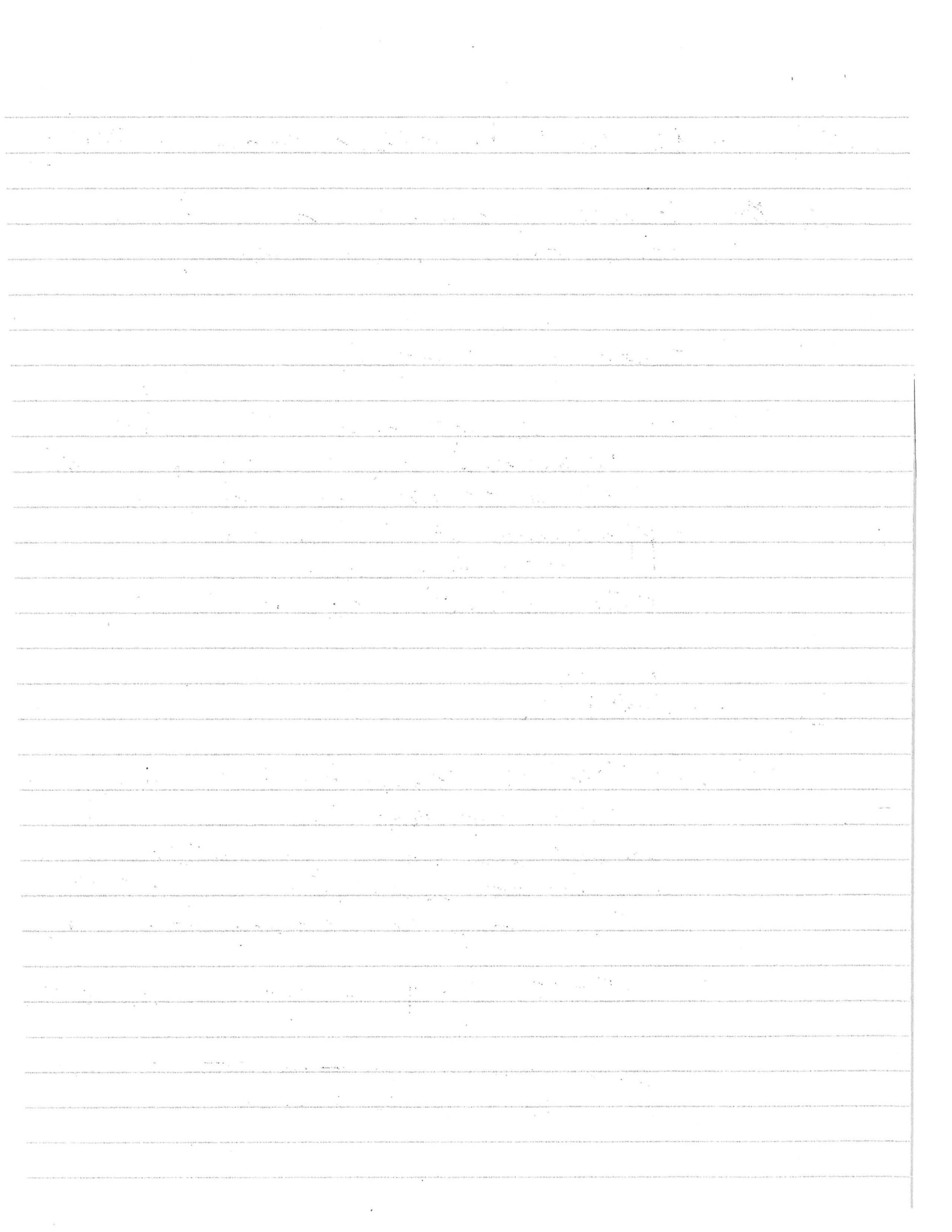
OPC - doesn't thought so that can take away to consider.

#4 - Federal Country

- LL - understood used for undertaking - whereby will need to be settled.
- apparatus of success
 - will add
- contractual guarantee.

#2 - FAP -

- Shes - need goes to root of my next sound legs -
- take 25 years to recognize, will be 25 soft 2 2000th 25 can be stable cycle
- start in previous work -
if
- seven year guarantee - rise by 2000th



Steve - prescriptive path as order
that John can follow.

Baker - to extend can't apply 177

Avon - like a tangled line to line
to ensure not coupled

Steve - won't want to be to
prescription - it's all under
- want to find down
of layers.

- whether leg is as described
writes attack

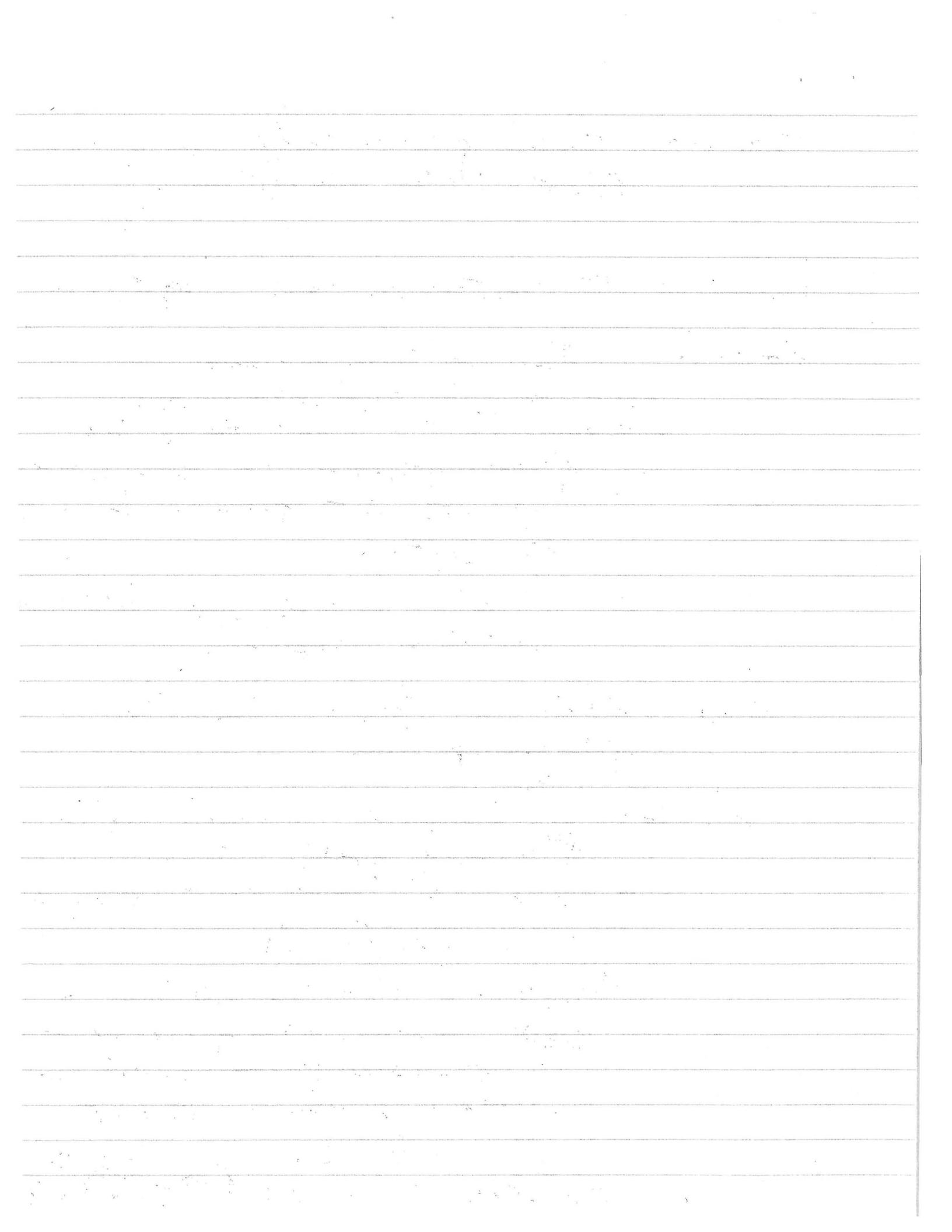
John - legs for FTT - for under 7
prescription

Steve - 2 levels - legs with
prescription

- leg will set out depth
- plan for attack.

Avon - E be a curve
but will be properties
2 parameters will have
range for legs
makers

- ability to need plan sub to
understand



Q&A - who knows?

Steve - not there yet - tension in

us
- F&P is policy document
need more expertise to
look at picture.

- if Q&A did - wrong costed
of costs.

F&P - comp. / FR Q&A present,

John - if 2015 Q&A to force things
where they try to avoid
role which affect finance

Wanda - funny - not laughing on
anything
- new way to do it

Sham - tuned 2 doc - that sets
in context

- Lots of open issues
- worst mpt feedback
detailed feedback

Johns

#3 - concern not too prescriptive

- want to ens

- too detailed & more flexible.

Steve - can you make more flexible

- set 2 bmn recovery sweeps

all table has been

- adds free own of substance
to what is fundamentally
sound design

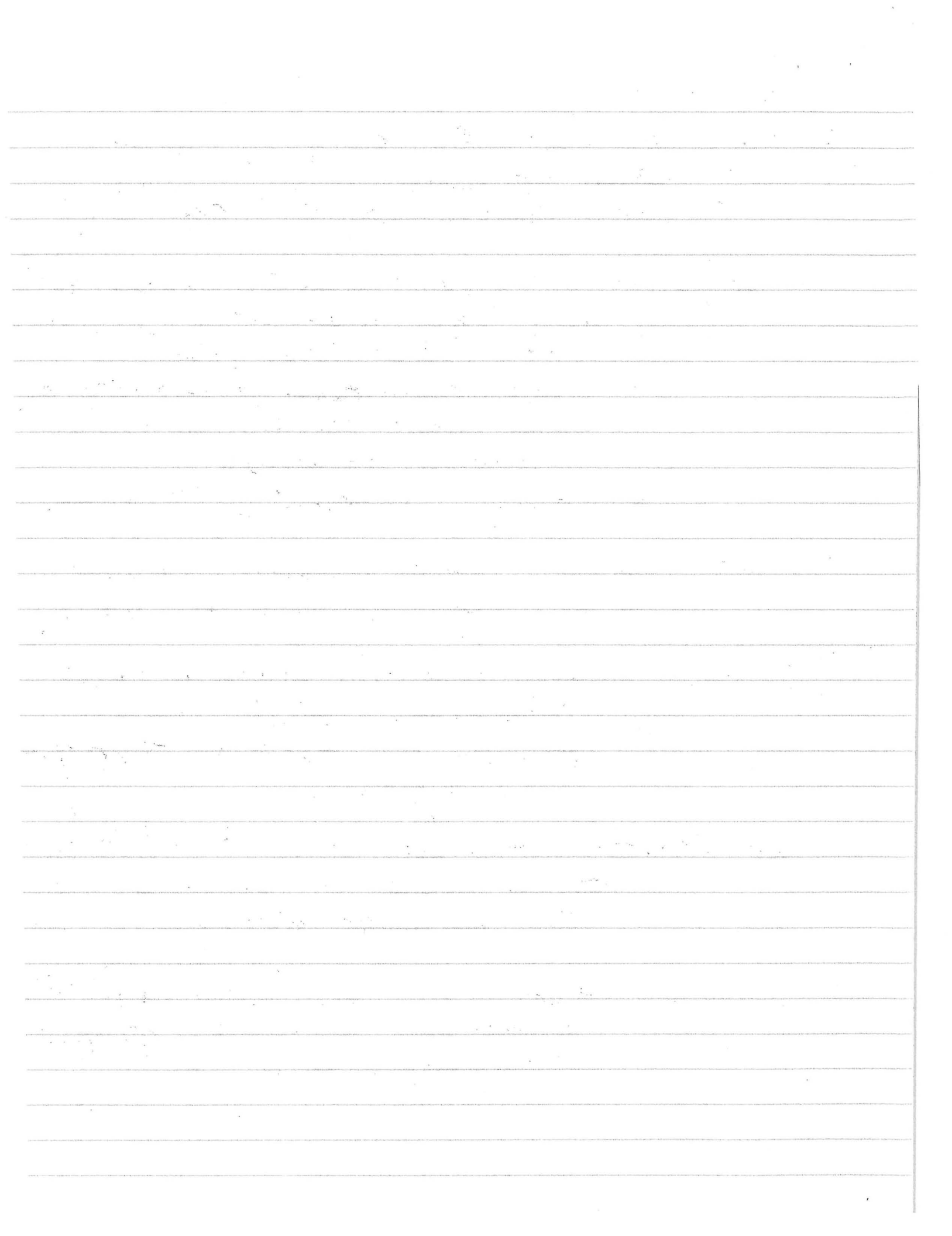
- nothing written in stone.

CC - hear your view of what
can go in legs or not.

John - why would provide you
unfunded liability to Gov
only to appoint disprop.
changes.

John - can do that? -> but if
one party - see 25 why
as are of practice

John - balance in law up after
provide every right
changes over time



14 ~~Reco~~

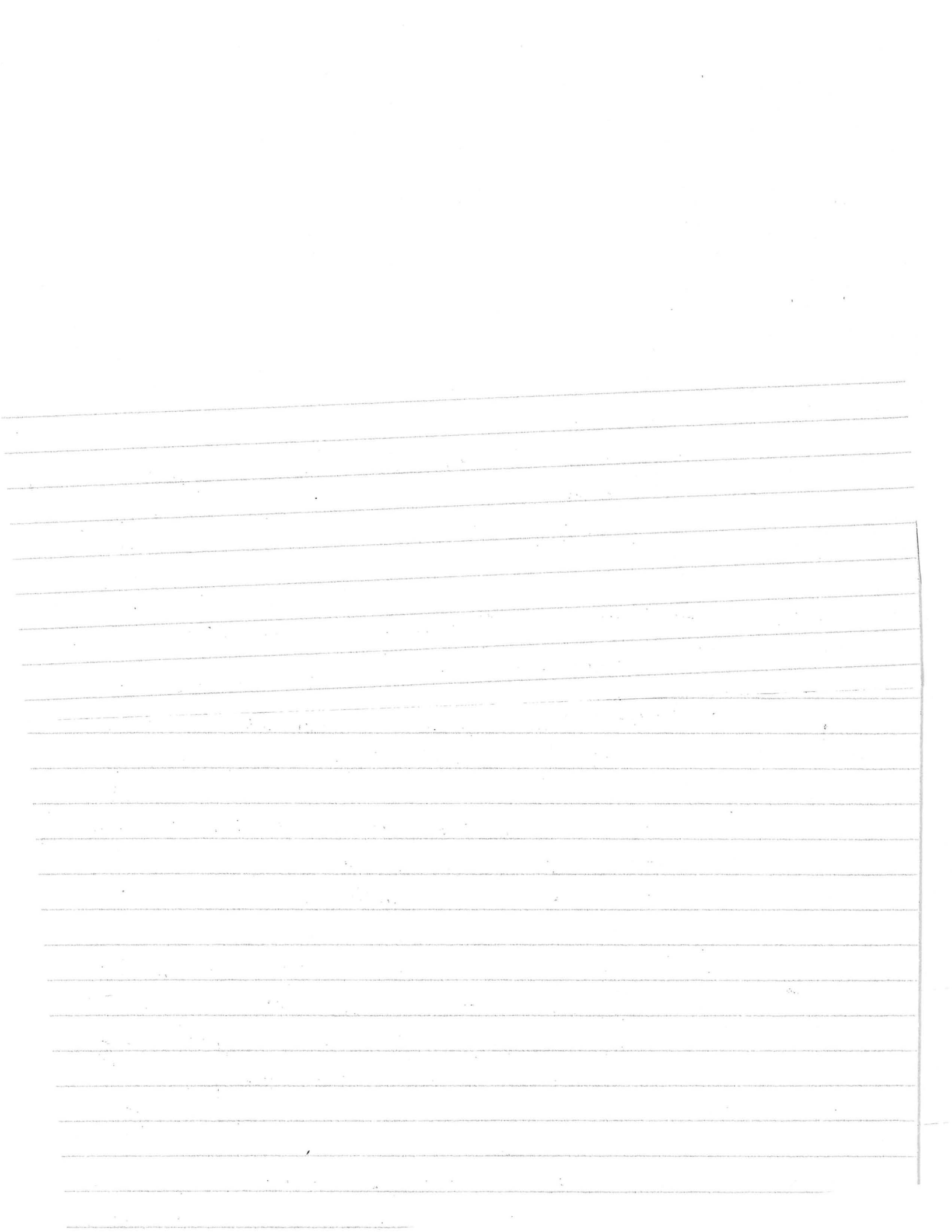
- you're saying John have agreed to purchase price from 2004

52- Explain updated as info unfolds
- need to know for...

- Should have regard for these things - that would oblige to do
- how detailed thought rights
- who has approval
- safety of approval

54

- When obvious challenge to have funding away from it was appropriate for lay to say -
- need to have it the best
→ use reserve funds
- intended to be



Stave -

- ME - seller / buyer - who does what
- OPG has it plans -
 - may or may not be accept to province
 - province has to make decis-
- present plan in reg, - if can
sell in accordance with govt
to
 - prov. can't tell OPG / financial
entity
 - buyers plan / sellers plan
 - province can't tell OPG to buy
be then report of govt

Stave - 2 spec

- plan exists - plan has pho
see if any they these



SA - notley compels OGC to try and
- have to have corresponding
Plan.

- parameters dictated by lawyer.
- what are obstacles.

- what is a responsible piece
of leg.

Sox - ~~company~~ conf. in thought
delay to OGC to implement
funding
- level of review after plan

OGC shall vs. it will be expected
that

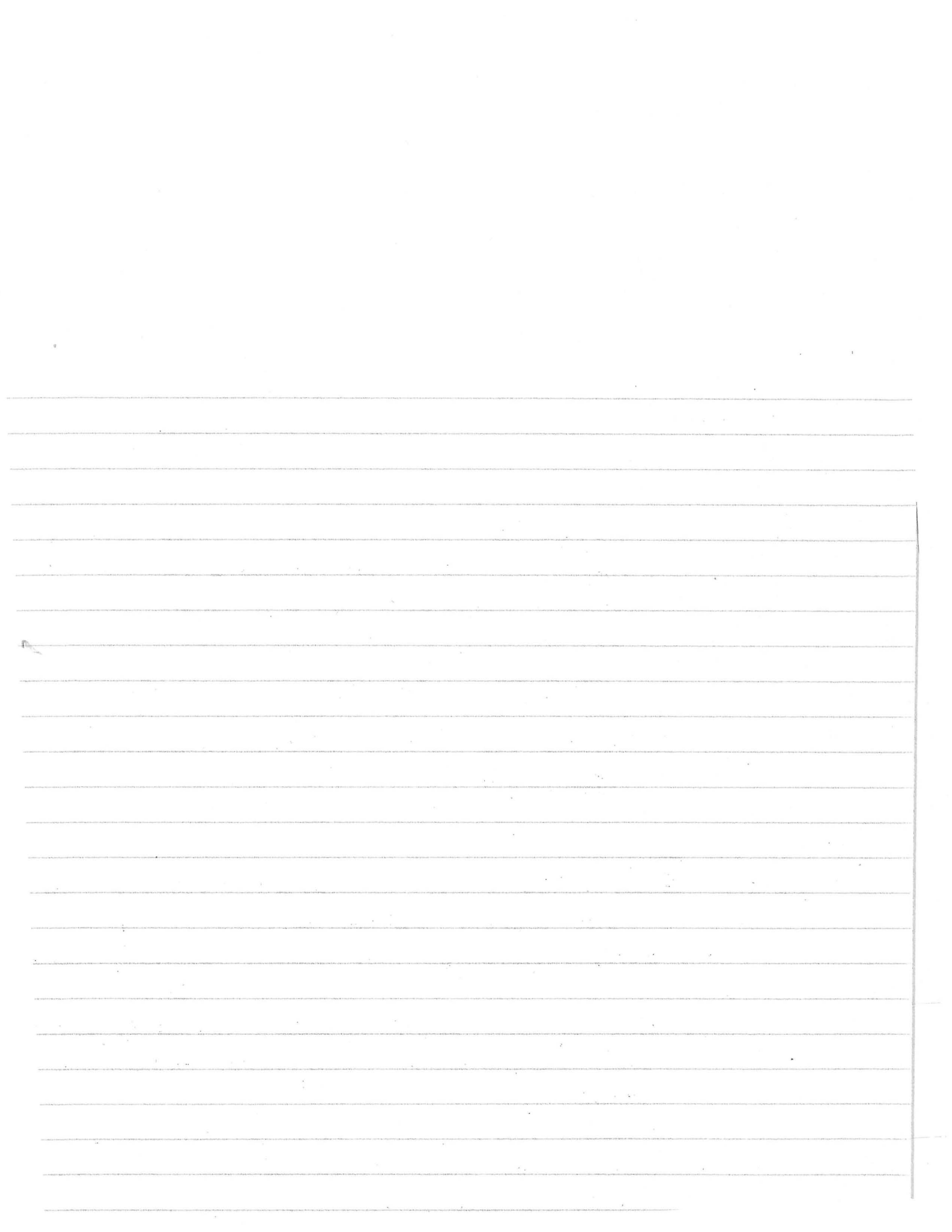
45 - limited on defaults under
program -

CC - like idea of that -
- we understood that detri

OPG - quick - no research -

Jim - workable plan - lowest
inputs down strategy
- once debt incurred
that is locked down
- ability to fill in around it
- this is interplay between 2
things.

HF - OEB no role - understood for
condition worsen -
- role needs to be signif link
- for trying to achieve - inputs
no apparent rights over,
strategy
- once fancy in place
- can't be someone who
can say - don't link



U- how to accept. need that
not curly

- trying to solve for security
thrust
- don't want OES to have to
approve smthg has no
control over

2- Poco

- ~ cost incurred secured app
- shortfall.
→ determining what for.

OES- want to use every
process as much
as possible

Corey - have a concept
basis - not detailed

OES - up

#12, only people with one
registered domain.
- initially open - no one else
permitted to own assets

then - 1500 sells - pass 1500
sells to sells again
- leg. would not enter
concept of serv.
- leg. not determine of what
day - still have ability
to negotiate terms out
- buy A equity.

1500 sells right - & no right
& oblige.

Ratio - rights for assets,

SK - creation of vehicle interrupted
loosely
- want to get deal unless
market

MF - OPG controls total - OPG
can't wind up OPG
- until debt repaid OPG
can't wind up
- not without catalyst
unless Hewitt
says ok

Ar put
in
ref

LEO -
s2 by agencies concerned to
size of transition charge
- LEO able to fund fully debt
buyback program

SA - to regularly reset beta
weights associated in
the concept works &

- only appears down and
- if we are target history beyond service - have to be aware.

SA - when do deal deal has
 content pattern
 - content of that sort -
 focused on AAA history
 deal is in doc.
 - if want to enter -
 LEGO can't sell in
 Britain - not sure what
 content

Reco - if Slantfall - permit
 LEGO to proceed
 - country is LEGO & other
 entities

7 - mostly of 2000 is West
 114, covering the

SA - legs or legs

KSO - might now have variance
- forecast variance - can't for
period of time.

SA - any doc needs - KSO 255
reflected in their books
- can be bordered by 255
shall not book by X

long sales agent - KSO conf.
quarry account.

KSO - the actual report to us on
from outposts - has to be
some way to recover

SA - mechanic - after debt service
cash flow, peer

Q- if LEO taking order from customer,
does it raise security issue?

SA- takes order

Lunch break

- volume of orders issues list,

L3

- ① underpayment for credit
② under ^{on} ~~payment~~ ^{by LDC}

- SA - based collect

- LDC has to put # in file,
to ~~credit~~ ^{credit} right on
collect

→ can LDC trace what
L3 billed to what L3

UK bank

- amt admitted - on daily basis through screenshot.
- everyday though.
- daily verification.

OKB mainly currently.

LB - is daily verifications -
reporting / tracking
reasonable

- don't think can't be cause of - don't have some priority rights to call.
- will want to know have rights for this

SA table this what is

11- 2 identity of agent to order
payment of transit ~~fee~~
charge

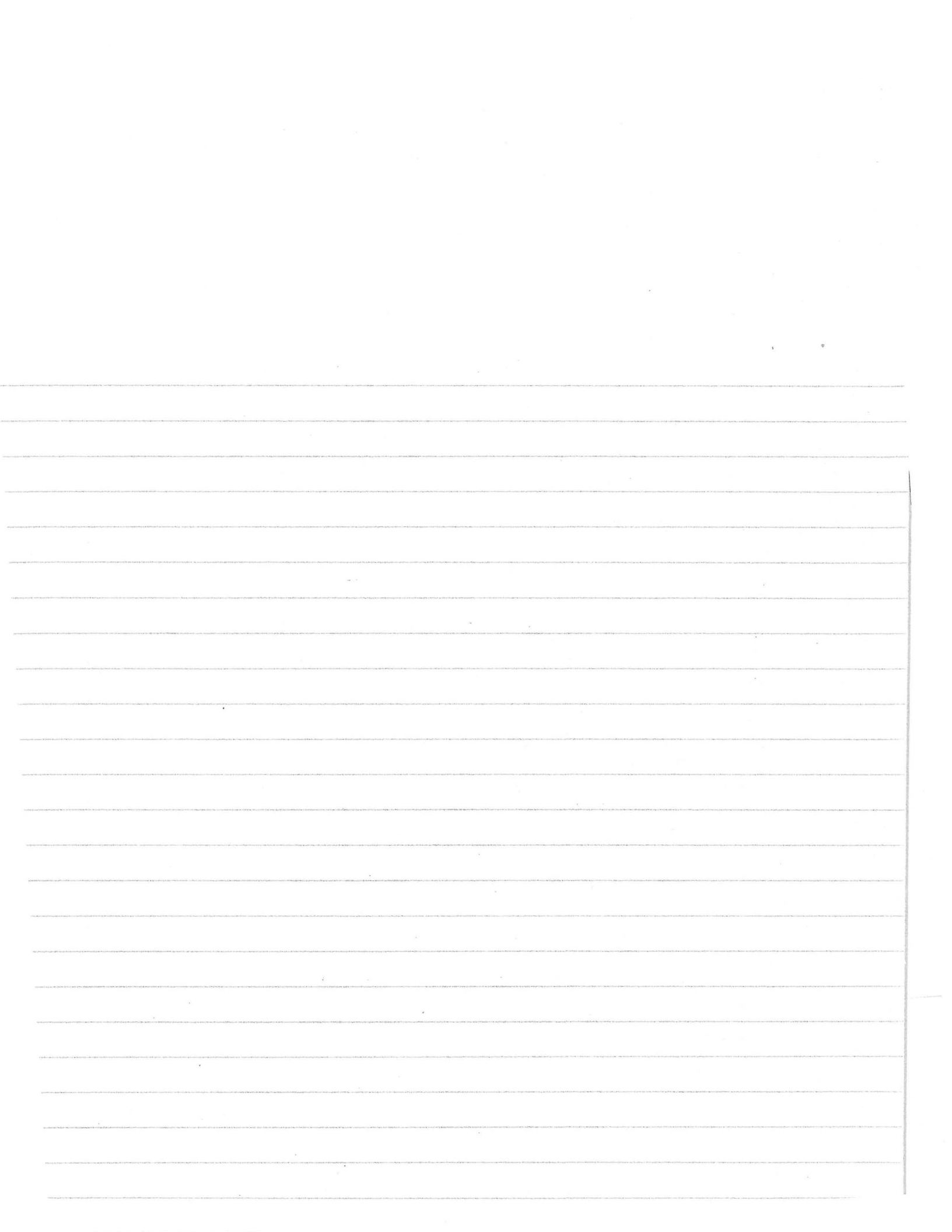
11- agree on concept -
mechanism is preferred

12- who are class,

11- DREC eligible -
very defined -
- class of people - not
entire

13- True up - every 6 with
possible more often

11- understand, used
- provide language on
long-term.



14 - month to week true-up
- gap - covers

- don't expect less - will
know

- follow month - true up for
previous work

SA - mechanics talked into def'n
- current contract
- est for 6 weeks true up of
end

Rocco - end of 2014 - point of
shutdown

- concern to lag -

& could be done in Reg

15 - agree on point

- ~~5~~ 16 what if shutdown in mth? -
- Pocco - preference some other mechanism.
 - no intent for this
 - things were on faded change

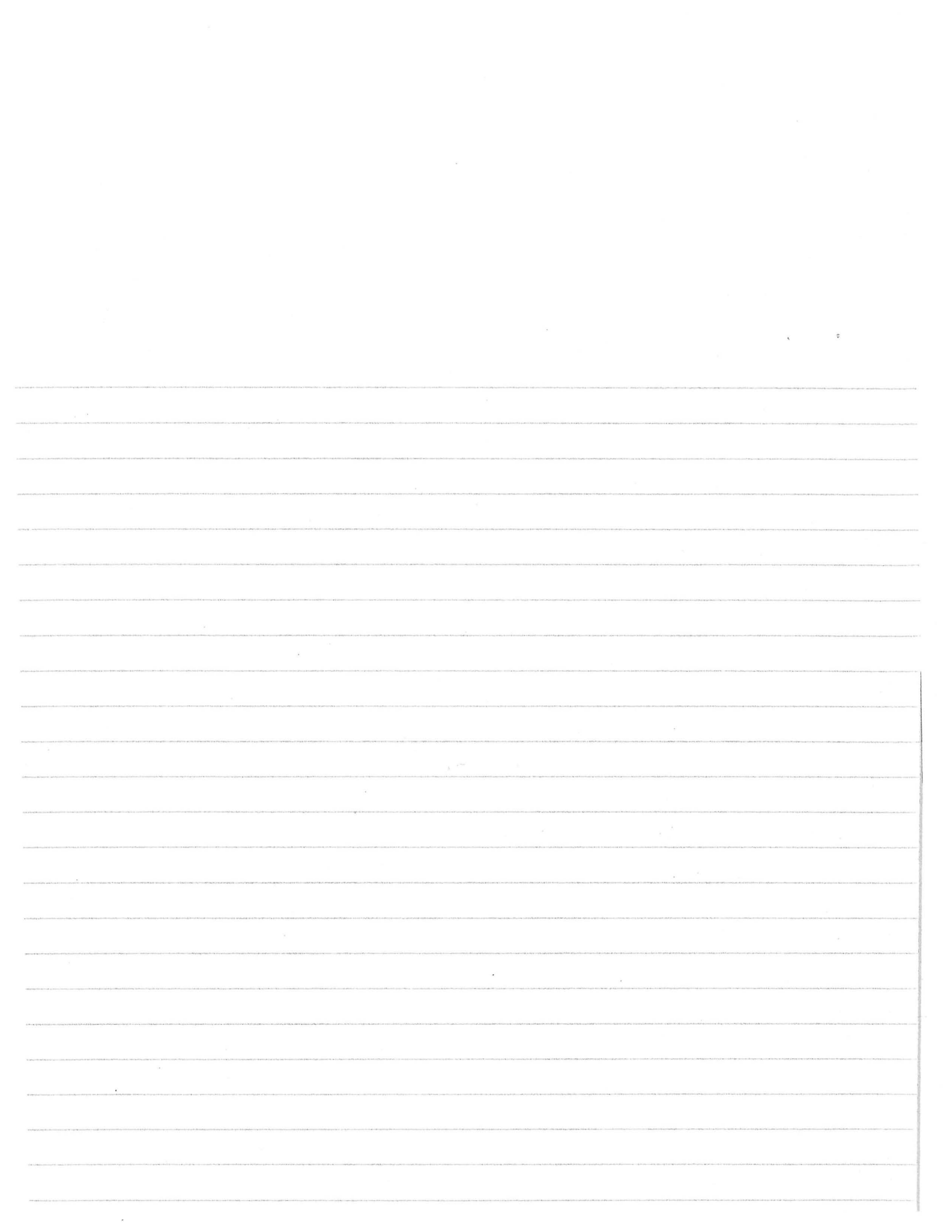
M₂ - LESO no access to transit.
Chargers.

2 things

① LES has to make req.
sent by ready for req.
balance in acct.

- 25 long as resource for
OEB

- no one plans for this has
to be recovered



MF - (ESD don't need ^{access to} transit changes.

SA - mechanics - look at next draft.
- inherent look to counter
discontinuity in asset
- test that.

OEB - quest,

log. degrees RFP done (probably)
we do 6 with
- 15 6 with critical

US separate change - spirit
to be up
- every 6 inches - both
from vantage perspective

Rocco - portion of bill belongs
to someone else
- money & needs to be
tracked
- if LLC's can split out
have went.

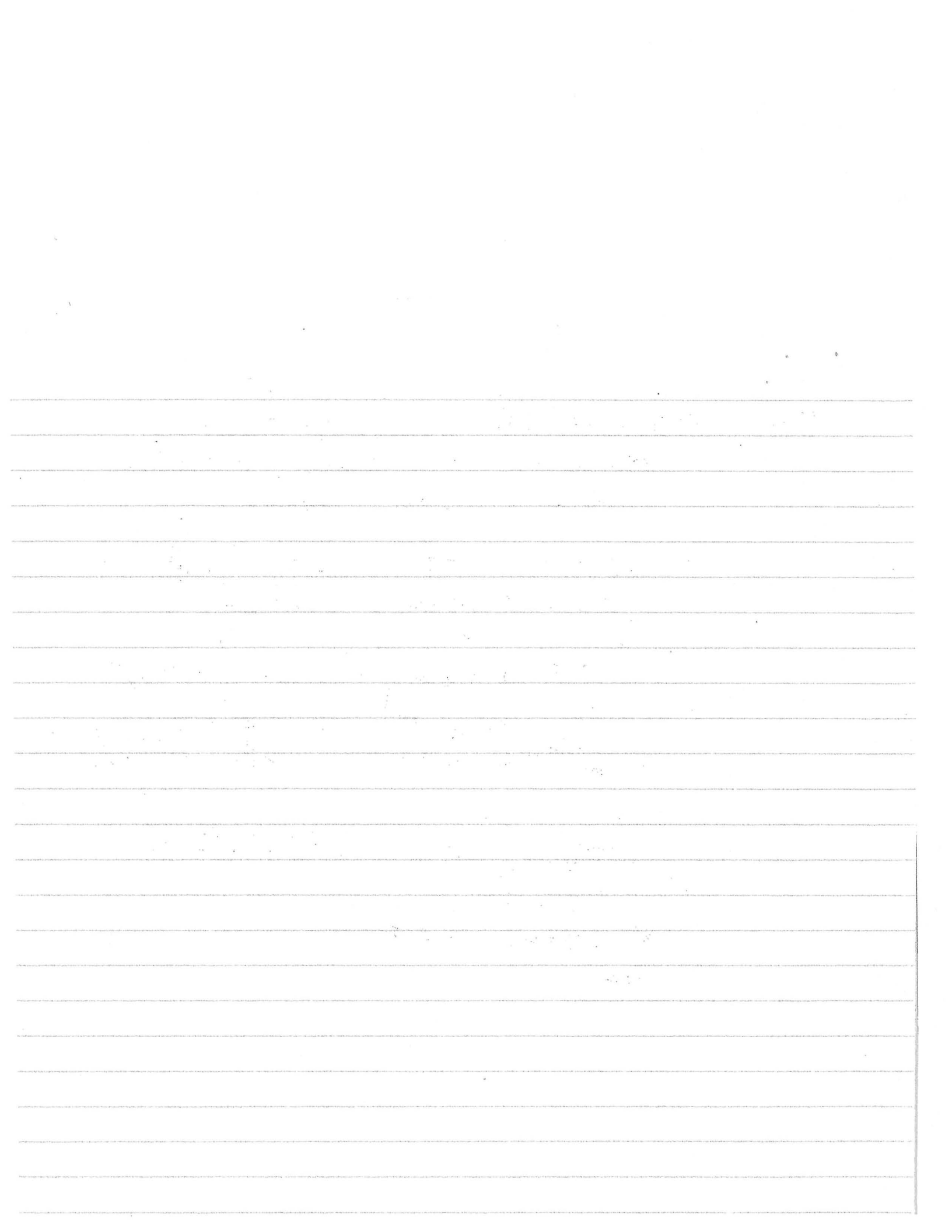
MF - def'n of regulatory asset
def'n shortfall LSO ready
to be on GA
- may be lucky - bc def'n
not tied to GA

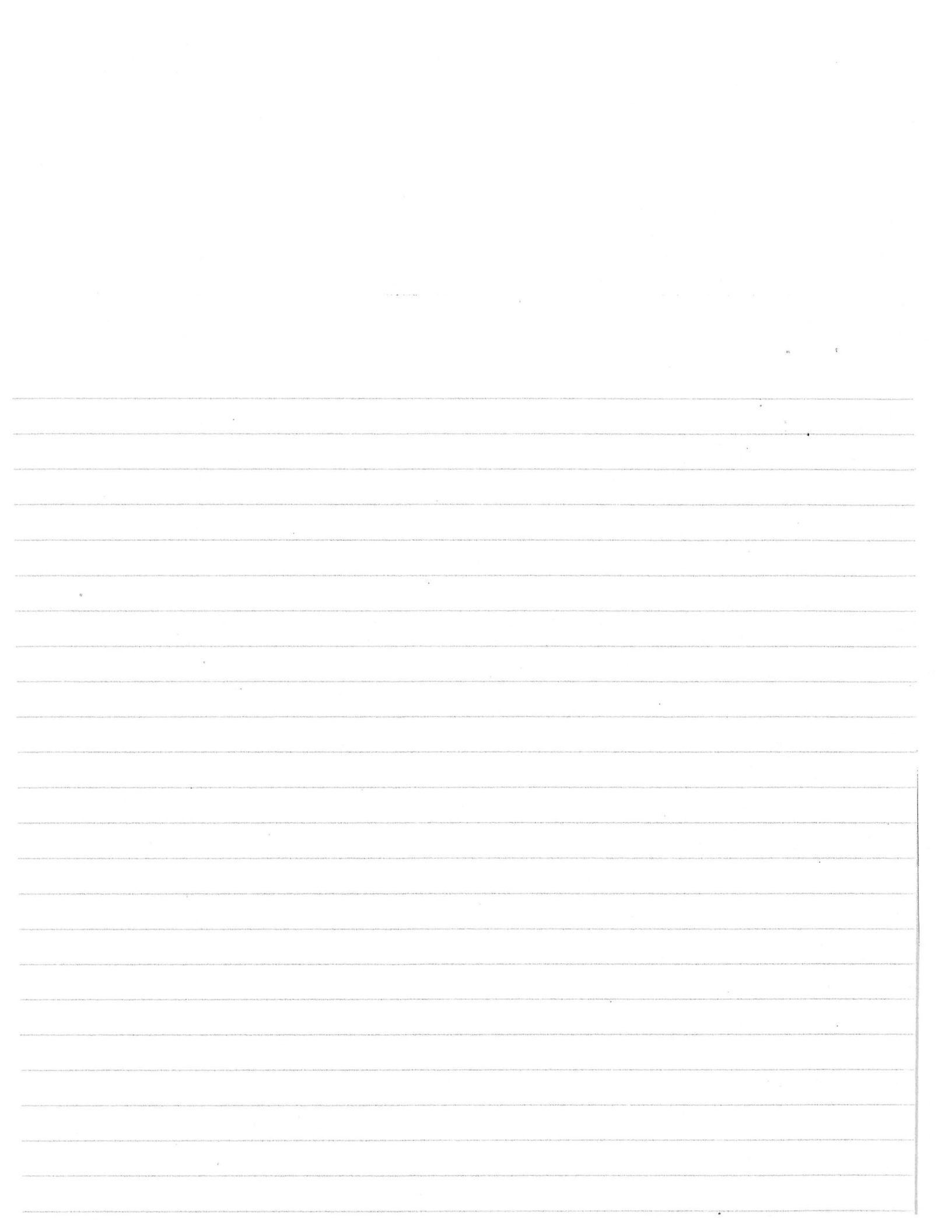
SA - org. doc - tied to shortfall
from power contract
- to come up w/ #'s
- created structure to realize
benefits of plan from wrap
- tried to make covers

MF - our asset had to find
obeynt. - LSO creates
asset w/o liability.

- Nature of asset depends
on liability creating
- buy defray - pay for it
- our asset is different -
LSO's since we help it.

(L - debt 10/13 created,
Wed
standalone 26
27





Post-bag Manager

CC - how to meet country fast
- tie into what already
happening.

- act taken off bills in
May - every shortfall
for LEO

LEO - if R&P set lower by
what ever set
- before rate working
- would create

Q - as long as by 15
refers to,

MB - some of discuss - might
of reason for LEO

. + n

- 11. +

MB - transit charge not LSO part
of asset

SA - ① sell you something arises
at your door - carrying
- whether tolerable

② RFD works.

MB₂ - need of before creates
regularly asset.

LSO - we have lefts - right
to recover.

from ① - to be sold regularly
calculations, asset

asset - interchangeable asset

at now, - what RB market will

QAB-

2 - whether amend legs to allow
US to exercise
Amshy

USO in first several yrs - every
month default
US will be able to track
+ carry 2 variance points

① - RPD forecast

② SA default 2 this is what
we sell

- then won't have to sell both

- USO don't want us to
sell forecast variance

SA - to recover ant 25% risk
in new leg 3 bring

- Sep 14 - new input is cancel
less

- it fall - OEB adjust
rates - less collect
choice

OEB - 2 prob to solve for.

- use RFB process -

Why - golden threshold
- impress from woody's.

OEB - could woody's be persons
that current infrastructure

St - looking for right of act
that 5 families

to 1 flow

MB. 25.33 tells us to settle GA
in short period.
- If deft smart overruling 25.33
whether stop & put back
in RHP.

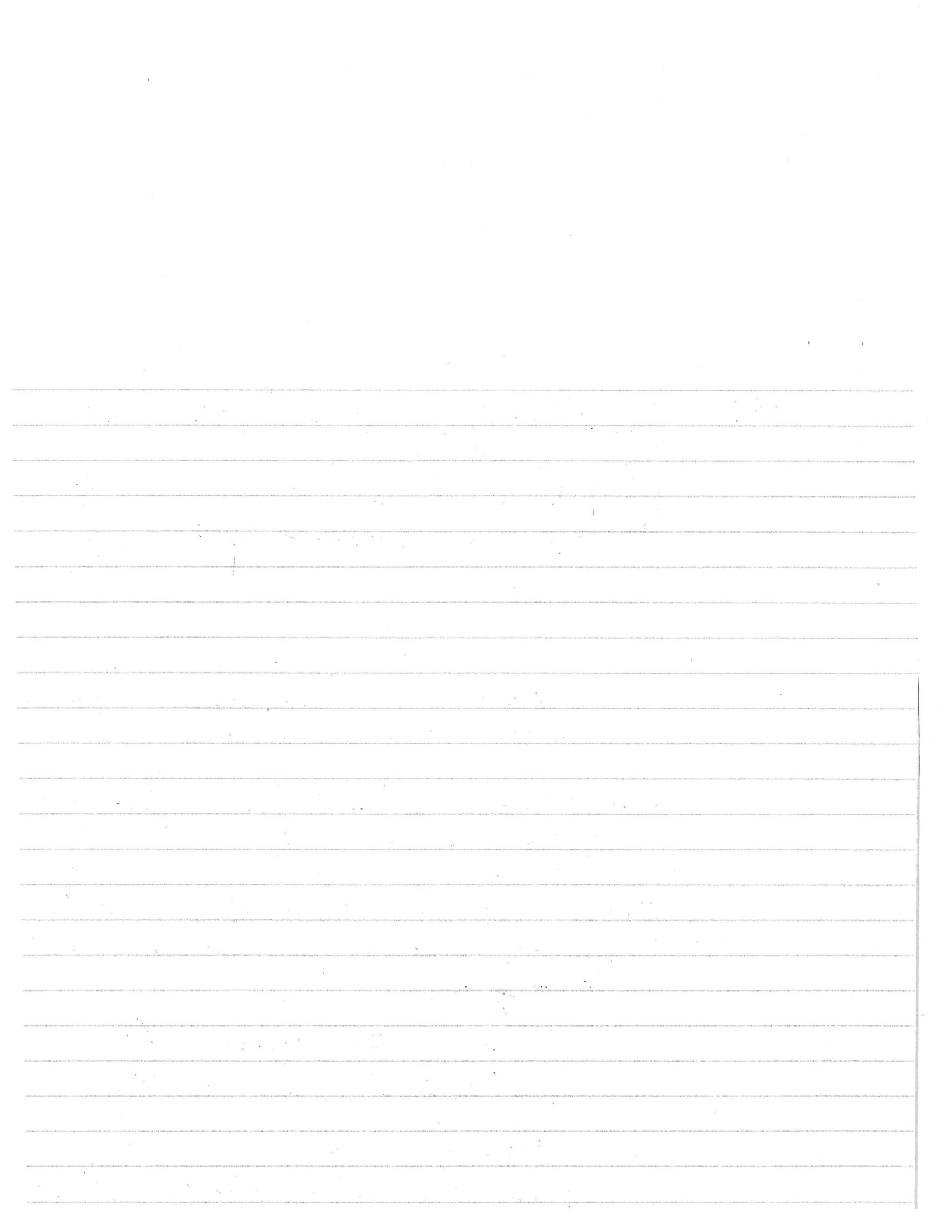
SA - Principles only discuss - don't
won't tie into that.

- GA plan which relates to
green energy plan

replace green adjustment with
what ever it there was
subjected

then let's take up
essentially extracted

< unless want to double
change pull out of



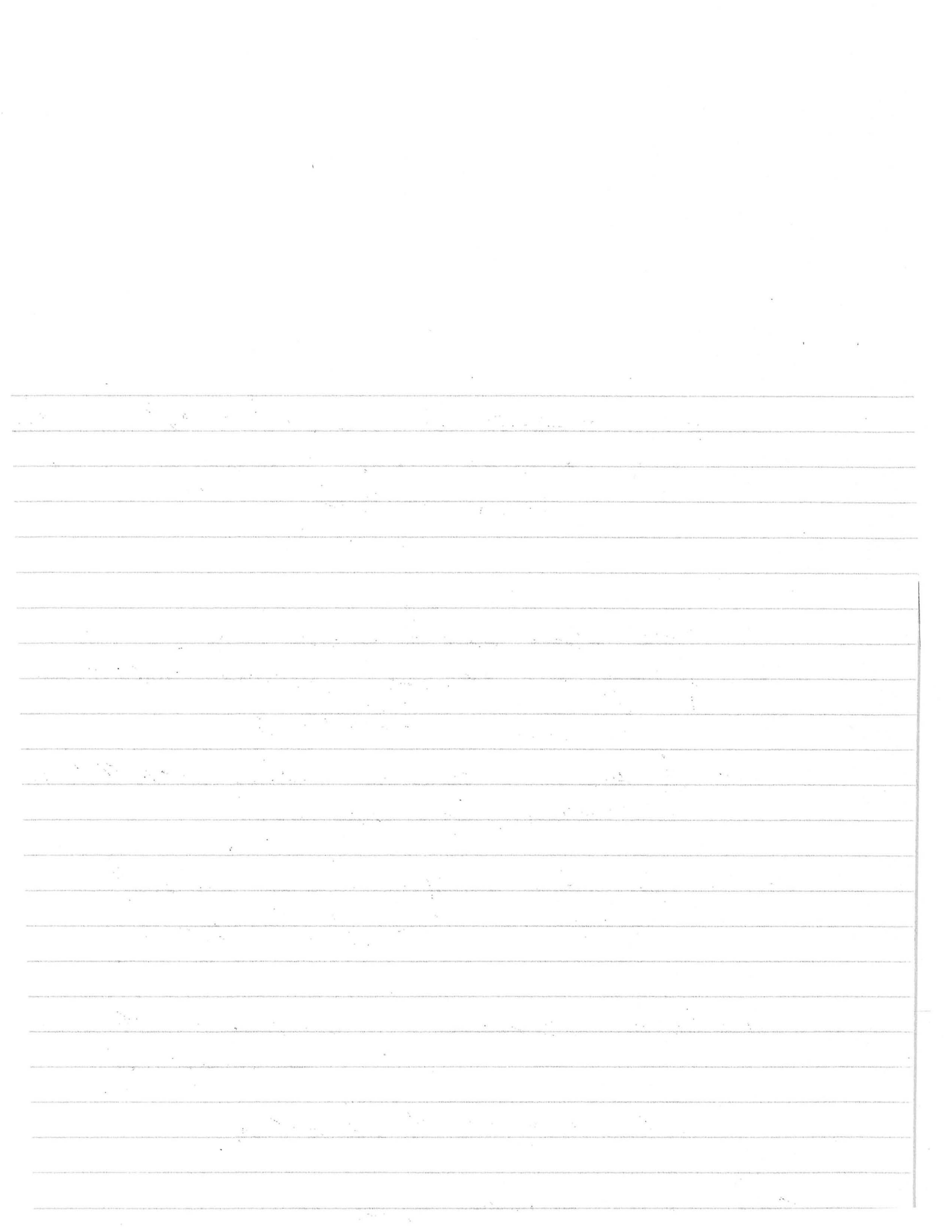
ACG - overpaid in past. notal credit
these guys, fully - draws
down credit

- if FTD set artificially low.
- program rolling under collecting
if selling to ACG then
- if falls away will run out of
room on credit.
- if ACG stops buying whole
program falls apart

regional asset - before right to
collect \$.

- (ESD right of recovery,

ESD - under the asset, has right



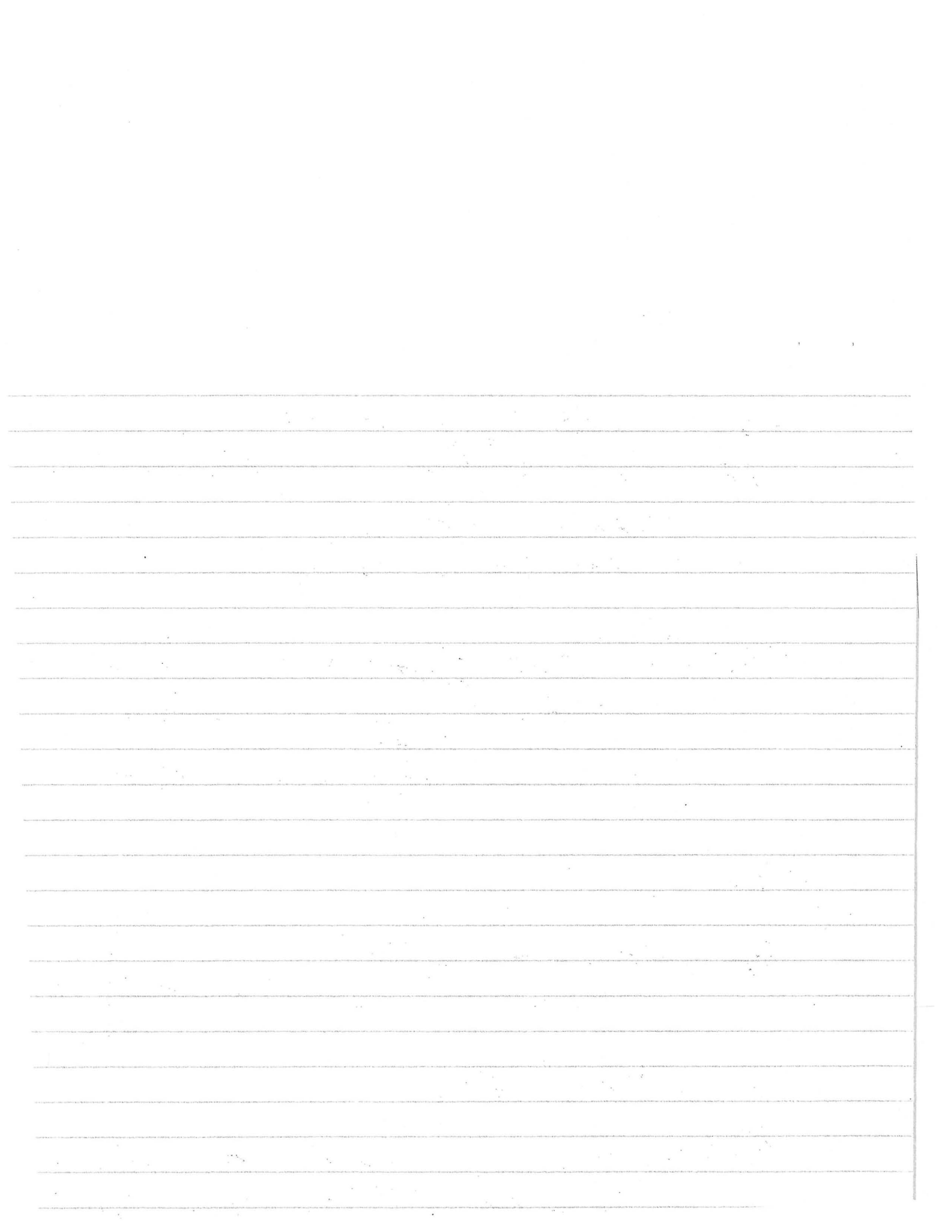
LESO - used right to recover.
SAC comes from transit rights
- took entry
- makes 2 diff. then

DEB - Ops should be sufficient
- Can't understand why
not suff
- 2 entry orders often

WIB

DEB - vol on Allen
→ not under LESO - point to
veg
- connect PPP -

PA - have 13 signal on table
sheet - DEB used when

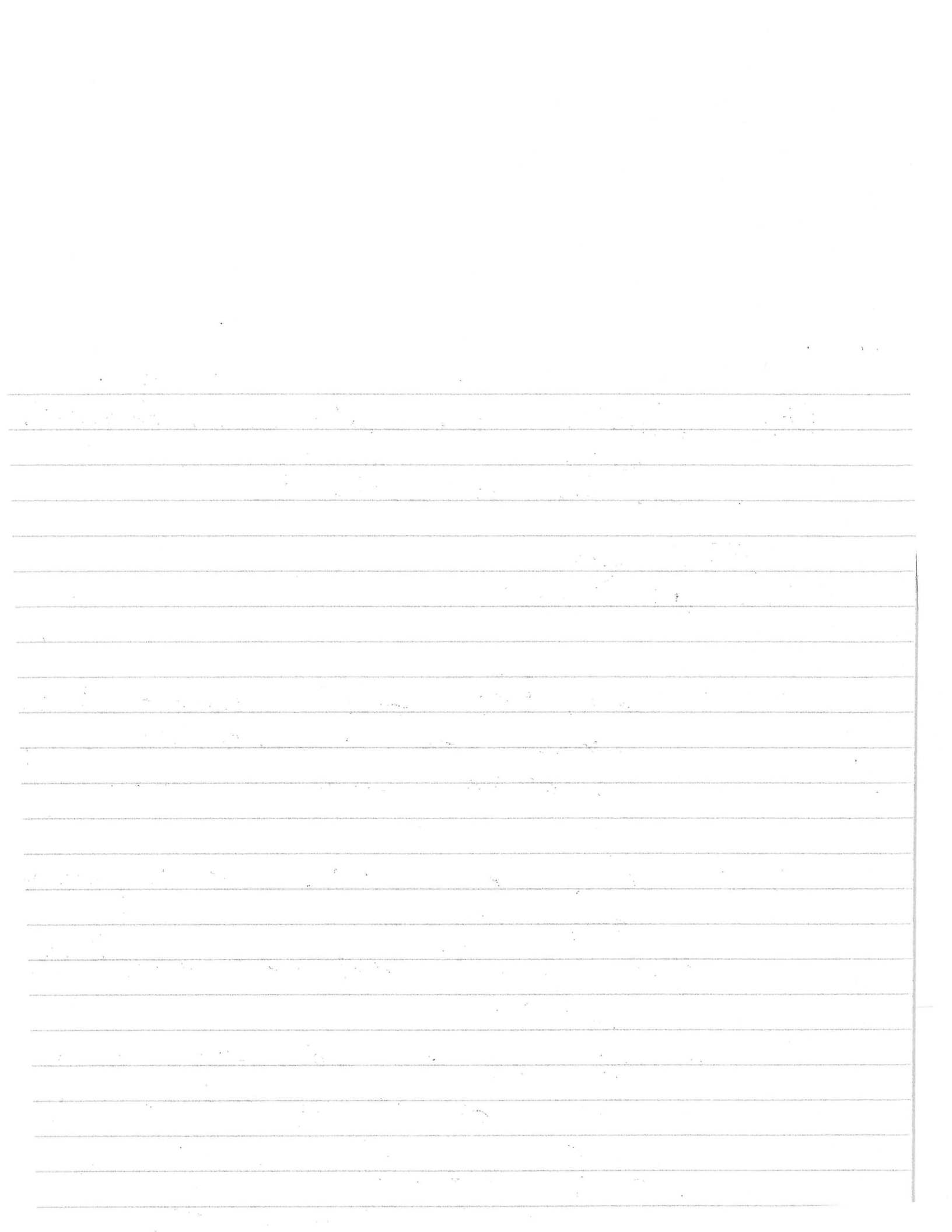


Stk - whether separately connected on
bill -
- in to be able to

(RPP chyt)
4 variances

DEB - set RPP on 2 boxes - which
would have otherwise kept up
smoothing - keep 2 variances

Stk - long GA calcul. re/0 regard to
form hydro?
- ~~background~~ against which to
deduct
- GA calcul. was regard to
body of variances - given adjust
- if currency were - ~~take~~
- L C GA - / direction



CC - nuclear order - how does thing
line up.

- OEB,
- wey come out
 - applicant comes forward
request reentry order.
 - it specifically related
to something
 - delegated to staff
 - a prompt from applicant

CC - legit

- we go for days later
- KGO have authority to ask
the court, if regularly
look

- in

- in the ... area

150 variance spent agreed to
create the budget.

- RPP - manual adjustment

OEB - bill in line to have 95/05
needed.

- KPMG wants OEB to be

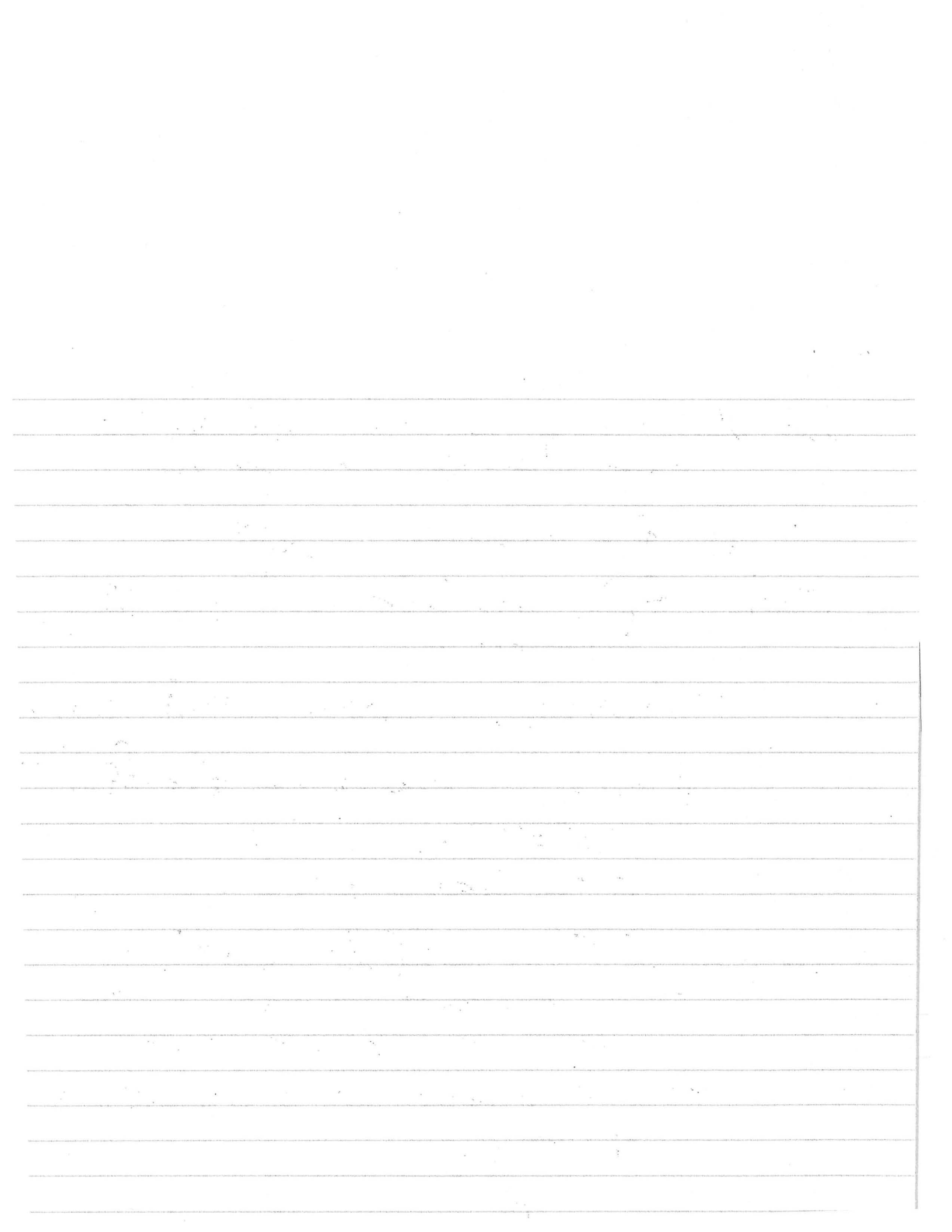
CC - practical reality - Shonffell
in line.

- could have order.

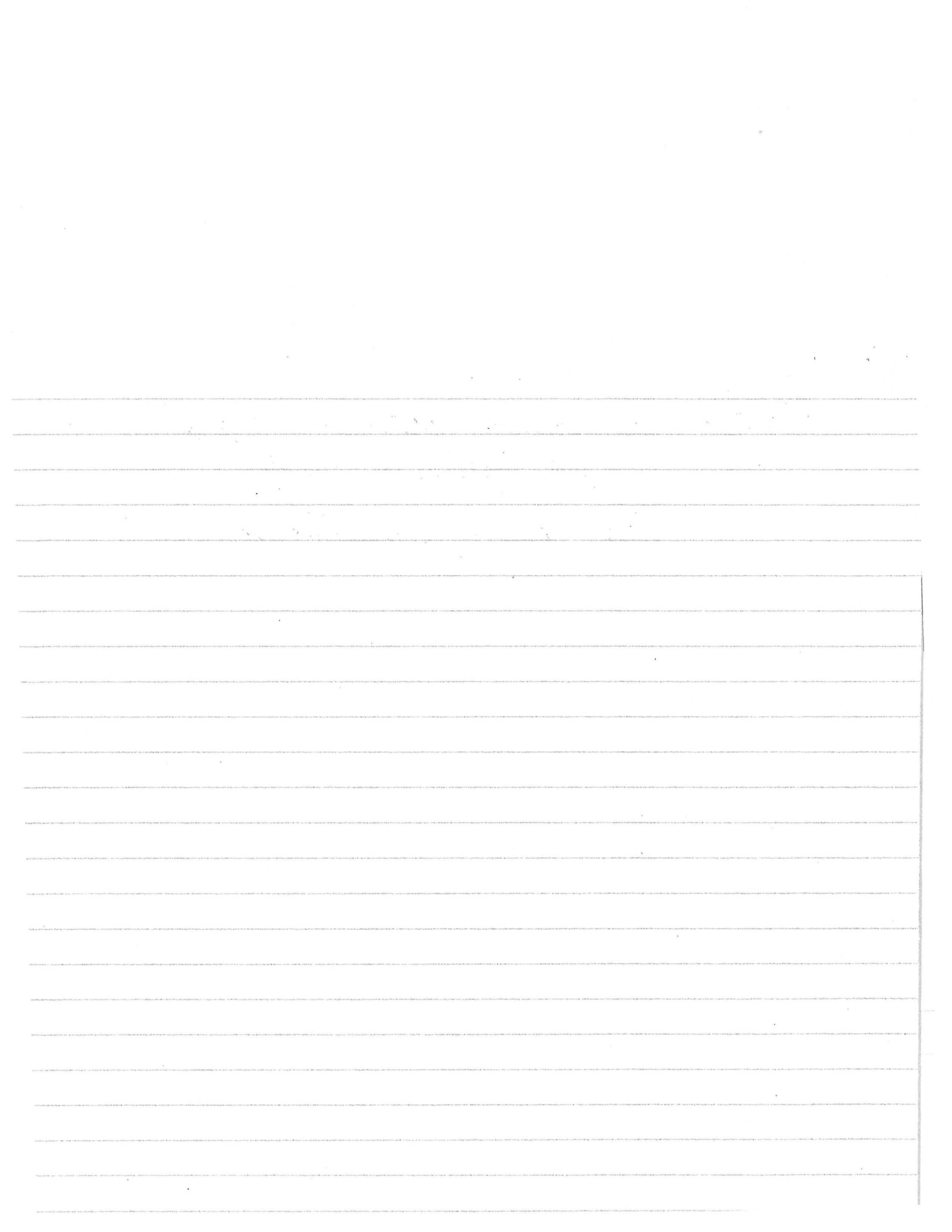
150 - 1st Shonffell - June 14

- important on LDC's to
tell us how owners

- they tell us on the
floor.



OEB- recovery mechanism deficit -
not enough OEB,
- its pen mechanism



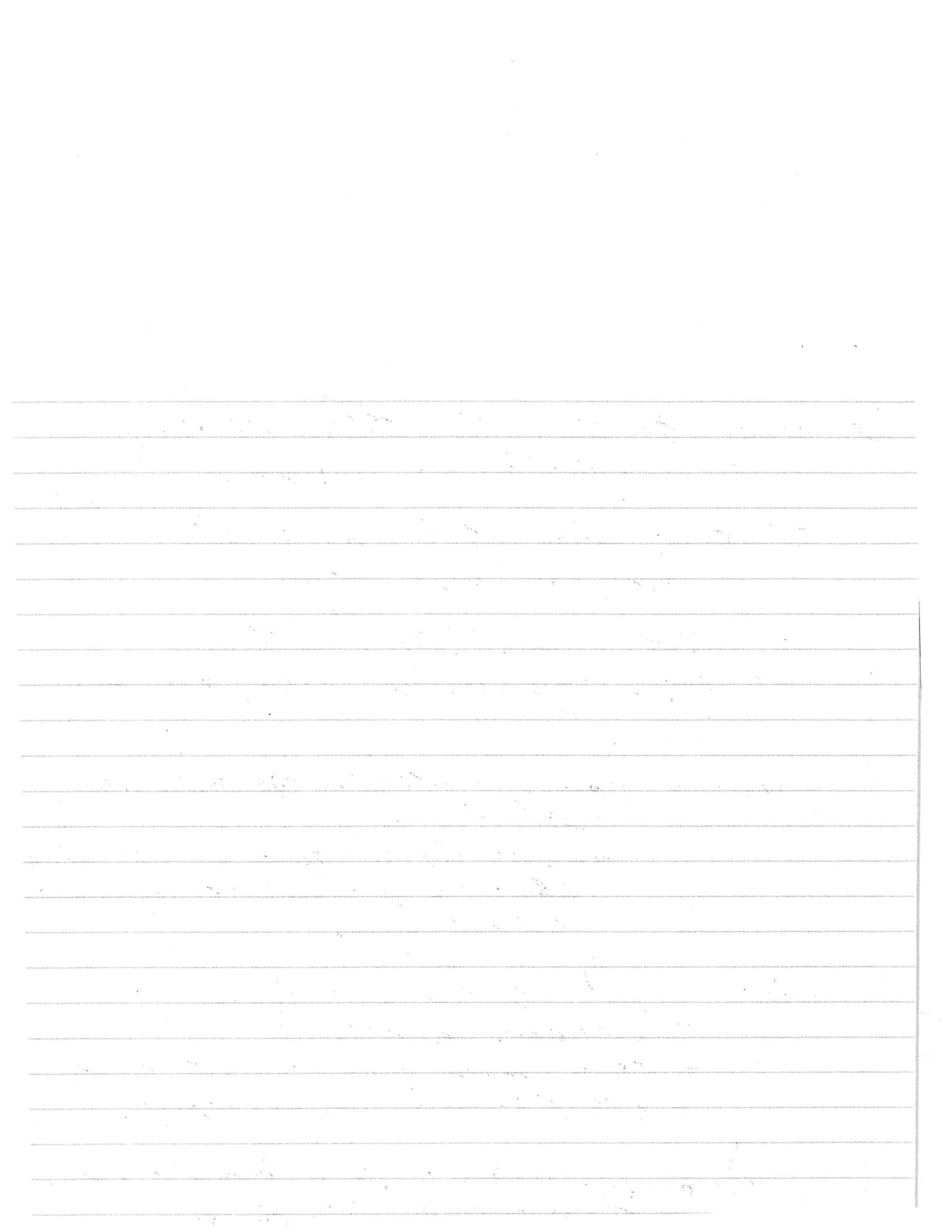
6 DEB looking at costs incurred
- LSO-fee-model.

- how did you carry at what did it cost you.
- ARG admin work costs.
- ARG payment - not equity.

Study - finance costs & admin.
costs
- find that asset created
comes right to recover
percentage

SK - that is finance plan
- scopes it out
- ARG does plan - no one,
presented in on top.

finance plan - performance
covenant, build it.



Q6 -
① Disincentive for free
② economy.

SA - when do the song plan - will
be benchmarked against

FAD - e

- SA - explant. for $4\frac{1}{2}$ yrs - when
will

LESO - shouldn't show up in
6-7 yrs - when OES sets
RPP

Q6 - we envision straight line
defn pctr.

St - Paper. is jumps as consing
gets bigger.

- curve too high - when do
you reset?

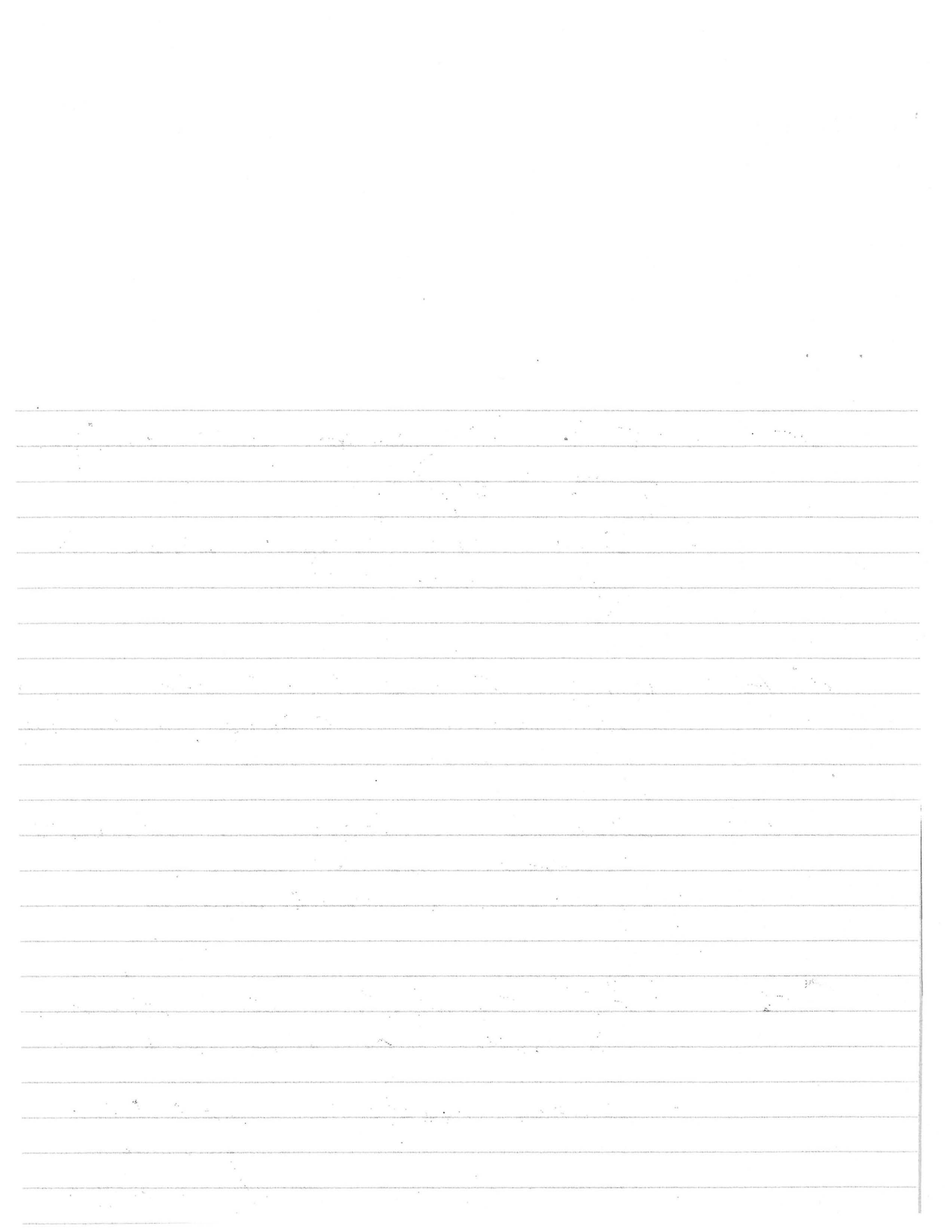
OPB - part of mech. - Used very first
of chunk consing. looks like

SA - dynamic curve that means
variables over time.
- picture not as clear

OPB - FAP tied to how often
update forecast outlook

- used data + interest

- see curve ^{piece} tied to A in



John - cannot do anything adverse
to interest in what,

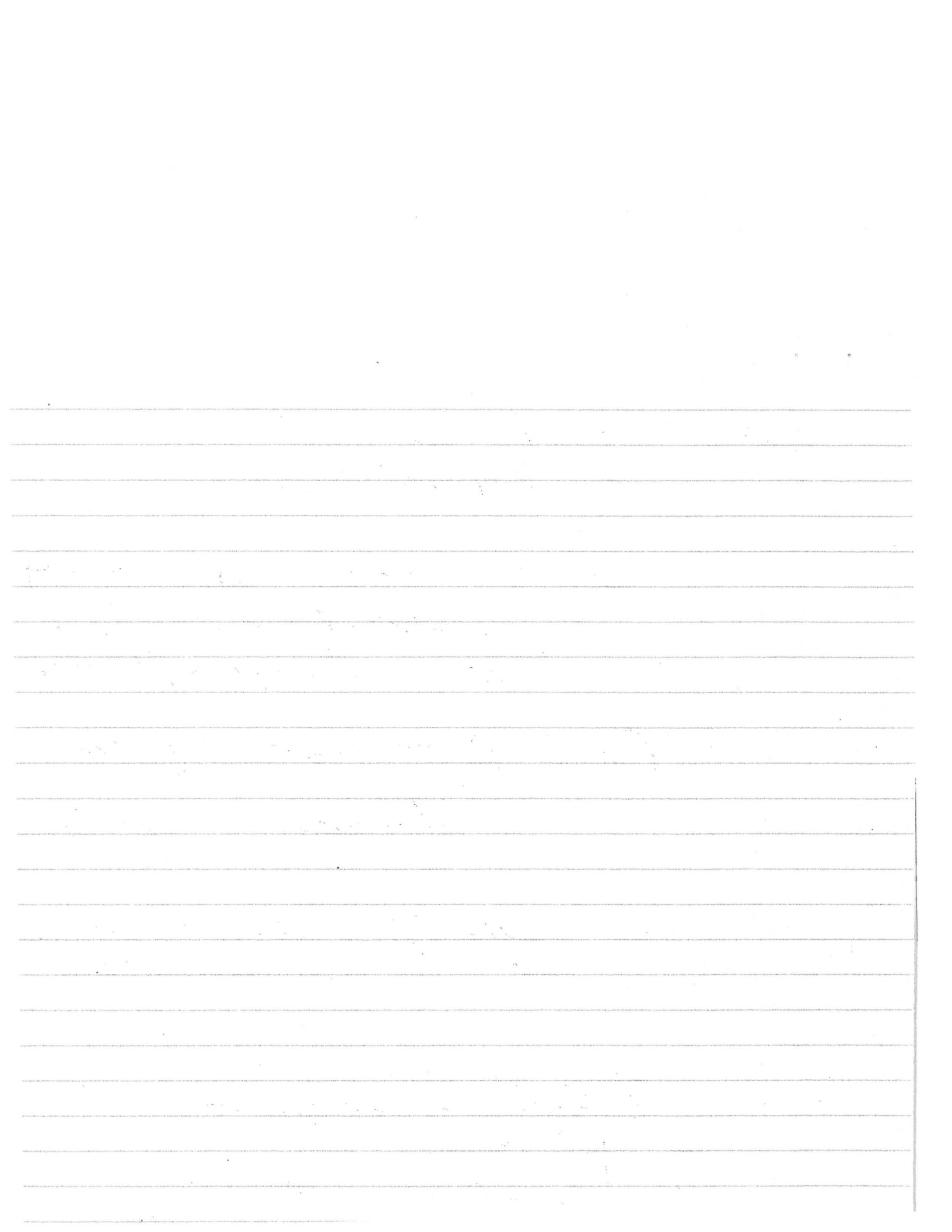
CL - logs - you & will do FIP
by these principles can
info so may be perspective

- Rego perspective - & then
do plan
→ focuses on it.

✓ CL - data + release curve
at public interest

SA - can is, distinct
as formula or parameters

- output #
presenting | Volume | interest
rates.



- ISO has shortfall in early periods
(risk variance)

So someone has to run with-

~~ISO~~

- you set FAP.

- OBG trust - breaks FP.

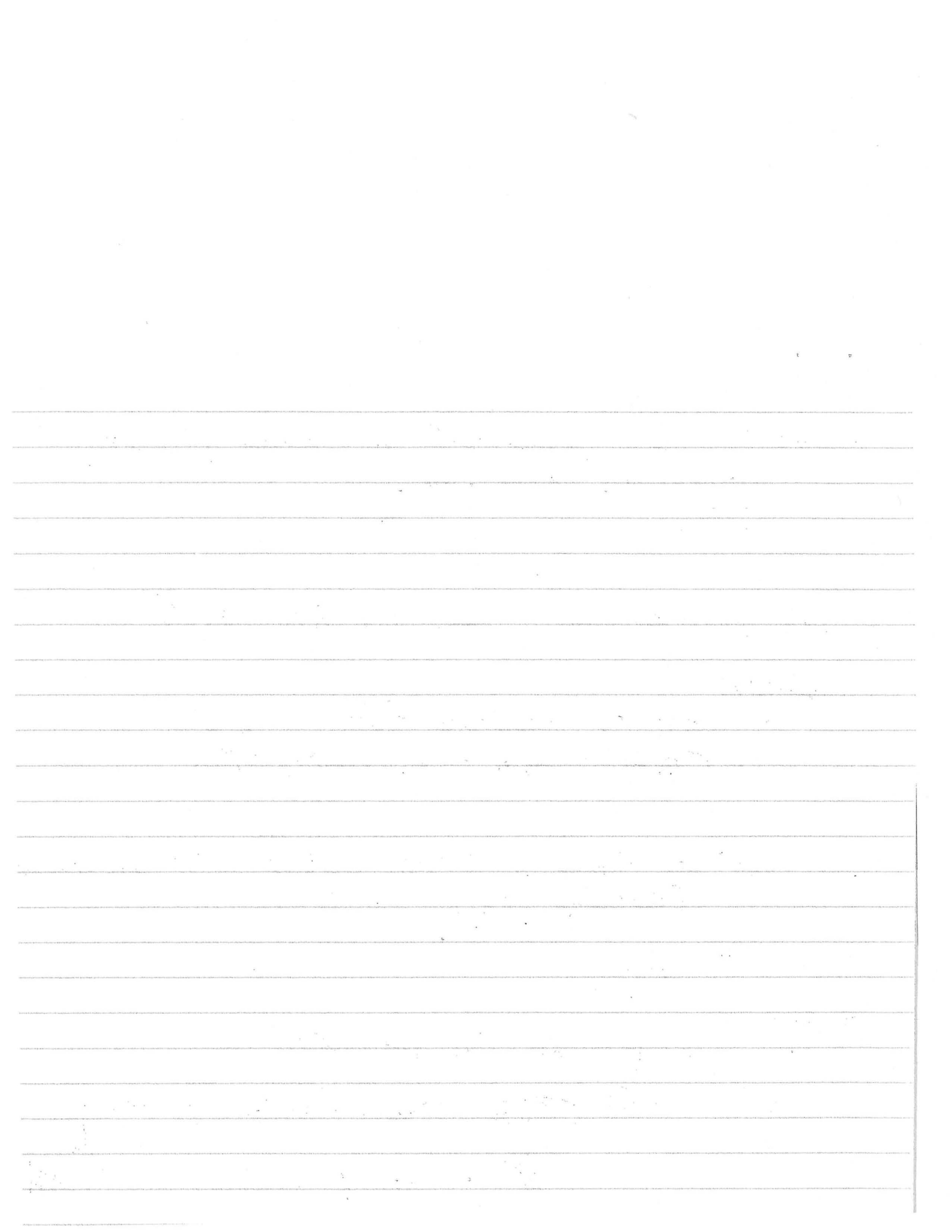
- who tells OEB what to increase
rates by?

→ veg

- repayment period

↳ OBG estimates through

TP. long veg to Schol



AB - review?

- Turn - 10 yrs down - know volume
- if this/that $\neq$ X.

- prob of sign to retailer.

- Turn

- some volume into feed into calculator seen.

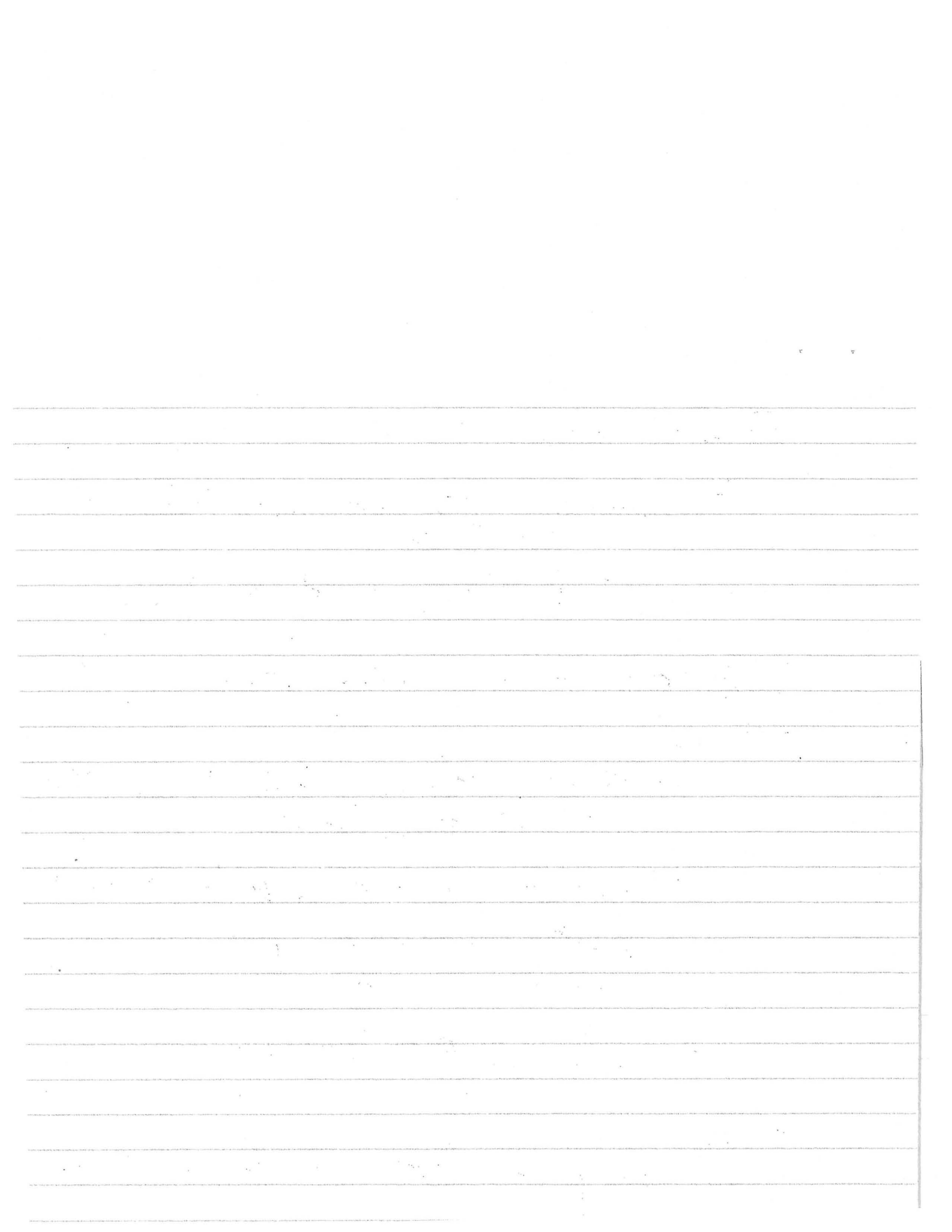
- might now pay ~~Stakeholder~~ + GA

- know manage price add on recovery out

- adder put into RPP

Turn

- conf + letter talks to RPP



SA - won't be trust, change
for period of time

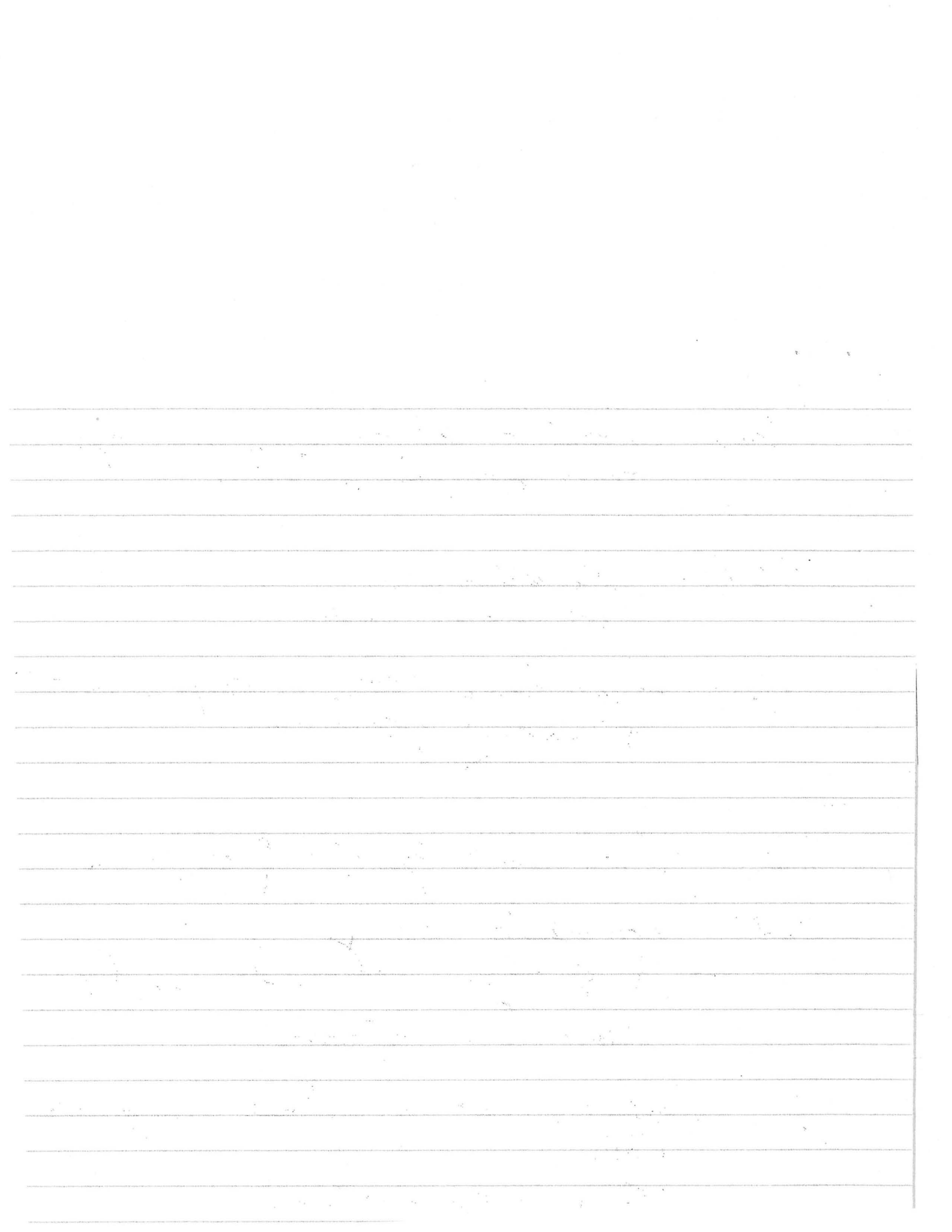
OEB - inflation
- no more than

SA - blended rate - expected
funding 40% 5-

Time - first charge $\rightarrow$ problem.

SA - no exit charge.
- if purely voluntary - they
have free pass

SA - dealers way about by pass
RBC
- stay connected.



3A - frontally to front of head
metamorphosing

Maksymuik, Amanda (ENERGY)

Subject: FW: Regular Legislative Check-Ins
Location: Teleconference: 1 855 318 4202 8635820#
Start: Tue 03/28/2017 11:00 AM
End: Tue 03/28/2017 11:30 AM
Recurrence: (none)
Meeting Status: Accepted
Organizer: WILSON, JUDY

The meeting at noon is in person here.

-----Original Appointment-----

From: WILSON, JUDY [<mailto:JUDY.WILSON@blakes.com>]

Sent: March-16-17 11:36 AM

To: WILSON, JUDY; Calwell, Carolyn (ENERGY/MEDEI/MRI); Shear, Dan (ENERGY); Rehob, James (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); STOKES, BRYSON

Subject: Regular Legislative Check-Ins

When: March-28-17 11:00 AM-11:30 AM (UTC-04:00) Caracas.

Where: Teleconference: 1 855 318 4202 8635820#

Please forward if I have left anyone off the invitation.

Meeting w/ Energy, KSO,
DEB, ORG

March 28/2014

- if you are on cash - for less than 25%
if one electric bill - from the 25%

ORG - getting debt to force

- want to see certain things
- goal is to have debt rated as high as (AAA) possible so get cheap debt

- interested in support from modeling firm KSO
- don't believe KSO does this related to any customers

DEB doesn't broadcast class B data

- 2003

2003 returns - 150 has submitted
yet on account of
not started

- at 150 to be
submitted by web agency
- who decides how much of
deducted in a year shifts to
can 200 transfers to
2003.

150 - and will be
used dollars
- 150 is low cost
- 150 only forecasts 2003
from today

150 - 10% overpayment is included
in bills

200 - want to go to units
- ever you go to
- who left out to
- 2003

- KSO - we don't have LDC forecasts
what can rely for US
gross meeting
- bill LDC's based on
their consumption at whole
level.
- western forecasts do it
at this level.

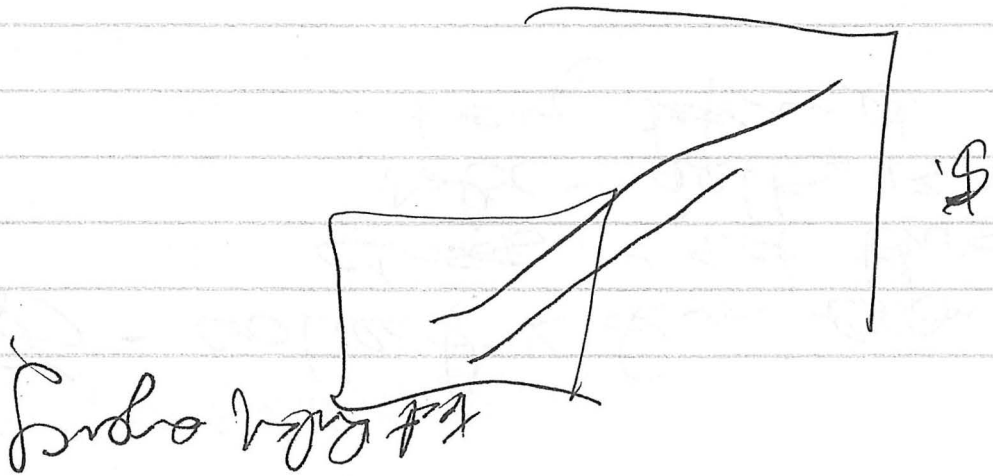
KSO - ~~to rely~~ for historical against
actuals

- bc modelly vs forward
looking
- doesn't change AB doesn't
right now for new RPD

AGD flexibility after C-10.

- 10% you own you change needs
flexibility from for C-10,

② 10% - does it apply to all



Q76

- OCB sets ~~the~~ - which results in more collect of market

is not as good

- \$ out date for sent to CSO

as unknown

in short demand want to put for off

- in short there once off which would be sold to OTC as default.

DS - collect x from expanded
class - set this as
rate - delta is not
being deferred

Ken -

ESD - wants for LDC to tell them
how much short

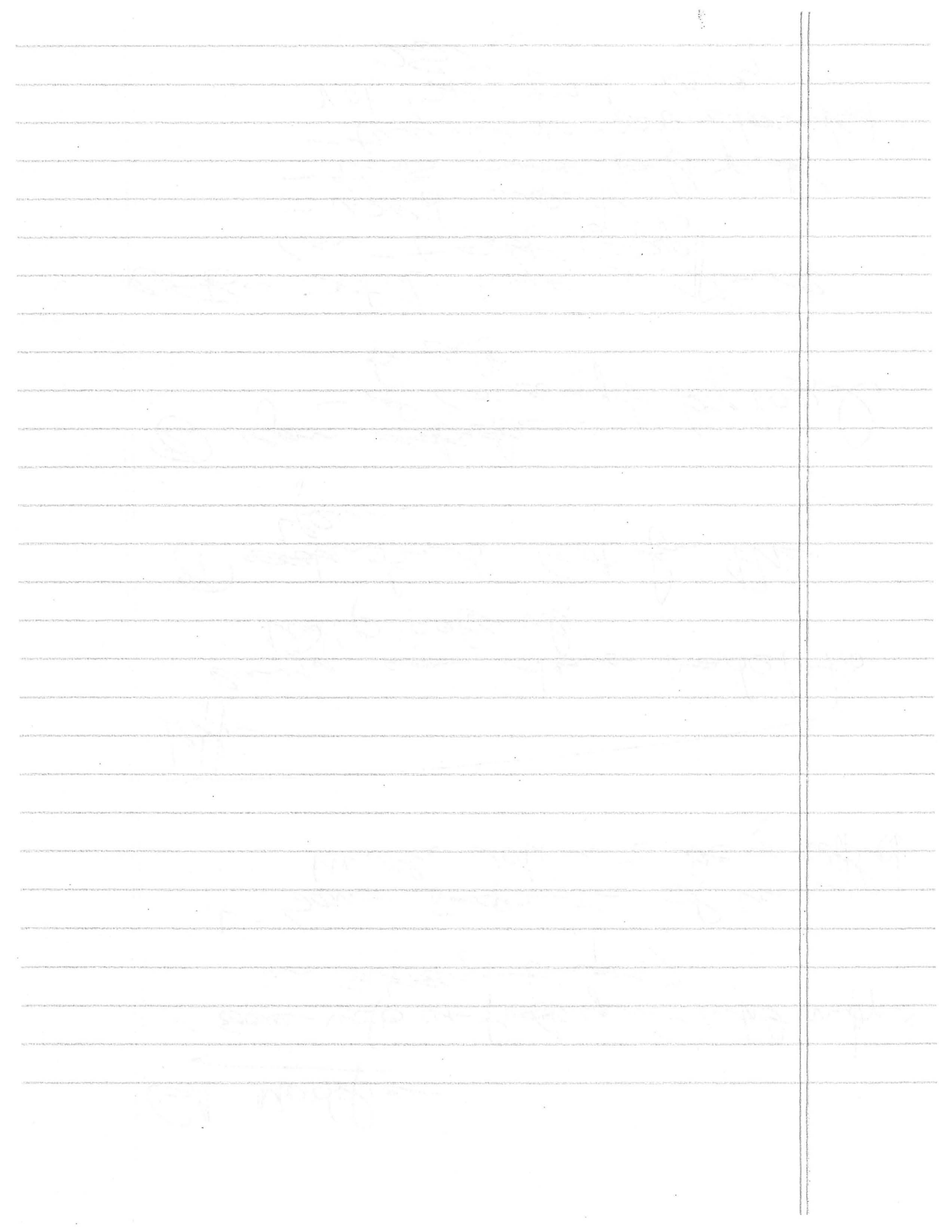
- have to
- less costly to do w RTR
- so LDC's can be short
way on shortfalls for
a few yrs

2 - what if settle on diff
class B under

- ready to be sent

ESD - could create cash flow
issue for some LDC's

OPB - when trust repd
if shortfall & over collected
also no dx



GA Modeler

- some info in first year - what happens in subsequent years?
- ✓ some separation of how much volume they sell

Left

anyone can share model to help calculate.

① estimated GA for the year.

② you ~~estimate~~ of consumption by total fruit

OB - until logs in place
can't set RTH,
- need input
- this goes bill per
- trying to get clocks
not all the way to
25%.

- write off as average
breast loss

29.16 is 15000
set in order
to 100% sold

- approach wants to
of have set. PEP
prices

on the order of 24 billion

world order - decrease PEP
order have have order
of 23% (in 201)

- after war - still follow
upper plan

- 100% will have reduce
the war to 100% (1)

- Towards 100% increase
100% - 100% increase
rate set to

3% Bl
6% acc.

every 40 set prices in Nov
prices go up then back down,

— banking Map 1 RPD into base
fund - need to be controlled
by inflat. otherwise have
another increase

OES for 1 us. anything else stay
— can't do into contemplation
2 price settings.

— want to see have to do
for typical bonds higher
leftovers to do X

RRP - neither necessary to better
— Pres that
— if opportunity to restructure
then on the

- IRRP creation of team
- FA - expect second letter
 - different alternatives letter -
 - already causing to county
 - expect to get separate letter from Munster on that point.
- to indicate -
 - conflicting in letter

Theory of Legality

March 28/2011

1) enabling LSO to do what it needs capacity to do

2) enabling OPE

3) enabling busy central

Part 5 of Lays - global descrip
of Shene not yet finished

- last page of sketch - in p5

- gaps of Giller in part 5 -

4. Role of OEB

///

✓ Bm of regulatory scheme.

1) KSO moved into long term power contracts
- contracts differ for

2) reason prices were guaranteed based on
reason of policy
development consistent
under new policy
framework

- covering gap - policy does
- benefit of new generation
AC intended to get off
coal - that will benefit
future development

Carolega editz

INSTRUCTONS April 24, 2017 |

CONFIDENTIAL

GOV2016.146.e

13-TP

Ontario Fair Hydro Plan Act, 2017

EXPLANATORY NOTE

Explanatory note TBD once contents of the Bill are settled.

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

Preamble

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

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

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

The Government of Ontario is committed to ensuring that the costs of financing these investments, and the associated charges to consumers raising of money to fund the investments,² are allocated fairly among present and future generations of consumers.

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

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

CONTENTS

PART I GENERAL

- | | |
|----|----------------------------|
| 1. | Interpretation |
| 2. | Effect of invalidity, etc. |

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

² FLS: please see opening flush of s. 92A (4) of the *Constitution Act, 1867*

- 3. Purpose
- 4. Crown bound
- 5. Protection and assurances

PART II
FAIR ADJUSTMENT

- 6. Fair adjustment, May 1, 2017 to April 30, 2018
- 7. Fair adjustment, May 1, 2018 to April 30, 2022

PART III
CLEAN ENERGY ADJUSTMENT

- 8. Specified consumers to pay clean energy adjustment
- 9. Irrevocability of clean energy adjustment
- 10. Determination of clean energy adjustment
- 11. IESO to issue remittance notice to electricity vendors
- 12. Electricity vendor to invoice specified consumers

PART IV
IMPLEMENTATION
FINANCIAL SERVICES MANAGER

- 13. Appointment
- 14. Duties and powers

FAIR ALLOCATION AMOUNT

- 15. Financial Services Manager to calculate fair allocation amount

FINANCING PLAN

- 16. Financial Services Manager to prepare Financing Plan
- 17. Implementation of Financing Plan

PART V
THE REGULATORY ASSET

- 18. Interpretation, portion of regulatory asset
- 19. Variance account
- 20. IESO funding shortfall
- 21. Regulatory asset established
- 22. Transfer of regulatory asset
- 23. Validity of transfer

PART VI
THE INVESTMENT ASSET

- 24. Interpretation, investment asset
- 25. Investment asset established
- 26. Transfer of investment interest
- 27. Validity of transfer
- 28. Investment asset owner may grant security interest

PART VI
MISCELLANEOUS

- 29. Appointment of agent, invoicing or collection
- 30. Not Crown agent
- 31. Sequestration
- 32. Choice of law
- 33. Conflict
- 34. No further approvals, etc.
- 35. Immunity
- 36. References in marketing materials and offering documents
- 37. Non-application, Financial Administration Act, s. 28
- 38. Regulations

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998
AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

PART VII
COMMENCEMENT AND SHORT TITLE

- 103. Commencement
- 104. Short title
- Schedule 1 Estimated finance amount

PART I GENERAL

Interpretation

Definitions

1xx. (1) In this Act,

“Board” means the Ontario Energy Board; (“French”)

“clean energy adjustment” means the amount determined under section 10xx; (“French”)
[OLC Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer. So far I have opted not to go with separate terms (e.g. “aggregate CEA” vs. “CEA”) because I’m hoping we can just be clear in each provision without resorting to more defined terms.]

“clean energy benefits” means, ~~in respect of a reference period,~~ the value of the benefits determined to be derived by ~~or accruing to~~ the specified consumers ~~during the reference period~~ as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs; (“French”)
[OLC Note: Please confirm that the phrase “during the reference period” is accurate (i.e. we are looking at the benefits derived during that time period).]

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

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

(i) renewable energy generation or capacity,

(ii) conservation and demand management, ~~including~~

~~(#) storage,~~

(iii) energy efficiency,

(iv) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario*

Energy Board Act, 1998 and excluding such other contracts as may be prescribed, or

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

- (b) such other estimated costs as may be prescribed; (“French”)

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

- (a) fostering the growth of and investment in clean and renewable energy sources and technologies,
- (b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and
- (c) promoting conservation and demand management; (“French”)

“electricity vendor”³ ~~means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed, and shall include the IESO to the extent that the IESO directly invoices a specified consumer;~~ (“French”)

[OLC Note: Need to ensure inclusion of IESO in definition of EV works in each case where the defined term is used.]

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

“financing entity” means ~~an entity established for the purpose of being an investment interest owner and that is managed by the Financial Services Manager [TBC];~~ (“French”)

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

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

“funding obligation” means a payment obligation incurred by or on behalf of ~~the regulatory asset owner or an investment asset interest owner in connection with the~~

³ FLS - this is similar to the definition of “electricity vendor” in the Ontario Rebate for Electricity Consumers Act, 2016

transfer of a regulatory asset or the refinancing of an existing funding obligation;
 (“French”)

[OLC Note: Does the definition of “funding obligation” need to be scoped a bit more narrowly; for example, incurrences for a particular purpose?]

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

“IESO funding shortfall” means, in respect of a reference period, the amount determined under section 20xx in respect of the reference period; (“French”) NTD: Shortfalls will occur monthly.

“investment asset” means the property rights investment asset created as described in section 22xx; (“French”)

“investment asset interest owner” means a financing entity that acquires an investment interest in the investment asset; (“French”)

“investment interest” means an ownership interest in the investment asset, which entitles and, in the case of a transfer of an interest in an investment asset, owner to the rights and benefits specified in the agreement under which the ownership interest in the investment interest is transferred; (“French”)

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

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

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

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

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

“prescribed” means prescribed by the regulations; (“prescrit”)

“reference period” means,

- (a) the period beginning on May 1, 2017 and ending on October 31, 2017,
- (b) every six-month period following the period mentioned in clause (a) or such shorter period as may be prescribed, until April 30, 2047-set out in the Fair Allocation Plan; (“French”)

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

“regulation” means a regulation made under this Act; (“règlement”)

“regulatory asset” means the right and interest established under section 21xx to recover the IESO funding shortfall amount recorded in the variance account created under section xx; (“French”)

“specified consumer” means,

- (a) a person who has an account with an electricity vendor for the supply of electricity in Ontario, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or
- (b) such other person as may be prescribed; (“French”)

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

“transfer” means (i) in relation to the regulatory asset, or any portion thereof, any act of IESO which states that it is a “transfer” of all or any portion of the regulatory asset or any other act of the IESO by which the IESO purports to dispose of its interest in all or any portion of the regulatory asset;
(ii) in relation to an investment interest, an assignment, conveyance, disposition or sale;
 (“French”)

NTD: IESO’s counsel explains the approach above: For a number of reasons it is difficult to treat the transaction between the IESO and the Financing Trust as a transaction which is in law a transfer, sale or assignment. We think that the best way of proceeding is for the Act to state specifically

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.]

Specified consumers

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

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.
2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.
3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.
4. The person's account with the electricity vendor relates to,
 - i. a dwelling,
 - ii. a property within the meaning of the *Condominium Act, 1998*,
 - iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or
 - iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.
5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:
 - i. The commodity price of the electricity used during the invoice period.
 - ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.
 - iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.
 - iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);
 - v. Any other amounts as may be prescribed.
2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.
2. Penalties or interest.
3. Charges that do not relate to the use of electricity.
4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:
 - i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".
 - ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider.

5. Any other prescribed amounts.

Transfer

(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the IESO purports to dispose of its interest in the regulatory asset with the result of a named person becoming the owner of an investment interest.

[OLC Note: Consider the awkwardness of this term vs. “investment *asset* owner”.]

Effect of invalidity, etc.⁴

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

Same, funding obligation

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

Purpose

3xx. (1) The purposes of this Act are,⁵

- (a) to ensure that clean energy costs are fairly allocated among ~~present and future~~ specified consumers over time and ~~that the process by which the Province raises money to fund the costs reflects~~ the fair allocation; and
- (b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

⁴ FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

⁵ FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Monke ref

Protection and assurances

Prohibition

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

- (a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;
- (b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment ~~or lower the priority of the clean energy adjustment over other debts;~~ or
- (c) ~~adversely affect an investment asset or a funding obligation~~ hinder, delay impair or prejudice the rights of an investment interest owner in an investment interest or the obligations of an investment interest owner under any funding obligation.

Clarification with respect to regulations

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

Monke **Agreements for compensation**

sum
ky (3) The Minister ~~of Finance~~ may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding ~~the performance of the IESO or electricity vendors under this Act; financial commitments, financial arrangements, indemnities~~ or similar transactions. NTD: Requires further elaboration of types of agreements.

(2) The Lieutenant Governor in Council may by order authorize the Minister of Finance, on behalf of Ontario, to agree to guarantee or indemnify, any debts, obligations, securities or undertakings associated with an investment interest.

Terms and conditions

(3) In respect of a guarantee or indemnity authorized under subsection (2), the Lieutenant Governor in Council may fix such terms and conditions as are considered advisable or may authorize the Minister of Finance, subject to any maximum liability specified for the guarantee or indemnity by the Lieutenant Governor in Council, to determine the terms, conditions and amount on which the guarantee or indemnity will be given.

PART II FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018

Definitions

6xx. (1) In this section,

“average baseline invoice amount” means the average monthly invoice amount that would be payable by the representative non-retail consumer or representative retail consumer, as the case may be, under the average baseline rate; (“French”)

“average baseline rate” means the average rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; (“French”)

“representative non-retail consumer” means a consumer who meets the following criteria:

NTD: there is a desire to move this definition to the regulations.

1. The consumer purchases electricity directly from Toronto Hydro.
[OLC Note: What does “directly” add here? Is this supposed to convey that it is a “non-retail” context because I don’t think that is sufficiently clear.]

2. The consumer has an account with Toronto Hydro that falls within the residential service rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*.

3. The consumer is invoiced by Toronto Hydro on a monthly basis.

4. The consumer is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan.

5. The consumer uses 750 kilowatt hours of electricity each month; (“French”)

“representative retail consumer” means a consumer who purchases electricity from a licensed retailer and meets the criteria set out in paragraphs 2 to 5 of the definition of “representative non-retail consumer”; (“French”)

[OLC Note: Do you think it’s necessary to clarify that purchasing from a licensed retailer may include being invoiced by Toronto Hydro on behalf of the retailer, or is that sufficiently clear given that para. 2 above applies? This relates to my question above

about what we mean by “directly” in para. 1 of the previous definition. Would the purchase in the “retail” context be considered to be “indirect”? I don’t think these words bring sufficient clarity.]

“Toronto Hydro” means Toronto Hydro-Electric System Limited. (“French”)

Rate determination

(2) [To more fairly ~~recognize clean energy benefits measure~~ and allocate the clean energy costs ~~and clean energy benefits~~ among present and future generations of specified consumers,] the rate for electricity payable for the period beginning on May 1 and ending on April 30, 2018 is as follows:

[OLC Note: Consider whether you want/need to include the phrase in square brackets here, given the proposed purpose provision, the preamble and the definitions of the various relevant terms. If we keep this text here, we will want to double-check to ensure consistency throughout. NTD: Yes, we would like to keep this language.]

1. In the case of a specified consumer who purchases electricity directly from Toronto Hydro, the rate is the average rate that would be payable by the representative non-retail consumer in order for the representative non-retail consumer to receive a monthly invoice amount that is 25 per cent less than the average baseline invoice amount.
2. In the case of a specified consumer who purchases electricity from a licensed retailer, the rate is the average rate that would be payable by the representative retail consumer in order for the [global adjustment charge included in the representative retail consumer’s monthly invoice amount] to be reduced by the same amount as the reduction calculated under paragraph 1.

[OLC Note: Not quite sure I have para. 2 right. Also will need to find correct wording to capture the GAM line item on the bill but want to make sure I have the overall concept correct first.]

Sub-meter customers

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

Determining rates

(4) The rates mentioned in subsection (2) shall be,

- (a) determined by the Board no later than seven business days after the day this section receives Royal Assent; and

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

[OLC Note: Just thinking through subs. (4), does clause (b) say that if the Bill receives RA on June 1st... then the Board must determine the rates by June 8th...and the rates would be effective as of July 1st. This isn't the outcome you want, is it? Don't you want the rates be effective May 1st?]

Transition

(5) Subsection (6) applies if,

- (a) an electricity vendor, specified consumer or unit sub-meter provider is unable, for technical or operational reasons to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017; or
- (b) an electricity vendor, specified consumer or unit sub-meter provider issues its first invoice for electricity consumed on or after May 1, 2017 on a day before the day the Board determines rates under subsection (4).

Same

(6) In the circumstances described in subsection (5),

- (a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and
- (b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

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

7xx. The Lieutenant Governor in Council may, [to more fairly recognize clean energy benefits measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

PART III CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

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

[OLC Note: In all places in the draft where we refer to “as agent of the investment asset owner”, are we sure that there will always be an investment asset owner in existence at the time when these provisions need to be relied upon?] NTD: Yes.

Same

- (2) For greater certainty, subsection (1) applies regardless of,
- (a) whether the clean energy adjustment is inconsistent with the fair allocation calculation made by the Financial Services Manager under Part IV applicable at the time when the payment is due; and
 - (b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity inconsistent with the Financing Plan.

Indebtedness of specified consumer

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

Same

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

Recovery from sub-meter consumers

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

[OLC Note: Consider whether you want to say more about what we mean by “pro rata basis” or whether you want to provide for details to be included in the regulations.]

Irrevocability of clean energy adjustment

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

Exception

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

Determination of clean energy adjustment

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

1. The Financial Services Manager shall Calculate the estimated the finance amount in respect of the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

NTD: Schedule 1 should go in the regulations

2. The Financial Services Manager shall calculateAdd the true up amount in respect of the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1. NTD: true up could be positive or negative.

3. The Financial Services Manager shall advise the Board of the estimated finance amount and the true up amount in accordance with the regulations.

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

True up amount

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

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

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

i. differences between the estimated and actual finance amounts for the immediately preceding reference period:

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

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

[OLC Note: What is the difference between “billings” and “invoices”... also “amounts billed” vs. “amounts invoiced”? Can we just use “invoicing”?] Yes, invoicing please

IESO to issue remittance notice to electricity vendors

~~11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion of the clean energy adjustment in respect of a reference period.~~

[OLC Note: I have removed the reference to the EV's portion of the CEA being determined in accordance with the regulations. Please confirm this works.]

IESO to collect

(2) The IESO shall, as an agent of the investment interestasset-owners, receivecollect the clean energy adjustment paid to it from electricity vendors [in accordance with the regulations and the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998*].

Collection account

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

1. Amounts described in subsection 12 (4) and 11(2). NTD: I think these are the same amounts, just described in different hands.
2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment asset interest owner in accordance with subsection (6), be received and held in trust by the IESO for the investment asset interest owners or a secured party to whom a security interest in an investment interest is granted under this Act and for greater certainty any trust created or established in accordance with this Act shall be a true trust and not a deemed trust.NTD: Same addition re: true trust in 12xx(4) – consider moving to s. 1xx

IESO to remit

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

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO [may? Shall?] collect the difference from specified consumers. NTD: Fully addressed in Part V

Electricity vendor to invoice specified consumers

12xx. (1) EachThe electricity vendor shall issue an invoice to each specified consumer with an account with such electricity vendor for amount payable by such the consumer's amount in respect of the clean energy adjustment as determined by applying the rate set by the Board under section 10xx(2) and in accordance with the regulations. [OLC Note: Do you want the regulations here to deal with: (1) the way in which invoice is issued; (2) the way the consumer's amount is calculated; or (3) both 1 and 2?]

Electricity Vendor to Report

(x) Each electricity vendor shall promptly report to the IESO the aggregate amount invoiced to its customers in respect of the Clean Energy Adjustment, the amount collected and such further information and in such manner as may be prescribed.

Electricity vendor to collect

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

Pro rating of payments

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

Held in trust

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

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

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

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

Remittance to IESO

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

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

PART IV IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) Subject to subsections (2) and (3), Ontario Power Generation Inc. is deemed to be appointed as the Financial Services Manager for the purposes of this Act.

Termination

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

- (a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in subsection 16xx (2);
- (b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and
- (c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

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

Duties and powers

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

Same

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

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.
2. Providing information to ~~electricity vendors, including~~ the IESO, in respect of obligations under Part III.
3. Such other matters as may be prescribed.

Review of costs

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

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager, prior to incurring any funding obligation, shall calculate the fair allocation amount in respect of each reference period for the purposes of,

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

(b) aligning the finance amounts becoming payable in such reference period under funding obligations that may be incurred during each reference period with the fair allocation amount for such reference period of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount determined in subsection (1) in respect of a reference period is the sum of the following amounts:

[OLC Note: I'm struggling a bit to understand the distinction between the "calculation" and the "amount" when it comes to fair allocation. I expect these provisions and all references to "fair allocation" will need revision to ensure we are articulating the desired policy.]

1. The amount, if any, by which the estimated {clean energy costs and } clean energy benefits to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs for the reference period [in the absence of this Act].

[OLC Note: The above needs some work... in particular we would need to say more than just "in the absence of this Act" because I think we would also need to specify that under the proposed scenario, the current Global Adjustment rules would continue to be in place. We also need to be clear what we mean by global adjustment etc.] NTD: We will continue to work on this. Not sure the reference to GA works.

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

[OLC Note: Consider whether para. 2 above and subs. (3) below should be combined somehow. I haven't had a chance to think this through yet.]

Principles

(2) In calculating ~~estimated clean energy costs and clean energy benefits to be allocated to specific consumer in a reference period the fair allocation amount [or in developing the fair allocation calculation?]~~, subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.
2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined ~~in accordance with the regulations based on [Insert principles]~~.
3. The fair allocation calculation should include reasonable assumptions regarding the following:
 - i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.
 - ii. The expected number of specified consumers in respect of each reference period.
 - iii. The expected electricity consumption rates in respect of each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation in respect of each future reference period. [OLC Note: Not sure I understand subs. (3) -- if the fair adjustment is done in advance, why wouldn't it be included as part of the current fair allocation calculation as well (i.e. not just future calculations)?]

Amendments to the fair allocation calculation

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

[OLC Note: Here and throughout, I'm not quite sure whether we should be referring to the "calculation" or the "amount".]

Submission of fair allocation to Minister

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

Effective date

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

Publication

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

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

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

Principles

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

1. Any incurrence of a funding obligation should reasonably align with the expected-estimated finance amount determined under in accordance with the regulationsSchedule 1 that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

[OLC Note: Need to consider further how para. 1 overlaps/conflicts with elements set out in s. 15xx above.]

[OLC Note: Please confirm that the underlined "during a reference period" is correct.]

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

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

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

Amendments to approved plan

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

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment in respect of the reference period unless, [OLC Note: Please confirm that the underlined “during a reference period” is correct.]

- (a) no fair adjustment has been made under Part II in respect of the reference period; or
- (b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

[OLC Note: Please confirm that the underlined “during a reference period” is correct.]

Other reports

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

Confidentiality of plan, reports

(4) The Financing Plan and any report referred to in subsection (3.1), including any document used in the preparation of the plan or a report, is deemed to be a record subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations ~~and make transfers~~ in material conformity with the applicable Financing Plan.

Same

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

Financing entities

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

Prohibition

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

Effect of amendment to Fair Allocations Plan

(4) ~~Each~~ No funding obligation incurred and ~~ne each~~ transfer made by the Financial Services Manager ~~a financing entity~~ shall be considered to be consistent with the Financing Plan and the fair allocation, ~~affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.~~

PART V THE REGULATORY ASSET

Interpretation, portion of regulatory asset

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

[OLC Note: This is meant to assist with clarity in the subsequent provisions. Will consider further as drafting settles.]

[NTD: "IESO funding shortfall" throughout to denotes the monthly amount and the "variance account" records the cumulative balance.]

Variance account

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

- ~~1. Create a variance account for the purposes of this Act.~~
- ~~2. Record the IESO funding shortfall in the variance account from time to time.~~
- ~~3. Recover the IESO funding shortfall in accordance with section X and the regulations.~~

No hearing

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

No appeals, etc.

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

IESO funding shortfall

20xx. (1) The IESO shall determine the IESO funding shortfall for each month in the following mannershall be equal to $A - B + C$ where:

1. ~~A = Calculate~~ the sum of all invoice amounts ~~(not including HST) which would have been~~ issued to specified consumers for the month if Part II of this Act did not apply.
2. ~~B = Calculate~~ the sum of all invoice amounts ~~(not including HST) actually~~ issued to specified consumers for the month.
3. ~~C = the sum of all financing costs related to all IESO funding shortfalls incurred by IESO for the month. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.~~

~~(x) For the purposes of calculating A and B of section 20xx(1), the electricity vendors shall provide to IESO such information as IESO may reasonably require and such further information as may be prescribed and the IESO shall be entitled to rely on such information.~~

20.xx (1) The IESO shall establish and maintain a variance account and shall record in such variance account the amount of the IESO funding shortfall for each month.

Same

(2) To the extent that the IESO funding shortfall for any month is determined based on an estimate of the electricity used by specified consumers or an error in the information provided by an electricity vendor, the IESO shall record an adjustment in the variance account in the following month an adjustment to reflect the difference between the estimate or the erroneous information and the electricity actually used by specified consumers.

(x) The IESO shall record in the variance account such other adjustments as may be prescribed by the regulations.

Recording of IESO funding shortfall

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

Recording determinative

(4) A recording of by the IESO funding shortfall in the variance account is determinative of the amount of IESO funding shortfall at the time of the and the balance recorded by the IESO in the variance account from time to time is determinative of such balance at such time, absent manifest error recording.

Rights of Investment Interest Owner

(6) An investment interest owner may rely, without inquiry, upon the balance in the variance account certified by the IESO and no error in such certification and no subsequent adjustment to the balance in the variance account shall affect the rights of the investment interest owner acquired pursuant to a transfer under section 22xx.

Regulatory asset established

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

(2) The Board shall, from time to time, in accordance with this Act and as further prescribed by regulation, determine and set rates payable by specified consumers so that IESO is able to recover the balance recorded in the variance account.

Same, restrictions

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

1. The IESO shall not be entitled to collect ~~the all or any part of the balance recorded in the variance account IESO funding shortfall~~ from specified consumers before May 1, 2022.
2. ~~The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].~~
3. ~~Such other restrictions as may be prescribed.~~

Transfer of regulatory asset

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

Same

- (2) Upon receipt of any payment in consideration for the transfer,
 - (a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and
 - (b) unless otherwise provided for in this Act, the IESO shall have no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

Same

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

Validity of transfer

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

Same

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

Deemed perfection, etc.

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

Priority of transfer

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

PART VI THE INVESTMENT ASSET

Interpretation, investment asset

(x) The transfer of a regulatory asset or a portion thereof creates an investment asset.

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

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests ~~without duplication of investment interest owners:~~

[OLC Note: Still need to review the language below carefully.]

1. The right to impose, bill, invoice, collect, ~~and receive and recover~~ the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.
2. The right to receive, ~~and collect and recover~~ all amounts in respect of the clean energy adjustment that are imposed, billed, ~~and invoiced and recoverable~~ under this Act, including any ~~amounts that and~~ all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.
3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.
4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.
6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the ~~regulatory asset investment interest owner's regulatory investment interest asset~~.
7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

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

No set off, etc.

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

[OLC Note: I wonder if subs. (2) is worded more broadly than intended -- the idea is that eventually the investment asset could be set off/reduced through payments, right?] Yes, that's right. The investment asset will be paid down over time

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

[OLC Note: Consider whether underlined term should be defined.]

- (b) ~~in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a);~~ or

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

Exercise of rights

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

Collective action required

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

[OLC Note: It seems that successors may need to be addressed here.] NTD: Nothing further required to deal with successors.

Transfer of investment interest

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

[OLC Note: Please compare the language underlined above vs. the language of subs. 23 (1) above. Here we are talking about transfer of “rights and interests” in an investment interest whereas above we refer to a transfer of “the RA”. Why are we not saying transfer of “the IA” here? Can one have a “right or interest” in an “interest”? Yes. Wording is admittedly less than perfect. Still need to clarify how these concepts work together.] NTD: we want to distinguish the RA from the IA and we are trying to convey different rights associated with each asset. The securities lawyers feel it is important to refer to rights and interests for the purposes of the IA.

Validity of transfer

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

[OLC Note: Awkward that we occasionally have references to “owner of the investment interest” vs. “investment *asset* owner”.] NTD: We have tried to refer consistently to “investment interest owner” rather than “investment asset owner”.

Same

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

Deemed perfection, etc.

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

Priority of transfer, assignment, etc.

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

Investment ~~asset~~ interest owner may grant security interest

28xx. (1) An investment ~~interest~~ asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

[OLC Note: This section had become a bit confused through multiple rounds of changes. I have now attempted to remove duplication. Please review carefully to ensure that it contains the correct provisions.]

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

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

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject

to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ~~investment asset account~~ or other account of any electricity vendor, ~~the IESO~~, an agent of an electricity vendor ~~or the IESO~~ or other person who may have commingled such revenues or other proceeds with other funds.

(7) The secured party shall be entitled to exercise the rights of an investment interest owner under the Act only after it has given notice of the enforcement of its security interest to the IESO.

PART VI MISCELLANEOUS

Appointment of agent, invoicing or collection

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

[OLC Note: ENE LSB to consider whether this section should apply to unit sub-meter providers.]

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

[OLC Note: would there be any doubt about whether any investment asset owner is a Crown agent? Is that where this needs to be articulated instead?]

Sequestration

31xx. (1) A court in the Province may, upon application by an investment ~~interestasset~~ owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment ~~interestasset~~ owner or secured party by any person or entity authorized to collect the clean energy adjustment, ~~including~~ defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

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

Same

(3) An order under subsection (1) shall remain in full force and effect despite any ~~bankruptcy, reorganization or other insolvency~~ proceedings with respect to the person or entity who is subject to the order.

Choice of law

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

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

[OLC Note: Please confirm that the underlined list of verbs is correct, taking into consideration the defined terms we are using in the draft Bill.]

No further approvals, etc.

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

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

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

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under ~~this section 5~~ unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28⁶

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

Regulations

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

- (a) defining any term used in this Act....
- (b) prescribing types of payment obligations that constitute funding obligations;
- (a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.
- (b) governing the inclusion of adjustments information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[OLC Note: reg-making powers to be dealt with in subsequent draft]

PART VII⁷ **AMENDMENTS TO OTHER ACTS**

ELECTRICITY ACT, 1998

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

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

[OLC Note: Given that we are listing some FHA “objects” in the EA here, it would be a bit unusual to then prescribe additional FHA-related objects in the regulations under the FHA (as opposed to the regs under the EA). Would you want to list the FHA-related objects of the IESO in the FHA proper, which would then make it more logical for additional FHA-related objects to be set out in the regs under the FHA? Same considerations apply to the OPG objects below (amendments to s. 53.1).]

⁶ FLS - see s. 51 of the Electricity Act, 1998

⁷ FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

- (i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;
- (ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;
- (iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

[OLC Note: Why is “creation” listed above? Isn’t that fully accomplished through the statute?]

- (iv) incurring liabilities in relation to the regulatory asset
- (v) transferring the regulatory asset for consideration;
- (vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out “and” at the end of clause (a) and by adding the following clauses:

- (c) amounts paid to or received from a [prescribed?] financial services entity or [a financing entity prescribed under?] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and
- (d) amounts collected from consumers who are [specified consumers within the meaning of?] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(1.1) Subsection 25.33 (2) of the Act is amended by striking out “and” at the end of clause (a) and by adding the following clauses:

- (c) amounts paid to or received from a [prescribed?] financial services entity or [a financing entity prescribed under?] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and
- (d) amounts collected from consumers who are [specified consumers within the meaning of?] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

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

4. A consumer who is,

- i. a [specified consumer within the meaning of?] the *Ontario Fair Hydro Plan Act, 2017*, or
- ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998*].

[OLC Note: I'm not sure who the consumers under 4 ii would be... why wouldn't they be prescribed under the EA? Or can we specify which consumers we're talking about? We can't give OEBA reg-making authority under the EA... would need to do so under the OEBA.]

(3) Clause 25.33 (4) (b) of the Act is amended by adding “or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*” at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding “or under the *Ontario Fair Hydro Plan Act, 2017*” at the end

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

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including the following:

- 1. Providing services on behalf of financing entities for the purposes of carrying out its obligations and activities in respect of that Act, subject to the right to be paid by a financing entity for services, including those services described in subsection (1.2).
- 2. Providing equity contributions and loans to a financing entity.
- 3. Exercising the powers and performing the duties of the Financial Services Manager under that Act.
- 4. Issuing non-equity securities in Ontario Power Generation Inc. or one of its subsidiaries, for the purpose of raising funds to acquire debt or equity interests

in a financing entity whose activities are limited to the incurrence of funding obligations under that Act.

[OLC Note - ENE LSB advises that it wishes to confirm whether OPG/Tory's still needs or wants this provision.]

Same, services

(1.2) For the purposes of paragraph 1 of subsection (1.1), Ontario Power Generation Inc. may provide services including the following:

1. The purchase and administration of investment assets on behalf of a financing entity and the negotiation, execution and delivery of any related agreements;
2. The negotiation, execution and delivery on behalf of a financing entity of constating documents, financial services agreements, administrative services agreements, purchase and sale agreements, trust indentures, hedging agreements, credit enhancement agreements, servicing agreements, loan agreements, subordinated loan agreements, security agreements, underwriting agreements, agency agreements and any similar agreements.
3. The negotiation, execution and delivery of any documents relating to a sale or offering of securities by a financing entity.
4. The implementation and administration of any agreements to which a financing entity is a party.
5. The acquisition, administration and sale of any other investments that may from time to time be made by a financing entity.

[OLC Note: By "any other investment", do you mean "any investment other than an investment interest within the meaning of the OFHPA"?]

6. The borrowing of money [on behalf of?] a financing entity.
7. Administering the activities of a financing entity and preparing reports on behalf of a financing entity.
8. Enforcing the rights of a financing entity.
9. Engaging or employing any persons to assist in providing services to a financing entity and delegating its powers and duties to such persons.
10. Performing any service that is incidental to the services set out in paragraphs 1 to 9.

Subsidiaries, etc.

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

Deemed assets, entity

(1.4) Subject to subsection (1.5) and despite any other provision of this Act, the *Business Corporations Act* or any other Act,

- (a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and
- (b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Exception

(1.5) Subsection (1.4) does not apply to a subsidiary of Ontario Power Generation Inc. in the case where the subsidiary is a special purpose financing entity.

Definition, financing entity

(1.6) For the purposes of this section, “financing entity” and “investment interest” have the meanings provided for in the *Fair Hydro Plan Act, 2017*.

202x. Section 89 of the Act is amended by adding the following subsection:**Exception**

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

203x. Section 90 of the Act is amended by adding the following subsection:**Exception**

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

[OLC Note: See subs. 14xx (3) of the main Bill above -- do you want to move this to become a consequential amendment or should it stay where it is? *All fees charged by*

OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

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

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

[OLC Note: Not sure why this needs to be specified as a condition of the licence if the requirements are already clearly imposed on these licensees under the OFHPA - am I missing something?]

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

[OLC Note: It seems to me that the rule is more about what can be included in the “amount of the payment”, so I have drafted it as a limitation on the “amount of payment” rather than a limitation on the Order itself. Does this work?]

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.
2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.
3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

PART VII COMMENCEMENT AND SHORT TITLE

Commencement

103x. This Act comes into force on [insert commencement rule]

Short title

104x. The short title of this Act is the *Ontario Fair Hydro Plan Act, 2017*.

SCHEDULE 1 ESTIMATED FINANCE AMOUNT

~~Estimated~~ finance amount

1. The ~~estimated~~ finance amount in respect of a reference period shall ~~be determined by estimating, prior to the start of a reference period,~~ the sum of the following:
[OLC Note: Who is responsible for doing the “estimate”?] Financial Services Manager determines the finance amount.

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.
[OLC Note: Throughout this section, please confirm that the underlined “during a reference period” is correct in each case.]

2. The sum of all funding costs in respect of the reference period, determined as follows:
 - i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.
 - ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

- iii. Subtract the amount calculated under subparagraph ii from the amount calculated under subparagraph i.
3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.
 4. The balance of the finance reserve at the end of the reference period, determined as follows:
 - i. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.
 - ii. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in subparagraph i.
 - iii. Subtract the amount calculated under subparagraph ii from the amount calculated under subparagraph i.
 5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

“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 of~~ 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?

Ontariothe 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 Base⁵].

"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-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 Province⁸, 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) 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 parameters⁹:
 - 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 illustrative 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 C3 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 and 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 ProvinceLieutenant 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 ProvinceLieutenant Governor in Council

- (1) **No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections** – The ProvinceLieutenant 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 ProvinceLieutenant 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 ProvinceLieutenant Governor in Council.
- (2) **Undertaking and Agreement** – The ProvinceLieutenant 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 ProvinceLieutenant 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 ProvinceLieutenant 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 regard 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 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 contemplated 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. ~~So~~so long as the Regulatory Asset is pledged to secure ~~bonds issued under a Treasury Act,~~ Funding Obligations, the ~~OPG Financing Entity~~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 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:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
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

Confidential – Solicitor & Client Privileged – Draft for Discussion Purposes Only

Formatted: Font: Italic, Not Highlight

Formatted: English (U.K.)

JPR Instructs 4 A (March 13-17) based on

Formatted: Highlight

A proposal to create Legislation.

Fair Hydro Plan Act, 2017, if enacted

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

NOTES: What follows is ENERGY's FIRST OPTION for deferring the Global Adjustment. It attempts to take the Global Adjustment Provisions at face value and makes incremental changes to add the necessary "lines in" and "lines out" that are required to fund the deferral of GAM through payments to be made by a new Fair Hydro Financing Trust (or designated entity) to be established by OPG. The plan is to have OPG establish the trust, but to ring-fence the trust from the rest of OPG's assets (that's my understanding of it) but to allow OPG to make decisions which leverage its ability to earn a return. OPG is responsible for injecting equity and equity and loans would also be provided by the OEFC. Both these sources would be only partial (approximately 5% from OPG, 41% from OEFC or thereabouts) capitalization. The rest of the funds would come from the Trusts' financing activities (it would enter into or be the subject of structured financial transactions such as securitization deals). This is all still evolving and this description is just to give you a sense of what we're working with. The drafting instructions won't reflect the financial interactions with the market yet.

The Second option is to is meant to give us all an alternative approach to consider. The plan would be to chose one or the other, or elements of each, in order to create the best product moving forward.

Formatted: Font: Bold

[Insert explanatory note.]

This draft has not been edited. FYI, I'm referring to the borrowing entity/thingy as "TBD" in the drafting.

ELECTRICITY ACT, 1998

1. Section 1 of the *Electricity Act, 1998* would be amended by adding the following clause:

- (d.1) to continue, create or facilitate the continuance or creation of initiatives that are reasonably likely to reduce or to support the reduction of greenhouse gas,¹ including initiatives relating to electricity conservation and efficiency or to the use of cleaner energy sources and technologies, and to provide mechanisms for mitigating related costs to consumers;

[Placeholder for possible purpose relating to other rate mitigation pending further discussion...I think we need to reconcile whatever text ENE wants to add re rate mitigation in particular with the existing clause (f). Ideally, we'll be able to reconcile the two in a single clause. Certainly we don't want there to be two purposes clauses on electricity prices that each have a different "take" on pricing. Maybe pricing should come out of (f) and we deal with pricing in a new, separate clause that could also address rate mitigation strategies.] *[ntd-jpr: Agreed, lets try this new "(f)" on for size.]*

(f) to protect the interests of consumers with respect to,

- (i) adequacy, reliability and quality of electricity service;
- (ii) prices, including the establishment of one or more mechanism to mitigate the prices that consumers would otherwise pay in a manner consistent with the policies of the Government of Ontario.

[ntd-jpr: I've tried to construct (f) (ii) in a manner which preserves the idea that, due to the policies of the Government of Ontario, consumers are going to receive an initial downward adjustment to the GAM amount in order to mitigate overall electricity prices, then have to endure the "pay back" phase which creates the necessity of having consumers pay more than they might otherwise pay.]

-Whether language of "deferral" is appropriate – instead, consider "intergenerational" "mitigate" – think "intergenerational" → an overarching theme - fair and equitable allocation of prices.

-fair distribution of the costs of the system of the whole across generations of consumers.

New objects for the IESO to be added to s.6 (1):

- (a.1) to enter into agreements or to make other arrangements with the Fair Hydro Financing Trust or the entity designated under Part x for the purposes of conducting its activities under section 25.33 and the Regulations: *[ntd-jpr: alternatively, if you don't want to refer to section-references, then perhaps "...for the purpose of conducting its rate-mitigation activities provided for in this Act.??]*

Formatted: Font: Not Bold

Formatted: Font color: Accent 1

Formatted: Font color: Accent 1

¹ FLS: See s. 71 (2) para. 2 of the Climate Change...Act.

- (a.2) to engage in activities related the making and receiving of payments from, the Fair Hydro Financing Trust, or the entity designated under Part X, as required under this Act, and to engage in related settlement activities;
- (a.3) to engage in activities related to the sale or disposition of regulatory assets referred to in section 25.33 for the purposes of assisting the Government of Ontario with its policies related to rate mitigation;

Formatted: English (U.K.)

x. (1) Subsections 25.33 (1) and (2) of the Act are repealed and the following substituted:

In order to help see all of the amendments in context and accommodate tweaks in the opening flushes, I've just remade subsections (1) and (2). However, that won't work if you may or will want to bring GGRA and the borrowing amendments into force at different times, so please let me know asap if you intend or may intend for that to be the case. *[ntd-jpr: I don't think we need to do that – bring GGRA amendments in at a different time than the Rate Mitigation measures, so I think what you've got here works well.]*

Interpretation

- (0.1) For the purposes of this Part,
 - (a) "deferral amount" refers to the total amount borrowed by the Fair Hydro Financing Trust or designated entity during the deferral period;
 - (b) "deferral period" means the period which commences on [January 1, 2017] and ends on [December 31, 2046] or at such earlier time as may be prescribed;
 - (c) "financing directive" means the directive referred to in section 25.34;
 - (d) "recovery period" refers to the period prescribed by the regulations and which commences not later than January 1, 2027.

Electricity pricing adjustments

Adjustments by IESO

(1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by such classes of market participants in Ontario as are prescribed by regulation, subject to subsection (2.1), reflect,

- (a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the *Ontario Energy Board Act, 1998*;
- (b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract;
- (c) amounts received by the IESO, directly or indirectly, from the Greenhouse Gas Reduction Account established under section 71 of the *Climate Change Mitigation and Low-Carbon Economy Act, 2016* for the funding of greenhouse gas reduction initiatives under this Act or the *Ontario Energy Board Act, 1998* for which the costs would otherwise be borne in whole or in part by consumers;

1. Re the underlined, given that this clause is about prescribed market participants, is the reference here to consumers correct?

Formatted: Font: Italic

2. That said, remind me why we need to include the phrase “for which the costs would otherwise be borne...” at the end at all? Isn’t that also the case with clauses (a) and (b) except that they don’t say so expressly? *[ntd-jpr: Actually, in regards to (a) and (b) which are existing clauses, the IESO is paying the full amounts to the entities (generators, contract-counter parties, etc.) while for (c) through (e), the amounts are either being reduced (e.g. (c) reduces the amounts consumers would otherwise have to pay using GGRA funding; (d) (same using amounts borrowed from the financing trust) (e).*

Formatted: Font: Italic

- (d) amounts received by the IESO, ~~directly or indirectly~~, from the ~~[[Fair Hydro Financing Trust or designated entity under section 53.6.2.]TBD]~~ under ~~[whatever the authority will require TBD to give money to the IESO; instructions pending];~~ and

Your instructions so far don’t suggest that the amounts would be received indirectly; please provide further information. *[ntd-jpr: For now, that’s correct: the IESO would be receiving the amounts directly from the Financing Trust or designated entity.]*

- (e) amounts paid to the ~~[[Fair Hydro Financing Trust or designated entity]TBD]~~ under,

- (i) subsection (1.1) ~~[authority requiring payment back to TBD of principal/interest];~~

- (ii) subsection (1.1).

~~[authority requiring payment back to TBD of operating costs];~~

Formatted: Normal, No bullets or numbering

[ntd-ivr: these next provisions (1.1) through (1.9) may be moved: They relate to the IESO's obligation to receive amounts from the Fair Hydro Financing Trust or designated entity and to make payments to the trust or entity. I've inserted them here for now.]

Payments, Fair Hydro Financing Trust, etc.

(1.1) The IESO shall, through its billing and settlement systems, make payments to the Fair Hydro Financing Trust or designated entity which, over time, provide for the following over the period which ends no later than January 1, 2047:

- (a) The payment in full of the amounts borrowed by the Trust or the entity for the purposes of providing near-term relief to prescribed electricity consumers: *[ntd-ivr: Should we express this as IESO making payments on a monthly basis?]*
- (b) The full amount of any interest costs or charges incurred by the trust or entity in relation to (a): *[ntd-ivr: Should we express this as IESO making payments on a monthly basis?]*
- (c) The full amount of any costs relating to the operation or management of the trust, as are approved by the Board: *[ntd-ivr: Should we express this as IESO making payments on a monthly basis?]*
- (d) Any other amounts as may be prescribed or as may be approved by the Board.

WHETHER PAYMENT OBLIGATIONS IS CORRECT:

-WE TRULY NEED THERE TO BE A SALE: IESO'S ROLE IS A COLLECTING AGENT AS OPPOSED TO A PAYMENT OBLIGATION TO PAY. EXERCISING A REGULATORY RIGHT THAT IS SOLD ON BEHALF OF BOND-HOLDERS.

GAM IN REVERSE - WHETHER WE CAN GIVE TRUST THE LINE INTO THE GENERATORS INCOME.

-THEN: OPG THOUGHT ABOUT A "WAREHOUSING" - IESO'S PRE-BORROWING ACTIVITY - IESO WOULD DRAW ON ITS LINE OF CRED (LOC) - IESO WOULD

-WANT TO ENSURE THAT IESO HAS THE POWER TO ACT THE COLLECTION AGENT ON BEHALF OF THE TRUST. DO WE NEED AN EXPRESS AUTHORITY TO TAKE ON THE WAREHOUSING

-PRECURSER ACTIVITIES

Formatted: Font: Italic

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold, Italic

Regulatory Assets,

(1.2) The following amounts shall be deemed to be regulatory assets with a right of recovery until the amounts are disposed of pursuant to subsection (1.3).:

- (a) Any and all amounts referred to in clause (1.1) (a) which are borrowed by the Trust or the entity during the deferral period and payable for the month for the purposes of providing near-term relief to prescribed electricity consumers;
- (b) Any and all amounts referred to in clause (1.1) (b) of any interest costs or charges incurred by the trust or entity during the deferral period, payable in the month, in relation to amounts referred to in clause (a);
- (c) Any and all amounts of any costs or charges referred to in clause (1.1) (c) relating to the operation or management of the trust, as approved by the Board;
- (d) The full amount of any and all other costs or true-ups which may be prescribed by the regulations.

[IOLC Counsel, the instruction is that we need to ensure absolute certainty (or as much certainty as we can provide) around the “pay back” provisions (right of trust to recover). This has to be “baked in” with as much detail around the pay back obligations / liability of consumers as possible.]

The other overarching principle is that those who benefit are required to pay back, -- Thus, putting these two principles together, then our intention is that as far as we can do, we must ensure that with absolute clarity that the full amount borrowed, interest, operating/etc costs have to be paid no matter what from the IESO, distributors and ultimately those consumers who benefit. [NTD-I’m not quite sure whether references to “distributors” will stay in. For now, let’s keep them in the places I’ve referenced them. The concern is that by referencing them we create credit and other financial risks for distributors due to the obligations (debt owing to the Trust or entity) including the enduring nature of those obligations.]

WHETHER THERE IS ENOUGH REFERENCE IN REG. ASSET SECTION TO THE REVENUE STREAM FROM THE PARTICULAR GROUP OF CONSUMERS: SHOULD THE INTRO LANGUAGE THAT THE REG. ASSET IS THAT PORTION OF THE REV STREAM REPRESENTING A, B, C, D. (I’m not sure we need to go that far – the importance of that link could be strengthened – making reference to that revenue stream – that portion of the revenue stream that relates to customers/consumers – amount equal to a,b,c. and d.)

Right of recovery,

- (1.3) The Fair Hydro Financing Trust or designated entity shall have the right to recover in full all amounts provided for in this Part [ntd-jpr: alternative: referred to in subsection (1.1)] from the IESO, distributors and prescribed consumers: [consumers referred to in clause (2.1)(a)]; [ntd-jpr: “distributors” may be removed depending upon assessment of or impact on credit risk of LDC’s.]
- (1.4) The Fair Hydro Financing Trust or designated entity shall, in addition to the amounts referred to in subsection (1.3), have the right to recover in full any and all interest costs, charges and expenditures incurred by the Trust or the Entity in relation to its activities;
- (1.5) The Fair Hydro Financing Trust or designated entity shall, in addition to the amounts referred to in subsection (1.3) and (1.4), have the right to recover in full any and all operating and management costs and expenditures which are incurred by the Trust or the Entity in relation to its activities and which are approved by the Board;
- (1.6) For greater certainty, the amounts referred to in subsections (1.3), (1.4) and (1.5) are deemed to be debts owing to the Fair Hydro Financial Trust or the Entity by the IESO, distributors and consumers until such amounts have been fully paid and fully discharged [ntd-jpr: I toyed with “fully discharged” but I’m not sure if it works – can we have it as an NTD for clients (and others) to consider?].

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Indent: Left: 0.5", No bullets or numbering

A proposal to create Legislation.

Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

ELECTRICITY ACT, 1998

1. (1) Section 1 of the *Electricity Act, 1998* would be amended by adding the following clause:

[Note: GGRA provisions have been removed for now. Please confirm if they should be re-inserted.]

(2) Clause 1 (f) of the Act would be struck out and the following substituted:

(f) to protect the interests of consumers with respect to the adequacy, reliability and quality of electricity service;

(f.1) to protect the interests of consumers with respect to the prices they pay for electricity, including protection of those interests through the Hydro financing initiative;

[Note: Since the Hydro financing initiative is a defined term and is clearly required to be implemented under the new substantive provisions of the Act, I'm still not sure why this needs to be addressed in the purpose clause. However, I have included a purpose provision as per your instructions.]

x. Subsection 2 (1) of the Act would be amended by adding the following definitions:

“Financing Entity” means the trust established by Ontario Power Generation Inc. under clause XX (a) or the entity prescribed for the purposes of clause XX (b); (“French”)

“hydro financing initiative” means those policies of the Government of Ontario related to its decision to ~~refinance a portion of Global Adjustment~~ ensure costs to Ontario electricity consumers are allocated fairly over time, taking into account the useful life of new sources of and technologies for electricity; (“French”)

Comment [ESP1]: The wording needs to worked on but we are suggesting tying the definition to what we are committing to (i.e., refinancing/deferral of GA).

[Note: I have applied the precedent of the “smart metering initiative” as per your instructions. Just want to reiterate my concern that the reference to government policies is really vague (which initiative/ policies? At which point in time?) and I think this could cause lots of confusion, particularly if the policies evolve over time. It could also have unintended consequences.]

[Note: To consider -- by describing the initiative as we have in the above definition, we are potentially linking the deferred amount to amounts that would otherwise be paid for by consumers as part of the GA. If the deferred amounts are not all about “the useful life of new sources and technologies” then the description of the initiative should likely be broadened. (For example, if some of the deferred amount may be used to cover high wholesale prices, one could argue that the initiative is NOT about allocating costs fairly over time... it’s just about pushing the cost increase to future consumers without considering what is “fair” across the generations.)

x. (1) Subsection 6 (1) of the Act would be amended by adding the following clauses:

(q.1) to enter into agreements or arrangements with the Financing Entity;

(q.2) to engage in activities related to making payments to and receiving payments from the Financing Entity under Part V.2, as required under this Act, and to engage in related settlement activities;

Note: Is some of this covered already by clause (i)? Could we address this by expanding upon clause (i)? Trying to understand whether there is any potential overlap.]

(q.3) to engage in activities related to the [sale/disposition/conveyance/assignment] of the [right/regulatory asset] created under section XX, which activities may include,

[Note: As discussed, please confirm terminology.]

(i) incurring liabilities in relation to the [right/asset];

(ii) [selling/assigning/disposing of?] the [right/asset] to the Financing Entity;

(iii) assigning [the right/asset] to third parties;

[Note: I don’t understand (iii) -- I thought the rights to the asset were being assigned to the trust and nobody else?]

(q.4) acting as a recovery agent for the Financing Entity in relation to [the right/asset];

x. (1) Subsections 25.33 (1) and (2) of the Act would be repealed and the following substituted [TBD].

[Note: As per our telephone discussion today (March 27), there seems to be ongoing debate about the policy direction:

1. Do you want to amend the GAM so that the money received from the FE and the money recovered by the FE are part of the initial GA calculation?
2. Do you want to leave the GAM section as is and add a requirement (in a new section) for the IESO to conduct additional adjustments for a subset of the payments referred to in s. 25.33? This second adjustment would be engaged in after the existing GAM is calculated. So it would be a further adjustment of what has already been adjusted under the GAM.

Until this fundamental question is answered, we are removing the proposed amendments to s. 25.33.]

x. Subsection 53.1 (1) of the Act would be repealed and the following substituted:

Objects of Ontario Power Generation Inc.

53.1 (1) The objects of Ontario Power Generation Inc. include, in addition to any other objects, the following:

[Note: I know that the words “in addition to any other objects” appears in the current provision, but it seems very odd. This suggests that the objects are unlimited, which doesn’t seem to be the intention but I could be wrong.]

1. Owning and operating generation facilities.
2. Establishing, operating and supervising the activities of entities for the purposes of supporting and promoting the government’s hydro financing initiative.
3. Providing financial and other support to the IESO in its activities in relation to the hydro financing initiative.
4. Engaging in such financing, borrowing, lending and related activities and transactions to support the IESO with short-term or long-term financing.]

Comment [ESP2]: GA refinancing should be kept separate from existing GA calculation – GA will continue to be calculated as normal (it will need to be as Class As and Class Bs will still pay GA as they do currently).

And current position is that the OEB (i.e., not IESO) that makes adjustments to RPP consumers bills and publishes the modifier to be used for RPP-eligible bills.

IESO is responsible for the flow of money to and from the SPV to and from OEB/LDCs/Retailers.

5. Providing equity, not exceeding the prescribed amount, to support the financing capacity of the Financing Entity.

Subsidiaries

(1.1) Ontario Power Generation Inc. may create one or more subsidiaries in order to more efficiently conduct its activities or achieve its objects.

x. Section 53.2 of the Act would be repealed and the following substituted:

Rights of the Minister¹

53.2 (1) The Minister, on behalf of Her Majesty in right of Ontario, may acquire, hold, dispose of and otherwise deal with securities or debt obligations of, or any other interest in, Ontario Power Generation Inc. or any of its subsidiaries.

Agreements

(2) The Minister, on behalf of Her Majesty in right of Ontario, may enter into any agreement or arrangement that the Minister considers necessary or incidental to the exercise of a power under subsection (1).

x. The Act would be amended by adding the following Part:

PART V.2 HYDRO FINANCING INITIATIVE

[Note: TBD where to place this Part within the Act and how to structure this Part. Temporary number (e.g. A1, A2, A3 etc.) has been used for now.]

FINANCING ENTITY

Financing Entity, established or prescribed

A1. (1) For the purpose of accomplishing the hydro financing initiative, the Minister may,

- (a) direct Ontario Power Generation Inc. to establish and operate a trust; or
- (b) direct Ontario Power Generation Inc. to [oversee? Administer?] an entity prescribed by the regulations.

[Note: Would the direction of the Minister include any additional instructions re timing etc.?.]

Duty of Ontario Power Generation Inc.

(2) Ontario Power Generation Inc. shall comply with the direction of the Minister.

Comment [ESP3]: Is this authority necessary – would OPG not always already have to comply with such a direction?

¹ FLS - this provision is based on s. 49 of the Act

[Note: Once OPG takes action under A1 in accordance with the Minister's direction, what happens if at some point in the future, the Minister wants a different entity to take over the role of the FE? Is this a concern that needs to be addressed?]

Object of Financing Entity

A2. (1) The object of the Financing Entity is to finance the amounts required to accomplish the hydro financing initiative.

[Note: We are imposing several obligations on the Financing Entity (FE). As a practical matter, how will these obligations be enforced? Who will be responsible for meeting these obligations? (e.g. would there be directors or officers of the trust?). Or will the OPG be responsible for meeting these obligations as the body that establishes/manages the trust or oversees the designated entity?]

Activities

(2) To achieve the object, the Financing Entity shall engage in the following activities:

[Note: Just want to confirm that this should be "shall" and not "may".]

1. Borrowing funds from the Financial Corporation or from such other persons or entities [as may be prescribed?].
2. Investing funds.
3. Making payments and loans to the IESO or such other entity as may be prescribed in accordance with the regulations [or an order of the Board].

[Note: I think it would be best to specify whether the rules would be set out in a reg or in a Board order to avoid confusion.]

[Note: Should the "loans" language be removed, since you noted that the IESO is not "borrowing" from the FE?]

4. Receiving payments from the IESO or such other person or entity as may be prescribed in accordance with the regulations.
5. Issuing securities or debt *[in the manner prescribed?]*.
6. Engaging in any activities, including entering into such transactions, agreements, or arrangements, as may be prescribed by and in accordance with the regulations.

Comment [ESP4]: Consider the wording re enabling the FE to engage in activities.

Board review of expenditures, etc.

A3. (1) The Financing Entity shall, at least 60 days after the end of each fiscal year, submit its expenditures relating to its operations for the fiscal year including the expenses

it has charged to Ontario Power Generation Inc. or the IESO, or that it has been charged by the Financial Corporation, in relation to those operations, to the Board for review.

[Note: The list of items that have to be reported on could be more prescriptive (e.g. specifying specific amounts to be set out) or it could also allow for the Board to specify what it wants to see in the report. Let me know if you'd like to adjust the wording of the requirement.]

Board recommendations, etc.

(2) The Board may review the expenditures and charges referred to in subsection (1) and make recommendations to the Financing Entity as are appropriate in order to ensure the consistency with the governing leg./reg. requirements (i.e., the constraints on OPG borrowing) most efficient operation and management of the Financing Entity in order to protect consumers.

[Note: Rather than saying "in order to protect consumers", should this say "in order to achieve the object of the FE"? Or perhaps this could just be deleted altogether with no need for replacement language.]

Deemed assets, entity,

A4. Despite any other provision of this Act or the *Business Corporations Act*, the assets and liabilities which are resident in and form part of the property of the Financing Entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries for any purpose.

[Note: You posed a question about excluding an OPG subsidiary from this rule. Please instruct.]

OBTAINING FINANCING

[Note: It will be important to read all of the provisions that follow against the provisions in the existing Act, to ensure there is no overlap/confusion being created due to potential interactions between existing authority and new authority. The drafting focus so far has just been to get the relevant substantive provisions into the draft without evaluating how they fit into the broader scheme of the Act.]

Ontario Power Generation Inc. to obtain financing

A5. (1) The IESO may direct Ontario Power Generation Inc. to cause the Financing Entity to engage in any of the following activities in order to accomplish the hydro financing initiative.

[Note: As a practical matter, how would OPG "cause the FE" to do these things? How is this different from "directing"?]

1. Financing, borrowing or lending to provide the IESO with short-term or long-term financing.

Comment [ESP5]: We need a new section either in the Part V.2 or in the 25.33/34/35s that sets out the constraints on OPG borrowing:

1. Requirement that GA refinancing be completed within the committed to 30-year period;

2. Requirement that surpluses in collections are applied to repay GA borrowing; and

3. Cap the amount to be recovered from ratepayers in any given year at 10 per cent of the average total bill (based on IESO's forecast at the time of the calculation).

Comment [ESP6]: We want to ensure that OPG acts in accordance with the constraints as set out in the above.

Comment [ESP7]: Why is IESO directing OPG here? Does it have the authority to do so (other than as set out here)?

2. [Purchasing/receiving/obtaining the right created under section XX] and making any payments to the IESO that relate to the IESO's activities in support of the hydro financing initiative.

[Note: Not sure if the regulated assets would always be "purchased" or if other terminology might be needed. Please advise.]

3. Collecting from the IESO amounts that the IESO is required to pay in relation to its activities in support of the hydro financing initiative.
4. Assigning its [the IESO's?] rights to all or part of the regulatory assets established under section XXXX.

[Note: What is para. 4 about? If this is about forcing OPG to make the FE do things, then does this belong in the list? I thought that it was only the IESO that would be assigning the rights to the FE]

5. Such other activities as may be prescribed.

Same

(2) Ontario Power Generation Inc. shall comply with a direction under subsection (1) within the time specified in the direction [and any prescribed rules?].

IESO to enter into transactions

A6. (1) The IESO shall, in order to support the achievement of the hydro financing initiative, enter into transactions with the Financing Entity or any other entity for such amounts as are necessary to support the hydro financing initiative.

[Note: My understanding is that the need for "or any other entity" stems from the need to allow for the IESO to obtain temporary financing in the immediate term, before it is able to access the FE. Do you want to narrow this so that the IESO is only authorized to do this before the FE is up and running? Or do you want to keep it available on an ongoing basis?]

Same

(2) In entering into transactions under subsection (1), the IESO shall comply with the regulations.

RIGHT OF RECOVERY [CREATION OF REGULATORY ASSET]

[Note re the following provisions:

I found a provision dealing with the concept of "regulatory asset" in Bill 210 from 2002 (see s. 79.13 of the OEBA). It deems certain things to be regulatory assets but does not say much more. On the phone, you noted that the term "regulatory asset" does not have any legal meaning on its own but is just an accounting term that has been used to describe

the statutorily created right of recovery. However, you also said that there may be a need to use this term in order to convey the intended meaning from an accounting perspective.

In order to ensure that the drafting captures the policy intent, please answer/address the following questions:

1. Should we be creating a statutory right of recovery or deeming certain amounts to be a regulatory asset? You said you'd consult on whether the regulatory asset terminology is important to flag in the Bill.
2. You said you're not sure whether or not the Act will require the IESO to sell/assign the right. Please instruct. If it is optional for the IESO to sell/assign, then it seems that the right could in theory remain with the IESO (unless you are saying that the statute can just create the right of the FE to recover without any need for the right to be assigned/sold by the IESO... in which case please explain why we need to deal with the sale/assignment at all). Please clarify.
3. I'm assuming that if we are creating a right, then the right must be held by someone (e.g. the IESO) before it can be assigned/sold? So should the right be created in the Act for the IESO (e.g. the IESO has a right to recover the amounts from distributors and prescribed consumers) since the IESO would then sell/assign/transfer the right to the FE? The FE must also have the right to recover from the IESO itself, so that creates an extra complication.
4. Should there be some indication of when the right of recovery/regulatory assets will no longer continue to exist (e.g. once all of the amounts have been paid?). I notice that your instructions below about the debt indicate that the debt is no longer owing once the amounts are paid, but do we need to indicate that the regulatory asset also ceases to exist at that point?

Right of recovery created

A7. A right to recover the following amounts in full from the IESO, distributors and prescribed consumers is created.

1. The [deferred amount].
2. The amounts of costs relating to the operation or management of the Financing Entity, as are approved by the Board.

[Note: How will the Board be approving these costs? Is this related to the expenditure report submitted to the Board? That provision dealing with Board expenditures doesn't refer to any approval taking place... just a review and recommendations.]

[Note: Need to mention expenditures?]

3. Other amounts as may be prescribed or as may be approved by the Board.

Note: Are you going to be saying anything about how the interest will be calculated?

Sale [and/or?] assignment of [right? Regulatory assets?]

A8. (1) The IESO [may? Shall?], in accordance with the regulations, sell [and/or?] convey to the Financing Entity the right to recovery created established under section A7 on such terms and conditions as are provided for by the Financing Entity.

[Note: Your instructions include the terms “sell”, “assign” and “convey” -- which are correct?]

[Note: Your instructions suggested that something other than the “regulatory assets” may need to be assigned to the FE. Are you referring to the “warehousing” liabilities assumed by the IESO in the early days? What else would need to be assigned? Could these items be listed above in A7 or is there a reason why they need to be kept separate?]

Sale deemed final

(2) The sale and conveyance referred to in subsection (1) is deemed to be final for all purposes.

[Note: What is this intended to achieve? Is this based on precedent language that has been interpreted to have the desired effect?]

Debts

(3) For greater certainty, the [amounts to which the FE has a right of recovery] are debts owing by the IESO, distributors and prescribed consumers to the Financial Entity until the amounts have been fully paid and fully discharged.

[Note: Why is subs. (3) necessary? Isn't it inherent in the sale of the regulatory assets that the FE would have acquired the future right to collect these amounts? Perhaps it is unclear that the amount can be collected from not just the IESO but from others down the chain. But isn't that what the “right of recovery” section above is meant to cover?]

[Note: I haven't checked to see how other similar provisions dealing with debts are drafted. Not sure we need the “for greater certainty” and also not sure what the distinction is between “fully paid” and “fully discharged”. This provision will need further consideration. You also noted that you may want to specify who determines when all obligations have been satisfied.]

IESO to recover amounts

A9. The IESO shall recover the amounts set out in section A7 from distributors and prescribed consumers, in accordance with [...]:

Note: how are the requirements that would determine recovery for this subsection meant to interact with the GAM reg?

[Note: The following two subsections are placeholders. You noted that *the provision is going to have to evolve to deal with consumers who exit the grid (disconnect) completely*

either because they leave the province or they decide to generate their own electricity and completely disconnect. You also want to be able to prescribe methods of ensuring that the amounts required cannot be “by-passed”. I’ll need to understand what is meant by “by-passed”.]

Distributors liable

(x) *The IESO and distributors are entitled to compensation for any shortfall in relation to the amounts the IESO must pay to generators, the Financial Corporation or other persons including prescribed persons, under section 25.33 resulting from the IESO’s activities under the hydro financing initiative.*

Consumers liable

(X) *Prescribed consumers are required to contribute towards the amount of any compensation referred to in subsection (4) in accordance with the amounts and methods prescribed by the regulations and such amounts shall not be by-passed.*

USE OF FUNDS TO REDUCE ELECTRICITY BILLS

[Note: Depending on how things land with s. 25.33, this might be a place to explain how the transactions between the IESO and the FE translate into reduction in the electricity bills of RPP consumers. Regulations could specify how the IESO would ensure that the short-term rate reductions that flow from the FE amounts are only received by the targeted class of consumers and that this same class of consumers is the only class responsible for the repayment of FE funds in the long-term.]

ONTARIO ENERGY BOARD ACT, 1998

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

6. To facilitate the implementation of the [hydro financing initiative].

[Note: Would need to link with definition in the EA or else spell out the definition here - TBD.]

x. Section 27.1 of the Act would be amended by adding the following paragraph:

Hearings

(1.1) A directive may specify whether the Board is to hold a hearing, the circumstances under which a hearing may or may not be held and, if a hearing is to be held, the type of hearing to be held and the time within which it must be held.

The underlined is what makes this different from the other provisions in the Act that basically have the same wording. There are already a number of places in the Act where you have this type of hearings provision re directives (e.g., s. 27.2 (7)). If you basically want the same authority in each instance, then the wording should be consistent in each

Comment [ESP8]: Do we need this new 1.1?

Could we not use or amend existing:

27.1 (1) The Minister may issue, and the Board shall implement, directives that have been approved by the Lieutenant Governor in Council that require the Board to take steps specified in the directives to promote energy conservation, energy efficiency, load management or the use of cleaner energy sources, including alternative and renewable energy sources. 2002, c. 23, s. 4 (4).

case. There are already some discrepancies between the current provisions (e.g., s. 27.2 (7) talks about types of hearings, whereas s. 28 (2) doesn't). Differences in wording will typically be presumed to be differences in meaning. So, the question is what you're intending to authorize in each case, and whether differences are intended. If you want the same thing everywhere, it should all be worded the same. Let me know.

[Note: Waiting for confirmation whether amendments to s. 78.7 are needed. Please advise.]

x. Section 79.16 (3) of the Act would be repealed and the following substituted:

Adjustment to eliminate variances

(3) In determining rates under clause (1) (b), the Board shall take into account balances in variance accounts established under section 25.33 of the *Electricity Act, 1998* and, subject to section X of that Act, make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct. [Note: Please let me know what section the highlighted portion is supposed to refer to... is it the provision that says the IESO has the 30 year period to pay off the amount in the variance account for the hydro financing initiative? I wonder if this is confusing and whether the amendment to subs. (3) above works... it almost seems unnecessary to say that the Board has to "take into account" this balance, given that we are setting up a bunch of very specific rules about what has to be done by various entities in order to eliminate this amount. What would the Board be expected to do with information about this variance account? For consideration.]

Timing

xx. This Act would come into force, if approved, on either a date specified in the legislation or on a later time to be stipulated by the Government.

Commencement

xx. This Act would come into force on [insert commencement rule]

STATUTORY AMENDMENTS

The following is preliminary and is based on our current understanding of the proposed structure and objectives. For example, we have assumed that the structure will not entail the insertion of a new Holdco between OPG and the Province. As these aspects are refined, some of the suggested amendments described below may not be needed and other aspects that we are not aware of may need to be considered. Accordingly, these suggested amendments are provided for discussion purposes and are subject to change. We would welcome the opportunity to work with OPG and the Ministry on refining the scope and substance of required legislative and regulatory amendments.

A. Amendments to Implement Structure

Certain *Electricity Act, 1998* amendments would be needed to implement the anticipated structure (which we understand, as noted above, would not include a Holdco), as follows:

- **Section 53.1(1):** Amend to permit owning and operating generation facilities through subsidiaries (not only directly through OPG). In addition, amend to permit OPG to administer, manage, loan moneys to and have a beneficial interest in, if applicable, Financing Trust.
- **Section 53.2:** Amend to permit the Minister to acquire, hold, dispose of or otherwise deal with securities or debt obligations of, or any other interest in, OPG or any subsidiaries. This is to accommodate possible variations to the financing structure that may be desirable over time.
- **Section 53.■ (new):** New statutory section to permit the Minister to enter into arrangements relating to an exercise of powers under 53.2.
- **Section 53.■ (new):** New statutory section providing that creditors of Financing Trust have no recourse to the assets of OPG or any of its subsidiaries (other than Financing Trust, if applicable). In addition, consideration should be given as to whether the Act should be amended so that the Financing Trust cannot be wound up or liquidated.

B. Miscellaneous Corporate Items to Address

- **OPG Articles:** Amend the OPG's articles to remove the private company restrictions.
- **MOA with Province:** Consider whether any amendments to OPG's MOA with the Province are required to contemplate the Financing Trust.

C. Amendments Under Electricity Act to Implement GA Smoothing

Based on our understanding that the global adjustment smoothing mechanism is intended to benefit residential and small business customers only and that the Minister will be responsible for determining how much global adjustment smoothing is to be applied in a given month, if any, amendments to the *Electricity Act, 1998* and Ontario Regulation 429/04 (Adjustments Under Section 25.33 of the Act) would be needed to implement the mechanism, as follows:

(i) **Electricity Act:**

- **Section ■ (New):** Establish a new power for the Minister to make directives to the IESO in relation to the global adjustment smoothing mechanism and, particularly, for purposes of establishing global adjustment smoothing amounts from time to time (expected to be monthly). To the extent possible, the directive power should be drafted so as to limit the ability for a future Minister to require the IESO to do anything that would materially and adversely affect the Financing Trust or its lenders. **[NTD: While our understanding is that the Minister would direct this, we note from other materials we have seen that OPG may instead be recommending a formula approach. It is not clear what the formula would look like, where it would be set out or how it would be applied and by whom]**
- **Paragraph 25.33(1):** This section says that IESO shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of market participants reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require IESO to ensure that, over time, payments by prescribed classes of market participants also reflect amounts paid to Financing Trust. **[NTD: Not certain this is needed if only to benefit residential and small business consumers, who are not market participants. May be needed in reference to payments from distributors and retailers]**
- **Paragraph 25.33(2):** This section says that distributors and retailers shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of consumers reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require distributors and retailers to ensure that, over time, payments by prescribed classes of consumers also reflect amounts paid to Financing Trust.
- **Note:** As described below, the regulation will need to include new requirements for the IESO to record the global adjustment smoothing amounts in one or more variance accounts and to use those amounts to offset amounts otherwise recorded in the variance accounts under Section 25.33(3) of the Act. For context, we note:
 - o Section 25.33(3) says that adjustments under (1) or (2) relating to electricity consumed by consumers whose rates are determined by the OEB under s. 79.16 of the OEB Act (i.e. RPP Customers) shall instead be made in

accordance with the regulations to one or more variance accounts established and maintained by the IESO.

- Section 25.33(4) says IESO, distributors and retailers shall make and receive such payments, set-offs and credits as may be required or permitted by the regulations with respect to consumers described in (3), i.e. RPP Customers.
- Section 25.33(5) says that IESO shall establish and maintain such variance accounts as may be needed to record all amounts payable or receivable by it under 25.33.

(ii) **O. Reg. 429/04 (Adjustments Under Section 25.33 of the Act):**

- **Section 1(1):** Consider adding definitions for “Financing Trust” and “global adjustment smoothing amount” or such other terms as may be preferred.
- **Section 1.2(1) (New):** Add section providing that, for the purposes of this Regulation, the global adjustment smoothing amount for a month is the amount determined by the IESO in accordance with a directive from the Minister under section ■ of the Electricity Act in respect of the month. [NTD: See above note re use of Minister directives]
- **Section 1.2(2) (New):** Consider adding a section providing that the IESO shall publish the global adjustment smoothing amount for a month by no later than the 10th business day of the following month [to align with general publication requirements for global adjustment under s. 1.1(2)].
- **Section 10(1):** Amend formula for calculating Class B GA rate by subtracting the global adjustment smoothing amount for a month from "M", which is the total amount of the global adjustment for the month. The global adjustment smoothing amount could be designated as "X", such that the formula would be $(M-X-N)/(P-Q)$. Define "X" as the global adjustment smoothing amount for the month as determined by the IESO in accordance with the Minister's directive under section ■ of the Electricity Act for the month. [NTD: See above note re use of Minister directives]
- **Section 10.1 (New):** Add new section to deal with adjustments under subsection 25.33(3) of the Act, i.e. in respect of RPP consumers. This section should require the IESO to establish, within the variance account(s) it maintains pursuant to subsection 25.33(3) of the Act, one or more subaccounts in which it shall record the global adjustment smoothing amounts applicable to the classes of consumers described in subsection 25.33(3) of the Act. This section must also specify that the IESO shall apply the amounts recorded in the subaccounts against the balances in the variance accounts for purposes of section 79.16(3) of the OEB Act.
 - **Note:** This is a key aspect because, when the OEB determines RPP rates, it must take into account the balances in the variance accounts established by the

IESO under s. 25.33 of the Electricity Act and make adjustments with a view to eliminating the balances within 12 months. This proposed new section 10.1 causes the IESO to reduce (in the near term) the variance account balances by the global adjustment smoothing amounts, as provided by Financing Trust, thereby enabling the OEB to determine RPP rates that, despite being lower for RPP consumers in the near term, still eliminate the relevant variance account balances within 12 months.

- **Paragraph 11(2)2.ii:** Amend the formula for calculating the allocation of global adjustment for a month to a licensed distributor that is a market participant by subtracting the global adjustment smoothing amount for a month from “M”, which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as “X”, such that the formula would be $[(M-X-N) \times (R+S-T)]/(P-Q)$. Define “X” as suggested under section 10(1).
- **Paragraph 11(2)3:** Amend the formula for calculating the allocation of global adjustment for a month to each Class B market participant by subtracting the global adjustment smoothing amount for a month from “M”, which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as “X”, such that the formula would be $[(M-X-N) \times U]/(P-Q)$. Define “X” as suggested under section 10(1).
- **Paragraph 16(7)4:** Consider amending the description of “Global Adjustment” that is required to be included on certain invoices so as to inform consumers that their portion of the global adjustment for the month (i) may have been reduced by the application of a global adjustment smoothing amount from the Financing Trust, or (ii) may include amounts payable to the Financing Trust in respect of global adjustment smoothing amounts previously applied.
- **Section 20(1):** This section establishes an obligation for the Ontario Electricity Financial Corporation and every licensed distributor that is a market participant to give the IESO such information as the IESO may require for the purposes of the Regulation in the form specified by the IESO and before the expiry of the period specified by the IESO. Consider amending to extend this obligation to the Financing Trust.
- **Section 20(6):** This section provides that on request by the OEB, the IESO, a licensed distributor, an embedded generator, a retailer or the OEFC shall give the OEB such information relating to this Regulation as the OEB may require, in the form and within the period specified by the OEB. Consider amending to extend this obligation to the Financing Trust.

D. Amendments Under OEB Act to Implement Cost Recovery for Financing Trust

Amendments to the *Ontario Energy Board Act*, including amendments to O. Reg. 95/05 (Classes of Consumers and Determination of Rates) and the introduction of a new regulation, would be

needed to implement a cost recovery process for the Financing Trust in relation to the global adjustment smoothing mechanism, potentially with limited OEB oversight, as follows:

(i) **Ontario Energy Board Act:**

- **Section 78(3.3):** This provision establishes an obligation for the OEB, when determining rates for the retailing of electricity, to take into account balances in variance accounts established under section 25.33 of the Electricity Act and to make adjustments “with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct.” Consider whether any amendments are needed, and confirm this works with the framework being proposed.
- **Section 78.7 (New):** We understand that the Province may want the OEB to have an oversight role. One possible approach would be to establish a new statutory section establishing that the IESO shall make payments to the Financing Trust with respect to the internal administrative costs incurred by the Financing Trust in connection with the purchase and management of the Regulatory Asset and the Financing Trust. Such payments by the IESO would need to be made in accordance with the order of the OEB then in effect, which orders shall be made by the OEB in accordance with rules prescribed under a new regulation.
 - o The new regulation would need to be clear that the OEB does not have jurisdiction to consider the principal amount or any interest, financing costs, third party fees or expenses. Rather, OEB’s role would be limited to considering the internal administrative costs of the Financing Trust and ensuring the Financing Trust receives an appropriate fee for its services, all of which would be recovered by the Financing Trust from the IESO, which would collect those amounts in the global adjustment. Note that, if this approach is accepted, the IESO and distributors and retailers would need the authority to collect such amounts as part of the GA and IESO would need the authority to pay such amounts to the Financing Trust. As such, additional amendments would be needed under O. Reg. 429/04.
- **Note:** Section 79.16 of the OEB Act does not require changes, but the significance of this provision should be understood.
 - o Section 79.16 gives the OEB responsibility for determining electricity commodity prices for eligible consumers. Eligibility is determined under Reg. 95/05 (Classes of Consumers and Determination of Rates), which is also known as the Regulated Price Plan (RPP) Regulation.
 - o Section 4(2) of the RPP Regulation defines RPP-eligible consumers as low volume consumers (i.e. those who annually use less than 150,000 kWh or such other amount as prescribed), consumers with demand of 50 kW or less, residential consumers that have accounts with distributors, consumers who annually use 150,000 to 250,000 kW of electricity, and consumers who have accounts with distributors if in the farming business.

- Paragraph 6(1)3 of the RPP Regulation provides that “In determining the rates (for RPP-eligible consumers), the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration adjustments required under section 25.33 of the *Electricity Act*, 1998 and shall ensure that the rates reflect those costs.”
- The Ontario Energy Board has developed a Regulated Price Plan Manual (revised February 16, 2016) to describe the processes and methodologies it uses for determining electricity commodity prices that are charged to RPP consumers pursuant to Section 79.16 of the OEB Act and paragraph 6(1)3 of the RPP Regulation.

(ii) **O. Reg. 95/05 (Classes of Consumers and Determination of Rates)**

- **Paragraph 6(1)3:** Amend so as to require the Board, when forecasting the cost of electricity to be consumed by the consumers to whom the rates apply, to take into consideration not only the adjustments required under section 25.33 of the Electricity Act but also the application or prior application of global adjustment smoothing amounts determined by the IESO in accordance with Minister directives under section ■ of the Electricity Act, and to ensure that the RPP rates reflect those amounts. [NTD: See above note re use of Minister directives]

(iii) **New Regulation (Payments to the Financing Trust)**

- If the OEB is to be given the role of reviewing and approving the recovery of OPG's internal administrative costs for the Financing Trust under the potential section 78.7 (see above), then this regulation should describe the process and criteria pursuant through which the OEB would determine the amounts that the IESO would be required to collect through the global adjustment, in accordance with section 25.33 of the Electricity Act, and pay to the Financing Trust in respect of the provision of global adjustment smoothing amounts. This part of the regulation should establish:
 - any reporting requirements from the Financing Trust and/or the IESO to the OEB in connection with the global adjustment smoothing mechanism;
 - the frequency of the OEB making determinations under this part of the regulation;
 - the process through which the OEB shall make these determinations, which should be a streamlined administrative process rather than a public hearing process or, if a hearing is needed, then the scope of the proceeding should be clearly and narrowly constrained so as to deter intervenor involvement, lengthy proceedings and reduce/eliminate risk to recovery by Financing Trust;
 - the basis for the OEB's determinations as to the payments that shall be made to the Financing Trust, which should specify that:
 - the Financing Trust shall recover its prudently incurred internal administrative costs on a forecast basis each year;
 - the Financing Trust shall receive an appropriate fee each year (with some guidance as to what would be appropriate); and

- the approved payment amounts shall be collected by the IESO through the global adjustment and paid to the Financing Trust in accordance with the order of the OEB then in effect. Note that O. Reg. 429/04 would likely need amendments to permit IESO (and distributors and retailers) to collect these amounts through the global adjustment.

Ontario Power Generation

Terms necessary for OPG to consolidate the Global Adjustment Trust

Issue	No.	Requirements
Directive	1	The Trust must be undertaken by OPG as a business initiative on its merits. A Shareholder Directive is to be limited to direct OPG to investigate the option of establishing a Trust vehicle to administer, finance and operate the Global Adjustment plan and the operation of that Trust and the control, risk and rewards of that Trust will determine its consolidation into OPG as a business enterprise
Trust	2	The Trust should not operate in a predetermined way such that OPG does not have decision-making authority over the Trust's ongoing activities after its formation (i.e. should not operate on 'autopilot').
	3	OPG must have the ability to appoint and remove the Trustee (or Board of Trustees), with no veto right by the Province.
	4	No party shall have the ability to remove OPG from its role and authority in the Trust.
	5	The Province cannot have the right to be able to veto OPG's decisions about the relevant activities of the Trust. OPG must have the power over the relevant activities of the Trust and be compensated. The relevant activities of the Trust include (but are not limited to) the evaluation and decisions on financing alternatives, duration, and the strategy to minimize financing costs.
	6	OPG must have the power to determine or change operating and financing policies of the Trust, which will affect the variability of risks and returns.
	7	OPG must have the power to establish operating and capital budgets of the Trust.
	8	The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following: a. The Trust b. Any of OPG's investments in the Trust c. The most subordinated debt of the Trust
	9	OPG must own greater than 50% of the most subordinated debt and must be no less than 5% of the subordinated debt of the Trust. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources.
	10	OPG must have the ability to earn variable returns by exercising its authority, which shall be accomplished as follows: a. The cash flow from the restructured asset shall include interest determined based on a relevant benchmark that is appropriate relative to the restructured asset, plus an appropriate margin consistent with the relevant market and other risks

		b. OPG shall have the authority to determine the financing strategy, which will vary the financing costs with the objective of enabling the Trust to achieve a more favourable return compared to the benchmark for interest on the restructured asset c. The Trust shall establish classes of liabilities (senior, subordinated and the most subordinated). The classes would allow the Trust to delineate financing of lower risk investment and investment that would bear higher residual risk. The delineation would limit OPG's self-funded investment to a reasonable level in order to allow OPG to remain a self-sustaining entity. d. OPG shall, through its ownership of the most subordinated liability, be able to capture and retain the pricing difference between cost of financing and benchmark for interest on the restructured asset, or any residual risk of restructured asset. The targeted return of the subordinated liability should be reflective of the underlying risks and compensate holders for active management that would be required. e. OPG should participate in the detailed design of the above and the Trust documentation to ensure that it has substantive power and variability, which will allow OPG's Board of Directors to evaluate the opportunity as a business initiative instead of through a shareholder directive]. Defined Forced Majeure for emergency events (e.g. unlikely credit market event or disruption where it is not possible to borrow from the market at a reasonable rate), OEFC may provide bridge financing beyond the designated percentage.
Legislation	11	The Legislation must require interest, carrying and administrative costs to be paid to the Trust on a monthly basis, so that the Trust is able to recognize appropriate revenue to offset any ongoing costs.
	12	The Legislation must dictate the manner in which the restructured asset would be determined, collected, and the period of collection, so that the determination of the restructured asset will not be subject to the Province's decisions on an ongoing basis, but determined based on a formula. Alternatively, the Legislation may allow for an adjustment to the pre-determined deferral formula based on specific parameters that would limit the adjustment to the restructured asset. Adjustments beyond the specific parameters would require approval by the Board of Trustee.
	13	The Legislation must be written to avoid legal or constitutional challenges and be seen as virtually unchangeable to reduce the cost of borrowing and with a specific formula which determines the deferral amount. Should a future government alter or repeal the legislation, the debt held in support of the deferred amounts would become payable by the Province directly, not by OPG or the Trust.
	14	The spirit of the above terms should be reflected in the Trust Indenture Agreement as well as Legislation, wherever possible.

GLOBAL ADJUSTMENT DEFERRAL

POTENTIAL FRAMEWORK FOR THE “REGULATED ASSETS”

EXECUTIVE SUMMARY

- Each month where the IESO does not collect the full GA amount, the IESO shall establish a deferral account pursuant to the legislation and record in the account the amount that it has deferred and which will be collected in future (each such deferral account would be a “**Regulatory Asset**”).
- The IESO would then sell the Regulatory Asset to the Financing Trust (the “**Trust**”) in exchange for a payment equal to the GA amount not collected in respect of that month. Note that this right to sell the Regulatory Asset would need to be explicitly permitted by the legislation as this type of sale has not, to our knowledge, been authorized by the OEB previously.
- The Trust would then be required to apply to the OEB for approval to clear and recover amounts from time to time from the Regulatory Asset (i.e., the deferral account).
- A specific regulation would be promulgated setting out the basis upon which OEB would make its decision to approve the clearance and recovery of amounts from the Regulatory Asset (i.e., the deferral account). Specifically, the OEB’s discretion would be limited to ensuring the accuracy of amounts recorded in the Regulatory Asset (i.e., the deferral account).
- OEB would be granted broader discretion to consider prudence when approving costs of the Trust arising from OPG’s internal costs.

DETAILED ANALYSIS OF REQUIRED CHANGES TO LEGISLATION AND REGULATION

- If necessary, establish authority for the OEB to license the Trust and a requirement for the Trust to obtain such a license from the OEB in order to make the Trust an OEB-regulated entity (s. 57 of the OEB Act)
 - Direct or otherwise require the OEB to issue a license to the Trust on an expedited basis, subject to limited conditions
- Establish authority for the OEB to determine payment amounts for the Trust (strictly in accordance with the following bullet), together with a requirement for the IESO to make payments to the Trust in accordance with the order of the OEB then in effect (similar to the framework that applies in respect of OPG’s payment amounts for prescribed generation under s. 78.1 of the OEB Act)
- Require the OEB to make orders determining payment amounts for the Trust in accordance with rules to be prescribed by regulations and create a new regulation that sets out limitations on the OEB’s discretion in establishing those payments (similar to O. Reg. 53/05 in respect of OPG’s payment amounts). Under the regulation:

- Require the IESO to establish the deferral accounts (i.e., the Regulatory Assets) to record the amount of uncollected GA
- Require the Trust to record in the Regulatory Assets (i.e., the deferral accounts purchased from the IESO): (a) interest costs on amounts borrowed to acquire the Regulatory Assets, and (b) financing and third party transaction costs.
- Require the Trust to establish another deferral account and record therein administrative costs of the Trust payable to OPG
- Require the OEB, in making an order determining payment amounts for the Trust, to ensure that the Trust recovers the balances recorded in each of the deferral accounts as long as the OEB is satisfied that the amounts have been accurately recorded in the accounts (similar to rules under s. 6 of O. Reg. 53/05 in respect of OPG's payment amounts).
 - Consider allowing the OEB to consider prudence only in respect of reviewing internal administrative costs of the Trust payable to OPG.
 - Consider specifying the timing for recovery of the balances in each of the deferral accounts, i.e. once a balance is approved for recovery, over how long a period will the Trust recover that balance?
 - Consider further prescribing the form, methodology, assumptions and/or calculations that the OEB shall be required to use in making orders determining payment amounts for the Trust, such as requiring the OEB to make these determinations by delegated authority and/or without a hearing, specifying the frequency with which such orders must be issued and specifying the information needed from the Trust to enable the OEB to make its determinations from time to time.
- As noted above, the IESO would be required to make payments to the Trust in accordance with the order of the OEB then in effect. To do so, the IESO would need to be authorized to collect, through the Global Adjustment, the amounts it needs to make payments to the Trust in accordance with such orders of the OEB. This would require amendments to s. 25.33 of the Electricity Act and to O. Reg. 429/04 to enable the IESO to collect the relevant amounts from distributors, retailers and directly from market participants that are connected directly to the IESO-controlled grid.
- **[NTD: Need to establish mechanism through which determinations are made (such as Minister directives or otherwise) as to whether and how much smoothing should be obtained by IESO from the Trust and applied to reduce the global adjustment in a particular period, as well as the timing for commencing recovery by the Trust of principal amounts.]**

- **[NTD: Through a separate process associated with the existing Rate Protection Plan, the OEB would be expected to incorporate the impacts of the smoothing mechanism into rates for customers that are subject to RPP rates.]**

LEGISLATIVE REQUIREMENTS

TO ALLOW DEFERRAL OF

GLOBAL ADJUSTMENT AMOUNTS TO BE FINANCEABLE

The IESO currently has a right to collect GA monthly from ratepayers through provisions in the *Electricity Act, 1998*. It is proposed that collection of a certain portion of the monthly GA be deferred for collection in the future, and that the right to recover the deferred GA from ratepayers be used as a basis for structured financing/securitization.

The current proposal is for a trust to be created as a financing vehicle (the “**Trust**”) in connection the deferred GA. The Trust will finance the deferral of the GA by purchasing the right to recover such deferred GA from the IESO for the principal amount of the GA being deferred. For example, if the amount of GA that is being deferred is \$200 million in a given month, the Trust will purchase from the IESO the right to future recovery of the deferred GA and the associated financing costs (including interest and transaction costs) for \$200 million in cash.

The Trust is expected to finance these purchases from the IESO through a combination of senior secured financing raised in the capital markets and subordinated financing from OPG (the funding for which will mostly be from equity injections from the OEFC/Province).

For accounting purposes, OPG will need to have the ability to direct the activities of the Trust, through a services agreement and/or through the Trust’s constating document.

Based on securitized financing raised by utilities in the US (backed by utility cost recovery orders) and the current regulatory framework in Ontario, the legislation in Ontario would need to be amended to provide the following, at a minimum:

1. The IESO will be empowered to create an asset (the “**Regulatory Asset**”) consisting of all right, title and interest in and to:
 - (a) right to recover from and bill Ontario electricity ratepayers for:
 - (i) the principal amount of GA that is being deferred for collection;
 - (ii) all interest and other financing costs incurred in respect of the deferral of the GA (whether through senior debt raised in the public markets or subordinated debt raised from OPG or others); and

- (iii) (subject to the comments in paragraph 5 below in respect of OPG's internal administrative costs only) all fees, expenses and other administrative costs associated with such financing, including up-front and ongoing financing costs and any indemnity payments;

all on such repayment/amortization schedule as agreed by the IESO and any purchaser of such right (or pursuant to a pre-defined schedule/formula in the legislation that covers all of the purchaser's principal, interest and ongoing financing costs on a monthly basis); and

- (b) all revenues, collections, claims, rights to payments, money or proceeds arising from the rights and interests set out in paragraph (a) above, regardless of whether such revenues, collections, claims, rights to payments, money or proceeds are imposed, billed, received, collected or maintained together with or commingled with other revenues, collections, rights to payments, payments, money or proceeds.

2. The IESO may dispose of the Regulatory Assets created from time to time on such terms as the IESO determines in accordance with the terms of directives to be issued to the IESO from time to time by the Minister [**Torys NTD: While our understanding is that the Minister would direct this, we note from other materials we have seen that OPG may instead be recommending a formula approach. It is not clear what the formula would look like, where it would be set out or how it would be applied and by whom**], provided that any such disposition shall be a true sale and absolute transfer of the IESO's right, title and interest in and to a Regulatory Asset to the purchaser of the Regulatory Asset. [**Torys NTD: part of being able to convey a property interest in a chose in action (which the regulatory asset would represent since the aspect that makes it a "regulatory asset" is the ability to recover the amount recorded in the account) is the ability to convey all legal and equitable interests – this would include the right to collect. But if the right to record and recover is created by legislation, can the IESO fully assign a legislative right? This issue may be resolved by having the IESO collect the Regulatory Assets on behalf of the purchaser thereof (perhaps as an agent for the purchaser)**]
3. The Regulatory Assets will not be subject to any set-off, counterclaim or other defence by the IESO or any successor or affiliated entity thereof.

4. The legislation will need to recognize the Regulatory Assets as amounts that may be recovered by the IESO (e.g. it could be designated as a “GA Deferral” and would be included in the amounts collectible by the IESO through the GA collection mechanism, and would include interest and financing costs).
5. The purchaser of the Regulatory Asset will have the right to require the IESO (or any successor) to collect the principal amount of GA deferred, together with interest, financing and administration costs, on the agreed repayment/amortization schedule. **[NTD: In the LIPA securitization rate order, if the entity that is authorized to collect rates to service the bonds ends up defaulting, there is the ability to request a court to order “sequestration” and payments of amounts owing to the owner of the Regulatory Asset. Consider whether to include a similar right here. Alternatively, consider whether a security interest over the moneys collected by the IESO could be provided to the purchaser.]**

OEB would be provided with oversight over the internal administrative costs collected by the Financing Trust. This could be accomplished by (a) providing the purchaser of the Regulatory Asset with the right to require the IESO or a successor to collect only the principal amount of GA together with interest and financing costs and third party fees and expenses, and (b) requiring the IESO to collect amounts through the global adjustment and make payments to the purchaser of the Regulatory Asset with respect to the internal administrative costs incurred by the purchaser in connection with the purchase and management of the Regulatory Asset and the Financing Trust, in accordance with the order of the OEB then in effect. Under this mechanism, the OEB would be required to review the purchaser’s internal administrative costs through a streamlined process and issue such orders in accordance with rules to be prescribed under a new regulation under the OEB Act, which would clearly limit the OEB’s scope of review and could establish the basis for the purchaser to receive an appropriate fee for its services.

6. In the event that any action is taken or permitted by the Province or any regulatory authority that limits, alters, or impairs **[Torys NTD: the legislation would have to limit the authority of independent quasi-judicial tribunals like the OEB for this to be effective, also deal with any statutory provisions relating to liability against the Crown]** the value of a Regulatory Asset or reduces the ability of the IESO or the purchaser of the Regulatory Asset to collect or recover the costs associated therewith, the owner of the Regulatory Asset and the holders of any bonds or other

securities issued to finance the purchase of the Regulatory Asset, will have a right of action against the Province for any damages suffered as a result of such amendment.

[NTD: Additional details, if necessary, could be built into regulations under the statute.]

[NTD: Any external review, e.g. by the OEB, should be limited to the amount of GA deferred and the time period for recovery. The financing program itself should not be subject to OEB or other regulatory review, as this would add significant risk to bondholders, challenging the financeability of the structure.] [Torys NTD: Our understanding is that these aspects were to be for the Minister to determine, and that OEB review would best be limited to considering the internal administrative costs of the Trust in managing Regulatory Assets]

LEGISLATIVE REQUIREMENTS

TO ALLOW DEFERRAL OF

GLOBAL ADJUSTMENT AMOUNTS TO BE FINANCEABLE

The IESO currently has a right to collect GA monthly from ratepayers through provisions in the *Electricity Act, 1998*. It is proposed that collection of a certain portion of the monthly GA be deferred for collection in the future, and that the right to recover the deferred GA from ratepayers be used as a basis for structured financing/securitization.

The current proposal is for a trust to be created as a financing vehicle (the “**Trust**”) in connection the deferred GA. The Trust will finance the deferral of the GA by purchasing the right to recover such deferred GA from the IESO for the principal amount of the GA being deferred. For example, if the amount of GA that is being deferred is \$200 million in a given month, the Trust will purchase from the IESO the right to future recovery of the deferred GA and the associated financing costs (including interest and transaction costs) for \$200 million in cash.

The Trust is expected to finance these purchases from the IESO through a combination of senior secured financing raised in the capital markets and subordinated financing from OPG (the funding for which will mostly be from equity injections from the OEFC/Province).

For accounting purposes, OPG will need to have the ability to direct the activities of the Trust, through a services agreement and/or through the Trust’s constating document.

Based on securitized financing raised by utilities in the US (backed by utility cost recovery orders) and the current regulatory framework in Ontario, the legislation in Ontario would need to be amended to provide the following, at a minimum:

1. The IESO will be empowered to create an asset (the “**Regulatory Asset**”) consisting of all right, title and interest in and to:
 - (a) right to recover from and bill Ontario electricity ratepayers for:
 - (i) the principal amount of GA that is being deferred for collection;
 - (ii) all interest and other financing costs incurred in respect of the deferral of the GA (whether through senior debt raised in the public markets or subordinated debt raised from OPG or others); and

- (iii) (subject to the comments in paragraph 5 below in respect of OPG's internal administrative costs only) all fees, expenses and other administrative costs associated with such financing, including up-front and ongoing financing costs and any indemnity payments;

all on such repayment/amortization schedule as agreed by the IESO and any purchaser of such right (or pursuant to a pre-defined schedule/formula in the legislation that covers all of the purchaser's principal, interest and ongoing financing costs on a monthly basis); and

- (b) all revenues, collections, claims, rights to payments, money or proceeds arising from the rights and interests set out in paragraph (a) above, regardless of whether such revenues, collections, claims, rights to payments, money or proceeds are imposed, billed, received, collected or maintained together with or commingled with other revenues, collections, rights to payments, payments, money or proceeds.

2. The IESO may dispose of the Regulatory Assets created from time to time on such terms as the IESO determines in accordance with the terms of directives to be issued to the IESO from time to time by the Minister **[Torys NTD: While our understanding is that the Minister would direct this, we note from other materials we have seen that OPG may instead be recommending a formula approach. It is not clear what the formula would look like, where it would be set out or how it would be applied and by whom]**, provided that any such disposition shall be a true sale and absolute transfer of the IESO's right, title and interest in and to a Regulatory Asset to the purchaser of the Regulatory Asset. **[Torys NTD: part of being able to convey a property interest in a chose in action (which the regulatory asset would represent since the aspect that makes it a "regulatory asset" is the ability to recover the amount recorded in the account) is the ability to convey all legal and equitable interests – this would include the right to collect. But if the right to record and recover is created by legislation, can the IESO fully assign a legislative right? This issue may be resolved by having the IESO collect the Regulatory Assets on behalf of the purchaser thereof (perhaps as an agent for the purchaser)]**
3. The Regulatory Assets will not be subject to any set-off, counterclaim or other defence by the IESO or any successor or affiliated entity thereof.

4. The legislation will need to recognize the Regulatory Assets as amounts that may be recovered by the IESO (e.g. it could be designated as a “GA Deferral” and would be included in the amounts collectible by the IESO through the GA collection mechanism, and would include interest and financing costs).
5. The purchaser of the Regulatory Asset will have the right to require the IESO (or any successor) to collect the principal amount of GA deferred, together with interest, financing and administration costs, on the agreed repayment/amortization schedule. **[NTD: In the LIPA securitization rate order, if the entity that is authorized to collect rates to service the bonds ends up defaulting, there is the ability to request a court to order “sequestration” and payments of amounts owing to the owner of the Regulatory Asset. Consider whether to include a similar right here. Alternatively, consider whether a security interest over the moneys collected by the IESO could be provided to the purchaser.]**

OEB would be provided with oversight over the internal administrative costs collected by the Financing Trust. This could be accomplished by (a) providing the purchaser of the Regulatory Asset with the right to require the IESO or a successor to collect only the principal amount of GA together with interest and financing costs and third party fees and expenses, and (b) requiring the IESO to collect amounts through the global adjustment and make payments to the purchaser of the Regulatory Asset with respect to the internal administrative costs incurred by the purchaser in connection with the purchase and management of the Regulatory Asset and the Financing Trust, in accordance with the order of the OEB then in effect. Under this mechanism, the OEB would be required to review the purchaser’s internal administrative costs through a streamlined process and issue such orders in accordance with rules to be prescribed under a new regulation under the OEB Act, which would clearly limit the OEB’s scope of review and could establish the basis for the purchaser to receive an appropriate fee for its services.

6. In the event that any action is taken or permitted by the Province or any regulatory authority that limits, alters, or impairs **[Torys NTD: the legislation would have to limit the authority of independent quasi-judicial tribunals like the OEB for this to be effective, also deal with any statutory provisions relating to liability against the Crown]** the value of a Regulatory Asset or reduces the ability of the IESO or the purchaser of the Regulatory Asset to collect or recover the costs associated therewith, the owner of the Regulatory Asset and the holders of any bonds or other

securities issued to finance the purchase of the Regulatory Asset, will have a right of action against the Province for any damages suffered as a result of such amendment.

[NTD: Additional details, if necessary, could be built into regulations under the statute.]

[NTD: Any external review, e.g. by the OEB, should be limited to the amount of GA deferred and the time period for recovery. The financing program itself should not be subject to OEB or other regulatory review, as this would add significant risk to bondholders, challenging the financeability of the structure.] [Torys NTD: Our understanding is that these aspects were to be for the Minister to determine, and that OEB review would best be limited to considering the internal administrative costs of the Trust in managing Regulatory Assets]

STATUTORY AMENDMENTS

The following is preliminary and is based on our current understanding of the proposed structure and objectives. For example, we have assumed that the structure will not entail the insertion of a new Holdco between OPG and the Province. As these aspects are refined, some of the suggested amendments described below may not be needed and other aspects that we are not aware of may need to be considered. Accordingly, these suggested amendments are provided for discussion purposes and are subject to change. We would welcome the opportunity to work with OPG and the Ministry on refining the scope and substance of required legislative and regulatory amendments.

A. Amendments to Implement Structure

Certain *Electricity Act, 1998* amendments would be needed to implement the anticipated structure (which we understand, as noted above, would not include a Holdco), as follows:

- **Section 53.1(1):** Amend to permit owning and operating generation facilities through subsidiaries (not only directly through OPG). In addition, amend to permit OPG to administer, manage, loan moneys to and have a beneficial interest in, if applicable, Financing Trust.
- **Section 53.2:** Amend to permit the Minister to acquire, hold, dispose of or otherwise deal with securities or debt obligations of, or any other interest in, OPG or any subsidiaries. This is to accommodate possible variations to the financing structure that may be desirable over time.
- **Section 53.■ (new):** New statutory section to permit the Minister to enter into arrangements relating to an exercise of powers under 53.2.
- **Section 53.■ (new):** New statutory section providing that creditors of Financing Trust have no recourse to the assets of OPG or any of its subsidiaries (other than Financing Trust, if applicable). In addition, consideration should be given as to whether the Act should be amended so that the Financing Trust cannot be wound up or liquidated.

B. Miscellaneous Corporate Items to Address

- **OPG Articles:** Amend the OPG's articles to remove the private company restrictions.
- **MOA with Province:** Consider whether any amendments to OPG's MOA with the Province are required to contemplate the Financing Trust.

C. Amendments Under Electricity Act to Implement GA Smoothing

Based on our understanding that the global adjustment smoothing mechanism is intended to benefit residential and small business customers only and that the Minister will be responsible for determining how much global adjustment smoothing is to be applied in a given month, if any, amendments to the *Electricity Act*, 1998 and Ontario Regulation 429/04 (Adjustments Under Section 25.33 of the Act) would be needed to implement the mechanism, as follows:

(i) **Electricity Act:**

- **Section ■ (New):** Establish a new power for the Minister to make directives to the IESO in relation to the global adjustment smoothing mechanism and, particularly, for purposes of establishing global adjustment smoothing amounts from time to time (expected to be monthly). To the extent possible, the directive power should be drafted so as to limit the ability for a future Minister to require the IESO to do anything that would materially and adversely affect the Financing Trust or its lenders. **[NTD: While our understanding is that the Minister would direct this, we note from other materials we have seen that OPG may instead be recommending a formula approach. It is not clear what the formula would look like, where it would be set out or how it would be applied and by whom]**
- **Paragraph 25.33(1):** This section says that IESO shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of market participants reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require IESO to ensure that, over time, payments by prescribed classes of market participants also reflect amounts paid to Financing Trust. **[NTD: Not certain this is needed if only to benefit residential and small business consumers, who are not market participants. May be needed in reference to payments from distributors and retailers]**
- **Paragraph 25.33(2):** This section says that distributors and retailers shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of consumers reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require distributors and retailers to ensure that, over time, payments by prescribed classes of consumers also reflect amounts paid to Financing Trust.
- **Note:** As described below, the regulation will need to include new requirements for the IESO to record the global adjustment smoothing amounts in one or more variance accounts and to use those amounts to offset amounts otherwise recorded in the variance accounts under Section 25.33(3) of the Act. For context, we note:
 - o Section 25.33(3) says that adjustments under (1) or (2) relating to electricity consumed by consumers whose rates are determined by the OEB under s. 79.16 of the OEB Act (i.e. RPP Customers) shall instead be made in

accordance with the regulations to one or more variance accounts established and maintained by the IESO.

- Section 25.33(4) says IESO, distributors and retailers shall make and receive such payments, set-offs and credits as may be required or permitted by the regulations with respect to consumers described in (3), i.e. RPP Customers.
- Section 25.33(5) says that IESO shall establish and maintain such variance accounts as may be needed to record all amounts payable or receivable by it under 25.33.

(ii) **O. Reg. 429/04 (Adjustments Under Section 25.33 of the Act):**

- **Section 1(1):** Consider adding definitions for “Financing Trust” and “global adjustment smoothing amount” or such other terms as may be preferred.
- **Section 1.2(1) (New):** Add section providing that, for the purposes of this Regulation, the global adjustment smoothing amount for a month is the amount determined by the IESO in accordance with a directive from the Minister under section ■ of the Electricity Act in respect of the month. [NTD: See above note re use of Minister directives]
- **Section 1.2(2) (New):** Consider adding a section providing that the IESO shall publish the global adjustment smoothing amount for a month by no later than the 10th business day of the following month [to align with general publication requirements for global adjustment under s. 1.1(2)].
- **Section 10(1):** Amend formula for calculating Class B GA rate by subtracting the global adjustment smoothing amount for a month from "M", which is the total amount of the global adjustment for the month. The global adjustment smoothing amount could be designated as "X", such that the formula would be $(M-X-N)/(P-Q)$. Define "X" as the global adjustment smoothing amount for the month as determined by the IESO in accordance with the Minister's directive under section ■ of the Electricity Act for the month. [NTD: See above note re use of Minister directives]
- **Section 10.1 (New):** Add new section to deal with adjustments under subsection 25.33(3) of the Act, i.e. in respect of RPP consumers. This section should require the IESO to establish, within the variance account(s) it maintains pursuant to subsection 25.33(3) of the Act, one or more subaccounts in which it shall record the global adjustment smoothing amounts applicable to the classes of consumers described in subsection 25.33(3) of the Act. This section must also specify that the IESO shall apply the amounts recorded in the subaccounts against the balances in the variance accounts for purposes of section 79.16(3) of the OEB Act.
 - **Note:** This is a key aspect because, when the OEB determines RPP rates, it must take into account the balances in the variance accounts established by the

IESO under s. 25.33 of the Electricity Act and make adjustments with a view to eliminating the balances within 12 months. This proposed new section 10.1 causes the IESO to reduce (in the near term) the variance account balances by the global adjustment smoothing amounts, as provided by Financing Trust, thereby enabling the OEB to determine RPP rates that, despite being lower for RPP consumers in the near term, still eliminate the relevant variance account balances within 12 months.

- **Paragraph 11(2)2.ii:** Amend the formula for calculating the allocation of global adjustment for a month to a licensed distributor that is a market participant by subtracting the global adjustment smoothing amount for a month from “M”, which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as “X”, such that the formula would be $[(M-X-N) \times (R+S-T)]/(P-Q)$. Define “X” as suggested under section 10(1).
- **Paragraph 11(2)3:** Amend the formula for calculating the allocation of global adjustment for a month to each Class B market participant by subtracting the global adjustment smoothing amount for a month from “M”, which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as “X”, such that the formula would be $[(M-X-N) \times U]/(P-Q)$. Define “X” as suggested under section 10(1).
- **Paragraph 16(7)4:** Consider amending the description of “Global Adjustment” that is required to be included on certain invoices so as to inform consumers that their portion of the global adjustment for the month (i) may have been reduced by the application of a global adjustment smoothing amount from the Financing Trust, or (ii) may include amounts payable to the Financing Trust in respect of global adjustment smoothing amounts previously applied.
- **Section 20(1):** This section establishes an obligation for the Ontario Electricity Financial Corporation and every licensed distributor that is a market participant to give the IESO such information as the IESO may require for the purposes of the Regulation in the form specified by the IESO and before the expiry of the period specified by the IESO. Consider amending to extend this obligation to the Financing Trust.
- **Section 20(6):** This section provides that on request by the OEB, the IESO, a licensed distributor, an embedded generator, a retailer or the OEFC shall give the OEB such information relating to this Regulation as the OEB may require, in the form and within the period specified by the OEB. Consider amending to extend this obligation to the Financing Trust.

D. Amendments Under OEB Act to Implement Cost Recovery for Financing Trust

Amendments to the *Ontario Energy Board Act*, including amendments to O. Reg. 95/05 (Classes of Consumers and Determination of Rates) and the introduction of a new regulation, would be

needed to implement a cost recovery process for the Financing Trust in relation to the global adjustment smoothing mechanism, potentially with limited OEB oversight, as follows:

(i) **Ontario Energy Board Act:**

- **Section 78(3.3):** This provision establishes an obligation for the OEB, when determining rates for the retailing of electricity, to take into account balances in variance accounts established under section 25.33 of the Electricity Act and to make adjustments “with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct.” Consider whether any amendments are needed, and confirm this works with the framework being proposed.
- **Section 78.7 (New):** We understand that the Province may want the OEB to have an oversight role. One possible approach would be to establish a new statutory section establishing that the IESO shall make payments to the Financing Trust with respect to the internal administrative costs incurred by the Financing Trust in connection with the purchase and management of the Regulatory Asset and the Financing Trust. Such payments by the IESO would need to be made in accordance with the order of the OEB then in effect, which orders shall be made by the OEB in accordance with rules prescribed under a new regulation.
 - o The new regulation would need to be clear that the OEB does not have jurisdiction to consider the principal amount or any interest, financing costs, third party fees or expenses. Rather, OEB’s role would be limited to considering the internal administrative costs of the Financing Trust and ensuring the Financing Trust receives an appropriate fee for its services, all of which would be recovered by the Financing Trust from the IESO, which would collect those amounts in the global adjustment. Note that, if this approach is accepted, the IESO and distributors and retailers would need the authority to collect such amounts as part of the GA and IESO would need the authority to pay such amounts to the Financing Trust. As such, additional amendments would be needed under O. Reg. 429/04.
- **Note:** Section 79.16 of the OEB Act does not require changes, but the significance of this provision should be understood.
 - o Section 79.16 gives the OEB responsibility for determining electricity commodity prices for eligible consumers. Eligibility is determined under Reg. 95/05 (Classes of Consumers and Determination of Rates), which is also known as the Regulated Price Plan (RPP) Regulation.
 - o Section 4(2) of the RPP Regulation defines RPP-eligible consumers as low volume consumers (i.e. those who annually use less than 150,000 kWh or such other amount as prescribed), consumers with demand of 50 kW or less, residential consumers that have accounts with distributors, consumers who annually use 150,000 to 250,000 kW of electricity, and consumers who have accounts with distributors if in the farming business.

- Paragraph 6(1)3 of the RPP Regulation provides that “In determining the rates (for RPP-eligible consumers), the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect those costs.”
- The Ontario Energy Board has developed a Regulated Price Plan Manual (revised February 16, 2016) to describe the processes and methodologies it uses for determining electricity commodity prices that are charged to RPP consumers pursuant to Section 79.16 of the OEB Act and paragraph 6(1)3 of the RPP Regulation.

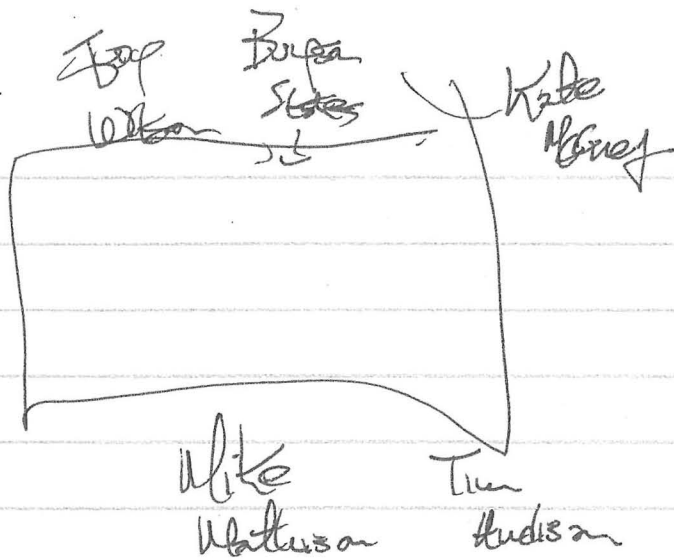
(ii) **O. Reg. 95/05 (Classes of Consumers and Determination of Rates)**

- **Paragraph 6(1)3:** Amend so as to require the Board, when forecasting the cost of electricity to be consumed by the consumers to whom the rates apply, to take into consideration not only the adjustments required under section 25.33 of the Electricity Act but also the application or prior application of global adjustment smoothing amounts determined by the IESO in accordance with Minister directives under section ■ of the Electricity Act, and to ensure that the RPP rates reflect those amounts. [NTD: See above note re use of Minister directives]

(iii) **New Regulation (Payments to the Financing Trust)**

- If the OEB is to be given the role of reviewing and approving the recovery of OPG's internal administrative costs for the Financing Trust under the potential section 78.7 (see above), then this regulation should describe the process and criteria pursuant through which the OEB would determine the amounts that the IESO would be required to collect through the global adjustment, in accordance with section 25.33 of the Electricity Act, and pay to the Financing Trust in respect of the provision of global adjustment smoothing amounts. This part of the regulation should establish:
 - any reporting requirements from the Financing Trust and/or the IESO to the OEB in connection with the global adjustment smoothing mechanism;
 - the frequency of the OEB making determinations under this part of the regulation;
 - the process through which the OEB shall make these determinations, which should be a streamlined administrative process rather than a public hearing process or, if a hearing is needed, then the scope of the proceeding should be clearly and narrowly constrained so as to deter intervenor involvement, lengthy proceedings and reduce/eliminate risk to recovery by Financing Trust;
 - the basis for the OEB's determinations as to the payments that shall be made to the Financing Trust, which should specify that:
 - the Financing Trust shall recover its prudently incurred internal administrative costs on a forecast basis each year;
 - the Financing Trust shall receive an appropriate fee each year (with some guidance as to what would be appropriate); and

- the approved payment amounts shall be collected by the IESO through the global adjustment and paid to the Financing Trust in accordance with the order of the OEB then in effect. Note that O. Reg. 429/04 would likely need amendments to permit IESO (and distributors and retailers) to collect these amounts through the global adjustment.



Mar 2/2011
Meeting in Boston

Walk through
 → smoothie out - with graph, data
 → ↑ rates vs more time up
 - benefit calc. 2011

- trust 2 shares entered fraction.
- trust will buy regular stock from KSO
- asset is right to collect from waterpiper
- create legal right -
 - amt + interest tied to legal holder of shares

- LSO to sell legs. right to corp
 - purchase price is 2 months.
- Corp forever principal holder of trust - might that will include ~~expense~~

Loan
- right to value assets - in portion.
- LSO has to invoice - amounts provided by trust
 - provided to LSO so LSO can reduce out of GA collected

Q. When is value determined?
 A. initial value.
 186.

- for modeling purposes while ~~years~~

Q - leading to trust - will turn around

- first paid payments to LCO.
→ once payback period kicks in trust moves LCO based on vessel

GA settling

- LCO funds amount to ensure payments made to OPG etc.
→ all those economies for each

or a

-
- Q 25 BA fluxing - you can flux bc bill to customer FLUX.

- if flux out is clear - where does flux get absorbed?

It - depends where

- center clips secured smoothly
billion - board & 1650
wants together to ensure
smoothed with

→ Bank picking up neatly used
as when out bonds
→ down the road when
bonds have to pay
back

- ① Crest. of PG track
- ② \$ flows.
- ③ OEB role.

don walk track slide 12.

FA (?)
ofman

2 R slide 2).

①

- we will run model - per
runner.

- will take two fair tests to
understand - 25 set being
averaged

2- day - 25 look at test - bit
only for this purpose?

Wednesday - do for what hrs
to to day

(Tolund tree)

- \$2.5 B - initial being
- 2014 adjustment.

Work Plan.

① OFG trust.

② LEO - OFG - trust.

- Mumby needy loan - to focus on
wastph.

OFG - Ken Hartwick

Tony's - twids.

~~RBC, Tony, Blues~~

2nd Marketability - Canada
only selling
- Canadian dollars only.
- banks would have view,

Turnings

→ legis - mid-april / 1st pl.

municipal borrow,

↳ build new plant - not put in
sewer surcharge

- going to have appropriate
w/

Q - whether GA const. tax?

underwriters will want open
that this is not a tax
- reviewed open - based on
x

Wanted:

- ① Weeks 10th/BN
- ② Regular meeting - TBD
- ③ Participate in Burger table
- ④ OCB / Topics / Burger meeting
- ⑤ Work on US models.

The Proposed Fair Hydro Act

May 3, 2017

Purpose

- Purpose is to walkthrough the main elements of the legislation.
- The Act consists of two components:
 - Part 1: Legislation to provide for the fair allocation of costs of electricity over time \
 - Part 2: Legislative amendments for social programs
- The proposed *Fair Hydro Act, 2017* would be an omnibus bill with 2 schedules: the *Ontario Fair Hydro Plan Act, 2017* and amendments to the *Ontario Energy Board Act, 1998*

Part 1 – Overview of Legislation to Provide for the Fair Allocation of Costs of Electricity Over Time

1. Ontario Fair Hydro Plan Act – Fundamental Principles
2. Brief Overview of the Legislation
3. Stakeholder Consultation and the Process to Prepare the Legislation
4. Building Blocks of the Legislation
 - What costs are part of the program?
 - How are the costs allocated fairly among ratepayers now and in the future?
 - What consumers does the program apply to?
 - How is the program financed?
4. How the Legislation Works
 - Clean Energy Initiative
 - Clean Energy Costs and Benefits
 - Clean Energy Adjustments
 - Fair Adjustment
 - Fair Allocation Amount
 - Regulatory Asset and the Investment Asset
 - Issuance and Payment of Debt
 - Financing Plan
5. Who Does What
 - Minister of Energy
 - Role of OPG
 - Role of IESO
 - Role of LDCs
 - Role of OEB

3

Ontario Fair Hydro Plan Act – Fundamental Principles

- The actions taken by the Government of Ontario to achieve a clean, modern, and reliable electricity system have resulted in significant costs. The burden of financing the electricity system improvements and funding key programs has unfairly fallen on the shoulders of today's consumers.
- The proposed Ontario Fair Hydro Plan Act (OFPA) is founded on the principle that costs related to the development of a clean, modern and reliable electricity system (with a diverse supply mix) ought to be charged to those consumers, today and in the future, who will be the beneficiaries of those costs.
- The Government of Ontario is committed to ensuring that the costs of financing these investments are allocated fairly among present and future generations of consumers.
- The challenge inherent in the development of the legislation was the need to balance several key factors: the fundamental principles of the program, the program's desired accounting treatment, ratepayer interests, expectations of the financial markets, financeability, and legal considerations.

4

Stakeholder Consultation and the Process to Prepare the Legislation

- The development of the Ontario Fair Hydro Plan Act was preceded by extensive consultation, on an ongoing basis, with representatives from the Ontario Energy Board (OEB), IESO, Ontario Power Generation (OPG), the Ontario Provincial Controller's Office Division (OPCD), the Ministry of Energy, the Ministry of Finance, dealers, investment advisors and Canadian (and in some cases U.S.) counsel for each of the involved parties.
- As appropriate, other Ministries were circulated with drafts of the legislation and consulted on particular issues.
- Several drafts of the legislation were circulated among stakeholders and several mark-ups of draft legislation were received in response.
- Lengthy face to face meetings also took place with stakeholders and their counsel both as a group and individually.
- Legislative counsel were involved on a daily basis and produced multiple versions of the legislation.
- A steering committee chaired by the Deputy Minister met and were briefed weekly on the status of the legislation (i.e., the "Rate Mitigation Implementation Group" consisting of senior executives of the Ministry of Energy, Cabinet Office, Ministry of Finance, Treasury Board Secretariat, OFA, OPCD, OPG, OEB and IESO).

5

Brief Overview of the Legislation – Fair Allocation

- Legislation is based on the principle that the costs incurred to move to a clean, modern and reliable electricity system creates benefits that will be experienced by multiple generations of Ontario ratepayers and, therefore, in the interest of fairness, those costs should be shared by those multiple generations.
- The legislation does two things: (i) it establishes the fundamental elements of the fair allocation program, and, (ii) it puts the mechanisms in place to permit the financing of periodic shortfalls in revenue that are created by the fair allocation of electricity costs over multiple generations.
- With respect to the "fair allocation", the legislation identifies:
 - What costs ought to be more fairly allocated ("clean energy costs");
 - Mechanisms to allocate costs fairly among generations of consumers ("fair adjustment" and "fair allocation");
 - The consumers to whom the program applies ("specified consumers");
 - How the program is funded (borrowing on the strength of the revenue stream from consumers); and
 - The roles of various provincial entities in the program (i.e., Minister of Energy, Ontario Energy Board, IESO and OPG).

6

Brief Overview of the Legislation – Financeability

- In order to ensure the financeability of the program, considerable portions of the legislation are devoted to dealing with the "nuts and bolts" of what is required for successful financing including,
 - The quantification of the value of the regulatory asset;
 - The transfer of the regulatory asset to the (OPG) financing entity (which creates the "investment asset");
 - The establishment of the "invoicing" process that ensures the investor's "line of sight" to the investment asset;
 - The establishment of an OPG financing plan to ensure, among other things, an appropriate program of financing the shortfalls that are created by the deferred collection of revenues; and
 - Provisions setting out the way in which the financings are backed by amounts payable by specified consumers.

7

Building Blocks of the Legislation – What Costs are Part of the Program?

- In order to achieve its purpose, the legislation establishes the following "building blocks":
 - Clean Energy Initiative – This is the term used to describe the Government of Ontario's policies to foster growth and investment in and remove barriers and promote opportunities for clean and renewable energy sources and technologies and promoting conservation and demand management. The "clean energy costs" under the legislation arise from the "clean energy initiative".
 - Clean Energy Costs – These are costs (attributable to the "clean energy initiative") that are to be more fairly distributed among generations of consumers.
 - Clean Energy Benefits – These are the value of the benefits derived by the "specified consumers" (including the clean energy costs).
 - Clean Energy Adjustments – This is adjustment to a consumer invoice on a monthly basis to repay principal, interest and other financing.

8

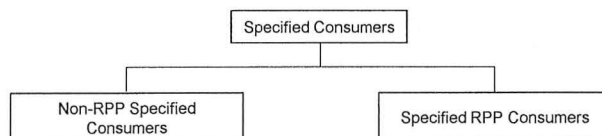
Building Blocks of the Legislation – How are the Costs to be Allocated?

- Fair Adjustment – This is the adjustment that gives the "relief" to certain specified consumers during the period from July 1, 2017 to June 30, 2021 (including this program's portion of the 25 per cent reduction).
- Fair Allocation Amount – This is the concept/mechanism by which the fair distribution of "clean energy costs" (including, for example, financing costs, the cost of the power contracts, and the costs of the fair adjustment) is calculated and implemented.

9

Building Blocks of the Legislation – What Groups of Consumers Does the Program Apply To?

- Specified Consumers – This is the defined group of consumers to whom the legislative program applies. These consumers are persons who have an account with an electricity vendor for the supply of electricity in Ontario and,
 - Have a demand for electricity of 50 kilowatts or less (or as otherwise prescribed);
 - Annually use not more than 250,000 kilowatt hours of electricity (or as otherwise prescribed);
 - Carry on a farming business (basically pursuant to the *Farm Registration and Farm Organizations Funding Act*);
 - Have an account with an electricity vendor that is for a "dwelling", condominium property, residential complex or co-operative housing; or
 - Are otherwise prescribed.



10

Building Blocks of the Legislation – How is the Program Financed?

- The ability to engage in the fair distribution of clean energy costs among the specified consumers requires financing during periods where the collection of the clean energy costs is, as part of the fair allocation, deferred to later years (thereby creating a revenue shortfall). A series of complex provisions are required to:
 - (i) Enable the financing, and
 - (ii) Meet requirements known to be important to rating agencies and investors.
- Regulatory Asset – This is fundamentally IESO's right to recover the revenues that it has deferred collecting because the clean electricity costs are being allocated across generations of ratepayers.
- Investment Asset – This is the asset that results when the regulatory asset is transferred to the (OPG) financing entities.
- The (OPG) financing entities will fund the acquisition (transfer) of the investment asset in the capital markets.

11

How the Legislation Works – Clean Energy Initiative

- The "clean energy initiative" concept is set out by definition. Its purpose is to establish the fundamental basis for the legislation.
- The definition is self-explanatory and is as follows:

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

 - a) eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies,,*
 - b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies,*
 - c) promoting conservation, demand management and energy efficiency; and*
 - d) investing in energy infrastructure to ensure a clean, modern and reliable system;*

12

How the Legislation Works – Clean Energy Costs and Benefits

- “Clean energy costs” are those costs that arise from the “clean energy initiative” and are allocated to the specified consumers for past, present and expected costs.
- The costs included in the “clean energy costs” include estimated amounts to be paid by IESO in adjustments made under section 25.33 of the *Electricity Act* (basically, the Global Adjustment provisions) which relate to contracts for,
 - Renewable energy generation or capacity;
 - Conservation and demand management, including shortage;
 - Energy efficiency; and
 - Natural gas generation and capacity (excluding certain contracts under section 78.2 of the *Ontario Energy Board Act* or as prescribed); and
 - Payments made under section 78.5 of the *Ontario Energy Board Act*.
- Other such costs to be included in “clean energy costs” may be prescribed
- These are the costs to be distributed fairly among the specified consumers through the “fair allocation amount”.

13

How the Legislation Works – Fair Allocation Adjustment

- The fair adjustment provisions are set out in Part II of the legislation.
- Part II establishes that the rate that will be payable by “specified RPP consumers” from May 1, 2017 to April 30, 2018 for the first fair adjustment is the rate that would be required from this program to contribute to that consumer to receiving a total a monthly invoice amount that is 25 per cent lower than the monthly invoice amount for that consumer under the “comparison rate”. The comparison rate is a rate to be determined by the OEB using the method prescribed by regulation under s 79.16(1)(b) of the OEB Act.
- Part II includes a transition provision in circumstances where for technical or operational reasons invoices cannot be adapted in time for the issuance of the first invoices under the program (i.e., adaptation of invoices must be implemented by August 1, 2017 followed by a subsequent lump sum credit to the consumer once the invoice is adapted).
- The Lieutenant General in Council is given the authority after April 30, 2018 to make regulations prescribing the rate for electricity (and therefore prescribing the “fair adjustment” until June 30, 2021). After June 30, 2021, regulations will have regard to the fair allocation amount and clean energy adjustments.

14

How the Legislation Works – Fair Allocation Amount

- The Minister sets the fair allocation amount.
- The establishment of the “fair allocation amount” is required to,
 - Fairly measure and allocate the estimated clean energy costs (and the clean energy benefits) among the “specified consumers” for applicable “reference periods”; and
 - Take into account (in the fair allocation) funding obligations (financing) that have been incurred (largely arising from the redistribution of cost across generations of consumers).
- The “fair allocation amount” is to have regard to:
 - Clean energy costs and allocating the appropriate proportionate amount of the clean energy benefits to the “specified consumers” (in the applicable “reference periods”);
 - Reasonable assumptions regarding the time value of money, the number of consumers in the “reference period”; and
 - Expected electricity consumption for the reference period.

15

How the Legislation Works – Regulatory Asset and Investment Asset

- IESO will have a funding deferral resulting from the reduction in amounts collected from specified consumers during the first 4 years because of the fair adjustment. The IESO’s funding deferral will be financed indirectly through the debt capital markets.
- The Act enables the financing of this IESO funding deferral, on an ongoing basis, by establishing the funding deferral as a “regulatory asset”. In simple terms, the regulatory asset is IESO’s right to recover the revenues that it has deferred collecting.
- IESO will then legally transfer portions of this right to recover revenues to the (OPG) financing entities.
- The (OPG) financing entity that receives the transfer of the right to recover revenues acquires a right to impose, invoice and collect those regulatory charges (called the “clean energy adjustments”). This is generally described in the legislation as the “investment asset”.
- The (OPG) financing entity will need to finance its acquisition (from IESO) of the investment asset, and it will do so in the capital markets.

16

How the Legislation Works – Issuance and Payment of Debt

- Debt securities and related funding obligations will be incurred by one or more (OPG) financing entities. These entities will be managed by OPG, as the financial services manager.
- The financings will be backed primarily by the “clean energy adjustments” payable by specified consumers. The “clean energy adjustments” will track the actual payment obligations incurred by the financing entities when they become due and payable. To ensure intergenerational fairness, these amounts will be managed by OPG to align with the “fair allocation amounts” ascribed to each of the next 60 six month periods ending in 2047 (or such later period as prescribed).
- IESO and each electricity distributor will act as agent for the financing entities to impose, invoice and collect the clean energy adjustments, which will be channeled through to pay each financing entity's related funding obligations.
- To support the program, the Government of Ontario will be expected to provide certain performance guarantees, indemnities and bond-purchase covenants. The terms of these obligations will be worked out over time in connection with the marketing of financings through OPG. The goal will be achieve highest rated securities, although that will largely depend on issues such as the strength of the Government of Ontario's undertakings not to adversely affect the program through subsequent legislation.

17

How the Legislation Works – Financing Plan

- The Financing Plan is prepared by the Financial Services Manager (OPG).
- The Financing Plan is the plan which is intended to set out when a “funding obligation” (financing) should be incurred so that the (OPG) financing entity can raise money to acquire the “investment interest” from IESO.
- There are rules that apply to the Financing Plan:
 - It must align with the “estimated finance amount” that will become due and payable during a “reference period”;
 - It must take into account the “fair allocation” and any “fair adjustment”;
 - It must plan to implement the financing in a reasonable and cost effective manner that reflects prevailing market terms and conditions; and
 - It must be based on certain reasonable assumptions set out in regulations (for example, related to anticipated IESO shortfalls, maturity of funding obligations, availability of refinancings, redemption opportunities and liquidity, and similar assumptions).

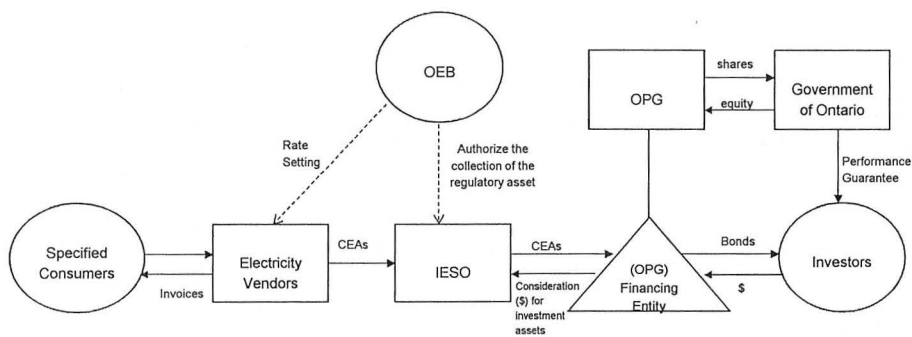
18

How the Legislation Works – Financing Plan (Continued)

- The (OPG) Financial Services Manager must incur funding obligations in conformity with the applicable Financing Plan.
- The Financing Plan will guide OPG's decisions regarding the repayment terms of the debt securities to be issued by financing entities. The Financing Plan will also deal with fundamental issues, such as the alignment (using derivatives) of any foreign currency obligations incurred by financing entities with the Canadian dollar cash flows arising through the clean energy adjustments.

19

How the Financing Structure Works



Note: CEAs are "clean energy adjustments"

20

Who Does What – Role of the Minister of Energy

- Determine the “fair allocation amount” applicable for each reference period. The fair allocation amounts will be set for all reference periods at the beginning of the program, based on reasonable expectations and forecasts at that time.

21

Who Does What – Role of the OPG

- As financial services manager, OPG will be responsible for the following under the Act:
 - Prepare and implement Financing Plan.
 - Establish and administer the financing entities.
 - Capitalize the financing entities by acquiring subordinated debt and equity, as required to achieve OPG's accounting and capital markets objectives.
 - Estimate and “true up” periodic finance amounts, to be passed through as regulatory charges in the form of Clean Energy Adjustments.

22

Who Does What – Role of IESO

- Calculate and record IESO funding shortfalls from time to time in a variance account, giving rise to a right of recovery from specified consumers to the extent not funded through the financings.
- Transfer the IESO's rights of recovery to (OPG) financing entities, in consideration for cash payments made by the financing entities from the proceeds of their financings.
- Coordinates the collection of "clean energy adjustments" from Electricity Distributors.
- Remit "clean energy adjustments" to (OPG) financing entity, for payment of financing entity funding obligations.
- Fund initial interest costs and expenses during the first 4 years.

23

Who Does What – Role of LDCs

- Obligation to invoice specified consumers.
- Collect, as agent of the investment interest owners, "clean energy adjustments" from specified consumers.
- Hold money received for clean energy adjustments in trust until remittance to the IESO.

24

Who Does What – Role of the OEB

- Determine and set rates to account for fair adjustments, fair allocations and clean energy adjustments (monthly adjustments).
- Determine and set rates and process to allow IESO to recover funding shortfalls (to the extent such amounts are not transferred to an (OPG) financing entity and financed in the capital markets).
- Review the administrative costs of OPG in connection with the administration of the program.

25

Part 2 – Overview of Legislative Amendments for Social Programs

- As part of the proposed Ontario Fair Hydro Plan, the Ministry of Energy is proposing amendments the *Ontario Energy Board Act, 1998* (OEBA) to enable the following measures:
 - Enhancing and providing tax-based funding for Rural or Remote Electricity Rate Protection (RRRP) through new enhanced rate protection for residential customers with high distribution rates;
 - Enhancing and providing tax-based funding for the Ontario Electricity Support Program (OESP); and
 - Creating a new First Nation On-Reserve Delivery Credit and providing for tax-based funding.

26

Overview of RRRP and Broadened Distribution Rate Protection

- Section 79 of the *Ontario Energy Board Act* would be amended to provide the Ministry the authority to prescribe, through regulation, classes of consumers whose cost would be transferred from the rate-base to the tax-base.
- If the proposed legislative amendments are approved, the government intends to propose regulatory amendments that would prescribe Hydro One's R2 customers as receiving RRRP from appropriated funds effective July 1, 2017. This would fulfill the government's intention to transfer the majority of the costs of administering the RRRP program to the tax-base.
- In addition, Energy is proposing legislative amendments that would broaden rate protection by creating a new distribution rate protection program to complement RRRP. This new program would be funded through tax payers.
- Distribution rate protection would be extended to eligible residential customers served by LDCs with the highest distribution costs.
 - Proposed legislative amendments would enable a maximum monthly base distribution charge to be established through regulations.
- If the proposed legislative amendments are approved, the government intends to prescribe by regulation both program details and the residential customers eligible for broadened distribution rate protection served by the following LDCs:
 - Hydro One (R1 and R2 rate classes), Algoma Power, Atikokan Hydro, InnPower, Chapleau Public Utilities Commission, Sioux Lookout Hydro, Lakeland Power (Parry Sound service territory) and Northern Ontario Wires Inc.

27

Ontario Electricity Support Program

- Proposed legislation related to the Ontario Electricity Support Program (OESP) would shift program funding from the rate base to the tax base.
 - Tax-based funding would only kick in once the existing OESP variance account is depleted, which is expected to happen in the fall of 2017.
- To allow for the existing program structure to stay in place until tax-based funding kicks in, proposed new legislation would only come into force via a proclamation Order in Council, on a date to be determined.
 - This would ensure that existing OEB authorities remain in place while ratepayer funding is being used.
- In addition, a new authority to allow the OEB and the Ministry of Community and Social Services (MCSS) to share data on customers to support increased participation in the OESP program among Ontario Works and Ontario Disability and Support Program clients would be put in place.
 - Information Privacy Commissioner (IPC) staff were consulted, and customer consent is reflected.
 - This information sharing component will come into force at Royal Assent, allowing OEB and MCSS to begin this process quickly, and support increasing OESP participation levels.

28

First Nations Delivery Credit

- Energy is proposing legislative amendments that would establish a first Nation Delivery Credit for On-Reserve Consumers. This new program would be funded through tax payers.
- The proposed First Nation Delivery Credit would provide:
 - All prescribed on-reserve consumers with a credit for the entirety of their delivery line or with a credit for the monthly service charge.
 - The costs that are covered by the delivery credit are also described in legislation.
- If the proposed legislative amendments are approved, the government intends to propose regulatory amendments that would:
 - Establish the class of customers eligible;
 - Determine what is considered on-reserve; and
 - Determine the method of calculating the delivery credit.

Rate Mitigation Plan Options

Working Draft (Tracked)

February 8, 2017

CONFIDENTIAL DRAFT

Context

- Electricity costs are increasing as the necessary investments are made to decarbonize and modernize the province's electricity infrastructure (i.e., \$35 billion+ investment in cleaner generation and \$15.5 billion investment in Hydro One transmission and distribution systems).
- Ontario has taken a number of actions to lower electricity costs for all consumers by:
 - Deferring investments in generation (e.g., new build nuclear), improving market efficiency (e.g., wind dispatch) and decreasing the cost of renewable procurements (e.g., GEIA renegotiation, decreasing FIT prices).
 - Increasing cost effectiveness and improving efficiency by adopting new electricity market approaches (e.g., competitive LRP, no new NUG contracting).
- Following the 2016 Throne Speech, actions were announced to further reduce electricity costs by:
 - Providing an 8% rebate (\$11/month savings), updating RRRP (\$45/month savings), expanding ICI (up to one-third savings for participants) and suspending the LRP II and the EFWSOP (up to \$3.8 billion in cost savings).
- On November 28, 2016, the Minister of Energy announced the need for changes in how electricity resources are procured, the need for wholesale market renewal and greater electricity consumer choice.
- The Ministry of Energy is currently updating its Long-Term Energy Plan (LTEP), which provides an opportunity to consider a range of policy changes to how the Ontario energy sector operates.

Options

- In recognition of the costs borne by ratepayers related to decarbonizing and modernizing the province's electricity sector, options for further rate mitigation include:
 1. Global Adjustment (GA) Smoothing – Provide significant and immediate rate relief through cost deferral of the GA.
 2. Electricity Support Programs to Help the Most Vulnerable – Provide a greater focus on vulnerable consumers:
 - Rural or Remote Electricity Rate Protection (RRRP) Enhancement (Delivery Charge Relief);
 - Ontario Electricity Support Program (OESP) Expansion;
 - LDC Affordability Fund; and
 - First Nations Rate.
 - ~~Low Income Conservation~~
 3. Ontario Energy Board (OEB) – Identify opportunities for OEB red-tape reduction and future LDC efficiencies and rates.
 4. Ontario Power Generation (OPG) – Find further efficiencies in operations and pass on savings to ratepayers.
 5. Independent Electricity System Operator (IESO) – Modernize Ontario's electricity market through electricity Market Renewal initiatives:

GA Smoothing – Options

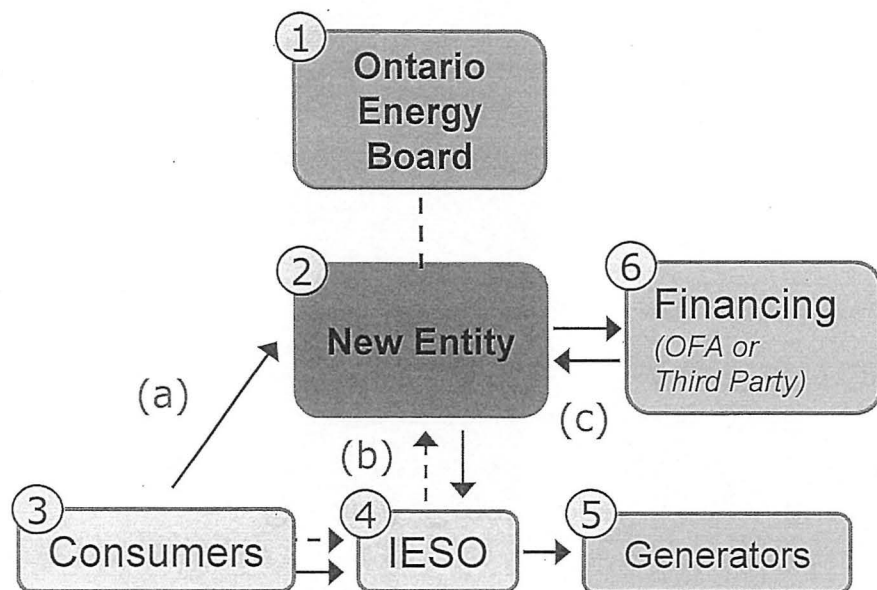
- Place holder

1. GA Smoothing – Implementation Models (UPDATE)

- The Province continues to consider mechanisms to finance and administer GA smoothing.
- Two leading options are under consideration:
 - Option A: Create a new special purpose entity, independent from the Province that would be dedicated to GA smoothing; and
 - Option B: Make changes to IESO / OPG in order to enable it to assume responsibility for GA smoothing.

1. GA Smoothing – Option A: New Entity

- The diagram outlines a implementation approach that includes a new entity, which would hold the debt and the receivable from ratepayers.



→ Early year fund flow

→ Future Repayment Mechanism

- The OEB oversees the new entity, as well as the GA smoothing mechanism on an ongoing basis.
- The New Entity funds part of the GA and (a) would have a legislative right to recover associated principle, interest and administrative costs from customers (settled via service agreement with IESO).
- Electricity Consumers pay IESO a portion of the GA in early years. In the future, the New Entity recovers principle, interest and administrative costs from consumers. Customers bill presentation remains unchanged (costs should diminish in early years).
- The IESO pays generators (in early years), partially from consumers and partially financed by the New Entity. (b) The IESO provides collection services to New Entity under a service contract.
- Generators continue to receive payments from IESO according to existing contract / regulatory structures.
- The OFA or a 3rd party lender funds the GA shortfall in early years and receives payments from the New Entity as debt is repaid. (c) Debt is subject to a contract between the New Entity and the lender.

1. GA Smoothing – Option A: New Entity

Framework and Oversight

- Legislative framework to establish constraints and limit authority of the new entity taking either a prescriptive or flexible approach.
- Ontario Energy Board could be empowered to approve GA smoothing schedule and oversee operations of the New Entity (compensation etc.).

Governance

- To achieve the desired accounting treatment, the entity would have to be structured as follows:
 - While the Province would choose the first board of directors or trustees, future directors or trustees would be selected in accordance with a mechanism created at the time the entity is created. The Province would have no ongoing role in appointments or in selection of key personnel, including the CEO.
 - The Province would not have a determining vote in the entity's business decisions.
 - The Province would have no recourse to the entity's assets and would not be responsible for the debt.
 - The Province could not dissolve the entity and having access to its assets and obligations.
 - The Province would not be able to change the mission or mandate of the entity, once it is created.
 - The Province would have no right to approve business plans or budgets or to require amendments to them.
 - The Province would not be able to alter the terms of the entity's debt arrangements.
 - The Province would not be able to affect the debt by controlling the entity's financial and operating policies.
 - The Province would not have input into the operational and financial policies of the entity, including accounting, personnel, compensation, collective bargaining or deployment of resources. For example, legislation like the *Broader Public Sector Executive Compensation Act, 2014* would not apply.
- As a result:
 - Staff would not be OPS employees.
 - Oversight would not be provided by Offices of the Legislature (AG, FAO etc.).
 - The *Freedom of Information and Protection of Privacy Act* would not apply.

1. GA Smoothing – Option B: IESO

- Make changes to IESO in order to enable it to assume responsibility for GA Smoothing.
- Need to determine whether it is likely that IESO could be sufficiently transformed in order to meet the following accounting tests:
 - Government Business Enterprise (GBE) Treatment: consistent with OPG and Hydro One, this treatment would require consolidation of only net income and equity (as opposed to line-by-line consolidations currently applied to IESO). This test includes the following components:
 - Separate entity;
 - Power to contract in own name;
 - Sue and be sued;
 - Delegated financial / operational authority to carry out a business;
 - Sells goods and services to individuals and organizations outside of the government reporting entity as its principal activity; and
 - Can, in the normal course of its operations, maintain its operations and meet its liabilities from revenues received from sources outside of the government reporting entity.
- Legislative changes would be required in order for IESO to take on an expanded mandate, and deal with substantial financial assets and liabilities.
- Enhancements to the OEB would also be necessary in order to ensure proper oversight of the GA Smoothing mechanism.
 - For example, ability to review and approve rolling 5 year smoothing schedules submitted by IESO.

1. GA Smoothing – Other Considerations

- **Recovery Mechanism**

- Province will need to explore different recovery/ administrative options.
- DRC/RRP/Tax Rebate.
- Consider whether a one-time, exit payment would be charged to ratepayers that are leaving the electricity system in order to recover foregone deferred charges.

- **Financing**

- While 3rd party financing would help to meet accounting control tests, the cost may be high
 - The Province may need to internally test the market to determine potential cost of 3rd party financing / securitization.
- Potential risks that 3rd parties will likely consider when determining cost of capital include:
 - Legislative framework (recovery mechanism);
 - Interest rate changes; and
 - Future electricity demand / customers.

- **Contractual / Legislative Agreements**

- Either the New Entity or IESO would need a legislative right to recover the principle, interest and administrative costs from customers.
- Form of an IESO collection services agreement would need to work within IESO's legislative framework, while providing sufficient comfort to the New Entity / 3rd party.
- We need to consider whether the Province's ability to change legislation undermines the governance choices that we make to achieve the accounting control analysis

2a. RRRP Enhancement – Accelerating Fixed Rate Benefit

- Currently, LDCs recover their costs through a combination of a fixed monthly charge and a volumetric charge based on kilowatt hours used. As a result, customers of the same LDC will be charged different amounts for distribution based on their consumption level.
- However, the OEB has made a determination to establish fixed distribution rates for residential consumers, in recognition that the majority of distribution costs are irrespective of the volume of consumption. The OEB believes moving to fixed rates will:
 - Enable residential customers to leverage new technologies, manage costs through conservation, and better understand the value of distribution services.
 - Establish a fairer way to recover the costs of providing distribution service.
 - Provide greater revenue stability for distributors, which will position them for technological change in the sector, remove any disincentive to promote conservation, and help with their investment planning.
- Fixed rates will be set at the average consumption level for a rate class in order to recover the same amount of revenue as the mix of fixed and variable charges does today. As a result, below-average volume consumers will experience cost increases and above-average volume consumers will experience cost decreases.
- The OEB is gradually phasing-in the move to fixed rates in order to mitigate the impact of these increases to below-average volume consumers. Most LDCs will receive fully fixed rates in 2019. Hydro One will be transitioned over a longer timeframe (2022-2023).
 - Hydro One's density-based rate classes and recent re-allocation of costs between the classes results in significant impacts for Hydro One low volume consumers. Providing the longer timeframe allows for the impact of the change to be held at less than 10% for low volume customers at the 10th percentile of consumption.

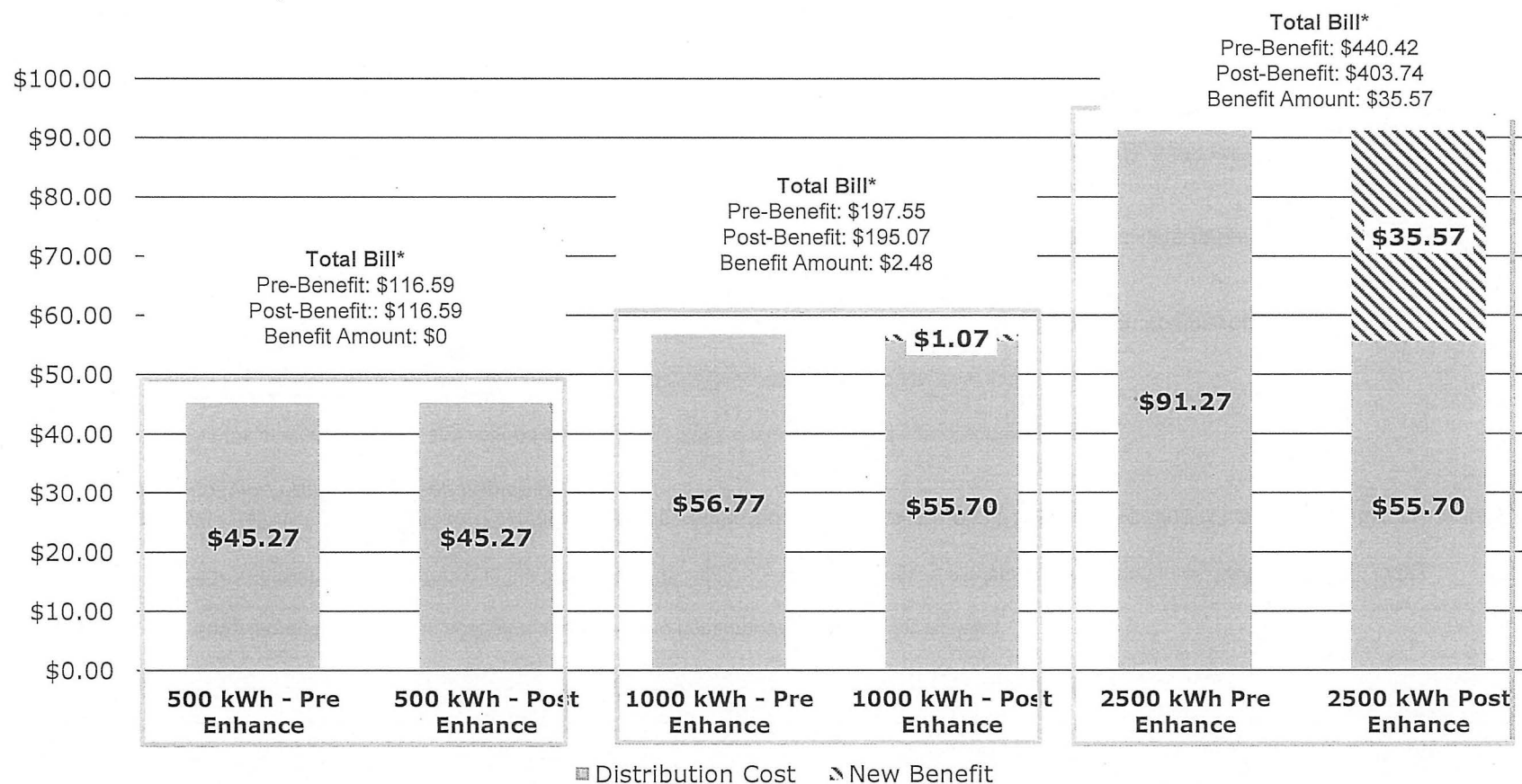
2a. RRRP Enhancement – Accelerating Fixed Rate Benefit Impacts

- Hydro One has estimated that if it accelerated the move to fixed rates effective 2017, the rates would be as follows:
 - R1: \$55.70/month – the same cost as a customer who consumes 955kWh/month today.
 - R2: \$64.64/month, when factoring in the \$60.50 RRRP support – the same cost as a customer who consumes 1200kWh/month today.
- Using sample customer data provided by Hydro One, it is estimated that approximately 2/3rds of Hydro One R1 and R2 customers would experience cost increases if this was implemented:
 - R1: ~146k customers would see cost decreases, and ~298k customers would see cost increases.
 - R2: ~117k customers would see cost decreases, and ~217k customers would see cost increases.
- However, support from the fiscal plan can be used to accelerate the move to fixed rates for those high-volume consumers who benefit – leaving low volume consumers to experience no change.
 - Hydro One estimates this would cost \$64 million. If the move was expanded to include Hydro One Urban (UR rate class) and Seasonal customers, the cost would be ~\$90 million.
 - When layering on the current RRRP support of \$242 million, program costs are between \$306-\$332 million.
 - As the move to fixed rates was completed, fiscal plan support for these customers could be withdrawn.

Accelerated Fixed Rate Benefit Fiscal Impact						
	2018	2019	2020	2021	2022	2023
Fixed Rate Enhancement*	\$64M-\$90M	\$52-\$72M	\$38M-\$54M	\$26M-\$36M	\$13M-\$18M	\$0
Total RRRP** (Inclusive fixed rate enhancement, excluding Algoma Power & Hydro One Remotes)	\$306-\$332M	\$300-\$320M	\$293-\$309M	\$287-\$297M	\$281M-\$286M	\$275M

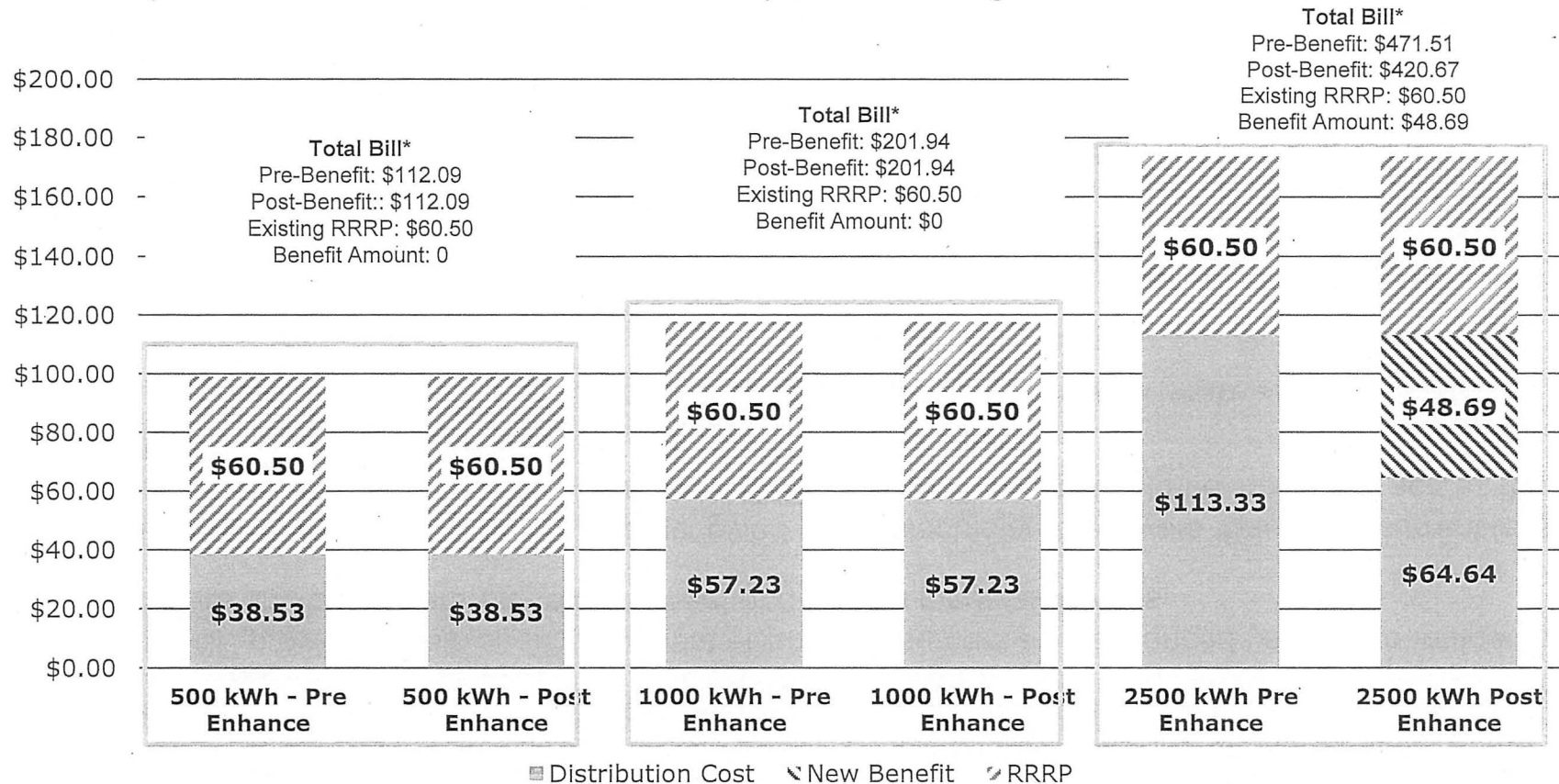
2a. RRRP Enhancement – Hydro One Mid-Density (R1) Ratepayer Impacts

- Under this option, R1 customers will not pay more than \$55.70 for distribution service. Customers with costs below this threshold experience no change.



2a. RRRP Enhancement – Hydro One Low-Density (R2) Ratepayer Impacts

- Under this option, R2 customers will not pay more than \$64.64, after accounting for the original \$60.50 RRRP subsidy. Customers with costs below this threshold experience no change.



2b. Ontario Electricity Support Program (OESP) Expansion

- The OESP is an income-tested, application based program that lowers the electricity costs of the most vulnerable consumers by providing a rebate directly on their electricity bills.
- The OESP provides basic benefits to most eligible consumers and enhanced benefits to Indigenous customers and customers with electric heat and certain medical devices.
- OESP funding is collected from a charge levied on all electricity ratepayers. Based on current level of program up-take and funding collection, OESP program benefits could be increased across the board by 50%. This would mean:
 - Single low income consumers would see an increase from \$30 to \$45/ month (\$540/year);
 - Families of four with electric heat could see an increase from \$55 to \$82.50/month (\$990/year); and
 - Indigenous, Métis, and Inuit consumers would also see benefit increases at the same level as those with electric heat and medical devices. These benefits could range from \$67 to \$113/month.
 - The Ministry is also considering options to support a “Delivery” line credit for Indigenous consumers. This would cost ~\$18 million/year and would save Indigenous consumers between \$75 and \$100/month (see slide 25 for more detail).
- Greater focus and support can be placed on lower income Ontarians by funding OESP through the tax base. This would also reduce costs for all consumers as a result of eliminating the OESP charge.
 - Average residential customer savings: \$0.83/month; and
 - Average industrial customer savings: \$1.10/MWh.

2b. OESP Expansion (cont'd)

- Potential changes to the OESP income thresholds was also considered, however, changes to the income thresholds at this point could potentially bring the OESP out of alignment with other existing social programs.
 - An OESP income threshold change could result in individuals and households that receive OESP, which is targeted to low-income individuals, not being eligible for other social assistance programs offered by the Province targeted to low income individuals/households.
- The credit and income threshold amounts for the OESP program were guided by other social assistance programs that are delivered within the Province, and the Province's Poverty Reduction Strategy, which has an underlying principle to measures poverty consistently in programs across government. One of the key measurement tools this Strategy uses is the Low Income Measure (LIM).
 - Feedback OEB received was that LIM is the method preferred by the Ministry of Finance and the preferred tool of low-income advocates.
 - OESP consequently adopted LIM as the income threshold to determine eligibility for OESP, and recommended its use for all energy assistance programs. It is also used for the OEB's Low Income Energy Assistance Program (LEAP).
- ~~• In the design of the OESP, the Ontario Energy Board and ENERGY worked with other ministries that deliver social assistance programs across the Province to ensure the OESP was broadly consistent with existing social programs, including the OESP income thresholds.~~
 - ~~○ The OESP income thresholds are based on the LIM (Low Income Measure) a measure published by Statistics Canada that takes into account total household income as well as total household size.~~
- Rather than changing the OESP income thresholds at this point, several measures could be taken that include:
 - The "LDC Affordability Fund" may help a segment of the population that do not qualify directly as low income but are struggling to pay their utility bills.
 - The OEB could be asked to explore whether the OESP income thresholds need to be updated as part of a regular program review.

2b. OESP Expansion – Fiscal Impacts

- 2017 program costs assume the ~~are based at current~~ program sign-up rate of 30% of eligible consumers increases to 45%. Cost projections assume the program grows to 100% of eligible consumers by 2022 and remains at that level.
- At the time of program design, it was estimated that 40-50% participation would be high for an application-based program delivered through electricity bills. However OESP can be enhanced by working to ensure the program uptake is as close as possible to 100%:
 - Streamlining the application process to make it easier and quicker to get through;
 - Putting in place a more aggressive communications strategy to make sure people are aware of the program;
 - Increasing funding for key partner agencies to work directly with individuals who are applying; and
 - Exploring automatic OESP qualification for those who receive provincial programs (e.g., ODSP).
- OEB is currently exploring options for simplifying the OESP process, including exploring options with MCSS on auto-enrollment options, discussing options to provide online alternative options to the ~~eliminate~~ wet signature consent forms with the federal government, and working with partners to do open houses to better reach vulnerable consumers.
- Table below shows estimate of program costs up to 2022:

Year	OESP Status Quo (\$M)	+50% (\$M)	TOTAL (\$M)
2017	\$108	\$54	\$162
2018	\$150	\$75	\$225
2019	\$186	\$93	\$279
2020	\$215	\$108	\$323
2021	\$243	\$122	\$365
2022	\$272	\$136	\$408

2b. OESP Expansion – Considerations

Considerations

- **Framework:** ~~New legislation would be~~ Changes to legislation / regulation may be required to establish and define the ability to use tax funding for the ~~parameters of a tax-based OESP~~. The scope of changes would depend on the implementation / delivery mechanisms. This may reveal additional considerations, including possible assessment as a tax credit.
- **Implementation:** If the OEB continues to deliver program, financial flow-through mechanisms would need to be considered in consultation with IESO and LDCs. Likely to be modeled after processes used for the Ontario Rebate for Electricity Consumers (OREC).
- ~~**Alternative Delivery:** If the OESP was funded by the tax base, it could also be explored whether the OESP could be better delivered as a provincial program via the tax system. This may help ensure that the program's participation rate is as high as possible, and could expand coverage to the estimated 142,000 low income households that do not receive an electricity bill.~~
- ~~**Transition to Social Assistance:** Moving OESP to the tax base can be a transitional step in folding this program into a reform of social and disability assistance programs and enhancement of MCSS' Social Assistance Management System moving forward.~~
- **Additional Enhancements:** The enhanced credit could be expanded to include additional eligibility categories of customers. For example, a new "Low Density Consumer" category could be introduced that provides Hydro One R2 and/or R1 customers (highest distribution rates) who are already OESP eligible with the enhanced credit.
- **Variance Account:** The OEB has been collecting program funding in excess of program costs and has accrued a positive balance. This balance must be addressed when moving to the tax base.
- **Treatment as Income:** If OESP amounts are increased, it will need to be confirmed that the credit is not treated as taxable income. This was addressed in the current iteration of the OESP.

2c. Low Income Conservation Benefit Program – Home Assistance Program Enhancement

- Existing low-income programs delivered by LDCs and IESO help qualified residential customers and social and/or assisted housing providers improve their energy efficiency.
 - Programs include the Home Assistance Program and the Retrofit Program (Social Housing stream).
 - \$500 million is planned under the Climate Change Action Plan (CCAP) to retrofit social housing.
- ENERGY is currently working with IESO to explore options to enhance and/or expand the existing Home Assistance Program or residential customers:
 - Participants could receive incentives for improved weatherization measures, appliances and lighting controls (e.g., new or upgraded furnace and central AC; windows/doors; washer/dryers, heat pumps (for electrically-heated residential customers).
 - The incremental funds would enable deeper measures and reach additional customers.
 - The new program would be delivered through LDCs and/or IESO and could include education and awareness initiatives.
- The budget estimate below is illustrative and reflects a doubling of the 2015 spending for the Home Assistance Program, which was \$20 million.

Calendar Year	2017	2018	2019	2020	2021*	2022*
Current Budget (\$Million)	10	10	10	10	-	-
Fiscal Year	2017/ 18	2018/19	2019/20	2020/21		
Proposed New Budget (\$ Million)	22.5	40	40	32.5	-	-

*Note: The Conservation First Framework extends to 2020.

2c. Establishing a New LDC Affordability Fund

- Electricity customers who meet the definition of low-income are eligible for energy efficiency incentives through the Home Assistance Program, delivered by LDCs under the Conservation First Framework.
- Some electricity customers who struggle to pay their utility bills do not meet the definition of a low-income household and therefore are not eligible for the Home Assistance Program.
- Establishing an “Affordability Fund” for LDCs could provide a means to help struggling customers who do not qualify for low income programs and cannot upgrade their homes without financial assistance.
 - Over time the Fund could help these customers get back on track with their bills and also save on disconnection costs.
 - The Fund would be targeted to customers on an as-needed basis (vs. marketed as an open-intake program).
- ENERGY is currently in discussions with the Electricity Distributors Association and several LDCs to determine the feasibility of establishing a Fund and to identify a willing funding partner(s).
- To allow for funds to flow in 2017/18-2016/17, ENERGY would sign a Transfer Payment Agreement (TPA) with a qualified third party/ies to administer the Fund.
 - LDCs would apply for funding and redistribute support to those customers that meet the targeted eligibility criteria.
- Recipients could receive measures similar to those available in the Home Assistance Program (weatherization, energy efficient appliances and lighting controls).
 - As an illustration, with \$200 million, the estimated reach of the fund could be 15,000 to 65,000 households, depending on measures and uptake.

2d. First Nations Rate – Context

- In June 2016, pursuant to s.35 of the OEB Act, the Minister issued a letter directing the OEB to prepare a report providing “*advice on options for an appropriate electricity rate (or rate assistance) for on-reserve First Nations electricity consumers.*”
 - In order to inform its report, the OEB engaged with First Nations, including remote communities, the distributors serving them, and consumer groups such as the Low Income Energy Network, in a series of meetings across the province. It also established an Advisory Committee with the Chiefs of Ontario’s Grievance Committee.
 - 48 First Nations attended meetings held in the Fall of 2016 in London, Couchiching First Nation, Sudbury, Toronto and Thunder Bay. The OEB also held sessions with Local Distribution Companies (LDCs) and consumer groups.
- The OEB provided its report to the minister on December 29, 2016.
- The OEB report recommended:
 - Eliminate the delivery charge for all on-reserve First Nations residential customers and eliminate the monthly service charge for customers of licensed distributors which charge a bundled rate;
 - The OEB estimates this would provide residential customers an average monthly benefit of \$85 at a total annual cost of \$13 to \$20 million or 11 cents a month for a typical residential electricity consumer.
 - Automatically qualify on-reserve First Nations residential customers (~21,500 customers).
 - Enable greater information sharing between distributors and band councils to identify all on-reserve First Nations customers.
 - Continue to provide assistance through OESP and LEAP to eligible on-reserve First Nations customers.
- The OEB suggested the program should be funded from the tax base as it is targeted to a particular segment of the provincial population, or, if rate based, to use a province-wide charge.

3. OEB – Red-Tape Reductions / LDC Efficiencies and Rates

Leveraging the OEB

- The Ontario Energy Board (OEB) has a mandate to regulate the electricity distribution sector in the public interest, ensuring the financial viability of the sector while promoting reliable service to customers at just and reasonable rates.
- The OEB, through the Renewed Regulatory Framework for Energy (RRFE), has since 2012 attempted to move the distribution sector towards a performance/outcomes-based regulatory framework.
 - While new reporting requirements such as the LDC performance scorecard are positive developments, RRFE does not tie these system performance expectations to LDC financial performance.
- ~~Performance-based options have the potential to indirectly incent consolidation (in a manner that returns benefits to consumers), improve customer experience, and potentially reduce Return On Equity (ROE) in an equitable manner in the event performance expectations are not met.~~
- Encouraging shared partnerships on services between utilities will help reduce costs in the back end and encourage further innovation for small to medium sized utilities.

Opportunities

- ENERGY could help promote or accelerate these efforts by asking the OEB to look at opportunities to further drive LDC efficiencies and productivity.
- In parallel, the OEB could be instructed to review business cases behind its own regulatory requirements to reduce “red tape” and eliminate costs that LDCs indicate are creating pressures on operating expenses.
- This could be done through the Minister's letter, the LTEP Implementation Directive, s. 35 of the *Ontario Energy Board Act, 1998*, and/or the 2017 Mandate Letter and other agency business planning processes.

3. OEB – LDC Efficiencies and Rates (Performance Incentives) (cont'd)

Considerations

Sector:

- Exact bill reduction levels are unknown, but real OM&A and some capital cost avoidance can reasonably be expected.
- Could indirectly incent consolidation if LDCs feel they are unable to adequately manage their assets in light of tightening requirements.
- Any initiatives that have a direct impact on LDC profitability could affect the value of Hydro One.
- There is a tension between requiring productivity enhancements and creating firm performance standards. LDCs have to invest to maintain system levels, but also finding cost efficiencies, which is an incentive for innovation. The Ministry and the OEB may have to also explore reducing regulatory burden/barriers on LDCs so they have the tools available to satisfy new performance expectations.

Regulatory:

- The OEB is the electricity distribution sector's independent regulator and as such is responsible for establishing rate-setting mechanisms in line with its statutory objectives.
 - The Ministry would engage with OEB to align on approach, and provide only high-level direction so as to respect OEB's role in determining implementation specifics.
 - The OEB would likely need to conduct policy hearings and stakeholder consultations on these initiatives, though Ministry could request new rules be in place for next major LDC rate cycle.
- LDCs are resistant to peer comparison for a variety of historical and service territory issues. OEB econometric analysis has generally supported limiting peer comparisons. As comparisons would be an important component of benchmarking performance standards, the Ministry may experience sector pushback.
- Updating rate-setting mechanisms and regulatory processes could create regulatory uncertainty and limit LDC activity. The OEB has revised its processes multiple times over the past 15 years.

4. OPG – Operational Efficiencies

- Provide expectation that OPG meet more aggressive cost targets, improving efficiency by ~\$3/Megawatt hour (MWh).

Considerations

- OPG recently submitted its 2017-19 business plan to the Province for concurrence. That plan includes the following:
 - Enterprise total generating cost increasing from \$48/MWh in 2016 to an average of \$55/MWh over the plan period.
 - An average residential monthly bill increases of \$1.05/month annually from 2017-2021.
- Much of this increase is due to the Darlington refurbishment project, which increases costs and reduces OPG's generation over the planning period.
- OPG has also shared its stretch targets for total cost of generation, which average \$52/MWh over the 2017-19 plan, a ~\$3/MWh reduction (5-6%) relative to its \$55/MWh business plan targets.
- The Province could provide instructions to OPG to focus on its stretch target as part of the Minister's Concurrence letter. This is a public document that OEB would likely review and incorporate as part of OPG's current rate application.
- Consistent with regulations under the *Ontario Energy Board Act*, OPG is seeking smoothed rates for nuclear as part of its 2017-2021 rate application.
 - As a result, the benefit to ratepayers of reducing generation costs is uncertain.
 - Given that the application extends beyond the business plan period, and to ensure OPG does not delay costs beyond the planning horizon, the Province may want to provide additional direction for out year expenditures.
- If OPG is unable to meet more aggressive cost targets, this could impact net income, and the Province's fiscal plan.
 - The total cost of \$3/MWh based on OPG's forecast production of 74 TWh/yr is about \$240 million per year.
- The Province could work with OPG to craft language in the concurrence letter in order to avoid setting unintended precedents for future rate application processes.

5. IESO – Market Renewal

- Continue to move forward with Independent Electricity System Operator's (IESO) Market Renewal initiatives:
 - Market Renewal encompasses projects such as a single-schedule system (from the current two-schedule system), more frequent intertie scheduling to better align with other jurisdictions and a day-ahead market. There will be up front capital costs to enable the initiative. IESO is currently assessing these costs.
 - Moving to “technology-agnostic” procurements will provide new opportunities for innovation and modernization and ensure ratepayers receive the best prices possible.

Considerations

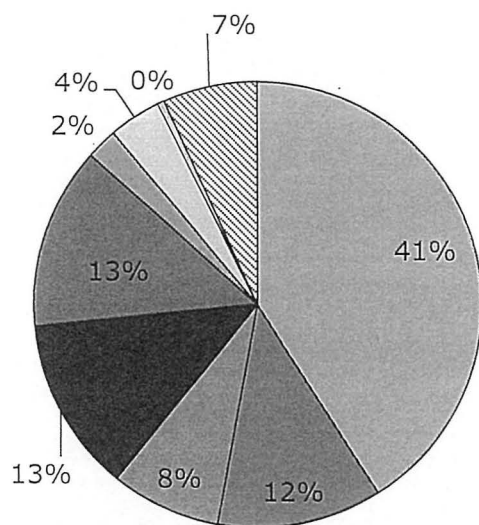
- Changes related to IESO's Market Renewal initiatives, reflected in HOEP and uplifts, are estimated to save up to \$300 million per year, starting in 2021, leading to a reduction of:
 - About \$1/month or less than 1% at current retail prices for a typical residential bill; and
 - About \$1.30/MWh at current all-in prices for industrial and SME electricity consumers.
- The IESO's Market Renewal is a broad initiative that will impact all aspects of Ontario's electricity market. Ontario has had a uniform price since market opening.
- Adopting a technology-agnostic stance will lower the overall cost of providing electricity service by selecting the most cost-effective resources to fulfill various system needs.
- The IESO estimates that the total implementation cost – including a 15% contingency and net of avoided costs – will be \$150 million. The bulk of the costs (capital) would only be recovered once the project has been implemented and as the benefits are being realized.

Appendix

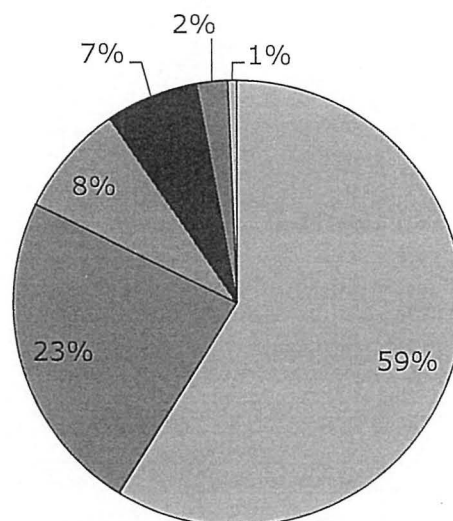
GA Smoothing – Cost Breakout

- The allocation of GA costs in 2016 is compared to the proportion of generation in the graph below.
- This cost breakdown will evolve over time as 2,181 MW of contracted generation comes online in the coming years.

2016 GA Cost: \$12.3 billion



2016 Generation: 155 TWh



■ Nuclear

■ Hydro

■ Natural Gas

■ Wind

■ Solar

■ Biomass, Landfill and Byproduct

□ Conservation

■ IEI Program

□ OEFC*

GA (\$M)	Gen. (TWh)
5,053	91
1,473	36
985	13
1,552	10
1,630	3
278	1
467	
60	
842	

*OEFC indicates the cost of generator contracts managed by the OEFC which include contracts for natural gas, hydro and biomass generators.

** Conservation measures, not quantified here, serve to reduce Ontario energy demand. Actual electricity generation would be larger than 155 TWh in the absence of conservation programs.

GA Smoothing – Residential Bills Lowered 25% (with Tax-Base Funded 8% Rebate and Social Programs)

- Total bill below is based on a revised IESO forecast. See footnotes for more information.

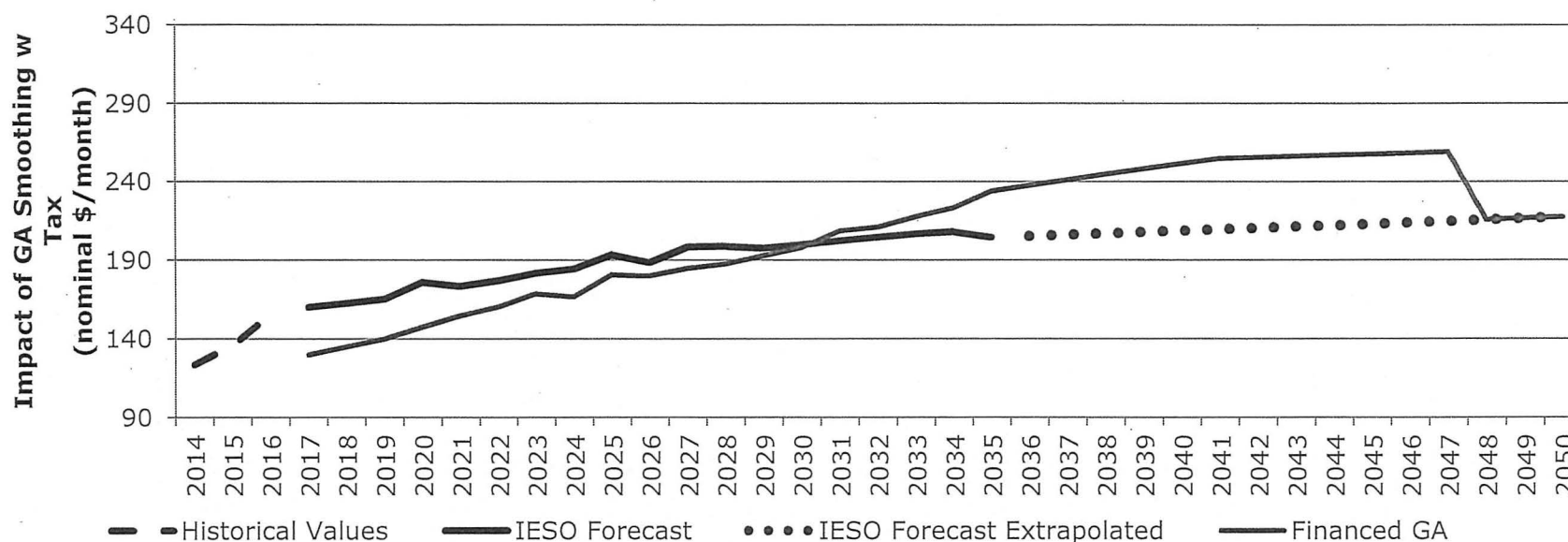
Residential (750 kWh/month)	Actual 2016	2017	2018	2019	2020	2021
Total Bill (includes HST)	163	172	175	178	189	187
Total Bill (excludes HST)	145	153	155	158	168	165
Impact of GA Financing		-27	-25	-22	-25	-17
Impact of Tax-Basing Social Programs		-2	-2	-2	-3	-3
Subtotal		123	128	133	140	146
8% rebate		-10	-10	-11	-11	-12
HST		16	17	17	18	19
Revised Bill (includes HST)	163	129	134	139	147	153
Change from Total Bill (includes HST)		-43	-41	-39	-42	-34
Year-over-Year Change		-21%	4%	4%	6%	4%
Change from Forecast		-25%	-23%	-22%	-22%	-18%

Average Class A (\$/MWh)	Actual 2016	2017	2018	2019	2020	2021
Total (excludes HST)	90	91	93	88	95	96
Impact of GA Financing		-22	-20	-19	-21	-14
Impact of Tax-Basing Social Programs		-3	-3	-3	-3	-3
Revised Total (excludes HST)	90	65	69	66	71	79
Change from Total Bill (excludes HST)		-26	-24	-22	-24	-17
Year-over-Year Change		-27%	6%	-5%	8%	11%
Change from Forecast		-28%	-26%	-25%	-25%	-18%

Fiscal Impact (\$M)	17-18	18-19	19-20	20-21
Tax-Basing Social Programs	362	409	450	485

Notes: Based on IESO's revised OPO forecast as of December 2016. Includes the cancellation of LRP II and EFW, expansion of ICI. Does not include smoothed OPG rates. Above residential bill is based on a 750 kWh per month Toronto Hydro customer. "Social programs" refers to existing RRRP and OESP. While initiatives would take several months to implement, the above estimate for 2017 reflects a full-year impact. The 8% rebate above represents savings compared to status quo due to the reduction in the sub-total from GA financing. Fiscal savings as result of GA Smoothing.

GA Smoothing (Borrow \$5 billion in 2017)



	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048
Average Monthly Residential Bill Impact of GA Smoothing, pre-tax (\$/month)	-27	-25	-22	-25	-17	-15	-11	-16	-11	-8	-12	-10	-4	-2	5	6	10	14	26	28	31	33	35	38	40	40	40	40	39	39	39	0
Total Accumulated Debt (\$ billion)	5	9	14	19	23	27	30	34	38	41	46	50	53	56	58	60	61	62	60	58	55	52	48	43	38	33	27	20	14	7	0	0
Total Change in Accumulated Debt (\$ billion)	5	5	4	5	4	4	3	4	4	3	4	4	3	3	2	2	1	1	-2	-2	-3	-3	-4	-5	-5	-6	-6	-6	-6	-7	-7	0

Notes: Assumes 30 year financing period and a nominal interest rate of 5.12% per year (compounded annually). Ratepayer GA payments increase annually beyond 2017 at inflation with GA over-payments capped at \$7.5 billion above the true cost of GA in any given year. IESO forecast is based on IESO's revised OPO forecast as of December 2016. Includes the cancellation of LRP II and EFW, expansion of ICI. Does not include smoothed OPG rates. Above residential bill is based on a 750 kWh per month Toronto Hydro customer.

GA Smoothing – Residential Bills Lowered 33% (with Tax-Base Funded 8% Rebate and Social Programs)

- Total bill below is based on a revised IESO forecast. See footnotes for more information.

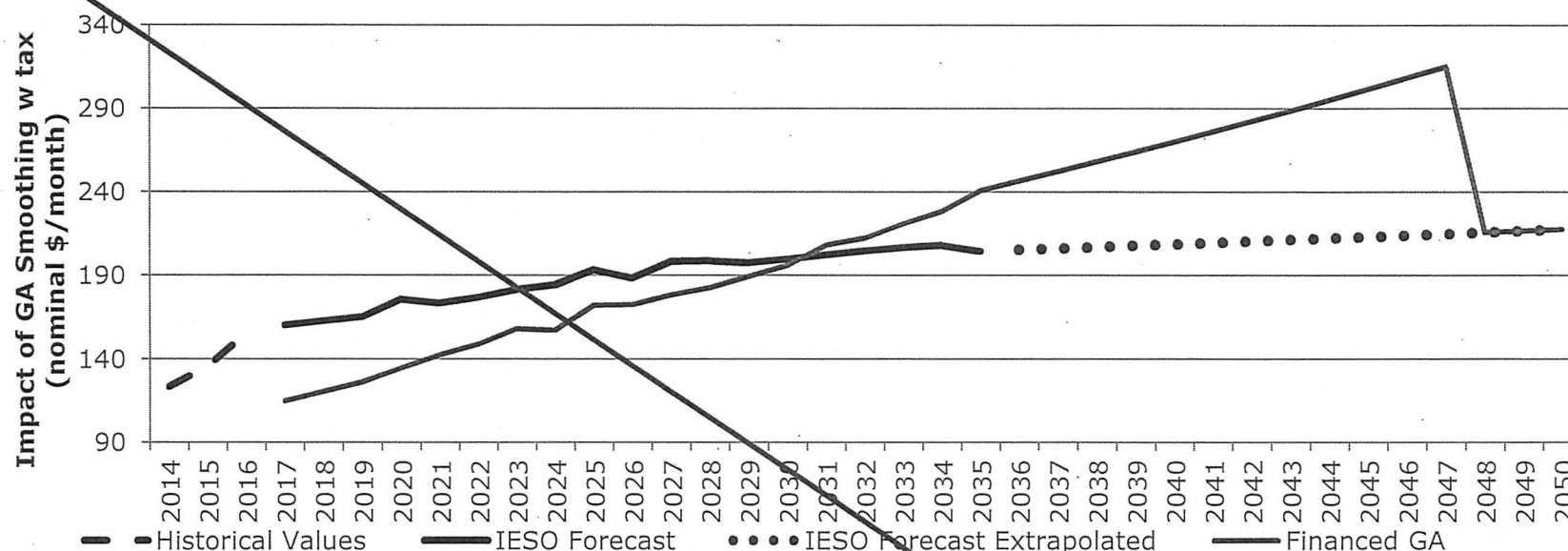
Residential (750 kWh/month)	Actual					
	2016	2017	2018	2019	2020	2021
Total Bill (includes HST)	163	172	175	178	189	187
Total Bill (excludes HST)	145	153	155	158	168	165
Impact of GA Financing		-40	-37	-35	-37	-28
Impact of Tax-Basing Social Programs		-2	-2	-2	-3	-3
Subtotal		110	115	120	128	135
8% rebate		-9	-9	-10	-10	-11
HST		14	15	16	17	18
Revised Bill (includes HST)	163	116	121	126	135	142
Change from Total Bill (includes HST)		-56	-54	-52	-54	-45
Year-over-Year Change		-29%	5%	5%	7%	5%
Change from Forecast		-33%	-31%	-29%	-29%	-24%

Average Class A (\$/MWh)	Actual					
	2016	2017	2018	2019	2020	2021
Total (excludes HST)	90	91	93	88	95	96
Impact of GA Financing		-33	-31	-29	-30	-23
Impact of Tax-Basing Social Programs		-3	-3	-3	-3	-3
Revised Total (excludes HST)	90	54	59	56	61	70
Change from Total Bill (includes HST)		-37	-34	-32	-34	-26
Year-over-Year Change		-39%	8%	-5%	10%	14%
Change from Forecast		-40%	-37%	-36%	-35%	-27%

Fiscal Impact (\$M)	17-18	18-19	19-20	20-21
Tax-Basing Social Programs	362	409	450	485

Notes: Based on IESO's revised OPO forecast as of December 2016. Includes the cancellation of LRP II and EFW, expansion of ICI. Does not include smoothed OPG rates. Above residential bill is based on a 750 kWh per month Toronto Hydro customer. "Social programs" refers to existing RRRP and OESP. While initiatives would take several months to implement, the above estimate for 2017 reflects a full-year impact. The 8% rebate above represents savings compared to status quo due to the reduction in the sub-total from GA financing. Fiscal savings as result of GA Smoothing.

GA Smoothing (Borrow \$7 billion in 2017)



	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048
Average Monthly Residential Bill Impact of GA Smoothing, pre-tax (\$/month)	-40	-37	-35	-37	-28	-25	-21	-24	-19	-14	-18	-14	-7	-3	5	7	13	18	32	36	41	45	50	54	59	63	68	73	78	83	89	0
Total Accumulated Debt (\$ billion)	7	14	21	28	35	41	47	53	59	65	71	77	83	88	91	95	97	99	98	96	94	90	85	80	73	64	55	44	31	16	0	0
Total Change in Accumulated Debt (\$ billion)	7	7	7	8	6	6	6	7	6	6	6	6	5	5	4	3	3	2	-1	-2	-3	-4	-5	-6	-7	-8	-10	-11	-13	-14	-16	0

Notes: Assumes 30 year financing period and a nominal interest rate of 5.12% per year (compounded annually). Ratepayer GA payments increase annually beyond 2017 at 2.7 percentage points above inflation with no limit on GA over-payments. IESO forecast is based on IESO's revised OPO forecast as of December 2016. Includes the cancellation of LRP II and EFW, expansion of ICI. Does not include smoothed OPG rates. Above residential bill is based on a 750 kWh per month Toronto Hydro customer.

GA Smoothing – Residential Bills Lowered 25% (with Tax-Base Funded 15% Rebate)

- Total bill below is based on a revised IESO forecast and is adjusted by the Ministry to reflect the proposed expansion of RRRP and OESP. See footnotes for more information.

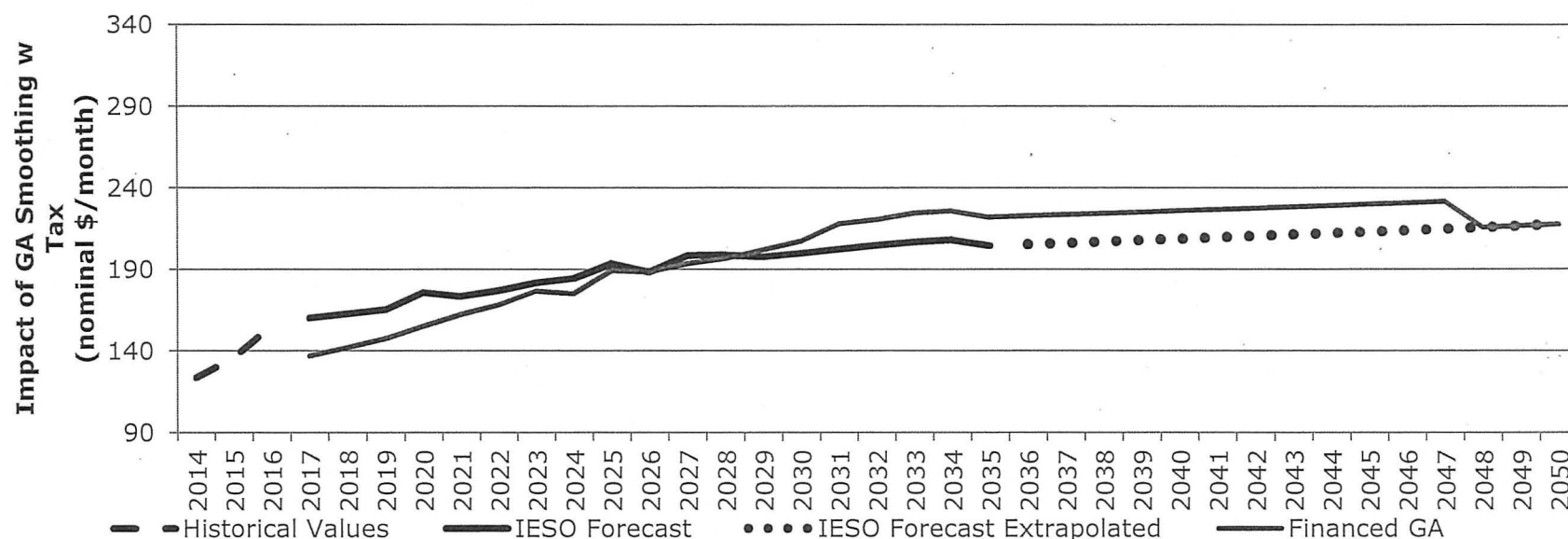
Residential (750 kWh/month)	Actual 2016	2017	2018	2019	2020	2021
Social Programs Expansion		0.5	0.7	0.9	1.1	1.2
Total Bill (includes HST)	163	173	176	179	191	188
Total Bill (excludes HST)	145	153	156	158	169	167
Impact of GA Financing		-21	-18	-16	-18	-10
Subtotal		132	137	143	150	157
15% rebate		-20	-21	-21	-23	-24
HST		17	18	19	20	20
Revised Bill (includes HST)	163	130	135	140	147	154
Change from Total Bill (includes HST)		-43	-41	-39	-44	-34
Year-over-Year Change		-20%	4%	4%	5%	4%
Change from Forecast		-25%	-23%	-22%	-23%	-18%

Average Class A (\$/MWh)	Actual 2016	2017	2018	2019	2020	2021
Social Programs Expansion		0.7	1.0	1.3	1.4	1.6
Total (excludes HST)	90	92	94	89	96	98
Impact of GA Financing		-17	-15	-13	-15	-8
Revised Total (excludes HST)	90	74	79	76	81	89
Change from Total Bill (includes HST)		-18	-15	-13	-15	-9
Year-over-Year Change		-17%	6%	-4%	7%	10%
Change from Forecast		-19%	-16%	-15%	-16%	-8%

Fiscal Impact (\$M)	17-18	18-19	19-20	20-21
Incremental Rebate (15%)	875	871	1,002	901

Notes: Based on IESO's revised OPO forecast as of December 2016 and adjusted by the Ministry to estimate a 1,500 kWh consumer connected to Toronto Hydro. Includes the cancellation of LRP II and EFW, expansion of ICI. Does not include smoothed OPG rates. Above residential bill is based on a 750 kWh per month Toronto Hydro customer. "Social programs" refers to existing RRRP and OESP. While initiatives would take several months to implement, the above estimate for 2017 reflects a full-year impact. The 8% rebate above represents savings compared to status quo due to the reduction in the sub-total from GA financing.

GA Smoothing (Borrow \$4 billion in 2017)



	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048
Average Monthly Residential Bill Impact of GA Smoothing, pre-tax (\$/month)	-21	-18	-16	-18	-10	-8	-4	-8	-4	0	-4	-2	4	7	14	14	16	16	15	15	15	15	15	15	15	15	15	15	15	15	15	0
Total Accumulated Debt (\$ billion)	4	7	10	14	16	19	20	23	25	26	28	30	31	31	30	29	28	27	25	23	22	20	18	16	14	12	10	8	5	3	0	0
Total Change in Accumulated Debt (\$ billion)	4	3	3	4	2	2	2	3	2	1	2	2	1	0	-1	-1	-1	-1	-1	-2	-2	-2	-2	-2	-2	-2	-2	-2	-2	-3	-3	0

Notes: Assumes 30 year financing period and a nominal interest rate of 5.12% per year (compounded annually). Ratepayer GA payments increase annually beyond 2017 at inflation with a limit of \$2.8 billion above the true cost of GA in any given year. IESO forecast is based on IESO's revised OPO forecast as of December 2016. Includes the cancellation of LRP II and EFW, expansion of ICI. Does not include smoothed OPG rates. Above residential bill is based on a 750 kWh per month Toronto Hydro customer.

GA Smoothing – Considerations (*Accounting Treatment: Does Province Control Entity?*)

Defining the Government Reporting Entity

- The government reporting entity should comprise government components and those organizations that are controlled by the government.

Determining Whether Control Exists

- Control is the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organization's activities.
- Whether a government controls an organization is a question of fact that must be determined by reference to the definition of control described in the prior paragraph and the particular circumstances of each case.
- Requires the application of professional judgment based on the definition of control and the substance of the relationship.
- It is the preponderance of evidence that would be considered in assessing whether a government controls an organization.

GA Smoothing – Considerations (*Accounting Treatment: Does Province Control Entity?*) (cont'd)

Indicators of Control

- There are certain indicators that provide more persuasive evidence of control:
 - Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization;
 - Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses;
 - Government holds the majority of the voting shares or a "golden share" 1(1) that confers the power to govern the financial and operating policies of the organization; and
 - Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations.
- Other indicators that may provide evidence of control exist when the government has the power to:
 - Provide significant input into the appointment of members of the governing body of the organization;
 - Appoint or remove the CEO or other key personnel;
 - Establish or amend the mission or mandate of the organization;
 - Approve the business plans or budgets for the organization and require amendments;
 - Establish borrowing or investment limits or restrict the organization's investments;
 - Restrict the revenue-generating capacity of the organization, notably the sources of revenue; and
 - Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources.

Overview of RRRP Enhancement – Options

	Program Envelope for H1 (\$M)*	Monthly Rebate for R2: low density consumers (+/- from status quo)	Monthly Rebate for R1: medium-density customers	Monthly cost to ratepayers**
(Status Quo) RRRP program for R1 and R2 customers of Hydro One (as of January 2017)	\$242M	\$60.50/month	\$0	\$1.58/month
(1) Accelerates move to fixed distribution rates for those customers expected to see a reduction in costs.***	\$306-\$332M	Distribution costs capped at \$64.64/month. Benefit begins at 1,200kWh/month	Distribution costs capped at \$55.70. Benefit begins at 955kWh/month.	\$2.07/month
(2) Increase total RRRP envelope to reduce R2 and R1 distribution costs at 1000kWh/month to Algoma Power costs at 1000kWh/month	\$292M	\$66.61/month (+\$6.11/month)	\$4.91/month	\$1.90/month
(3) Change RRRP program to a volumetric-based tiered benefit program where rebate will be dependent on customer consumption levels				
(3a) - Assume total RRRP program envelope of \$300M and distribute to R2 & R1 based on tiered-benefit levels. - Tiered-benefit levels: divide customer base into 3 equal buckets. Allocate \$300M to each bucket in proportion to contribution of H1 distribution revenues. - Assume fixed current \$60.50 rebate no longer applies equally to all R2 customers.	\$300M	750kWh or less: \$37.65 (-\$22.85) 750 to 1,200 kWh: \$44.74 (-\$15.76) 1,200 kWh or more: \$60.69 (+\$0.49)	600kWh or less: \$16.05 600kWh to 1,000kWh: \$19.22 1,000kWh or more: \$25.67	\$1.90/month
(3b) - Expand RRRP program envelope and distribute to both R2 & R1 customers based on tiered-benefit levels. - Tiered-benefit levels determined in same manner as 3(a). - Assume fixed current \$60.50 still applies to all R2 customers	\$542M	750kWh or less: \$81.66 (+\$21.16) 750kWh to 1,200 kWh: \$91.90 (+\$31.40) 1,200 kWh or more: \$114.95 (+\$54.45)	600 kWh or less: \$23.19 600kWh to 1,000 kWh: \$27.76 1,000 kWh or more: \$37.09	\$3.20/month

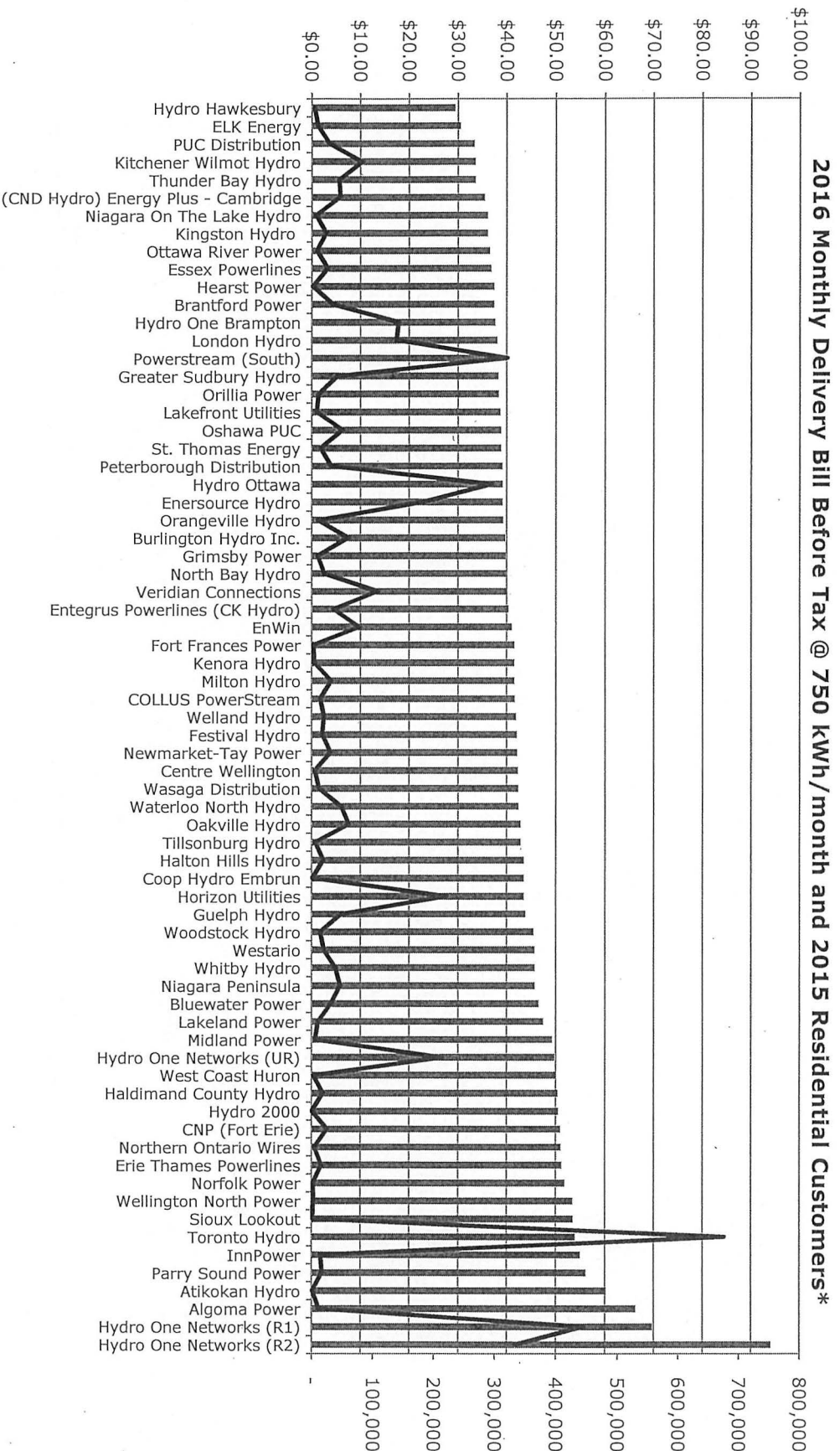
*All option costs are inclusive of status quo RRRP, except 3(a) which assumes a phaseout of the program.

**Only if left on ratebase. Will increase based on yearly expansion.

***Based on Hydro One estimates. Consumer benefit is total costs subtract the cap amount.

Note: figures do not include ~\$50M in RRRP costs currently supporting Algoma Power and Hydro One Remotes

Wide Variation in Delivery Rates Across the Province



Ontario

* Hydro One customer numbers are for 2016 and divided by rate class. Hydro One R2 does not reflect RRRP enhancement.

All RRRP Options – Fiscal Considerations

Ratepayer Impacts

- Some consumers with low consumption may still have proportional higher distribution rates. These customers will experience bill pressures both from the transition to fixed rates and from expected general rate increases (for which they are responsible for an increasing proportion).
- Hydro One distribution rates are expected to climb in coming years. The projected 2017 fixed rates of \$64.64 (R2) and \$55.70 (R1) will rise through the transition period. Therefore customers who receive a benefit will still experience bill increases.

Fiscal Impacts

- Having the original RRRP subsidy remain on the rate-base allows for program expansion from the fiscal plan while avoiding an additional \$242M tax-base impact.
- Hydro One is expected to submit its cost of service application for 2018 and beyond (3-5 years) in spring 2017. The rate increases requested in this application could potentially increase the proposed fixed rate significantly, which would have significant impact on fiscal requirements and ratepayer impacts.
- Cost for Hydro One to implement and to upgrade customer billing systems is likely material. Those costs would ultimately be passed back to the customers of those LDCs.
- The Ministry will need to consider how consumption thresholds and/or benefit levels rise alongside the expected rise in distribution rates.
- There is a high risk of entrenching external subsidies, as there is no clear path to transition away from subsidies and toward a more sustainable, cost-based rate framework.

All RRRP Options – Implementation Considerations

- LDCs would track credit variances in a variance account and settle amounts with the IESO, which receives taxpayer funding from ENERGY/MoF in the same manner as the 8% rebate happens today.
 - While this new program would build on exiting transfer payment protocols in use under the ORECA, it would be complex for Hydro One to implement, as CIS upgrades are likely needed.
 - Depending on the option chosen, OEB estimates that the implementation would take at least 6 months or more, following finalized regulations, given need to change customer billing systems and determine settlement procedures.
- RRRP focuses on ameliorating differences in distribution costs, not the entire Delivery line of the residential bill which also includes transmission and line loss costs.
- Eligibility for RRRP is currently determined by LDC density levels. Hydro One R1 has similar density levels to some other LDCs (e.g., InnPower). Thus if the intention is to limit expansion to just Hydro One R1, a new eligibility criteria would have to be developed (legal and regulatory risks would need to be explored).
- New legislation would be required to establish this program. Legal and regulatory risks (particularly with regards to legal authority and to the Ontario Energy Board's role in setting rates and incenting efficiencies) require further analysis.
 - Some options may impact OEB rate-setting processes and create disincentives towards Hydro One productivity and performance improvements.
- Providing a tax-based subsidy outside of exiting rate setting mechanism reduces incentives for customers and distributors to engage on operating costs and capital planning.
- The development of an appropriate program can be initiated through a letter to the Ontario Energy Board via s. 35 of the *Ontario Energy Board Act, 1998*.

First Nations Rate Assistance – Context

- On-reserve First Nations customers face unique challenges that impact electricity affordability, such as the poor quality of the housing stock on-reserve. These challenges result in significantly higher electricity consumption levels and costs.
- First Nations living on reserve are particularly vulnerable low-income consumers: the average income is considerably lower compared to First Nations living off reserve and compared to non-Indigenous populations*:
 - Average income of First Nations on reserve in Ontario: \$21,100
 - Average income of First Nations off reserve in Ontario: \$31,527
 - Average income of Non-Indigenous people in Ontario: \$42,506*
 - Median incomes on smaller reserves can fall below \$10,000 (e.g., Cat Lake FN).
- Employment rates also differ between on-reserve First Nations, off-reserve First Nations and Non-Indigenous individuals, as well as other indices of social vulnerability**:
 - 54% of Indigenous people over 15 years old and living on-reserve in Ontario are unemployed or not in the labour force.
 - The on-reserve unemployment rate is 18.3% compared to 6.4% in Ontario generally.
 - 67% of families residing on-reserve are single parent families, compared to the Canadian equivalent of 19%.

*Note: Average income for those aged 15 and older in 2010

** Note: 2006 Census data

OEB First Nations Rate Report – Background

- Through the First Nations-Ontario Political Accord and Canada's Truth and Reconciliation Commission's Calls to Action, there is a renewed spirit to work together on issues of mutual interest, including resource benefits sharing, the treaty relationship, and jurisdiction.
- First Nation and Political-Territorial Organization leaders have advocated for the review of delivery charges associated with transmission and distribution assets within the context of historical grievances and the need for electricity rate relief for on-reserve customers.
- The Minister committed to consider options for addressing the issue at the Apr. 18, 2016 First Nations-Ontario Energy Table meeting.
- In June 2016, pursuant to s.35 of the OEB Act, the Minister issued a letter directing the OEB to prepare a report providing "*advice on options for an appropriate electricity rate (or rate assistance) for on-reserve First Nations electricity consumers.*"
- In order to inform its report, the OEB engaged with First Nations, including remote communities, the distributors serving them, and consumer groups such as the Low Income Energy Network, in a series of meetings across the province. It also established an Advisory Committee with the Chiefs of Ontario's Grievance Committee.
- 48 First Nations attended meetings held in the Fall of 2016 in London, Couchiching First Nation, Sudbury, Toronto and Thunder Bay. The OEB also held sessions with Local Distribution Companies (LDCs) and consumer groups.
- The OEB provided its report to the minister on December 29, 2016.

CONFIDENTIAL

JPR Instructs – GAM (Feb 10-17) based on GOV2016.146.e
2-TK

Formatted: Highlight

Formatted: Highlight

Electricity Amendment Act, 2016 (Proceeds Recycling)

EXPLANATORY NOTE

[Insert explanatory note.]

This draft has not been edited.

ENE to confirm consultation plans with MOECC and MOF (and CLB?)

ELECTRICITY ACT, 1998

1. Section 1 of the *Electricity Act, 1998* is amended by adding the following clauses:

- (d.1) to continue, create or facilitate the continuance or creation of initiatives that are reasonably likely to reduce or to support the reduction of greenhouse gas,¹ including initiatives relating to electricity conservation and efficiency or to the use of cleaner energy sources and technologies, and to provide mechanisms for mitigating related costs to consumers;

(d.2) to establish one or more mechanisms to facilitate the Government of Ontario's policy to smooth electricity prices and to recover from consumers the costs associated with such activities, including policies designed to ensure that those consumers who benefit from investments made in generation, conservation, demand-management and energy efficiency bear an appropriate share of those costs: ***Ntd-jpr: This new object is designed to provide further authority context for Government to be able to establish rate-(GA) smoothing mechanisms, including mechanisms which [re]-allocate the value future benefits to today's consumers ("intergenerational fairness" is the organizing principle), and costs associated with future benefits to future consumers. This is consistent with our CLB advice on the GAM proposals.]***

Comment [JPR1]: This portion of the drafting relates to the legacy GGRA work that we had done over the summer. It is a bit of a template for the work we're doing now with GAM refinancing.

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Italic

Ntd-jpr: Hi, OLC Counsel: These amendments are focussed on two key changes to the existing global adjustment mechanism (GAM) provisions (including related regulation-making authority) associated with ENERGY's rate smoothing strategy.

Formatted: Not Highlight

Formatted: Not Highlight

Formatted: Not Highlight

¹ FLS: See s. 71 (2) para. 2 of the Climate Change... Act.

1) **IESO Makes payments to and from a newly-established entity (e.g.**

corporation or trust) designed to borrow large sums of money on behalf of consumers and to pay amounts to the IESO to allow the IESO to pay those amounts into GAM as an offset to the amounts that consumers would otherwise have to pay (similar to the GGRA idea but instead of receiving money from Government's GGRA (an account within the crf) this would be money from an entity which deals at arms length from both Government and the IESO. Dan Shear is to instruct on the entity. The real difference between the payment flows between the IESO under the GGRA scenario versus "the entity" scenario is that for the latter, the IESO would also be collecting amounts to **repay the entity** (including capital and interest charges) for the amount the entity borrows. Those amounts are collected from consumers. Significant amounts would need to be borrowed in order to lower consumers GAM-related costs up-front to give them an appreciable (25 or 30 percent) total bill reduction. The repayment schedule would increase over time and add to both the cost at the later end (see deck (Feb 6/17 version) at slides 5 – 9 for an indication of how the bill impact would look for average consumers over the next 15 to 20 years.).

Formatted: Font: Not Bold, Not Highlight

Formatted: Numbered + Level: 1 +
Numbering Style: 1, 2, 3, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Indent
at: 0.5"

Formatted: Font: Not Bold, Not Highlight

Formatted: Font: Not Bold, Not Highlight

Formatted: Not Highlight

Formatted: Font: Bold

NTD-JPR: We need to amend the IESO Fees-making provision at s.25.1 to ensure

x. (2) Section 25.1 of the Act is amended by adding the following subsection:

- (2) the IESO shall establish a fee to recover from consumers *fall or a portion of? the* administrative, operational and management costs of the Financing Subsidiary to the financing or refinancing of all or a portion of the amounts otherwise payable by consumers pursuant to section 25.33 and the regulations, including but not limited to all or a portion of the administration and operating expenses of the entity *[corporation]* referred to in x.

Comment [JPR2]: I'm still considering whether we need to address the IESO's "Fees" provisions which could be designed to recover any amounts related to the costs associated with GAM refinancing: it may be redundant to the IESO's GAM cost-recovery authority specified below. However, it may be an important "back-stop" to the GAM-related authorities to ensure that stray amounts not easily relatable to the borrowed funds (such as a share of the new entity's administrative operating expenses) can be recovered.

Formatted: Not Highlight

Formatted: Not Highlight

Formatted: Not Highlight

Formatted: Font: Bold

- (2.1) The IESO shall establish and maintain separate accounts reflecting the amounts collected from consumers and paid to the entity referred to s.53.x of the Act from any other books or accounts related to its operations or the fees that it collects for those purposes.

Formatted: Not Highlight

x. (1) Clause 25.33 (1)(a) of the Act is amended by adding "the entity *[corporation]* referred to in section x", after "Financial Corporation" and replace "under section 78.1, 78.2 or 78.5" with "under 78.1, 78.2, 78.5 or 78.6".

Comment [JPR3]: See in OEBA-related amendments: new s.78.6 to deal with IESO payments to new entity and OEB oversight.

x. (1) Subsection 25.33 (1) of the Act is amended by striking out “and” at the end of clause (a), by adding “and” to the end of clause (b) and by adding the following clause:

- (c) amounts received by the IESO, directly or indirectly, from the Greenhouse Gas Reduction Account established under section 71 of the *Climate Change Mitigation Smoothing and Low-Carbon Economy Act, 2016* for the funding of greenhouse gas reduction initiatives under this Act or the *Ontario Energy Board Act, 1998* for which the costs are, or would otherwise be, borne in whole or in part by consumers.

Comment [JPR4]: This relates to potential GGRA funding via GAM.

- (d) amounts received by the IESO, directly or indirectly, from **[the entity referred to in Part x]**, for which the costs are, or would otherwise be, borne in whole or in part by consumers. *Jntd-jpr: part of the rate-smoothing plan relating to GAM is to create a separate entity (either a trust or other not-for profit entity which is capable of either borrowing or receiving borrowed funds and ensuring that the borrowed funds themselves and the costs of the borrowed funds, (e.g. the interest/financing costs which are expected to be quite significant), are recovered from consumers. The current plan is to have the IESO continue to act as the settlement agent for consumers – it would receive amounts from the entity to flow into and through GAM using those amounts to reduce GAM liability, and recover and much much later down the road, the costs of borrowing (capital plus interest) from consumers. The GAM-related amendments are designed to ensure that there is an appropriate “line in” and “line out” of GAM in respect of amounts the IESO is supposed to receive from the entity and, over time, pay out to the entity relating to the borrowed funds and interest costs.*

Comment [JPR5]: These are the costs related to GAM which consumers are otherwise responsible for, but for which the amounts paid out by the new entity are being used, in part, to address (lower).

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

- (e) amounts payable by the IESO, on behalf of consumers, to **[the entity referred to in Part x]**.

Formatted: Font: Not Bold

(2) Subsection 25.33 (2) of the Act is amended by striking out “and” at the end of clause (a), by adding “and” to the end of clause (b) and by adding the following clause:

- (c) amounts received by the IESO, directly or indirectly, from the Greenhouse Gas Reduction Account established under section 71 of the *Climate Change Mitigation Smoothing and Low-Carbon Economy Act, 2016* for the funding of greenhouse gas reduction initiatives under this Act or the *Ontario Energy Board Act, 1998* for which the costs are, or would otherwise be, borne in whole or in part by consumers.

OLC Counsel: next we need to require that distributors make adjustments in their account which recognize the funds (amounts) received from the IESO that are

paid by the entity (the borrowed funds) in order to combine those amounts with the amounts that consumers will pay under clause 25.33(2)(a):

- (d) amounts received by the IESO, directly or indirectly, from Financing Subsidiary for which the costs are, or would otherwise be, borne in whole or in part by the following classes of consumers:

Formatted: Font: Not Bold

Comment [JPR6]: These are the costs related to GAM which consumers are otherwise responsible for, but for which the amounts paid out by the new entity are being used, in part, to address (lower).

- (i) Consumers who participate in the Board's Regulated Price Plan established under section 79.16 of the *Ontario Energy Board Act, 1998*; *[ntd-jpr: to which subsection 79.16 and regulations made thereunder apply. I Note: s.79.16(1) authorizes the OEB to create its Regulated Price Plan (RPP) and O. Reg. 95/05 (Classes of Consumers and Determination of Rates) fixes the classes of consumers who are eligible to participate in the RPP. Some "opt out" (per s.79.16(4) for retail contracts – I assume that they, too, would be entitled to receive the benefits of and costs of "rate smoothing"]. and,*

Formatted: Numbered + Level: 1 +
Numbering Style: i, ii, iii, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.74" + Indent at: 1.24"

Formatted: Font: Bold

- (ii) Consumers who are eligible to participate in the Board's Regulated Price Plan established under section 79.16 of the *Ontario Energy Board Act, 1998* and who have entered into a contract with a retailer;

Formatted: Indent: Left: 1.24", First line: 0"

Formatted: Numbered + Level: 1 +
Numbering Style: i, ii, iii, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.74" + Indent at: 1.24"

- (iii) Consumers who are served by a sub-metering entity; *[ntd-jpr: this provision may require further discussion/building out.]*

Formatted: Font: Not Italic

Formatted: List Paragraph, No bullets or numbering

Formatted: Numbered + Level: 1 +
Numbering Style: i, ii, iii, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.74" + Indent at: 1.24"

- (e) amounts payable by the IESO, on behalf of consumers, to the Financing Subsidiary.

Formatted: Font: Bold

Formatted: Font: Not Italic

[ntd-jpr: one of the purposes of our GA-related work is to reflect the "intergenerational" nature of the benefits (and costs) that we're attempting to reallocate. I've tried to tailor an object (mocked-up above as an amendment to s.2).

Comment [JPR7]: Here we're ensuring that distributors must recognize amounts that consumers have to pay back to the entity (and its financiers) including borrowed funds, interest and carrying charges. Probably has to include admin and operational-related costs of running the entity.

Formatted: Font: Not Bold

Formatted: Font: Italic

x. Section 25.33 is amended by adding the following subsection after subsection (5):

[OLC Counsel:, below I'm trying to clarify that for the GGRA funds received by the IESO, that the IESO may be required (via regulation – amendments to O. Reg. 429/04) to settle certain contracts and classes of contracts with certain generators and classes of generators using GGRA amounts. This is to ensure that Government can always track the GGRA funds as specifically and separately as required in order to match those amounts paid out of the GGRA with the GHG-lowering initiatives which the contracts and classes of contracts represent].

Formatted: Font: Italic

GGRA funding, separate payments and tracking,

Formatted: Font: Bold

(5.1) If required by the regulations, the IESO shall separately track and account for the amounts it receives pursuant to clause 25.33(1)(c) and to direct such amounts to the contracts and generators or classes of contracts and generators as may be prescribed.

Financing Subsidiary funding, separate payments and tracking,

(5.2) For the purposes of ensuring that amounts received from the Financing Subsidiary are paid toward the costs consumers are otherwise required to bear pursuant to section 25.33, the IESO shall, on behalf of consumers or the Financing Subsidiary,

- (a) allocate amounts received from the Financing Subsidiary toward the amounts otherwise payable by consumers under section 25.33(1) in accordance with *Intd for clients; need instructions here: the schedule approved by the Board? Alternativley, do we plan to place instructions right in the legislation? Consider.I*
- (b) recover the amounts *Intd:; these are the amounts borrowed by the financing sub including interest costs* to be paid by the IESO to the Financing Subsidiary pursuant to subsection 25.33(2) from consumers in accordance with *Intd for clients: need instructions here: the schedule approved by the Board? Alternativley, do we plan to place instructions right in the legislation? Consider.I*
- (c) recover the amounts, on behalf of the Financing Subsidiary, of administrative, operating *Intd-jpr: operational?* and management costs and fees associated with the Financing Subsidiary's *Intd: rate smoothing?* activities conducted on behalf of consumers from consumers.
- (d) separately track and account for,
 - (i) the amounts received from the Financing Subsidiary *Intd: and allocated toward the amounts/costs provided for under section 25.33 (1) that consumers would otherwise bear;*
 - (ii) the amounts paid to the Financing Subsidiary *Intd: related to the amounts referred to in sub-clause (i));*
 - (iii) the amounts that that the IESO pays to the Financing Subsidiary related to the Subsidiary's administrative, operational and management costs;
 - (iv) the amounts related to (iii) that are recovered from consumers; and,

Comment [JPR8]: This is just preserving the GGRA-tracking/tracing to specific FIT and GEIA contracts amounts. The IESO must separately track for future audit.

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Indent: Left: 0.5"

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Not Bold, Not Italic

Formatted: List Paragraph, No bullets or numbering

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: List Paragraph, No bullets or numbering

Formatted: Numbered + Level: 1 +
Numbering Style: i, ii, iii, ... + Start at: 1 +
Alignment: Left + Aligned at: 1" + Indent at: 1.5"

Formatted: Indent: Left: 1.5"

Formatted: Numbered + Level: 1 +
Numbering Style: i, ii, iii, ... + Start at: 1 +
Alignment: Left + Aligned at: 1" + Indent at: 1.5"

Formatted: Font: Not Italic

Formatted: Indent: Left: 1.5"

Formatted: List Paragraph, No bullets or numbering

Formatted ... [1]

Formatted: Indent: Left: 1.5"

Formatted ... [2]

Formatted ... [3]

- (v) any variances between the amounts reflected in subclauses (i) and (ii), or the amounts reflected in subclauses (iii) and (iv) or such variances which relate to any of the amounts reflected in subclauses (i) through (iv) that the IESO deems appropriate;

Formatted: Numbered + Level: 1 +
Numbering Style: i, ii, iii, ... + Start at: 1 +
Alignment: Left + Aligned at: 1" + Indent at:
1.5"

Formatted: English (U.K.)

Formatted: List Paragraph, No bullets or
numbering

True up,

(5.3) The IESO shall annually, or more frequently as is practicable, recover from consumers and pay to the Financing Subsidiary, any amounts determined under this section ~~[ntd: could isolate to subsection (5.2)]~~ which are due and payable to the Financing Subsidiary.

Formatted: Font: Bold

Formatted: Font: Not Bold

Formatted: Font: Bold

Entity funding, distributors, separate payments and tracking,

(5.3) If required by the regulations, distributors and retailers shall separately track and account for the amounts received from the IESO, and payments it makes to the IESO, the entity ~~[corporation]~~ referred to under Part X of the Act, pursuant to *clause 25.33(1)(d) or (e)*, and to direct such amounts to the entity ~~[corporation]~~ in such manner as may be prescribed.

Instructions (for ensuring reg-making authority can capture what it needs to) how O. Reg. 429/04 would need to reflect (track separately) both the amounts related to GGRA funding and / or funded via refinancing (settlements with the new "Entity")

Formatted: Highlight

Formatted: Font: Bold, Highlight

Formatted: Highlight

Formatted: Font: Bold, Highlight

Formatted: Highlight

Formatted: Font: Not Bold, Highlight

O. Reg. 429/04, s.1.1 - New "J" for Master Formula -- Reflecting the Re-Financing of GAM at the Regulation Level

-Define new element of master formula, "J", to track amounts funded through the new entity (e.g. the amount to be financed). Then ensure that the Master formula reflects either the "inclusion" of this amount

Formatted: Numbered + Level: 1 +
Numbering Style: 1, 2, 3, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.26" + Indent
at: 0.51"

Formatted: Font: Not Italic

Formatted: Font: Not Bold, Highlight

Formatted: Highlight

Formatted: Font: Not Bold, Highlight

Formatted: Indent: Left: 0.51"

Formatted: Numbered + Level: 1 +
Numbering Style: 1, 2, 3, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.26" + Indent
at: 0.51"

J is the net amount received or owed to the entity under Part X of the Act and which relates to the amounts:

1. Received by the IESO *[each month]* from the entity in accordance with *[the schedule approved by the Board]* under s.x; plus,
2. Payable to the Entity each month by the IESO in accordance with the schedule approved by the Board under s. x.

Formatted: Font: Not Bold, Highlight

Next, back up at the legislative level, could we next track this through to the reg. making authority in s.114(1.3)(f) I

Formatted: Font: Not Bold

Formatted: Not Highlight

Formatted: Font: Italic

Regarding whether we need to specify that adjustments under (c) may be made only with respect to certain classes of consumers, my current take is that I don't think so, and this is why:

Formatted: Font: Italic

- Both s. 25.33 (1) and (2) make clear in their opening flushes that the adjustments may be with respect to certain, but not all, market participants/consumers.
- S. 114 (1.3) (f) (i) provides authority to prescribe classes of market participants and consumers to whom adjustments will apply.
- S. 114 (1.3) (f) (ii) is a bit different, but still refers to classes of consumers/distributors/retailers in respect of which prescribed adjustments would be made.
- S. 114 (2) confirms that a regulation made under s. 114 (1) or (1.3) may be general or particular in its application.

Of course, we could be more express, but that would inevitably draw attention to the fact that the consumers who may receive the benefit of the adjustment and the consumers paying for the initiatives don't exactly line up. Just to keep it in mind, there are two sets of consumers we're talking about here...the ones who are funding the initiatives (ie, the "consumers" referred to in clause (c)), and the ones who would be within a class that would get the benefit of the adjustment that all consumers pay (the consumers who would be within the prescribed class). I think you're only prescribing the latter. Happy to discuss.

Comment [JPR9]: Relates to the legacy GGRA funding of GAM work.

(3) Section 25.33 of the Regulation is amended by adding the following subsection:

Additional requirements

(9) The Lieutenant Governor in Council may, by regulation, require the IESO, a distributor, retailer, generator or any other licence holder to take the steps prescribed by the regulations in the manner and time prescribed by the regulations, in order to implement or facilitate the implementation of the adjustments for the amounts referred to in clauses (1) (c), (1)(d) and (1)(e), ~~and (2) (c), (2)(d) and (2)(e).~~

1. Given the potential breadth of application of this provision, I thought it better to "surface" it into the provision itself, and not just deal with it in the reg-making provision. Again, my earlier caveats apply...it's hard to know in the abstract what this would and wouldn't authorize. Obviously not something that would conflict with the Act. Long story short, without specifics there's no guarantee that this'll let you do what you need it to do, at the end of the day.

2. The fact that this is specific to clauses (c) may attract comment, e.g., why would you need this for clauses (c) and not for clauses (a) or (b)?

Comment [JPR10]: Relates to the legacy GGRA funding of GAM work.

x. (1) Subclause 114 (1.3) (f) (ii) of the Regulation is amended by adding “under subsection 25.33 (2)” after “that must or may be made”.

TBD whether s. 114 (1.3) (f) (i) and (ii) need further amendment, given the inclusion of the new clause (c) in s. 25.33 (1) and (2). I don’t see anything at this point that would need changes. *[ntd-jpr: Thanks, OLC Counsel: – could we also consider s.114(1.3)(f) from the perspective of s.25.33(1)(d), (e) and (2)(d), (e).]*

Formatted: Font: Italic

(2) Subsection 114 (1.3) of the Regulation is amended by adding the following clause:

- (g.0.1) requiring the IESO, a distributor, retailer or generator or any other licence holder to take specified steps, including [...], in order to implement or facilitate the implementation of the adjustment of the amounts referred to in clauses 25.33 (1) (c) and (2) (c), and prescribing the manner in which and the timing by which the steps must be taken,

Please provide examples, if possible, so that we can consider, (a) whether this regulatory authority is sufficient, and (b) whether to refer to the examples expressly.

TBD whether s. 114 (1.3) (f) (xii) – (xv) are to be amended in any way. They provide authority to require that various actors provide information to various other actors “for the purposes of section 25.33 or a regulation made under this clause”. If your clients are interested in a reporting requirement relating to the actual GHG reduction initiatives, then I think that if that authority doesn’t already exist elsewhere, it could be added, but not here. As I read it, this is really reporting in respect of the adjustments, set-offs, credits, payments, etc.

- Just a flag, in case it matters, that a couple of these information-sharing subclauses are subject to s. 114 (6) of the Act, which deals with agreements to the contrary.

ONTARIO ENERGY BOARD ACT, 1998

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

- 6. To facilitate the implementation of the policies of the Government of Ontario respecting climate change ~~mitigation-smoothing~~ and greenhouse gas reduction.

7. To facilitate the implementation of the policies of the Government of Ontario respecting the smoothing of electricity prices.

Formatted: Font: Not Bold

Formatted: Font: Not Bold

x. Section 2 of the Act is amended by adding the following paragraph:

7. To facilitate the implementation of the policies of the Government of Ontario respecting climate change ~~mitigation-smoothing~~ and greenhouse gas reduction.

Formatted: Indent: Left: 0", First line: 0"

x. Section 27.1 of the Act is amended by adding the following paragraph:

Hearings

(1.1) A directive may specify whether the Board is to hold a hearing, the circumstances under which a hearing may or may not be held and, if a hearing is to be held, the type of hearing to be held and the time within which it must be held.

The underlined is what makes this different from the other provisions in the Act that basically have the same wording. There are already a number of places in the Act where you have this type of hearings provision re directives (e.g., s. 27.2 (7)). If you basically want the same authority in each instance, then the wording should be consistent in each case. There are already some discrepancies between the current provisions (e.g., s. 27.2 (7) talks about types of hearings, whereas s. 28 (2) doesn't). Differences in wording will typically be presumed to be differences in meaning. So, the question is what you're intending to authorize in each case, and whether differences are intended. If you want the same thing everywhere, it should all be worded the same. Let me know.

x. The Act is amended by adding the following section:

Payments to the Entity, etc.

78.6 (1) The IESO shall make payments to the entity referred to in Part X of the Electricity Act, 1998 with respect to amounts borrowed by that entity for the purposes of mitigating their electricity prices:

Interest, etc.

(2) The IESO shall make payments to the entity referred to in Part X of the Electricity Act, 1998 with respect to any interest paid or payable by the entity in respect of the

Comment [JPR11]: This next section combines the IESO's authority (requirement) to make payments to the entity and to recover amounts from consumers in accordance with the OEB-supervised (approved) payments and cost recovery schedule. It's a light-handed way of putting the OEB in a supervisory role without licensing. The IESO has to annually report on the payments to / from the entity and amounts collected from consumers, including any month-to-month/year-to-year variances.

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Not Bold

Formatted: Font: Bold

amounts borrowed by that entity on behalf of consumers for the purposes of mitigating their electricity prices;

Amount and timing of payments.

(3) The amount and timing of the payments referred to in subsection (1) shall be Clients: option 1: approved by the Board?

: option 2: prescribed by the Regulations?

: option 3: a function of the financial contracts and other arrangements referred to in s. 25.32. (1) of the *Electricity Act, 1998* [A new provision we've just designed?]

Debts of entity

(3) The payments referred to in subsections (1) and (2) are deemed to be debts payable to or accounts receivable of the entity and not those of the IESO:

IESO to collect

(4) The IESO shall collect from consumers the amounts referred to in subsection (1) and (2) on behalf of the entity, and recover those amounts from consumers, on behalf of the entity, over time, in accordance with the regulations or any order of the Board *[ntd-jpr: this allows the OEB to establish a repayment schedule and collection (cost-recovery) schedule.]*;

Variance accounts, etc.

(5) For the purposes of this section, the IESO shall establish one or more variance or deferral accounts to separately track, administer and pay the amounts referred to in this section.

Board oversight

(6) At least once during each fiscal year and as often as the Board may require, the IESO shall submit to the Board and the Board shall review, a report detailing the payments and amounts that the IESO has paid or collected under this section:

(a) Payments made during the fiscal year to the entity;

(b) The amounts collected on behalf of the entity from consumers;

(c) The amounts which are reflected in any deferral or variance accounts *[ntd-jpr: which track or reflect the differences]*;

(d) Such other information as the regulations or the Board may from time to time require.

Commencement

xx. This Act comes into force on [insert commencement rule].

Formatted: Highlight

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Indent
at: 0.5"

Formatted: Font: Italic

Formatted: Indent: Left: 0.5"

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Indent
at: 0.5"

Formatted: Font: Italic

Formatted: List Paragraph, No bullets or
numbering

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Indent
at: 0.5"

Formatted: Font: Italic

Formatted: List Paragraph, No bullets or
numbering

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Indent
at: 0.5"

Formatted: Font: Italic

What are the commencement instructions?

Page 5: [1] Formatted	Rehob, James (ENERGY)	02/09/2017 11:34:00 AM
-----------------------	-----------------------	------------------------

Numbered + Level: 1 + Numbering Style: i, ii, iii, ... + Start at: 1 + Alignment: Left +
Aligned at: 1" + Indent at: 1.5"

Page 5: [2] Formatted	Rehob, James (ENERGY)	02/09/2017 11:34:00 AM
-----------------------	-----------------------	------------------------

Numbered + Level: 1 + Numbering Style: i, ii, iii, ... + Start at: 1 + Alignment: Left +
Aligned at: 1" + Indent at: 1.5"

Page 5: [3] Formatted	Rehob, James (ENERGY)	02/09/2017 11:47:00 AM
-----------------------	-----------------------	------------------------

List Paragraph, No bullets or numbering

Clean energy = transition
adjustment charges



specified consumers will
be invoiced as part
of repayments of
auto debt

- fair adjustments = amendments
to EAV

① Not for next 5 yrs (until
2022)

② No CPI - 2018

Excess costs
in budget
landmark list
of specific, with
too do each
thing

THROPS
05955

Bell
085079

\$781
\$5499

February 27, 2017

Mr. Serge Imbrogno
Deputy Minister,
Ministry of Energy
4th Floor, Hearst Block
900 Bay Street
Toronto, Ontario
M7A 2E1

Dear Deputy:

Below is a summary of OPG's preliminary views on the implementation of the Province's proposed Global Adjustment Smoothing Account and financing structure. These views are contingent on the proposed terms and conditions that were sent to the Ministry of Energy on February 21, 2017.

Understanding that the finalization of the legal terms, the Trust indentures, financing structure and other detailed terms will take several months and will involve collaboration between legal counsel, input from capital markets, parties involved and other stakeholders, this letter is intended to provide the guideline and framework which could form the foundation of the plan.

Please do not hesitate to contact me if you have any questions regarding this summary.

Sincerely,

Mr. Ken Hartwick
Chief Financial Officer and Senior Vice President, Finance
Ontario Power Generation
W: 416-592-6985
C: 647-544-6985
ken.hartwick@opg.com

cc. Jeff Lyash, President and CEO, OPG

Background:

The Province has indicated that it will take steps to reduce electricity bills in the near term. It has identified reductions in the Global Adjustment Charge (GAC) charged to electricity customers as a means to achieve its policy goals. The Province is proposing to temporarily reduce the amount of the GAC charged to electricity customers (primarily RPP-eligible customers). The exact quantum and duration of the program is still not known but based on discussions with the Province GAC charges of approximately \$2-5B per year for the next 5-10 years would be deferred and collected over future periods commencing after the deferral period. A combination of senior debt and subordinated debt (mainly sourced by additional equity from the shareholder) would be issued to fund the amount deferred. The financing cost of the debt and other costs of running the program would form part of the amounts recovered from customers over the term of the program.

The Province has requested that OPG administer the GAC deferral, because of OPG's participation in the market, regulatory knowledge and the potential ability to consolidate the activity and accounting with OPG. Given the significant amount of financing required for the GAC deferral, OPG has developed a financing structure (depicted below) to:

- restrict the risk to OPG;

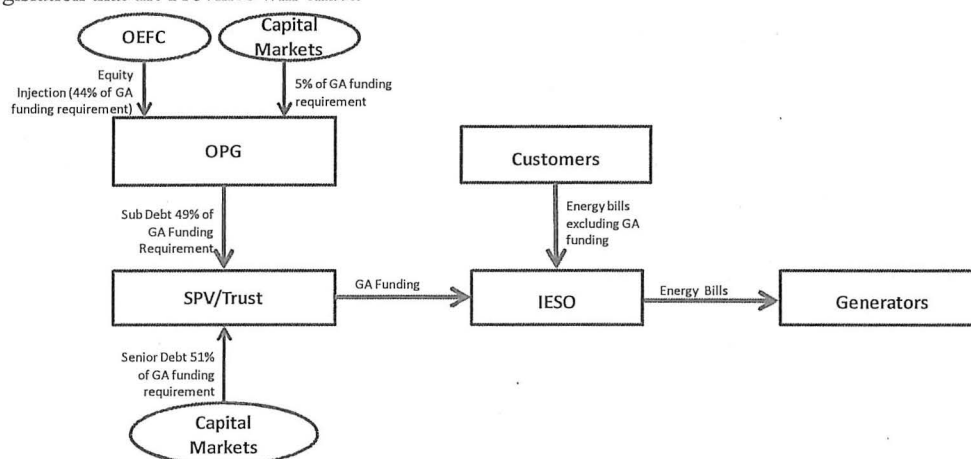
White Paper
Global Adjustment Deferral - Discussion Paper
Ontario Power Generation (OPG)

- maximize the cost-effectiveness of the Trust or the Special Purpose Vehicle (“SPV”) financing vehicle; and
- allow for consolidation into OPG financial statements.

The success of this structure is dependent on achieving a number of objectives which are reviewed in the following sections:

- Ability to Recognize an Asset and Record Revenue
- Ability to Consolidate the SPV into OPG
- Ability to Finance
- External Assessment
- Risk Summary

All of the percentages shown in the graphic below are indicative and will be highly dependent on the legislation that the Province will enact:



Process:

The IESO will effectively sell the ‘right to collect’ deferred future revenue from ratepayers (GA Recovery Right asset) to the SPV in return for cash proceeds. In order for the SPV to purchase this asset the SPV will obtain the financing from two key sources: 51% directly from capital markets and 49% as subordinated debt from OPG. OPG will obtain 44% of this financing as an equity injection from the Province and 5% from capital markets.

A. Ability to Recognize an Asset and Record Revenue

Accounting Requirements under International Financial Reporting Standards (IFRS)

- 1) It is our understanding that the IESO and KPMG have concluded that the sale of this ‘right to collect’ future revenue (or regulatory asset) is not a financing transaction and will not be recorded as a financial liability. Based on that conclusion, the right to collect will be accounted for as an intangible asset in the SPV.
- 2) In order to the SPV to record this right as an intangible asset, the right must meet the following conditions:
 - The intangible asset must be separable and arise from a contractual or legal right (i.e. mandated by the Legislation and SPV Indenture Agreement).
 - The SPV must have the control and power to obtain future economic benefits from the intangible asset.
 - The SPV must be able to demonstrate that the intangible asset is purchased at fair value.

- 3) In order for the SPV to recognize appropriate revenue to offset any ongoing costs, the Legislation must require interest, carrying and administrative costs to be paid to the SPV on a monthly basis. This may result in additional amounts to be deferred to achieve the desired customer impact. Payment of revenue to the SPV is also important to service the interest expenses of the debt.

B. Ability to Consolidate the SPV into OPG under IFRS

OPG 'Control' of the SPV - Accounting Requirements

- 1) In order to meet the accounting definition of 'control', accounting guidance must be considered. There are no bright lines to determine whether OPG has exposure, or rights, to variable returns from its involvement with the SPV, or whether it has the ability to affect the returns of the SPV through its power over the SPV. Rather, all facts and circumstances are considered when assessing whether an entity has control over another entity. Based on the relevant accounting guidance under IFRS, OPG has proposed terms necessary to demonstrate that OPG has control over the SPV. OPG's external auditors, Ernst & Young, has provided their concurrence that based on the information provided to them to date that the following conditions should permit consolidation of the SPV by OPG.

Directive:

1. The SPV must be undertaken by OPG as a business initiative on its merits. A Shareholder Directive is to be limited to direct OPG to investigate the option of establishing a SPV vehicle to administer, finance and operate the Global Adjustment plan. The control, risk and rewards of that SPV will determine its consolidation into OPG as a business enterprise.

SPV:

2. The SPV should not operate in a predetermined way such that OPG does not have decision-making authority over the SPV's ongoing activities after its formation (i.e. should not operate on 'autopilot').
3. OPG must have the ability to appoint and remove the Trustee (or Board of Trustees), with no veto right by the Province. No party shall have the ability to remove OPG from its role and authority in the SPV.
4. The Province cannot have the right to veto OPG's decisions about the relevant activities of the SPV. OPG must have the power over the relevant activities of the SPV and be compensated. The relevant activities of the SPV include (but are not limited to) the evaluation and decisions on financing alternatives, duration, and the strategy to minimize financing costs. OPG must have the power to establish operating and capital budgets of the SPV.
5. OPG must have the power to determine or change operating and financing policies of the SPV, which will affect the variability of risks and returns.
6. The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following:
 - The SPV
 - Any of OPG's investments in the most subordinated debt of the Trust
7. OPG must own greater than 50% of the most subordinated debt and targeted to be no less than 5%¹ of the total debt of the SPV. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources. A quantitative analysis should be performed at a later date to corroborate the appropriateness of the 5% threshold to support that the 5% subordinated debt investment is sufficient to absorb most of the expected variability in the SPV.
8. OPG must have the ability to earn variable returns by exercising its authority, which shall be accomplished as follows:

¹ While the rest of the letter refers to a 10% investment in the most junior subordinated debt with OPG owning 5%, it should be noted that OPG should own more than 50% of the most subordinate debt. For simplicity, the degree to which OPG's ownership beyond 50% is not shown in this letter.

- a. The cash flow from the restructured asset shall include interest determined based on a relevant benchmark that is appropriate relative to the restructured asset, plus an appropriate margin consistent with the relevant market and other risks
- b. OPG shall have the authority to determine the financing strategy, which will vary the financing costs with the objective of enabling the SPV to achieve a more favourable return compared to the return from the restructured asset
- c. The SPV shall establish classes of liabilities (senior, subordinated and the most subordinated). The classes would allow the SPV to delineate financing of lower risk investment and investment that would bear higher residual risk. The delineation would limit OPG's self-funded investment to a reasonable level in order to allow OPG to remain a self-sustaining entity.
- d. OPG shall, through its ownership of the most subordinated liability, be able to capture and retain the pricing difference between cost of financing and benchmark for interest on the restructured asset, or any residual risk of restructured asset. The targeted return of the subordinated liability should be reflective of the underlying risks and compensate holders for active management that would be required.
- e. OPG should participate in the detailed design of the above and the SPV documentation to ensure that it has substantive power and variability, which will allow OPG's Board of Directors to evaluate the opportunity as a business initiative instead of through a shareholder directive.

Notwithstanding the above, under certain Defined Forced Majeure for emergency events (e.g. unlikely credit market event or disruption where it is not possible to borrow from the market at a reasonable rate), the OEFC may provide bridge financing beyond the designated percentage for a defined period. The relevant terms should ensure that this temporary measure does not detract from the rights of OPG to direct all of the relevant activities of the SPV. Additionally, OPG should not be protected from risk of loss by the OEFC with respect to its subordinated investment, nor should it lose its right to derive the residual returns should such bridge financing be required.

Legislation

9. The Legislation must require interest, carrying and administrative costs to be paid to the SPV on a monthly basis, so that the SPV is able to recognize appropriate revenue to offset any ongoing costs.
 10. The Legislation must dictate the manner in which the restructured asset would be determined, collected, and the period of collection, so that the determination of the restructured asset will not be subject to the Province's decisions on an ongoing basis, but determined based on a formula. Alternatively, the Legislation may allow for an adjustment to the pre-determined deferral formula based on specific parameters that would limit the adjustment to the restructured asset. Adjustments beyond the specific parameters would require approval by the Board of Trustees.
 11. The Legislation must be written to avoid legal or constitutional challenges and be irrevocable to reduce the cost of borrowing and with a specific formula which determines the deferral amount. As irrevocability would be difficult under Canadian law one mitigation would be to provide a Provincial guarantee which only applies with cancellation or amendment of the legislation.
 12. The spirit of the above terms should be reflected in the SPV Indenture Agreement as well as Legislation, wherever possible.
- 2) The Trust is expected to be financed as follows:
- 51% senior secured debt from external markets
 - 39% senior subordinated debt from OPG (via Province equity injection into OPG)

White Paper
Global Adjustment Deferral – Discussion Paper
Ontario Power Generation (OPG)

- 10% junior subordinated debt from OPG (5% from external markets and 5% from Province equity injection into OPG).

When assessing control, an investor shall consider the nature of its relationship with other parties and whether those parties are acting on the investor's behalf (i.e. they are 'de facto agents'). If OPG is assessed to be a 'de facto agent' of the Province, it will compromise the ability for OPG to consolidate the Trust. The split above is to meet the following conditions to ensure that OPG is not considered a 'de facto agent' of the Province:

- The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following:
 - The Trust
 - Any of OPG's investments in the most subordinated debt of the Trust
 - OPG must own greater than 50% of the most subordinated debt and targeted to own no less than 5% of the total debt of the Trust. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources.
- 3) The Province will need to conclude on whether OPG still meets the definition of a Government Business Enterprise as defined under Public Sector Accounting Board standards in order to obtain the preferred consolidation treatment after the transaction. We also recommend that the Province to undertake the analysis deemed necessary to confirm the accounting treatment in its consolidated Public Accounts, including if the recognition of the intangible asset would result in an offsetting liability in the Public Accounts.

C. Ability to Finance

Property Right or Right to Collect

Legislative Requirements for Financing

The GA Recovery Right must be structured to encompass the following elements:

- Right to recover from and bill Ontario electricity customers for (1) the principal amount of GA that is being deferred, (2) all interest and other financing costs incurred in respect of the deferral of the GA, (3) all fees, expenses and other administrative costs associated with such financing;
- Repayment/amortization schedule as agreed by the IESO and any purchaser of such GA Recovery Right (or pursuant to a pre-defined schedule/formula that covers all of the purchaser's principal, interest and ongoing financing costs on a monthly basis);
- Repayment/amortization schedule must include a true up mechanism to ensure all costs associated with the deferral can be recovered from customers;
- IESO may dispose of the GA Recovery Right, provided that any such disposition shall be a true sale and absolute transfer to the purchaser of the IESO's right, title and interest in and to the GA Recovery Right;
- Purchaser will have the right to require the IESO (or any successor) to collect the principal amount of GA Recovery Right, together with interest, financing and administration costs, on the agreed repayment/amortization schedule;
- Right must be irrevocable and, if amended by future governments, debt holders have the right of action against the government to recover the amount outstanding including interest, fees, expenses and any damages resulting from the amendment;
- GA Recovery Right will not be subject to any set-off, counterclaim or other defence by the IESO or any successor or affiliated entity; and
- Make certain amendments to the Electricity Act to allow OPG to implement the SPV financing structure (e.g. allowing OPG to create subsidiaries and holding companies, and to have a beneficial interest in the SPV, etc). This would provide flexibility to accommodate possible variations to the financing structure that may be desirable over time.

Detailed legislative requirements are specified in the attachments as follows:

White Paper
Global Adjustment Deferral - Discussion Paper
Ontario Power Generation (OPG)

Attachment 1 Legislative requirements to allow deferral of global adjustment amounts to be financeable

Attachment 2 Statutory amendments

The proposed financing structure for the SPV is:

	Risk Profile	Source	% of Total Funding Requirements
Tranche A Senior Debt	The least risky	Capital Markets	51%
Tranche B Sub Debt	In between A&C	OPG via OEFC	39%
Tranche C Sub Debt)	The most risky	OPG via OEFC	5%
		OPG via Capital Markets	5%

SPV structure is used to accomplish the following:

- SPV holds right to charge customers for the benefit of debt holders;
- Allows the financing vehicle to be ring-fenced from OPG as an SPV structure is set up as generally single purpose entities with no other operations that could add risk to the SPV, dilute debt holder rights, allow parties from other operations to claim rights to the future recovery from customers or allow these other parties to initiate bankruptcy proceedings;
- Enables SPV to potentially get a higher credit rating than OPG;
- Supports consolidation with OPG provided accounting requirements are satisfied;

This approach supports a number of objectives of the GA Recovery Right:

- 51% external senior debt supports separation of the SPV from the Province
- 5% junior subordinated debt establishes OPG's "at risk" equity which supports separation of the SPV from the Province
- Subordinated debt provides flexibility to the financing structure and additional credit support to external debt holders
- Subordinated debt sourced from OPG (mainly funded by equity injection from the Province) minimizes impact on OPG credit metrics reducing risk of an OPG rating downgrade that could result in the SPV being consolidated directly with the Province as the SPV would be considered an arm of the Province.

Recent transactions used as precedents are:

Duke Energy Florida Project Finance LLC

June 2016

5 series of bonds totalling USD\$1.3B

Weighted average life from 2 to 19 years with interest rates from 1.2% to 3.1%

Credit rating AAA

Utility Debt Securitization Authority

Sponsored by Long Island Power Authority

March 2016

Amount issued USD\$0.6B

Weighted average life of 12 years and weighted average yield of 2.7%

August 2016

Amount issued USD\$0.5B

Weighted average life of 7 years and weighted average yield of 2.0%

Credit rating AAA

Cumulative outstanding (including previous issuances): USD\$4.2B

D. External Assessment

Shakerhill Partners, an external advisor, identified the following items in an assessment of the structure and financeability of the structure:

- The structure is financeable however there are a number of significant risks to the structure:
 - Canadian and Ontario law does not provide the same protection to property right as exists in the US federal and state constitutions to limit the ability of governments to adversely impair contracts to the detriment of the holder;
 - Legislation could mitigate some of the risks – deferred recovery asset to be “uncapped”, regular semi-annual true up to ensure recovery, Province provides sufficient committed liquidity to the IESO so that temporary shortfall in recovery does not affect payments to SPV, term of the deferral recovery substantially exceeds the longest maturity of debt of the SPV and that true-up mechanism take account of potential for currency, interest rate and duration mis-match between the debt of the SPV and the recovery mechanism;
 - Size of the program may be too large for Canadian securitization market requiring access to the US securitization market;
- Final maturity of debt should not exceed 30 years from inception of the program
- True up mechanism should be designed such that the forecast of recovery is less than 10% of the customer bill under downside scenarios to limit growth of the deferral balance as a higher portion of the customer bill increases the political risk to debt holders which could result in a lower credit rating and potential impact on financeability
- Securitized debt products are specialized and price at a premium to other fixed rate instruments however a successful program supported by a strong credit rating this premium could shrink over time to a minor spread over Provincial debt
- OPG’s credit rating should be maintained provided sufficient equity is injected to maintain credit metrics
- While the structure is not expected to impact the Province there are risks that the program could negatively impact the rating agencies view of the Province’s financial management.

E. Risk Summary

i. Consolidation

- Elements of the proposed structure were established to support consolidation of the SPV into OPG. These items may not be sufficient to establish OPG as risk owner of the SPV and the SPV may need to be consolidated directly with the Province.

ii. Financeability

- The legislation establishing the structure and the property right for recovering the financing and associated costs may not be adequate for financing purposes resulting in more expensive financing or an inability to obtain the required external financing.

iii. Cost of Financing

- Future governments may enact legislation that changes the right of the SPV to recover amounts from customers.
- The right to recover amounts from future customers must be irrevocable and subject to full recovery from the government in the event that future governments reduce or eliminate the recovery. A legal structure that is weaker than the precedent US transactions increases the risk to debt holders and the cost of financing.
- Interest rates on bonds in the securitization market are higher than equivalent rated bonds. Rate for a AAA securitization credit is about 50 bps higher than GOC (rated AAA) for a 5 year term. This difference is attributable to the specialized structure of the bond, smaller investor pool for this bond, smaller size of the market and higher perceived risks of the bond.
- Any regulator involvement must not be seen to modify any terms of debt issued or the property right securing the debt as this would increase risk to debt holders.

- It may not be possible to issue debt to match the terms of the deferred asset so shorter term debt would be used which raises risk to re-finance the maturing debt as the market may no longer be interested in this product. As well, underlying reference interest rates may be higher and the market may require a higher spread to invest in this product.
- With the GA Recovery Right program continuing for 10 years, debt issued over this period is subject to changes in both the underlying reference interest rates and appetite of the market for this product.

iv. OPG Credit Rating

- Minimizing the impact of significant additional debt on OPG's credit rating is dependent on higher EBITDA arising from earned income on the GA Recovery Right in excess of external debt. Ability of the SPV to record revenue reflecting the growth in asset value.
- Potential OPG credit rating downgrade if legislative structure is not adequate to support long term recoverability, inability to record revenue from growth in asset value or agencies view equity injection as debt.
- OPG credit rating downgrade could result in loss of GBE status or result in SPV being consolidated directly with the Province.

**LEGISLATIVE REQUIREMENTS
TO ALLOW DEFERRAL OF
GLOBAL ADJUSTMENT AMOUNTS TO BE FINANCEABLE**

The IESO currently has a right to collect GA monthly from ratepayers through provisions in the *Electricity Act, 1998*. It is proposed that collection of a certain portion of the monthly GA be deferred for collection in the future, and that the right to recover the deferred GA from ratepayers be used as a basis for structured financing/securitization.

The current proposal is for a trust to be created as a financing vehicle (the “**Trust**”) in connection the deferred GA. The Trust will finance the deferral of the GA by purchasing the right to recover such deferred GA from the IESO for the principal amount of the GA being deferred. For example, if the amount of GA that is being deferred is \$200 million in a given month, the Trust will purchase from the IESO the right to future recovery of the deferred GA and the associated financing costs (including interest and transaction costs) for \$200 million in cash.

The Trust is expected to finance these purchases from the IESO through a combination of senior secured financing raised in the capital markets and subordinated financing from OPG (the funding for which will mostly be from equity injections from the OEFC/Province).

For accounting purposes, OPG will need to have the ability to direct the activities of the Trust, through a services agreement and/or through the Trust’s constating document.

Based on securitized financing raised by utilities in the US (backed by utility cost recovery orders) and the current regulatory framework in Ontario, the legislation in Ontario would need to be amended to provide the following, at a minimum:

1. The IESO will be empowered to create an asset (the “**Regulatory Asset**”) consisting of all right, title and interest in and to:
 - (a) right to recover from and bill Ontario electricity ratepayers for:
 - (i) the principal amount of GA that is being deferred for collection;
 - (ii) all interest and other financing costs incurred in respect of the deferral of the GA (whether through senior debt raised in the public markets or subordinated debt raised from OPG or others); and
 - (iii) (subject to the comments in paragraph 5 below in respect of OPG’s internal administrative costs only) all fees, expenses and other administrative costs associated with such financing, including up-front and ongoing financing costs and any indemnity payments;

all on such repayment/amortization schedule as agreed by the IESO and any purchaser of such right (or pursuant to a pre-defined schedule/formula in the legislation that covers all of the purchaser's principal, interest and ongoing financing costs on a monthly basis); and

(b) all revenues, collections, claims, rights to payments, money or proceeds arising from the rights and interests set out in paragraph (a) above, regardless of whether such revenues, collections, claims, rights to payments, money or proceeds are imposed, billed, received, collected or maintained together with or commingled with other revenues, collections, rights to payments, payments, money or proceeds.

2. The IESO may dispose of the Regulatory Assets created from time to time on such terms as the IESO determines in accordance with the terms of directives to be issued to the IESO from time to time by the Minister, provided that any such disposition shall be a true sale and absolute transfer of the IESO's right, title and interest in and to a Regulatory Asset to the purchaser of the Regulatory Asset.
3. The Regulatory Assets will not be subject to any set-off, counterclaim or other defence by the IESO or any successor or affiliated entity thereof.
4. The legislation will need to recognize the Regulatory Assets as amounts that may be recovered by the IESO (e.g. it could be designated as a "GA Deferral" and would be included in the amounts collectible by the IESO through the GA collection mechanism, and would include interest and financing costs).
5. The purchaser of the Regulatory Asset will have the right to require the IESO (or any successor) to collect the principal amount of GA deferred, together with interest, financing and administration costs, on the agreed repayment/amortization schedule. **[NTD: In the LIPA securitization rate order, if the entity that is authorized to collect rates to service the bonds ends up defaulting, there is the ability to request a court to order "sequestration" and payments of amounts owing to the owner of the Regulatory Asset. Consider whether to include a similar right here. Alternatively, consider whether a security interest over the moneys collected by the IESO could be provided to the purchaser.]**

OEB would be provided with oversight over the internal administrative costs collected by the Financing Trust. This could be accomplished by (a) providing the purchaser of the Regulatory Asset with the right to require

the IESO or a successor to collect only the principal amount of GA together with interest and financing costs and third party fees and expenses, and (b) requiring the IESO to collect amounts through the global adjustment and make payments to the purchaser of the Regulatory Asset with respect to the internal administrative costs incurred by the purchaser in connection with the purchase and management of the Regulatory Asset and the Financing Trust, in accordance with the order of the OEB then in effect. Under this mechanism, the OEB would be required to review the purchaser's internal administrative costs through a streamlined process and issue such orders in accordance with rules to be prescribed under a new regulation under the OEB Act, which would clearly limit the OEB's scope of review and could establish the basis for the purchaser to receive an appropriate fee for its services.

6. In the event that any action is taken or permitted by the Province or any regulatory authority that limits, alters, or impairs the value of a Regulatory Asset or reduces the ability of the IESO or the purchaser of the Regulatory Asset to collect or recover the costs associated therewith, the owner of the Regulatory Asset and the holders of any bonds or other securities issued to finance the purchase of the Regulatory Asset, will have a right of action against the Province for any damages suffered as a result of such amendment.

STATUTORY AMENDMENTS

The following is preliminary and is based on our current understanding of the proposed structure and objectives. For example, we have assumed that the structure will not entail the insertion of a new Holdco between OPG and the Province. As these aspects are refined, some of the suggested amendments described below may not be needed and other aspects that we are not aware of may need to be considered. Accordingly, these suggested amendments are provided for discussion purposes and are subject to change. We would welcome the opportunity to work with OPG and the Ministry on refining the scope and substance of required legislative and regulatory amendments.

A. Amendments to Implement Structure

Certain *Electricity Act*, 1998 amendments would be needed to implement the anticipated structure (which we understand, as noted above, would not include a Holdco), as follows:

- **Section 53.1(1):** Amend to permit owning and operating generation facilities through subsidiaries (not only directly through OPG). In addition, amend to permit OPG to administer, manage, loan moneys to and have a beneficial interest in, if applicable, Financing Trust.
- **Section 53.2:** Amend to permit the Minister to acquire, hold, dispose of or otherwise deal with securities or debt obligations of, or any other interest in, OPG or any subsidiaries. This is to accommodate possible variations to the financing structure that may be desirable over time.
- **Section 53.■ (new):** New statutory section to permit the Minister to enter into arrangements relating to an exercise of powers under 53.2.
- **Section 53.■ (new):** New statutory section providing that creditors of Financing Trust have no recourse to the assets of OPG or any of its subsidiaries (other than Financing Trust, if applicable). In addition, consideration should be given as to whether the Act should be amended so that the Financing Trust cannot be wound up or liquidated.

B. Miscellaneous Corporate Items to Address

- **OPG Articles:** Amend the OPG's articles to remove the private company restrictions.
- **MOA with Province:** Consider whether any amendments to OPG's MOA with the Province are required to contemplate the Financing Trust.

C. Amendments Under Electricity Act to Implement GA Smoothing

Based on our understanding that the global adjustment smoothing mechanism is intended to benefit residential and small business customers only and that the Minister will be responsible for determining how much global adjustment smoothing is to be applied in a given month, if any, amendments to the *Electricity Act, 1998* and Ontario Regulation 429/04 (Adjustments Under Section 25.33 of the Act) would be needed to implement the mechanism, as follows:

(i) **Electricity Act:**

- **Section ■ (New):** Establish a new power for the Minister to make directives to the IESO in relation to the global adjustment smoothing mechanism and, particularly, for purposes of establishing global adjustment smoothing amounts from time to time (expected to be monthly). To the extent possible, the directive power should be drafted so as to limit the ability for a future Minister to require the IESO to do anything that would materially and adversely affect the Financing Trust or its lenders. **[NTD: While our understanding is that the Minister would direct this, we note from other materials we have seen that OPG may instead be recommending a formula approach. It is not clear what the formula would look like, where it would be set out or how it would be applied and by whom]**
- **Paragraph 25.33(1):** This section says that IESO shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of market participants reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require IESO to ensure that, over time, payments by prescribed classes of market participants also reflect amounts paid to Financing Trust. **[NTD: Not certain this is needed if only to benefit residential and small business consumers, who are not market participants. May be needed in reference to payments from distributors and retailers]**
- **Paragraph 25.33(2):** This section says that distributors and retailers shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of consumers reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require distributors and retailers to ensure that, over time, payments by prescribed classes of consumers also reflect amounts paid to Financing Trust.
- **Note:** As described below, the regulation will need to include new requirements for the IESO to record the global adjustment smoothing amounts in one or more variance accounts and to use those amounts to offset amounts otherwise recorded in the variance accounts under Section 25.33(3) of the Act. For context, we note:
 - o Section 25.33(3) says that adjustments under (1) or (2) relating to electricity consumed by consumers whose rates are determined by

the OEB under s. 79.16 of the OEB Act (i.e. RPP Customers) shall instead be made in accordance with the regulations to one or more variance accounts established and maintained by the IESO.

- Section 25.33(4) says IESO, distributors and retailers shall make and receive such payments, set-offs and credits as may be required or permitted by the regulations with respect to consumers described in (3), i.e. RPP Customers.
- Section 25.33(5) says that IESO shall establish and maintain such variance accounts as may be needed to record all amounts payable or receivable by it under 25.33.

(ii) **O. Reg. 429/04 (Adjustments Under Section 25.33 of the Act):**

- **Section 1(1):** Consider adding definitions for “Financing Trust” and “global adjustment smoothing amount” or such other terms as may be preferred.
- **Section 1.2(1) (New):** Add section providing that, for the purposes of this Regulation, the global adjustment smoothing amount for a month is the amount determined by the IESO in accordance with a directive from the Minister under section ■ of the Electricity Act in respect of the month. [NTD: See above note re use of Minister directives]
- **Section 1.2(2) (New):** Consider adding a section providing that the IESO shall publish the global adjustment smoothing amount for a month by no later than the 10th business day of the following month [to align with general publication requirements for global adjustment under s. 1.1(2)].
- **Section 10(1):** Amend formula for calculating Class B GA rate by subtracting the global adjustment smoothing amount for a month from "M", which is the total amount of the global adjustment for the month. The global adjustment smoothing amount could be designated as "X", such that the formula would be $(M-X-N)/(P-Q)$. Define "X" as the global adjustment smoothing amount for the month as determined by the IESO in accordance with the Minister's directive under section ■ of the Electricity Act for the month. [NTD: See above note re use of Minister directives]
- **Section 10.1 (New):** Add new section to deal with adjustments under subsection 25.33(3) of the Act, i.e. in respect of RPP consumers. This section should require the IESO to establish, within the variance account(s) it maintains pursuant to subsection 25.33(3) of the Act, one or more subaccounts in which it shall record the global adjustment smoothing amounts applicable to the classes of consumers described in subsection 25.33(3) of the Act. This section must also specify that the IESO shall apply the amounts recorded in the subaccounts against the balances in the variance accounts for purposes of section 79.16(3) of the OEB Act.

- **Note:** This is a key aspect because, when the OEB determines RPP rates, it must take into account the balances in the variance accounts established by the IESO under s. 25.33 of the Electricity Act and make adjustments with a view to eliminating the balances within 12 months. This proposed new section 10.1 causes the IESO to reduce (in the near term) the variance account balances by the global adjustment smoothing amounts, as provided by Financing Trust, thereby enabling the OEB to determine RPP rates that, despite being lower for RPP consumers in the near term, still eliminate the relevant variance account balances within 12 months.
- **Paragraph 11(2)2.ii:** Amend the formula for calculating the allocation of global adjustment for a month to a licensed distributor that is a market participant by subtracting the global adjustment smoothing amount for a month from “M”, which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as “X”, such that the formula would be $[(M-X-N) \times (R+S-T)]/(P-Q)$. Define “X” as suggested under section 10(1).
- **Paragraph 11(2)3:** Amend the formula for calculating the allocation of global adjustment for a month to each Class B market participant by subtracting the global adjustment smoothing amount for a month from “M”, which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as “X”, such that the formula would be $[(M-X-N) \times U]/(P-Q)$. Define “X” as suggested under section 10(1).
- **Paragraph 16(7)4:** Consider amending the description of “Global Adjustment” that is required to be included on certain invoices so as to inform consumers that their portion of the global adjustment for the month (i) may have been reduced by the application of a global adjustment smoothing amount from the Financing Trust, or (ii) may include amounts payable to the Financing Trust in respect of global adjustment smoothing amounts previously applied.
- **Section 20(1):** This section establishes an obligation for the Ontario Electricity Financial Corporation and every licensed distributor that is a market participant to give the IESO such information as the IESO may require for the purposes of the Regulation in the form specified by the IESO and before the expiry of the period specified by the IESO. Consider amending to extend this obligation to the Financing Trust.
- **Section 20(6):** This section provides that on request by the OEB, the IESO, a licensed distributor, an embedded generator, a retailer or the OEFC shall give the OEB such information relating to this Regulation as the OEB may require, in the form and within the period specified by the OEB. Consider amending to extend this obligation to the Financing Trust.

D. Amendments Under OEB Act to Implement Cost Recovery for Financing Trust

Amendments to the *Ontario Energy Board Act*, including amendments to O. Reg. 95/05 (Classes of Consumers and Determination of Rates) and the introduction of a new regulation, would be needed to implement a cost recovery process for the Financing Trust in relation to the global adjustment smoothing mechanism, potentially with limited OEB oversight, as follows:

(i) Ontario Energy Board Act:

- **Section 78(3.3):** This provision establishes an obligation for the OEB, when determining rates for the retailing of electricity, to take into account balances in variance accounts established under section 25.33 of the Electricity Act and to make adjustments “with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct.” Consider whether any amendments are needed, and confirm this works with the framework being proposed.
- **Section 78.7 (New):** We understand that the Province may want the OEB to have an oversight role. One possible approach would be to establish a new statutory section establishing that the IESO shall make payments to the Financing Trust with respect to the internal administrative costs incurred by the Financing Trust in connection with the purchase and management of the Regulatory Asset and the Financing Trust. Such payments by the IESO would need to be made in accordance with the order of the OEB then in effect, which orders shall be made by the OEB in accordance with rules prescribed under a new regulation.
 - o The new regulation would need to be clear that the OEB does not have jurisdiction to consider the principal amount or any interest, financing costs, third party fees or expenses. Rather, OEB’s role would be limited to considering the internal administrative costs of the Financing Trust and ensuring the Financing Trust receives an appropriate fee for its services, all of which would be recovered by the Financing Trust from the IESO, which would collect those amounts in the global adjustment. Note that, if this approach is accepted, the IESO and distributors and retailers would need the authority to collect such amounts as part of the GA and IESO would need the authority to pay such amounts to the Financing Trust. As such, additional amendments would be needed under O. Reg. 429/04.
- **Note:** Section 79.16 of the OEB Act does not require changes, but the significance of this provision should be understood.
 - o Section 79.16 gives the OEB responsibility for determining electricity commodity prices for eligible consumers. Eligibility is determined under Reg. 95/05 (Classes of Consumers and Determination of Rates), which is also known as the Regulated Price Plan (RPP) Regulation.
 - o Section 4(2) of the RPP Regulation defines RPP-eligible consumers as low volume consumers (i.e. those who annually use less than 150,000 kWh

or such other amount as prescribed), consumers with demand of 50 kW or less, residential consumers that have accounts with distributors, consumers who annually use 150,000 to 250,000 kW of electricity, and consumers who have accounts with distributors if in the farming business.

- Paragraph 6(1)3 of the RPP Regulation provides that “In determining the rates (for RPP-eligible consumers), the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration adjustments required under section 25.33 of the *Electricity Act*, 1998 and shall ensure that the rates reflect those costs.”
- The Ontario Energy Board has developed a Regulated Price Plan Manual (revised February 16, 2016) to describe the processes and methodologies it uses for determining electricity commodity prices that are charged to RPP consumers pursuant to Section 79.16 of the OEB Act and paragraph 6(1)3 of the RPP Regulation.

(ii) O. Reg. 95/05 (Classes of Consumers and Determination of Rates)

- **Paragraph 6(1)3:** Amend so as to require the Board, when forecasting the cost of electricity to be consumed by the consumers to whom the rates apply, to take into consideration not only the adjustments required under section 25.33 of the *Electricity Act* but also the application or prior application of global adjustment smoothing amounts determined by the IESO in accordance with Minister directives under section ■ of the *Electricity Act*, and to ensure that the RPP rates reflect those amounts.
[NTD: See above note re use of Minister directives]

(iii) New Regulation (Payments to the Financing Trust)

- If the OEB is to be given the role of reviewing and approving the recovery of OPG's internal administrative costs for the Financing Trust under the potential section 78.7 (see above), then this regulation should describe the process and criteria pursuant through which the OEB would determine the amounts that the IESO would be required to collect through the global adjustment, in accordance with section 25.33 of the *Electricity Act*, and pay to the Financing Trust in respect of the provision of global adjustment smoothing amounts. This part of the regulation should establish:
 - any reporting requirements from the Financing Trust and/or the IESO to the OEB in connection with the global adjustment smoothing mechanism;
 - the frequency of the OEB making determinations under this part of the regulation;
 - the process through which the OEB shall make these determinations, which should be a streamlined administrative process rather than a public hearing process or, if a hearing is needed, then the scope of the proceeding should be clearly and narrowly constrained so as to deter intervenor involvement, lengthy proceedings and reduce/eliminate risk to recovery by Financing Trust;

- the basis for the OEB's determinations as to the payments that shall be made to the Financing Trust, which should specify that:
 - the Financing Trust shall recover its prudently incurred internal administrative costs on a forecast basis each year;
 - the Financing Trust shall receive an appropriate fee each year (with some guidance as to what would be appropriate); and
 - the approved payment amounts shall be collected by the IESO through the global adjustment and paid to the Financing Trust in accordance with the order of the OEB then in effect. Note that O. Reg. 429/04 would likely need amendments to permit IESO (and distributors and retailers) to collect these amounts through the global adjustment.

CONFIDENTIAL

JPR Instructs – GAM (Feb 10-17) based on GOV2016.146.e

2-TK

Formatted: Highlight

Formatted: Highlight

Electricity Amendment Act, 2016 (Proceeds Recycling)

EXPLANATORY NOTE

[Insert explanatory note.]

This draft has not been edited.

ENE to confirm consultation plans with MOECC and MOF (and CLB?)

ELECTRICITY ACT, 1998

1. Section 1 of the *Electricity Act, 1998* is amended by adding the following clauses:

- (d.1) to continue, create or facilitate the continuance or creation of initiatives that are reasonably likely to reduce or to support the reduction of greenhouse gas,¹ including initiatives relating to electricity conservation and efficiency or to the use of cleaner energy sources and technologies, and to provide mechanisms for mitigating related costs to consumers;

(d.2) to establish one or more mechanisms to facilitate the Government of Ontario's policy to smooth electricity prices and to recover from consumers the costs associated with such activities, including policies designed to ensure that those consumers who benefit from investments made in generation, conservation, demand-management and energy efficiency bear an appropriate share of those costs; ***Ntd-jpr: This new object is designed to provide further authority context for Government to be able to establish rate-(GA) smoothing mechanisms, including mechanisms which [re]-allocate the value future benefits to today's consumers ("intergenerational fairness" is the organizing principle), and costs associated with future benefits to future consumers. This is consistent with our CLB advice on the GAM proposals.]***

Comment [JPR1]: This portion of the drafting relates to the legacy GGRA work that we had done over the summer. It is a bit of a template for the work we're doing now with GAM refinancing.

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Italic

Ntd-jpr: Hi, OLC Counsel;. These amendments are focussed on two key changes to the existing global adjustment mechanism (GAM) provisions (including related regulation-making authority) associated with ENERGY's rate smoothing strategy.

Formatted: Not Highlight

Formatted: Not Highlight

Formatted: Not Highlight

¹ FLS: See s. 71 (2) para. 2 of the Climate Change... Act.

1) **IESO Makes payments to and from a newly-established entity** (e.g. corporation or trust) designed to borrow large sums of money on behalf of consumers and to pay amounts to the IESO to allow the IESO to pay those amounts into GAM as an offset to the amounts that consumers would otherwise have to pay (similar to the GGRA idea but instead of receiving money from Government's GGRA (an account within the crf) this would be money from an entity which deals at arms length from both Government and the IESO. Dan Shear is to instruct on the entity. The real difference between the payment flows between the IESO under the GGRA scenario versus "the entity" scenario is that for the latter, the IESO would also be collecting amounts to **repay the entity** (including capital and interest charges) for the amount the entity borrows. Those amounts are collected from consumers. Significant amounts would need to be borrowed in order to lower consumers GAM-related costs up-front to give them an appreciable (25 or 30 percent) total bill reduction. The repayment schedule would increase over time and add to both the cost at the later end (see deck (Feb 6/17 version) at slides 5 – 9 for an indication of how the bill impact would look for average consumers over the next 15 to 20 years.).

Formatted: Font: Not Bold, Not Highlight

Formatted: Numbered + Level: 1 +
Numbering Style: 1, 2, 3, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Indent
at: 0.5"

Formatted: Font: Not Bold, Not Highlight

Formatted: Font: Not Bold, Not Highlight

Formatted: Not Highlight

Formatted: Font: Bold

INTD-JPR: We need to amend the IESO Fees-making provision at s.25.1 to ensure

x. **(2) Section 25.1 of the Act is amended by adding the following subsection:**

(2) the IESO shall establish a fee to recover from consumers ~~fall or a portion of? the~~ administrative, operational and management costs of the Financing Subsidiary to the financing or refinancing of all or a portion of the amounts otherwise payable by consumers pursuant to section 25.33 and the regulations, including but not limited to all or a portion of the administration and operating expenses of the entity *[corporation]* referred to in x.

Comment [JPR2]: I'm still considering whether we need to address the IESO's "Fees" provisions which could be designed to recover any amounts related to the costs associated with GAM refinancing: it may be redundant to the IESO's GAM cost-recovery authority specified below. However, it may be an important "back-stop" to the GAM-related authorities to ensure that stray amounts not easily relatable to the borrowed funds (such as a share of the new entity's administrative operating expenses) can be recovered.

Formatted: Not Highlight

Formatted: Not Highlight

Formatted: Not Highlight

Formatted: Font: Bold

(2.1) The IESO shall establish and maintain separate accounts reflecting the amounts collected from consumers and paid to the entity referred to s.53.x of the Act from any other books or accounts related to its operations or the fees that it collects for those purposes.

Formatted: Not Highlight

x. (1) **Clause 25.33 (1)(a) of the Act is amended by adding "the entity [corporation] referred to in section x", after "Financial Corporation" and replace "under section 78.1, 78.2 or 78.5" with "under 78.1, 78.2, 78.5 or 78.6".**

Comment [JPR3]: See in OEBA-related amendments: new s.78.6 to deal with IESO payments to new entity and OEB oversight.

x. (1) Subsection 25.33 (1) of the Act is amended by striking out “and” at the end of clause (a), by adding “and” to the end of clause (b) and by adding the following clause:

- (c) amounts received by the IESO, directly or indirectly, from the Greenhouse Gas Reduction Account established under section 71 of the *Climate Change Mitigation-Smoothing and Low-Carbon Economy Act, 2016* for the funding of greenhouse gas reduction initiatives under this Act or the *Ontario Energy Board Act, 1998* for which the costs are, or would otherwise be, borne in whole or in part by consumers.

Comment [JPR4]: This relates to potential GGRA funding via GAM.

- (d) amounts received by the IESO, directly or indirectly, from **[the entity referred to in Part x]**, for which the costs are, or would otherwise be, borne in whole or in part by consumers. *Intd-jpr: part of the rate-smoothing plan relating to GAM is to create a separate entity (either a trust or other not-for profit entity which is capable of either borrowing or receiving borrowed funds and ensuring that the borrowed funds themselves and the costs of the borrowed funds, (e.g. the interest/financing costs which are expected to be quite significant), are recovered from consumers. The current plan is to have the IESO continue to act as the settlement agent for consumers – it would receive amounts from the entity to flow into and through GAM using those amounts to reduce GAM liability, and recover and much much later down the road, the costs of borrowing (capital plus interest) from consumers. The GAM-related amendments are designed to ensure that there is an appropriate “line in” and “line out” of GAM in respect of amounts the IESO is supposed to receive from the entity and, over time, pay out to the entity relating to the borrowed funds and interest costs.*

Comment [JPR5]: These are the costs related to GAM which consumers are otherwise responsible for, but for which the amounts paid out by the new entity are being used, in part, to address (lower).

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

- (e) amounts payable by the IESO, on behalf of consumers, to **[the entity referred to in Part x]**.

Formatted: Font: Not Bold

(2) Subsection 25.33 (2) of the Act is amended by striking out “and” at the end of clause (a), by adding “and” to the end of clause (b) and by adding the following clause:

- (c) amounts received by the IESO, directly or indirectly, from the Greenhouse Gas Reduction Account established under section 71 of the *Climate Change Mitigation-Smoothing and Low-Carbon Economy Act, 2016* for the funding of greenhouse gas reduction initiatives under this Act or the *Ontario Energy Board Act, 1998* for which the costs are, or would otherwise be, borne in whole or in part by consumers.

OLC Counsel: next we need to require that distributors make adjustments in their account which recognize the funds (amounts) received from the IESO that are

paid by the entity (the borrowed funds) in order to combine those amounts with the amounts that consumers will pay under clause 25.33(2)(a):

- (d) amounts received by the IESO, directly or indirectly, from Financing Subsidiary for which the costs are, or would otherwise be, borne in whole or in part by the following classes of consumers:

Formatted: Font: Not Bold

Comment [JPR6]: These are the costs related to GAM which consumers are otherwise responsible for, but for which the amounts paid out by the new entity are being used, in part, to address (lower).

- (i) Consumers who participate in the Board's Regulated Price Plan established under section 79.16 of the *Ontario Energy Board Act, 1998*; *[ntd-jpr: to which subsection 79.16 and regulations made thereunder apply.] Note: s.79.16(1) authorizes the OEB to create its Regulated Price Plan (RPP) and O. Reg. 95/05 (Classes of Consumers and Determination of Rates) fixes the classes of consumers who are eligible to participate in the RPP. Some "opt out" (per s.79.16(4) for retail contracts – I assume that they, too, would be entitled to receive the benefits of and costs of "rate smoothing"]. and,*

Formatted: Numbered + Level: 1 + Numbering Style: i, ii, iii, ... + Start at: 1 + Alignment: Left + Aligned at: 0.74" + Indent at: 1.24"

Formatted: Font: Bold

- (ii) Consumers who are eligible to participate in the Board's Regulated Price Plan established under section 79.16 of the *Ontario Energy Board Act, 1998* and who have entered into a contract with a retailer;

Formatted: Indent: Left: 1.24", First line: 0"

Formatted: Numbered + Level: 1 + Numbering Style: i, ii, iii, ... + Start at: 1 + Alignment: Left + Aligned at: 0.74" + Indent at: 1.24"

- (iii) Consumers who are served by a sub-metering entity; *[ntd-jpr: this provision may require further discussion/building out.]*

Formatted: Font: Not Italic

Formatted: List Paragraph, No bullets or numbering

Formatted: Numbered + Level: 1 + Numbering Style: i, ii, iii, ... + Start at: 1 + Alignment: Left + Aligned at: 0.74" + Indent at: 1.24"

- (e) amounts payable by the IESO, on behalf of consumers, to the Financing Subsidiary.

Formatted: Font: Bold

Formatted: Font: Not Italic

[ntd-jpr: one of the purposes of our GA-related work is to reflect the "intergenerational" nature of the benefits (and costs) that we're attempting to reallocate. I've tried to tailor an object (mocked-up above as an amendment to s.2).

Comment [JPR7]: Here we're ensuring that distributors must recognize amounts that consumers have to pay back to the entity (and its financiers) including borrowed funds, interest and carrying charges. Probably has to include admin and operational-related costs of running the entity.

x. Section 25.33 is amended by adding the following subsection after subsection (5):

Formatted: Font: Not Bold

Formatted: Font: Italic

[OLC Counsel:, below I'm trying to clarify that for the GGRA funds received by the IESO, that the IESO may be required (via regulation – amendments to O. Reg. 429/04) to settle certain contracts and classes of contracts with certain generators and classes of generators using GGRA amounts. This is to ensure that Government can always track the GGRA funds as specifically and separately as required in order to match those amounts paid out of the GGRA with the GHG-lowering initiatives which the contracts and classes of contracts represent].

Formatted: Font: Italic

GGRA funding, separate payments and tracking,

Formatted: Font: Bold

(5.1) If required by the regulations, the IESO shall separately track and account for the amounts it receives pursuant to clause 25.33(1)(c) and to direct such amounts to the contracts and generators or classes of contracts and generators as may be prescribed.

Financing Subsidiary funding, separate payments and tracking.

(5.2) For the purposes of ensuring that amounts received from the Financing Subsidiary are paid toward the costs consumers are otherwise required to bear pursuant to section 25.33, the IESO shall, on behalf of consumers or the Financing Subsidiary,

- (a) allocate amounts received from the Financing Subsidiary toward the amounts otherwise payable by consumers under section 25.33(1) in accordance with *[ntd for clients: need instructions here: the schedule approved by the Board? Alternativley, do we plan to place instructions right in the legislation? Consider.]*
- (b) recover the amounts *[ntd: these are the amounts borrowed by the financing sub including interest costs]* to be paid by the IESO to the Financing Subsidiary pursuant to subsection 25.33(2) from consumers in accordance with *[ntd for clients: need instructions here: the schedule approved by the Board? Alternativley, do we plan to place instructions right in the legislation? Consider.]*
- (c) recover the amounts, on behalf of the Financing Subsidiary, of administrative, operating *[ntd-jpr: operational?]* and management costs and fees associated with the Financing Subsidiary's *[ntd: rate smoothing?]* activities conducted on behalf of consumers from consumers.
- (d) separately track and account for,
 - (i) the amounts received from the Financing Subsidiary *[ntd: and allocated toward the amounts/costs provided for under section 25.33 (1) that consumers would otherwise bear;*
 - (ii) the amounts paid to the Financing Subsidiary *[ntd: related to the amounts referred to in sub-clause (i)];*
 - (iii) the amounts that that the IESO pays to the Financing Subsidiary related to the Subsidiary's administrative, operational and management costs;
 - (iv) the amounts related to (iii) that are recovered from consumers; and,

Comment [JPR8]: This is just preserving the GGRA-tracking/tracing to specific FIT and GEIA contracts amounts. The IESO must separately track for future audit.

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Indent: Left: 0.5"

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Not Bold, Not Italic

Formatted: List Paragraph, No bullets or numbering

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: List Paragraph, No bullets or numbering

Formatted: Numbered + Level: 1 +
Numbering Style: i, ii, iii, ... + Start at: 1 +
Alignment: Left + Aligned at: 1" + Indent at: 1.5"

Formatted: Indent: Left: 1.5"

Formatted: Numbered + Level: 1 +
Numbering Style: i, ii, iii, ... + Start at: 1 +
Alignment: Left + Aligned at: 1" + Indent at: 1.5"

Formatted: Font: Not Italic

Formatted: Indent: Left: 1.5"

Formatted: List Paragraph, No bullets or numbering

Formatted ... [1]

Formatted: Indent: Left: 1.5"

Formatted ... [2]

Formatted ... [3]

- (v) any variances between the amounts reflected in subclauses (i) and (ii), or the amounts reflected in subclauses (iii) and (iv) or such variances which relate to any of the amounts reflected in subclauses (i) through (iv) that the IESO deems appropriate;

Formatted: Numbered + Level: 1 +
Numbering Style: i, ii, iii, ... + Start at: 1 +
Alignment: Left + Aligned at: 1" + Indent at:
1.5"

Formatted: English (U.K.)

Formatted: List Paragraph, No bullets or
numbering

True up,

(5.3) The IESO shall annually, or more frequently as is practicable, recover from consumers and pay to the Financing Subsidiary, any amounts determined under this section *[ntd: could isolate to subsection (5.2)]* which are due and payable to the Financing Subsidiary.

Formatted: Font: Bold

Formatted: Font: Not Bold

Formatted: Font: Bold

Entity funding, distributors, separate payments and tracking,

(5.3) If required by the regulations, distributors and retailers shall separately track and account for the amounts received from the IESO, and payments it makes to the IESO, the entity *[corporation]* referred to under Part X of the Act, pursuant to *clause 25.33(1)(d) or (e)*, and to direct such amounts to the entity *[corporation]* in such manner as may be prescribed.

Instructions (for ensuring reg-making authority can capture what it needs to) how O. Reg. 429/04 would need to reflect (track separately) both the amounts related to GGRA funding and / or funded via refinancing (settlements with the new "Entity")

Formatted: Highlight

Formatted: Font: Bold, Highlight

Formatted: Highlight

Formatted: Font: Bold, Highlight

Formatted: Highlight

Formatted: Font: Not Bold, Highlight

Formatted: Numbered + Level: 1 +
Numbering Style: 1, 2, 3, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.26" + Indent
at: 0.51"

Formatted: Font: Not Italic

Formatted: Font: Not Bold, Highlight

Formatted: Highlight

Formatted: Font: Not Bold, Highlight

Formatted: Indent: Left: 0.51"

Formatted: Numbered + Level: 1 +
Numbering Style: 1, 2, 3, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.26" + Indent
at: 0.51"

Formatted: Font: Not Bold, Highlight

O. Reg. 429/04, s.1.1 - New "J" for Master Formula -- Reflecting the Re-Financing of GAM at the Regulation Level

-Define new element of master formula, "J", to track amounts funded through the new entity (e.g. the amount to be financed). Then ensure that the Master formula reflects either the "inclusion" of this amount

J is the net amount received or owed to the entity under Part X of the Act and which relates to the amounts:

1. Received by the IESO *[each month]* from the entity in accordance with *[the schedule approved by the Board]* under s.x; plus,
2. Payable to the Entity each month by the IESO in accordance with the schedule approved by the Board under s. x.

Next, back up at the legislative level, could we next track this through to the reg. making authority in s.114(1.3)(f) I

Formatted: Font: Not Bold

Formatted: Not Highlight

Formatted: Font: Italic

Regarding whether we need to specify that adjustments under (c) may be made only with respect to certain classes of consumers, my current take is that I don't think so, and this is why:

Formatted: Font: Italic

- Both s. 25.33 (1) and (2) make clear in their opening flushes that the adjustments may be with respect to certain, but not all, market participants/consumers.
- S. 114 (1.3) (f) (i) provides authority to prescribe classes of market participants and consumers to whom adjustments will apply.
- S. 114 (1.3) (f) (ii) is a bit different, but still refers to classes of consumers/distributors/retailers in respect of which prescribed adjustments would be made.
- S. 114 (2) confirms that a regulation made under s. 114 (1) or (1.3) may be general or particular in its application.

Of course, we could be more express, but that would inevitably draw attention to the fact that the consumers who may receive the benefit of the adjustment and the consumers paying for the initiatives don't exactly line up. Just to keep it in mind, there are two sets of consumers we're talking about here...the ones who are funding the initiatives (ie, the "consumers" referred to in clause (c)), and the ones who would be within a class that would get the benefit of the adjustment that all consumers pay (the consumers who would be within the prescribed class). I think you're only prescribing the latter. Happy to discuss.

Comment [JPR9]: Relates to the legacy GGRA funding of GAM work.

(3) Section 25.33 of the Regulation is amended by adding the following subsection:

Additional requirements

(9) The Lieutenant Governor in Council may, by regulation, require the IESO, a distributor, retailer, generator or any other licence holder to take the steps prescribed by the regulations in the manner and time prescribed by the regulations, in order to implement or facilitate the implementation of the adjustments for the amounts referred to in clauses (1) (c), (1)(d) and (1)(e), and (2) (c), (2)(d) and (2)(e).

1. Given the potential breadth of application of this provision, I thought it better to "surface" it into the provision itself, and not just deal with it in the reg-making provision. Again, my earlier caveats apply...it's hard to know in the abstract what this would and wouldn't authorize. Obviously not something that would conflict with the Act. Long story short, without specifics there's no guarantee that this'll let you do what you need it to do, at the end of the day.

2. The fact that this is specific to clauses (c) may attract comment, e.g., why would you need this for clauses (c) and not for clauses (a) or (b)?

Comment [JPR10]: Relates to the legacy GGRA funding of GAM work.

x. (1) Subclause 114 (1.3) (f) (ii) of the Regulation is amended by adding “under subsection 25.33 (2)” after “that must or may be made”.

TBD whether s. 114 (1.3) (f) (i) and (ii) need further amendment, given the inclusion of the new clause (c) in s. 25.33 (1) and (2). I don’t see anything at this point that would need changes. *[ntd-jpr: Thanks, OLC Counsel: – could we also consider s.114(1.3)(f) from the perspective of s.25.33(1)(d), (e) and (2)(d), (e).]*

Formatted: Font: Italic

(2) Subsection 114 (1.3) of the Regulation is amended by adding the following clause:

- (g.0.1) requiring the IESO, a distributor, retailer or generator or any other licence holder to take specified steps, including [...], in order to implement or facilitate the implementation of the adjustment of the amounts referred to in clauses 25.33 (1) (c) and (2) (c), and prescribing the manner in which and the timing by which the steps must be taken,

Please provide examples, if possible, so that we can consider, (a) whether this regulatory authority is sufficient, and (b) whether to refer to the examples expressly.

TBD whether s. 114 (1.3) (f) (xii) – (xv) are to be amended in any way. They provide authority to require that various actors provide information to various other actors “for the purposes of section 25.33 or a regulation made under this clause”. If your clients are interested in a reporting requirement relating to the actual GHG reduction initiatives, then I think that if that authority doesn’t already exist elsewhere, it could be added, but not here. As I read it, this is really reporting in respect of the adjustments, set-offs, credits, payments, etc.

- Just a flag, in case it matters, that a couple of these information-sharing subclauses are subject to s. 114 (6) of the Act, which deals with agreements to the contrary.

ONTARIO ENERGY BOARD ACT, 1998

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

- 6. To facilitate the implementation of the policies of the Government of Ontario respecting climate change ~~mitigation-smoothing~~ and greenhouse gas reduction.

7. To facilitate the implementation of the policies of the Government of Ontario respecting the smoothing of electricity prices.

Formatted: Font: Not Bold

Formatted: Font: Not Bold

x. Section 2 of the Act is amended by adding the following paragraph:

7. To facilitate the implementation of the policies of the Government of Ontario respecting climate change ~~mitigation~~ smoothing and greenhouse gas reduction.

Formatted: Indent: Left: 0", First line: 0"

x. Section 27.1 of the Act is amended by adding the following paragraph:

Hearings

(1.1) A directive may specify whether the Board is to hold a hearing, the circumstances under which a hearing may or may not be held and, if a hearing is to be held, the type of hearing to be held and the time within which it must be held.

The underlined is what makes this different from the other provisions in the Act that basically have the same wording. There are already a number of places in the Act where you have this type of hearings provision re directives (e.g., s. 27.2 (7)). If you basically want the same authority in each instance, then the wording should be consistent in each case. There are already some discrepancies between the current provisions (e.g., s. 27.2 (7) talks about types of hearings, whereas s. 28 (2) doesn't). Differences in wording will typically be presumed to be differences in meaning. So, the question is what you're intending to authorize in each case, and whether differences are intended. If you want the same thing everywhere, it should all be worded the same. Let me know.

x. The Act is amended by adding the following section:

Payments to the Entity, etc.

78.6 (1) The IESO shall make payments to the entity referred to in Part X of the Electricity Act, 1998 with respect to amounts borrowed by that entity for the purposes of mitigating their electricity prices;

Interest, etc.

(2) The IESO shall make payments to the entity referred to in Part X of the Electricity Act, 1998 with respect to any interest paid or payable by the entity in respect of the

Comment [JPR11]: This next section combines the IESO's authority (requirement) to make payments to the entity and to recover amounts from consumers in accordance with the OEB-supervised (approved) payments and cost recovery schedule. It's a light-handed way of putting the OEB in a supervisory role without licensing. The IESO has to annually report on the payments to / from the entity and amounts collected from consumers, including any month-to-month/year-to-year variances.

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Not Bold

Formatted: Font: Bold

amounts borrowed by that entity on behalf of consumers for the purposes of mitigating their electricity prices;

Amount and timing of payments,

(3) The amount and timing of the payments referred to in subsection (1) shall be Clients: option 1: approved by the Board?

: option 2: prescribed by the Regulations?

: option 3: a function of the financial contracts and other arrangements referred to in s. 25.32.2(1) of the *Electricity Act, 1998* [A new provision we've just designed?]

Formatted: Highlight

Debts of entity

Formatted: Font: Bold

(3) The payments referred to in subsections (1) and (2) are deemed to be debts payable to or accounts receivable of the entity and not those of the IESO;

IESO to collect

(4) The IESO shall collect from consumers the amounts referred to in subsection (1) and (2) on behalf of the entity, and recover those amounts from consumers, on behalf of the entity, over time, in accordance with the regulations or any order of the Board *[ntd-jpr: this allows the OEB to establish a repayment schedule and collection (cost-recovery) schedule.]*;

Formatted: Font: Bold

Variance accounts, etc.,

Formatted: Font: Bold

(5) For the purposes of this section, the IESO shall establish one or more variance or deferral accounts to separately track, administer and pay the amounts referred to in this section.

Board oversight

(6) At least once during each fiscal year and as often as the Board may require, the IESO shall submit to the Board and the Board shall review, a report detailing the payments and amounts that the IESO has paid or collected under this section:

(a) Payments made during the fiscal year to the entity;

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Font: Italic

Formatted: Indent: Left: 0.5"

(b) The amounts collected on behalf of the entity from consumers;

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Font: Italic

Formatted: List Paragraph, No bullets or numbering

(c) The amounts which are reflected in any deferral or variance accounts *[ntd-jpr: which track or reflect the differences]*;

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Font: Italic

Formatted: List Paragraph, No bullets or numbering

(d) Such other information as the regulations or the Board may from time to time require;

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Font: Italic

Commencement

xx. This Act comes into force on [insert commencement rule].

What are the commencement instructions?

Page 5: [1] Formatted	Rehob, James (ENERGY)	02/09/2017 11:34:00 AM
-----------------------	-----------------------	------------------------

Numbered + Level: 1 + Numbering Style: i, ii, iii, ... + Start at: 1 + Alignment: Left +
Aligned at: 1" + Indent at: 1.5"

Page 5: [2] Formatted	Rehob, James (ENERGY)	02/09/2017 11:34:00 AM
-----------------------	-----------------------	------------------------

Numbered + Level: 1 + Numbering Style: i, ii, iii, ... + Start at: 1 + Alignment: Left +
Aligned at: 1" + Indent at: 1.5"

Page 5: [3] Formatted	Rehob, James (ENERGY)	02/09/2017 11:47:00 AM
-----------------------	-----------------------	------------------------

List Paragraph, No bullets or numbering

Entity Mandate

- The Following table depicts either a prescriptive or flexible mandate for a new entity established to manage Global Adjustment (GA) smoothing.
- This mandate could be established through legislation or through a combination of legislation and the constating documents of the organization (e.g. articles of incorporation, trust indenture) or a combination of both.
- The focus of the governance principles would be to reinforce the distance and independence the entity has from Government.
- OEB role (level of supervision) can be small or moderate depending upon need for oversight by an independent energy regulator versus risk perception of financiers.

Comment [DS1]: I assume this is not the place to discuss the nature of the entity itself, but rather its mandate? There are a number of additional points we could include about the nature of the entity if desired.

Element	Prescriptive Mandate	Flexible Mandate
Objective	- <u>Smooth impacts of the Global Adjustment Mechanism (GAM) in order to allocate costs to ratepayers across a [25 / 30] year time horizon, in accordance with the following parameters</u> - <u>Legislated loan and interest repayment mechanism with recourse to rate-payers only (cost of capital and financing costs)</u> - <u>OEB oversight (annually) but no licensing or rate-order.</u> - <u>Could have OEB set overall cap for collection each year, allowing entity to recover according to prescribed rules within specified range.</u>	- <u>Smooth impacts of the Global Adjustment Mechanism (GAM) in order to allocate costs to ratepayers across a 25-35 year time horizon, guided by the following parameters</u> - <u>All decisions to balance the interests of current and future ratepayers, taking into account factors including but not limited to:</u> - o Current and expected future demand for electricity - o Current and future expected number and composition of ratepayers - o <u>Total cost of electricity and expected future changes to the cost of electricity</u> - <u>Legislated loan and interest repayment mechanism with recourse to rate-payers only (cost of capital and financing costs)</u> - <u>OEB oversight (annually) but no licensing or rate-order.</u> - o <u>Could have OEB set overall cap for collection each year, allowing entity to recover at will within specified range.</u> - o <u>Could accommodate</u>

		<u>moderate role for OEB to manage/supervise entity's (and IESOs) collection schedule.</u> ○ <u>Ambit of OEB role could be constrained by reg.</u> - Current and expected future interest expenses
Sources of Financing	- Borrow via the Ontario Financing Authority (OFA) under commercial terms	- Seek lowest cost of financing either from the OFA or 3rd party lenders in order to balance cost and risk to ratepayers - Develop and deploy borrowing strategies to minimize cost and mitigate risk to ratepayers, considering factors above
GAM Payment & Financing Approach	- In year 1 provide \$X billion to finance the cost of GAM (hereafter known as "Annual Financed GAM Payment"), offset by a deferral account to be recovered from ratepayers - Over years 2 to x, reduce <u>Annual Financed GAM Payment</u> amounts, relative to the year 1 total (\$x billion), such that the decrease is not greater than 2% of the total annual cost of GAM from the prior year - Starting in year 1, recover, on a monthly basis, interest expenses related to accumulated debt from electricity ratepayers - Reduce <u>Annual Financed GAM Payment</u> amounts to \$0 or less (once less than \$0, this becomes a charge to ratepayers) in 12 to 15 years - In years a to b, Recover accumulated debt via a charge to ratepayers over remaining 10 to 13 years (25 years total), provided that the annual increase in the charge to ratepayers is not greater than 2% of the total annual cost of GAM from the prior year	- In year 1 provide \$X billion to finance the cost of GAM (hereafter known as "Annual Financed GAM Payment"), offset by a deferral account to be recovered from ratepayers - Each year, the New Entity will submit plans for approval to the OEB that propose a rolling [5 yr / 10 yr] declining <u>Annual Financed GAM Payment</u> schedule, such that the annual decrease is not greater than 3% of the total annual cost of GAM from the prior year. - <u>Prescribe criteria OEB to apply in approving or requiring changes to such schedule.</u> - Manage the recovery of interest expenses and administrative costs related to accumulated debt from electricity ratepayers - Manage the recovery of accumulated debt over a 25-35 year period - Financed <u>Annual GAM Payment</u> schedules and recovery of accumulated debt should take into account the interests of both current and future ratepayers, while ensuring long term financial stability for the

Comment [DS2]: It would also be possible to require the entity to seek lowest cost of financing from the OFA or 3rd party under the "Prescriptive Mandate".

Comment [DS3]: Any prudence test for admin costs?

		new entity.	
Mechanism for Recovery from Ratepayers	- Legislation would provide the entity with the right to recover debt, interest and administrative costs from rate payers. - Prescriptive mandate: legislation prescribes who pays and in what proportions - Broad mandate: Board has discretion to determine recovery. - <u>Amendments to Electricity Act, 1998 could specify:</u> - <u>Amendments to IESO mandate (objects) and GAM provisions to authorize IESO to receive and pay amounts from and to entity;</u> - <u>monthly amounts to be settled (separately) with IESO, distributors/retailers then collected from consumers and settle with IESO. IESO makes payments to entity. Separate reporting can be explicitly mandated.</u> - <u>IESO to report annually to OEB about these settlements separately.</u> - <u>Variance accounts established within entity, IESO, distributors to track payment flows and variances. OEB oversight of accounts (reporting only)</u> - <u>Optional: OEB could set overall cap for annual recovery and/or manage repayment schedule or could be prescribed.</u> - <u>Amendments to OEBA: "Rate mitigation" added to Board's objectives re electricity;</u> - <u>Entity: OEB could receive and review annual report from entity.</u> - <u>No OEB license or rate-order for entity (light touch) versus overseeing repayment schedule or even fixing / approving same (closer to rate-making).</u> - <u>IESO specifically required to make payments to entity;</u> - <u>Regulations prescribing criteria and rules re. payments as required.</u> - <u>Optional: Can further circumscribe OEB role re. setting cap or repayment schedule via reg. or</u> - <u>OEB could fix entity's rate: OEB's approval of internal/operating costs together with approval of schedule and setting hard cap.</u>	Formatted: Font: Bold Formatted: Font: Bold Formatted: Font: Not Bold Formatted: Font: Bold Formatted: Font: Bold Formatted: Font: Bold	
Ontario Energy Board Oversight	- New Entity to submit to the OEB on an [annual] basis its rolling 5 year declining <u>Annual</u> Financed GAM Payment schedule and / or charge ratepayers to demonstrate that the plan aligns with its mandate and maximizes benefit to both current and future ratepayers, while mitigating risks - New Entity to submit annual business plans to the OEB for review and approval. This review would exclude any pre-existing debt obligations and would ensure that all associated debt covenants are respected	Comment [DS4]: What do you mean by this?	
Contract with IESO	- New Entity to enter into a commercial, contractual arrangement with IESO whereby IESO will collect a portion of GAM to service debt (see <u>cost-recovery amendments above</u>) - Once the GAM payment switches to a charge (as described in "GAM Payment & Financing Approach"), the New Entity will contract collection from ratepayers to the IESO, while retaining all rights and obligations associated with collection of this charge - The contract between the New Entity and IESO will establish an annual (monthly?) mechanism to reset payment and recovery amounts, as	Comment [DS5]: Why do we need this? We can wrap this up in the overall settlements work performed by the IESO, with leg/reg support as needed.	

	established by through the Ontario Energy Board review process described above
--	--