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Ontario

MINISTRY OF
ENERGY

Rate Mitigation Plan Options

Working Draft

January 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 the to decarbonizing and modernizing the province's electricity sector, options for further rate mitigation include:

1. Global Adjustment (GA) Financing

2. Alternative to GA Financing – Contract Renegotiations
   - Contract Extensions – Wind and Solar; and
   - Clean Energy Supply (CES) Contracts.

3. Distribution Rate Relief

4. Other Electricity Support Programs Funded Through the Tax-base:
   - Ontario Electricity Support Program (OESP);
   - Low-Income Conservation; and
   - First Nations Rate.

5. Enhanced Tax-based RPP Rebate (5%)

Proposed Initiatives – Potential Savings for Typical Residential Electricity Consumers

$/750kWh	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**Timing of Benefit**
1. Global Adjustment (GA) Financing (Moderate)	-	17.49	15.01	12.49	14.91	6.32	4.03	Immediate
2. Alternative to GA Financing – Contract Renegotiations								
a. Contract Extensions – Wind and Solar								
b. Clean Energy Supply Contract								
3. Distribution Rate Relief								
4. Electricity Support Programs								
a. Ontario Electricity Support Program (OESP)*	-	0.83	0.83	0.83	0.83	0.83	0.83	Immediate
b. Low-Income Conservation	-	-	-	-	-	-	-	
c. First Nations Rate	-	-	-	-	-	-	-	
5. Enhanced Tax-based RPP Rebate (5%)	-	7.04	7.17	7.31	7.77	7.61	7.83	Immediate

***Note**: Savings based on currently approved OESP rate set by OEB.
Note: The above initiatives will provide similar benefits for non-RPP Class B electricity consumers. Class B includes small-medium enterprises (SMEs).

Proposed Initiatives – Potential Savings for Average Industrial Electricity Consumers (UPDATE Charts)

$/MWh	2016	2017	2018	2019	2020	2021	2022	Timing of Benefit
1. Global Adjustment (GA) Financing (Moderate)	-	14.49	12.43	10.33	12.35	5.23	3.33	Immediate
2. Fund Electricity Support Programs Through the Tax-Base								
a. RRRP	-	2.10	2.15	2.21	2.26	2.32	2.38	Immediate
b. OESP*	-	1.10	1.10	1.10	1.10	1.10	1.10	Immediate
c. Low-Income Conservation	-	-	-	-	-	-	-	
d. First Nations Rate	-	-	-	-	-	-	-	
3. Empowering Energy Agencies To Increase Cost Effectiveness and Improve Efficiency								
a. IESO – Market Renewal	-	-	-	-	-	1.34	1.38	Long-Term
b. OEB – LDC Efficiencies / Rates*	-	TBD	TBD	TBD	TBD	TBD	TBD	Medium-Term
c. OPG – Operational Efficiencies	-	0.59	0.74	0.89	1.01	1.12	1.03	Immediate
4. Enhanced Tax-based RPP Rebate (5%)	-	-	-	-	-	-	-	Immediate

***Note:** Savings based on current OESP charge as set by OEB.

Fiscal Impacts (Update Charts)

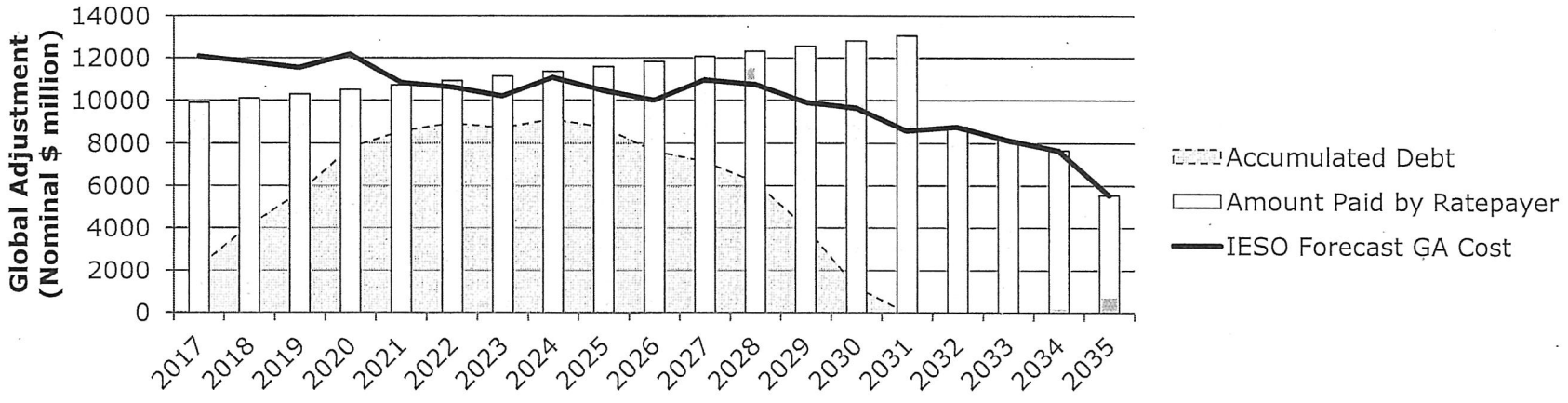
$M	2016-17	2017-18	2018-19	2019-20	2020-21
1. Global Adjustment (GA) Financing (Moderate)	TBC	TBC	TBC	TBC	TBC
2. Fund Electricity Support Programs Through the Tax-Base*					
a. RRRP	-	$457	$469	$479	$493
b. OESP	-	162	225	279	323
c. Low-Income Conservation	-	60	60	60	60
d. First Nations Rate	-	18	18	18	18
3. Empowering Energy Agencies To Increase Cost Effectiveness and Improve Efficiency					
a. IESO – Market Renewal	-	-	-	-	-
b. OEB – LDC Efficiencies / Rates	-	-	-	-	-
c. OPG – Operational Efficiencies**	-	-	-	-	-
4. Enhanced Tax-based RPP Rebate (5%)	169	699	679	732	724

***Note:** Includes costs of program expansion and various assumptions as detailed on relevant slides.
**** Note:** Risk to fiscal plan of up to $240 million annually (foregone net income) if OPG is unable to reach more aggressive operational efficiency targets.

Source: Ministry of Finance, Energy

1. Global Adjustment (GA) Financing

- It is proposed that the amount of global adjustment (GA) paid by ratepayers in each year over the forecast period is set at a fixed amount and money is borrowed to make up the remainder of the GA cost in each year.
- Starting on January 1, 2017, the amount of GA paid by ratepayers is set at a value lower than the true cost of GA in 2017 and is increased according to a pre-defined schedule until the debt has been paid off.
- GA costs will be "smoothed" over time by lowering costs in the short term and increasing costs in the long term.
- In some scenarios, the amount of GA paid by ratepayers *above* the expected actual cost of GA is capped so as to limit large increases in the cost of electricity in any given year.
- All analysis is based on forecasts from Independent Electricity System Operator (IESO), assumes a 5% annual borrowing interest rate and an inflation rate of 2% per year.

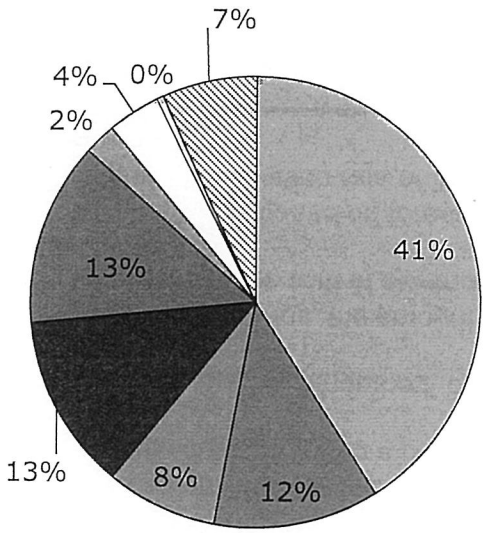


Sample financing: Ratepayers pay less than the cost of GA in early years, borrowing up to $9 billion that is fully paid off in 2031 by charging ratepayers more than the cost of GA in later years.

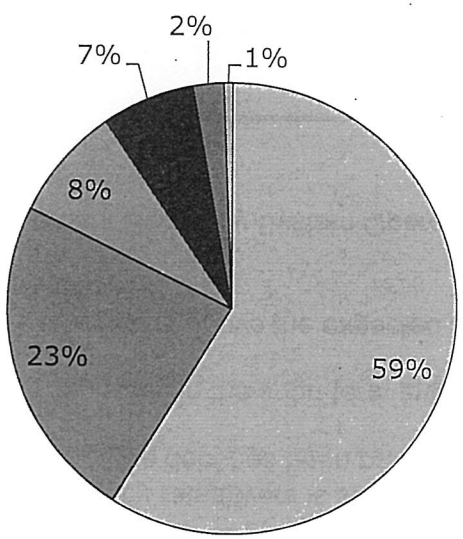
1. GA Financing – Cost Breakout

- 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



	GA ($B)	Gen. (TWh)
Nuclear	5,053	91
Hydro	1,473	36
Natural Gas	985	13
Wind	1,552	10
Solar	1,630	3
Biomass, Landfill and Byproduct	278	1
Conservation	467	
IEI Program	60	
OEFC*	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.

1. GA Financing – Options

1a. Moderate / GA Financing

- The amount of GA paid by ratepayers in 2017 is lowered by $3.1 and $3.3 billion below the true cost of GA and increases at 2% in each subsequent year until the total amount of money borrowed is paid off in 25 and 30 years respectively.
- Future GA over-payments above the true cost of GA are capped at $2 billion to limit electricity cost increases in any given year.

1b. Moderate / GA Financing with Delayed Increase

- The starting GA payment from all ratepayers in 2017 is lowered by $1.1 and $1.4 billion, ratepayer payments *decrease* in the short term to keep residential bills relatively flat, then increases at 3% each year – up to a maximum of $2 billion above the true cost of GA – until the borrowed money is paid back over a 25 and 30 year financing period respectively.

Low / GA Financing (see in Appendix)

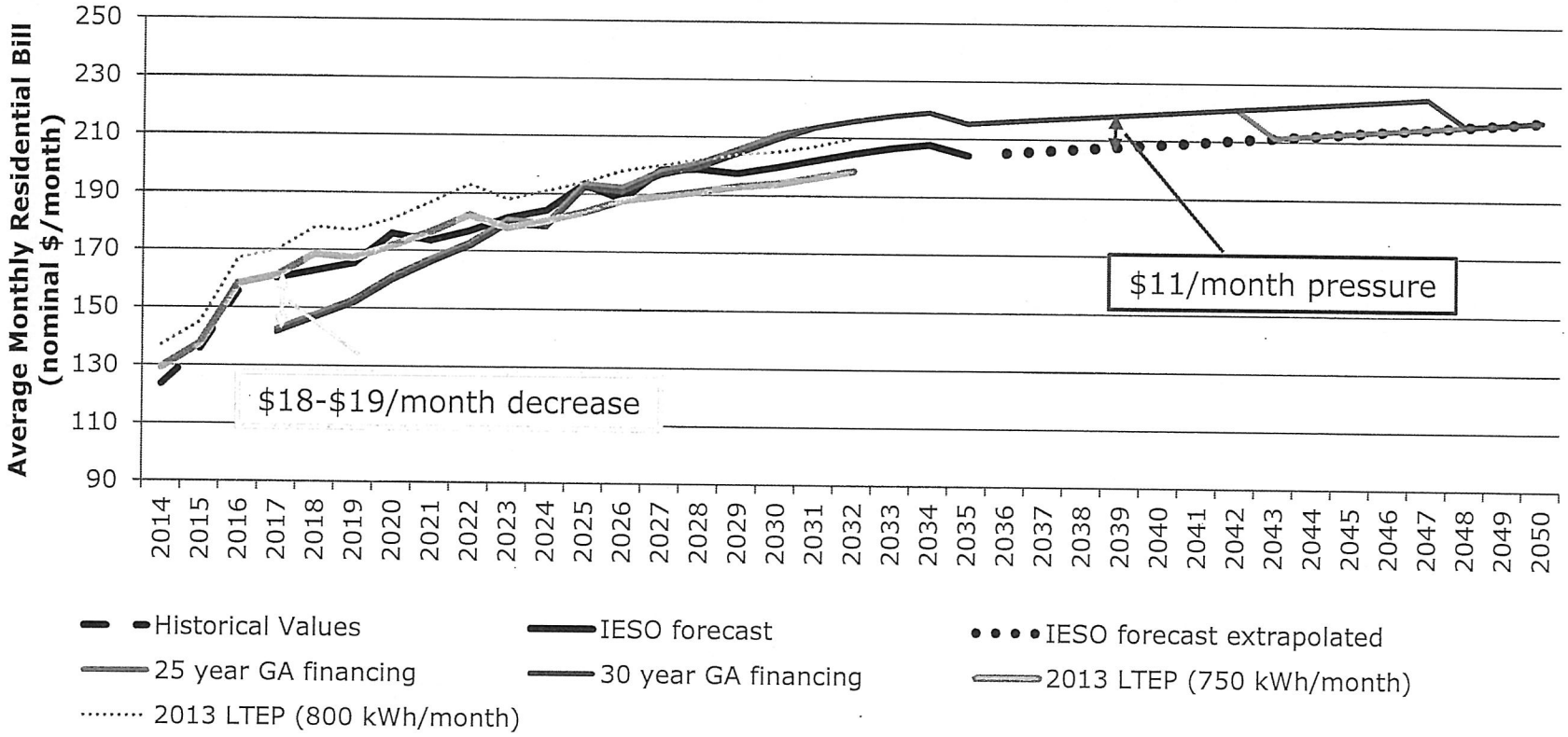
- The amount of GA paid by ratepayers in 2017 is lowered by $2.5 billion below the true cost of GA and increases in each subsequent year until the total amount of money borrowed is paid off.
- Future GA over-payments above the true cost of GA are capped at $2 billion to limit electricity cost increases in any given year.

High / GA Financing (see in Appendix)

- The amount of GA paid by ratepayers in 2017 is lowered by $4.4 and $5 billion below the true cost of GA and increases at 2% in each subsequent year until the total amount of money borrowed is paid off in 25 and 30 years respectively.
- No limit is placed on the amount charged to ratepayers above the true cost of GA.

1a. Moderate / GA Financing – Impact on Residential Electricity Bills

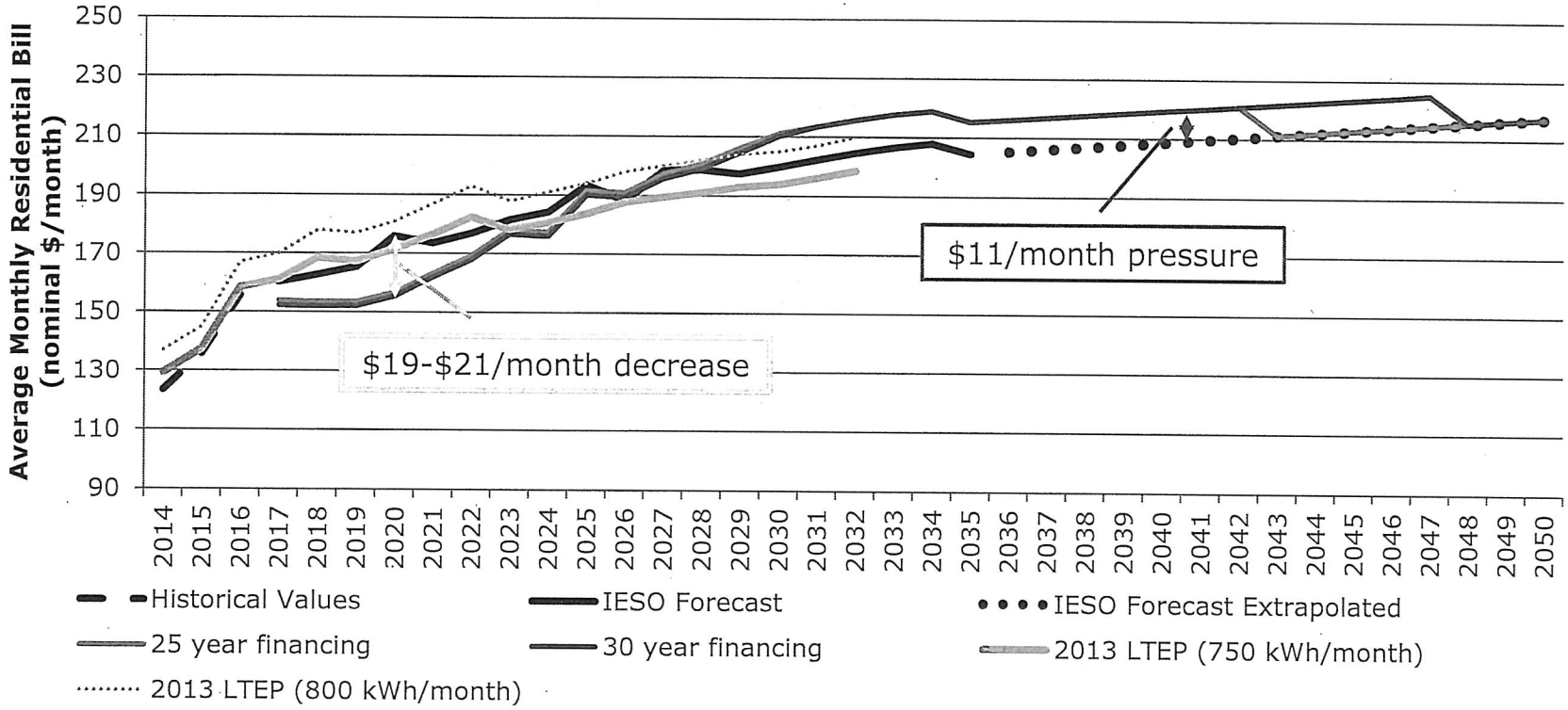
- In this scenario, the starting GA payment from all ratepayers in 2017 is lowered by $3.1 billion (green line) and $3.3 billion (red line) and increases at 2% each year – up to a cap of no more than $2 billion more than the true cost of GA in any year – until the borrowed money is paid back in 25 and 30 years respectively.



- By **borrowing up to $19-$23 billion**, this scenario results in **a short-term residential electricity cost reduction of up to $17-$19/month** at the cost of **increased future electricity bills over 14-19 years of up to $11/month** above the true cost of electricity production.

1b. Moderate / GA Financing with Delayed Increase in Payments – Impact on Residential Electricity Bills

- In this option, the starting GA payment from all ratepayers in 2017 is lowered by $1.1 billion (green line) and $1.4 billion (red line), ratepayer payments *decrease* in the short term to keep residential bills relatively flat, then increases at 3% each year – up to a maximum of $2 billion above the true cost of GA – until the borrowed money is paid back over a 25 and 30 year financing period respectively.



- By **borrowing up to $19-$23 billion**, this scenario results in **a short-term residential electricity cost reduction of up to $19-$21/month** at the cost of **increased future electricity bills over 14-19 years of up to $11/month** above the true cost of electricity production.

1. GA Financing – Considerations (cont'd) (Update)

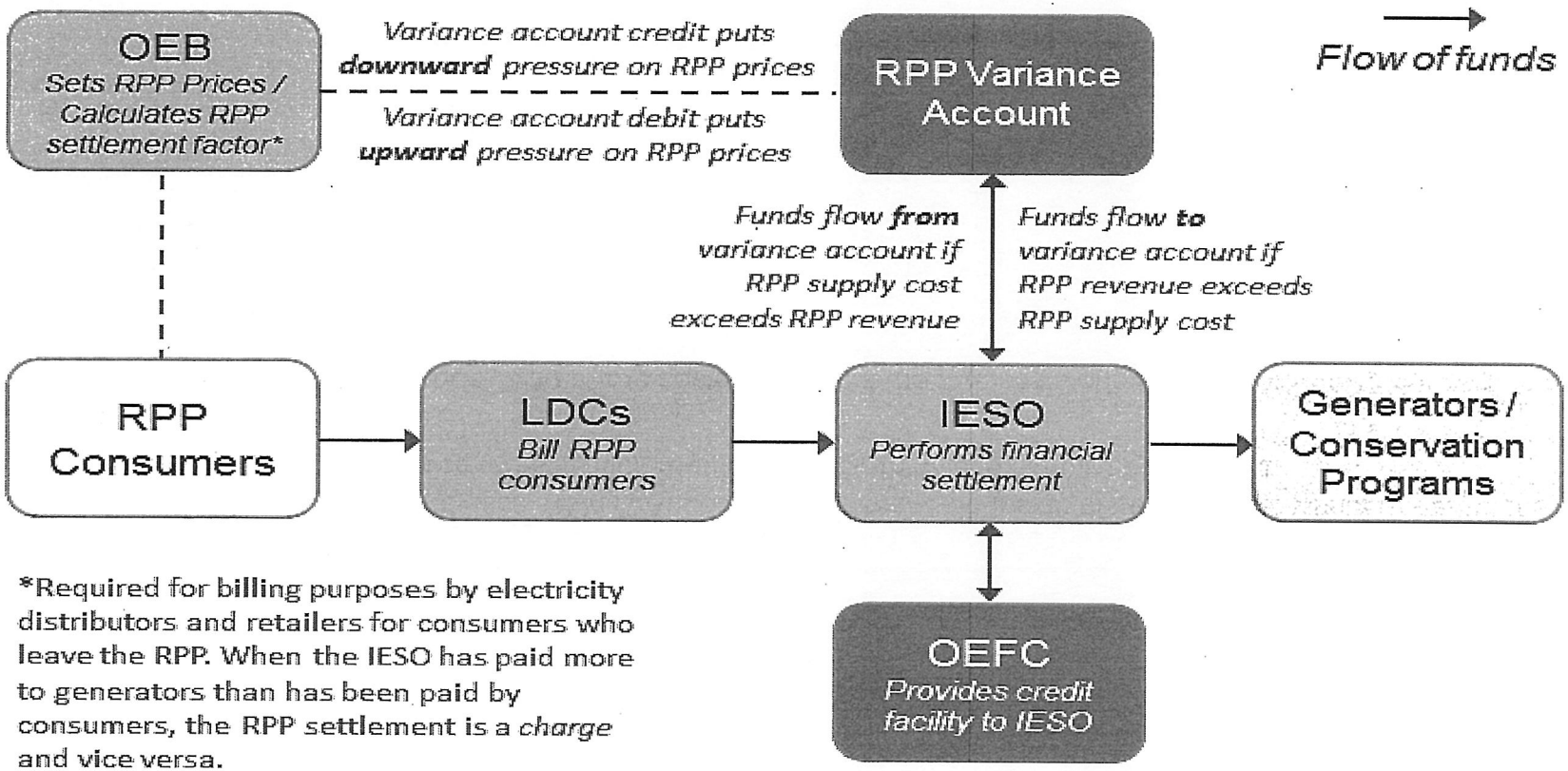
Considerations

- ENERGY continues to work with LSB, IESO, MOF/OFA, TBS and external accountants to identify legislative, regulatory, borrowing and accounting requirements associated with GA financing option.
  - Ongoing analysis on whether such changes to the financing of the GA would affect the Province's current accounting treatment for the GA and represent a potential fiscal risk (i.e., consolidation).
  - Historically electricity sector financing has been conducted by the Ontario Financing Authority (i.e., managing OEFC's stranded debt and borrowing on behalf of IESO).
  - The significant amount of additional Provincial borrowing needed to finance the GA, and associated risks (e.g., interest rates, repayment timelines), could put pressure on the Province's credit rating and overall borrowing capacity.

- Discussions have focused on:
  - Create an "asset" (and confirm that it meets accounting requirements);
  - Identifying who will hold the asset(s), this could include:
    - Province (e.g., OEFC, etc);
    - IESO;
    - LDCs; or
    - New entity (e.g.,
  - Determine the source of the financing (e.g., OFA, IO, etc)

1. GA Financing – RPP Funds Flow and Variance Account

- The diagram outlines current RPP structure and related flow of funds.



1. GA Financing – Considerations (cont'd)

Considerations

Legal:

- Legislation would be required to authorize the financing proposal.
  - Amendments to the *Electricity Act, 1998* (EA) could authorize the financing of certain costs within or part of the GA. However, whether any other legislation requires amendment is not known at this time.
  - The GA regime currently provides that "true costs" represent the true costs of making payments to generators or counter parties to contracts, not the incurring of discretionary financing or interest costs.
  - Considerations such as the need to analyze legal risks or the need to address costs retroactively (if the proposal requires a January 1, 2017 start) could add to the legal and drafting complexity. Further legal analysis is required.

1. GA Financing – Considerations (cont'd)

Considerations

- Borrowing money to finance the GA, while lowering costs in the short term, results in a more rapid rise in electricity prices beyond the rate of increase already expected.
  - Deferral of electricity system costs over a long time-horizon and associated interest costs may draw criticism from some stakeholders as creating a new "stranded debt" in the sector. **Note:** the Debt Retirement Charge (DRC) was removed from residential bills in 2016 and will be removed for remaining customers in 2018.

- The GA financing proposal involves borrowing large amounts of money over a long period of time (16-30 years, depending on the scenario) to reduce electricity rates. This debt would be highly sensitive to interest rates which could extend repayment timelines or put significant pressure on electricity rates. A long-term interest rate of 5% is assumed for this analysis.

- GA and HOEP provide a natural hedge against each other – when one goes up, the other goes down – keeping total electricity costs relatively stable and predictable. Smoothing only the GA would lead to greater price volatility for consumers unless the schedule and amount of ratepayer payments was defined relative to the actual cost of GA.

- Some Class A consumers pay limited GA and would receive little benefit under the financing proposal. These consumers also currently pay very low rates. In addition, in recognition that Class B electricity consumers pay the majority of GA costs, could limit GA cost reductions through financing to Class B consumers only.

- Should Ontario electricity demand be lower than forecasted, the cost of paying off the debt will be spread over a smaller pool of consumption, further increasing future costs for individual ratepayers.

2a. Extend Length of Existing Wind / Solar Contracts

- Wind and solar developments are typically contracted through standard offer procurements on 20 year fixed terms at fixed pricing.
- Many of these projects have already reached commercial operation.
- The province could explore options for IESO to negotiate extensions to existing renewable energy contracts, for example, by 10 years, in return for the contract holders agreeing to a lower price in the near term.

Considerations

- Projects in commercial operation offer potential for near-term rate reduction whereas projects that have yet to reach commercial operation provide potential to mitigate future rate increases only.
- The attractiveness of this option to contract holders would vary from project to project and would depend on project economics.
- Revised pricing would be subject to negotiation, and associated ratepayer savings would be difficult to forecast accurately.
- The duration of contract renegotiation is difficult to forecast and may not be achievable in the near term.
  - Proponents may have to renegotiate their project financing arrangements, ensure project investors are satisfied with any changes in ROI, and extend land leases.
- Project host communities and Indigenous communities whose traditional territory the projects are sited in may not be interested in these projects extending their operational period; discussions/consultation may be required in advance of this potential option moving forward.

2a. Extend Length of Existing Wind / Solar Contracts (cont'd)

Considerations

- Should Ontario be successful in negotiating lower prices in the near term, it should be noted that contract holders will be in a strong bargaining position (given their existing fixed-priced contracts), and will likely extract additional value from the negotiations.

- The Province is not a party to the contracts and has never been involved in the negotiation of the contracts themselves. IESO would be required to renegotiate the contracts, which would likely involve a direction or directive to IESO.

- Further analysis is required as to how ENERGY could express its policy intent to have IESO renegotiate the contracts for a reduced rate at a longer term, however it is unlikely that IESO could guarantee the outcome.

- Further analysis is also required to ascertain whether there is scope within the existing contracts for IESO to renegotiate their terms in this manner.

- Extending contract terms may require investments in component replacement and additional operation and maintenance costs that developers would seek to recover under any renegotiated contract.

- Extending contract terms would reduce planned flexibility and increase the risk of overpayment as this existing capacity would now be contracted into the 2040s and not the 2030s.

2a. Extend Length of Existing Wind / Solar Contracts (cont'd)

Considerations

- Ontario has over 4,500 MW of wind in commercial operation, with the vast majority being large scale (>500kW) developments.
  - This includes over 2,700 MW of large FIT 1 and GEIA wind projects representing 47 contracts (average size ~58 MW) and over 1,000 MW of solar projects representing 103 contracts.
- Below are two potential approaches to reducing ratepayer costs in the near term by extending contract terms at reduced prices. An illustrative example of a typical large wind project is used.
- **Example:** 100 MW FIT 1 wind project achieving Commercial Operation in 2014 (i.e., 17 years remaining on initial 20 year contract), assuming a 10 year contract extension negotiated at the LRP I low weighted average wind price of $64.5/MWh
  - (17 years @ $135/MWh + 10 years @ $64.5/MWh)
- **Potential Approach 1:** Provide a single new contract price that is the average of the lower extension price and the FIT contract price over the new contract term. The new price would be lower over a longer term.
  - **Illustrative Example:** New contract for 27 years at $129/MWh.
  - New contract price set to allow 10% rate of return over 27 year contract per FIT pricing approach.

100 MW Wind Project	**Status Quo**	**27 Year Contract (remaining term extended for 10 additional years)**
Contract Cost (NPV 2017)	$550 Million	$582 Million
Average Monthly Ratepayer Impact Over First 5 Years	$0.03 savings	
Average Monthly Ratepayer Impact Over Remaining 22 Years	$0.02 increase	
Average Monthly Ratepayer Impact Over Entire 27 Year Contract	$0.01 increase	

2a. Extend Length of Existing Wind / Solar Contracts (cont'd)

Considerations

- **Potential Approach 2:** Offer facilities a revised contract that extends terms and is structured to offer lower pricing in the initial contract years and higher pricing in the later years of the contract.
  - **Illustrative Example:** New contract for 27 years at $85.9/MWh over the first 5 years and $169/MWh over the remaining 22 years.
    - Price over first 5 years is LRP I weighted average wind price.
    - Price over remaining 22 years is set to allow 10% rate of return over entire 27 year contract per FIT pricing approach.

100 MW Wind Project	Status Quo	27 Year Contract	
		Initial 5 Years	Last 22 Years
Contract Cost (NPV 2017)	$550 Million	$632 Million	
Monthly Average Ratepayer Impact Over First 5 Years	$0.09 savings		
Monthly Average Ratepayer Impact Over Remaining 22 Years	$0.07 increase		
Monthly Average Ratepayer Impact Over Entire 27 Year Contract	$0.04 increase		

2a. Extend Length of Existing Wind / Solar Contracts (cont'd)

- Below are illustrative estimates of potential GA savings if all contracts for large FIT and GEIA wind and solar projects in commercial operation are renegotiated according to the approaches illustrated above.
- Estimates are for large (10 MW or greater) FIT 1 and GEIA wind and solar projects in commercial operation, totalling about 2,700 MW of wind and about 900 MW of solar capacity. A 10 year contract extension is assumed at a price of:
  - **For Wind:** LRP I low weighted wind price of $64.5/MWh
  - **For Solar:** LRP I low weighted solar price of $141.5/MWh

Potential Approach 1:

	Current Contracts*	**New Extended Contracts**
Total Value (NPV 2017)	$22.9 Billion	$22.8 Billion
Average Annual Contract Value (First 5 Years)	$1.5 Billion	$1.3 Billion
*Figures assume projects remain operational after contract expiry at the LRP I low weighted price inflated to the year of contract expiry, as per OPO assumptions .		

Potential Approach 2:

	Current Contracts	**New Extended Contracts**
Total Value (NPV 2017)	$ 22.9 Billion	$ 25.3 Billion
Average Annual Contract Value (First 5 Years)	1.5 Billion	$1.0 Billion

2a. Extend Length of Existing Wind / Solar Contracts (cont'd)

- Contract re-negotiations could be piloted with large wind and solar contract holders.
- For example, the top 5 contract holders by portfolio value (online projects 10 MW and larger) include:

Contract Holder	Technology	# of Contracts	Capacity (MW)	Estimated Value (NPV 2017)
Samsung*	Wind & Solar	7	899	$5.0 Billion
NextERA	Wind	6	534	$2.7 Billion
Northland Power	Wind & Solar	15	290	$1.8 ~~2~~ Billion
Pattern / Capital Power	Wind	1	270	$1.4 ~~5~~ Billion
ENGIE	Wind	4	265	$1.2 Billion

Source: IESO contract data current as of Sept 2016.
*Includes two Phase III solar projects (100 MW combined) that came online in late 2016 not included in Sept 2016 IESO contract data.

2b. Clean Energy Supply (CES) Contracts

- There are 13 natural gas facilities operating under Clean Energy Supply (CES) contracts. Given the current excess capacity, some of these facilities could be renegotiated to reduce output in the near term.

- In conjunction, OPG could seek to negotiate outright purchases of certain Ontario gas assets. Given the current excess capacity in electricity supply in Ontario, OPG can seek to negotiate outright purchases of certain Ontario gas assets and reposition them such that ratepayers would pay only for the "current need" component:
  - Contract terms would be renegotiated with the Province to temporarily idle the facilities;
  - Variable expenditures would be largely avoided with the facilities only incurring fixed costs; and
  - Plant life would be extended to a period post-2024 when additional power would be required.

- OPG has estimated monthly residential bill reductions of $2.37 to $4.00 from 2017 to 2019 if such an approach was taken for Ontario's gas portfolio.

- Natural targets would be assets that OPG either jointly owns (e.g., Portland, Brighton Beach) or operate on OPG's site with acquisition funding coming from Provincial borrowing.
  - Although OPG could also look beyond its facilities to the broader natural gas fleet in Ontario.

Considerations

- This proposal would reduce GHGs and provide some near-term cost benefits through lower staffing and maintenance costs:
  - Contract terms would be renegotiated with to temporarily idle the facilities;
  - Variable expenditures would be largely avoided with the facilities only incurring fixed costs; and
  - Plant life would be extended to a period post-2024 when additional power would be required.

- It will likely be challenging to find a willing seller and/or to negotiate a favourable price:
  - Sellers that are approached are in a strong position to extract value from OPG/the Province; and
  - Similarly, OPG's negotiating position would be weakened if this was viewed as part of the broader rate mitigation strategy.

- In the past, OPG and IESO's contract renegotiations have been contentious and lengthy.

3. Distribution Rate Relief (SNAP to Update)

- XXXX

4a. 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 consumers and enhanced benefits to Indigenous customers and customers with electric heat and 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 and Métis consumers would also see benefit increases at the same level as those with electric heat and medical devices.
    - The Ministry is also considering options to support a "Delivery" line credit for Indigenous consumers. This would cost ~$18 million/year (Option 2d on slide 8) and would save Indigenous consumers between $75 and $100/month.
- 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.

4a. OESP Expansion – Fiscal Impacts

- 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**

- 2017 program costs are based at current program sign-up rate – 30% of eligible consumers. 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 eliminate wet signature consent forms with the federal government, and working with partners to do open houses to better reach vulnerable consumers.

4a. OESP Expansion – Considerations

- **Framework:** New legislation would be required to establish and define the parameters of a tax-based OESP. This may reveal additional considerations, including possible assessment as a tax credit.
- **Implementation:** 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 ~142,000 low-income households that do not receive an electricity bill.
- **Transition to Social Assistance:** Moving OESP to the taxbase 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.

4b. Low Income Conservation Benefit Program

- Existing low income programs delivered by LDCs and IESO help qualified homeowners and social and/or assisted housing providers improve the energy efficiency of their homes.
  - Programs include the Home Assistance Program and the Retrofit Program (Social Housing Stream).
- A new Low Income Conservation Benefit Program would build on existing programs.
  - Participants could receive incentives for conservation measures not currently covered (e.g. air conditioning, heat pumps (electric heated homes)).
  - Increased incentive amounts (e.g., under the existing Retrofit Program, incentives cover approx. 60% of the total cost of the energy efficiency upgrade).
  - Targeted education and awareness initiatives.
- The new program would be delivered through LDCs and/or IESO.
- The new program would coordinate with CCAP initiatives.
- The budget estimate below is illustrative and assumes annual program budgets three times the 2015 spending for the Home Assistance Program.

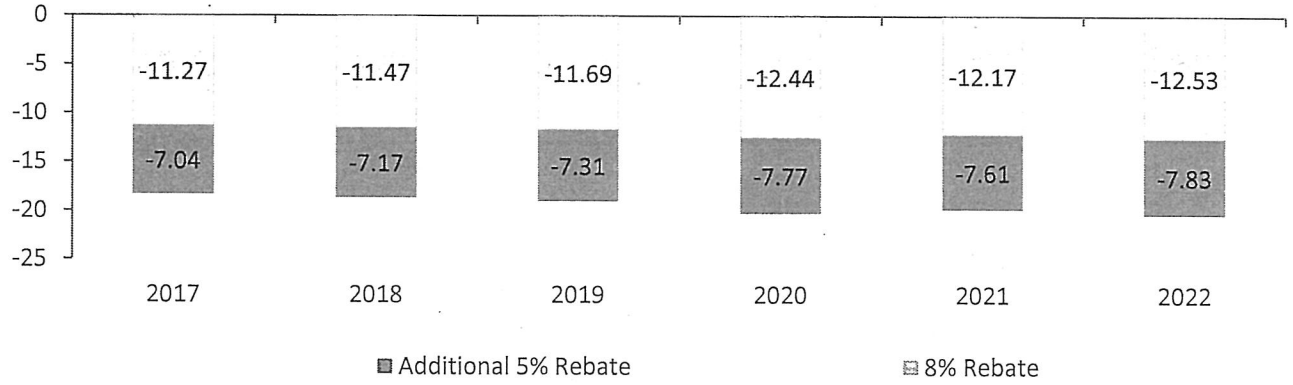
	2017	2018	2019	2020	2021	2022
Proposed Budget ($ Million)	$60	$60	$60	$60	$60	$60

- Further analysis is required on costing and implementation details, including alignment with the Conservation First Framework.

5. Enhanced Tax-Base RPP Rebate (5%)

- Enhancing the rebate by a further 5% on the amount before tax provides an average savings of about $7 each month or $84 annually for a typical residential electricity consumer.
- As of January 1, 2017, electricity consumers eligible for the Regulated Price Plan (RPP) receive an 8% rebate equivalent to the provincial portion of HST on their pre-tax bill.
- The eligibility criteria for the 8% rebate is as follows:
  - Consumers with a demand of 50 kW or less;
  - Consumers with a demand of 250,000 kWh/year or less;
  - Farms;
  - Multi-unit residential buildings and other facilities used as residential rental units;
  - Dwellings;
  - Condominiums; and
  - Co-operatives with housing units.

Benefit for a Typical Residential RPP Consumer
in $/750-kWh month



5. Enhanced Tax-Base RPP Rebate (5%) (cont'd)

Considerations

- Amendments would be required related to the *Ontario Rebate for Electricity Consumers Act, 2016.*
- The Act authorizes the making of regulations to reimburse electricity vendors for amounts credited to consumers' accounts under the Act. The Act authorizes the making of other regulations to put in place mechanisms needed to implement the financial assistance.
- The rebate could be made retroactive to January 1, 2017. Similar to the current 8% rebate, electricity consumers would receive a retroactive payment once the local distributor begins issuing the rebates if the distributor needs more time to adjust its billing systems.

Fiscal Cost of an Enhanced Rebate
in $millions

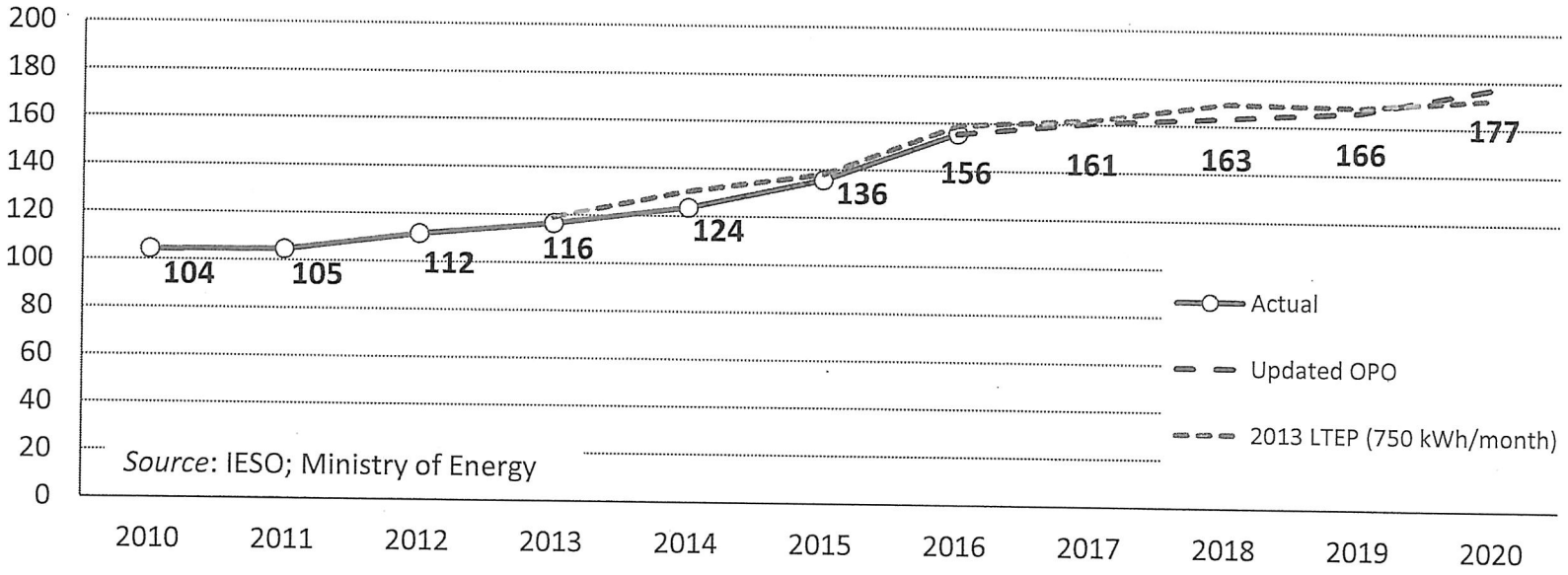
Cost ($M)	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022
Cost of 8% rebate	271	1,119	1,086	1,171	1,159	1,208
Cost of 13% rebate	440	1,818	1,764	1,903	1,884	1,963
Cost of incremental 5% rebate	169	699	679	732	724	755

Appendix

Context – Residential Electricity Prices

- Residential consumers electricity prices continue to be a concern for many Ontarians, particularly those that rely on electric heat.
  - **Note:** The typical residential bill is currently below the 2013 Long-Term Energy Plan (2013 LTEP) forecast.

Typical Residential Electricity Bills
Historical and Forecast in $/month

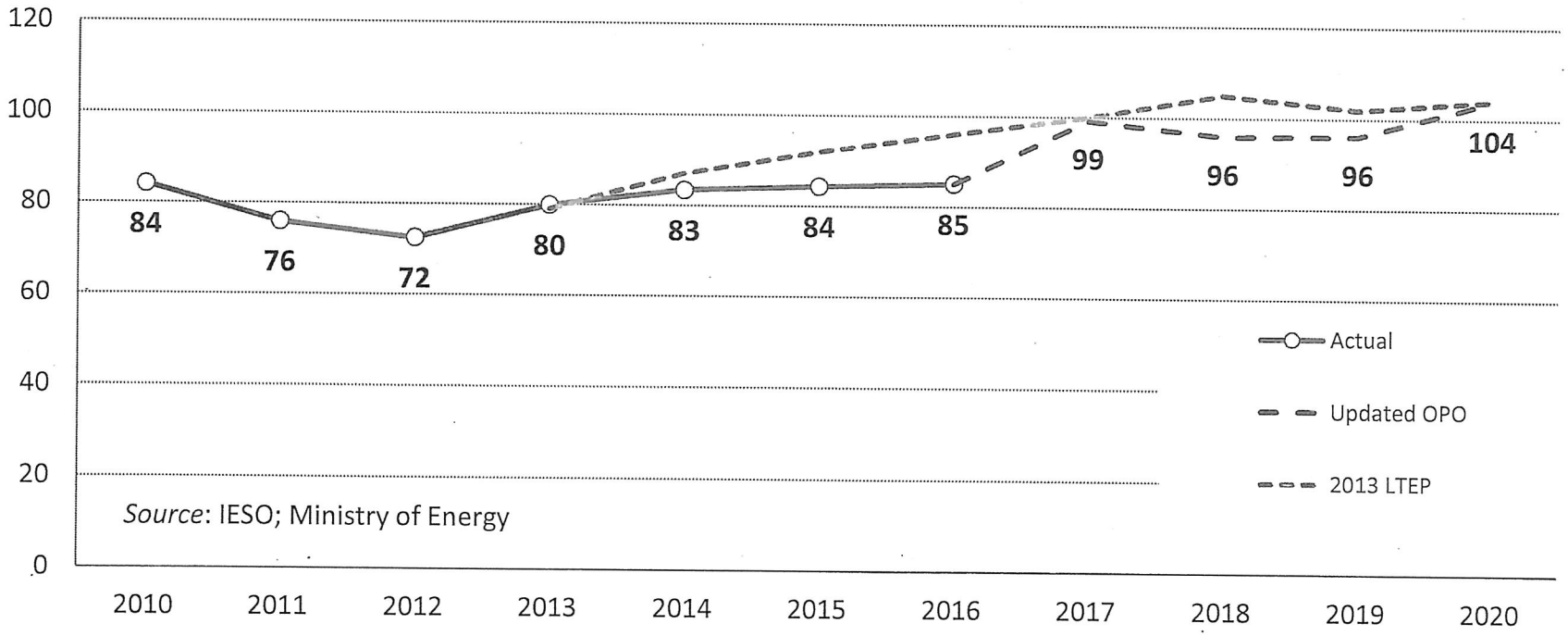


Note: The 2013 LTEP forecast for residential bills was based on 800 kWh/month without RRRP or electric heating; the above has been rebased to 750 kWh/month for comparison purposes. Typical residential are based on Toronto Hydro. The updated OPO forecast above includes the 8% rebate to offset the provincial portion of HST, ICI expansion and RRRP expansion.

Context – Large Industrial Electricity Prices

- Industrial electricity prices continue to be a concern for many businesses.
  - **Note:** The typical industrial electricity price is currently below the 2013 LTEP forecast.

Typical Class A Electricity Prices
Historical and Forecast in $/MWh



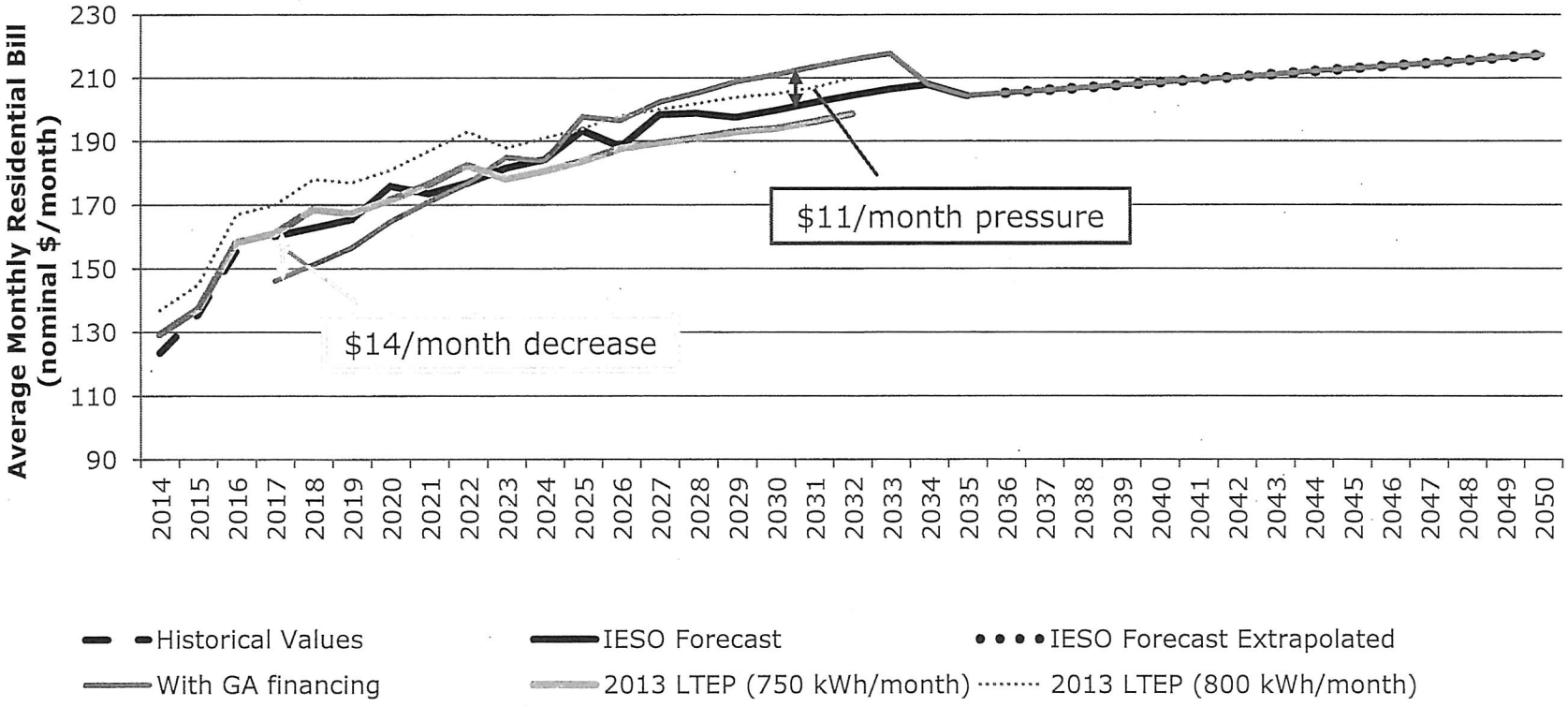
Note: The 2013 LTEP forecast for industrial reflects a transmission connected Class A electricity consumer. The updated OPO forecast above includes ICI expansion and RRRP expansion.

Global Adjustment (GA) Financing

- The global adjustment (GA) is comprised of costs for regulated and contracted generation, as well as conservation.
- Some contracted generation assets are expected to have a useful life that extends beyond the term of their current financial contracts (typically 20-years).
- Similarly, conservation costs are recovered through the GA on an annual basis while conservation initiatives provide benefits to the electricity system over the course of many years.
- Since the GA only includes costs related to the contractual life of these assets, there may be an opportunity to recognize the longer-term benefit of these assets to the electricity system and "bring forward" that benefit for ratepayers today, while deferring some of the current costs.
- An indicative GA financing proposal is presented that lowers ratepayers costs over the short term by borrowing money but increases costs over the long term when GA costs are forecast to be lower.
- **Note:** Not all generating assets will continue operations at the end of their contract term. Regulatory constraints (i.e., nuclear licences) or low demand conditions (i.e., as experienced with current expiring NUGs) would mean that some generators will shutdown at the expiry of their contract. Future ratepayers would be paying for these assets that are no longer producing power.

Low / GA Financing – Impact on Residential Electricity Bills

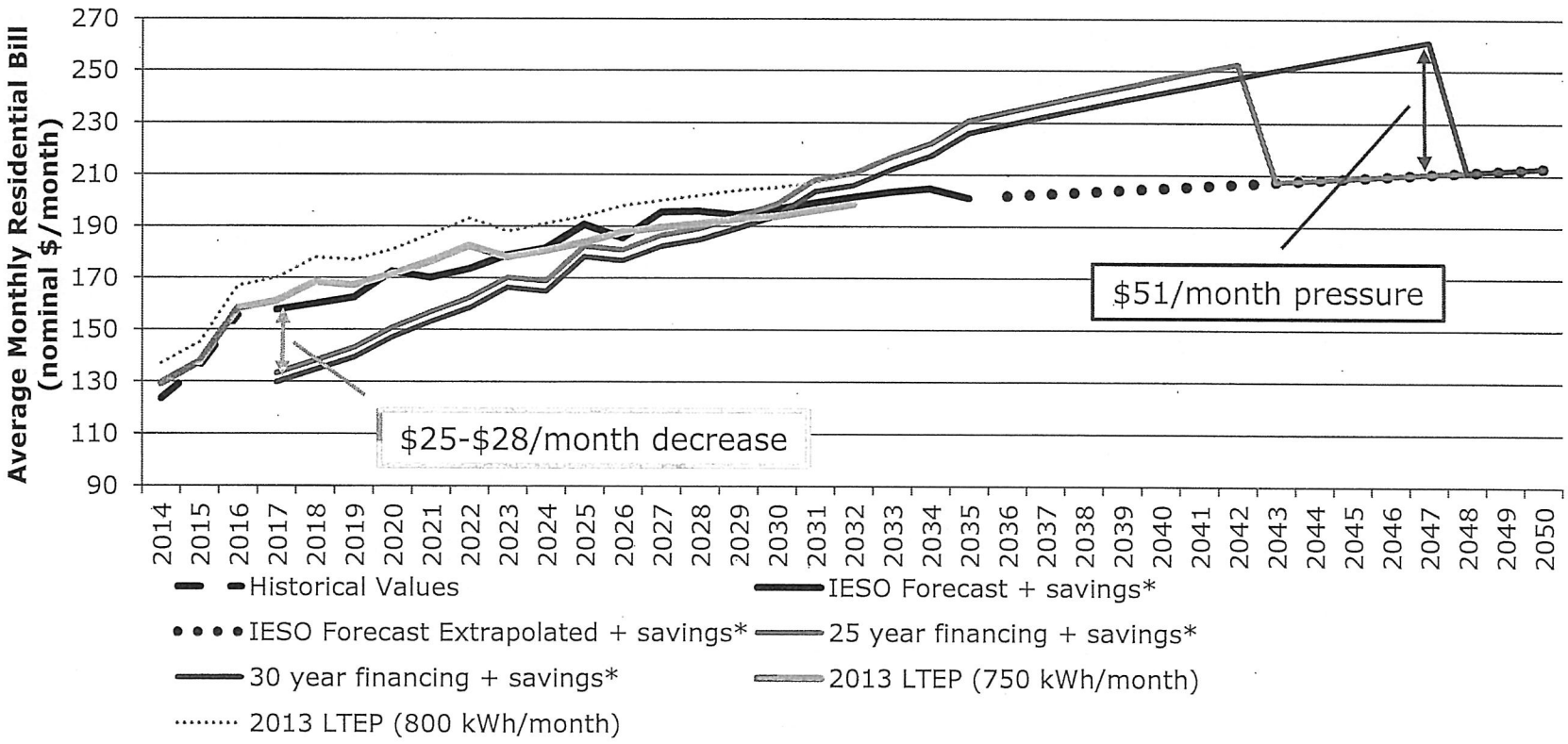
- In this option, the starting GA payment from all ratepayers in 2017 is lowered by $2.5 billion and increases at 2% each year – up to a cap of no more than $2 billion more than the true cost of GA in any year – until the borrowed money is paid back in 2032.



- By **borrowing up to $9.3 billion**, this scenario results in **a short-term residential electricity cost reduction of up to $14/month** at the cost of **increased future electricity bills over 10 years of up to $11/month** above the true cost of electricity production.

High / GA Financing – Impact on Residential Electricity Bills

- In this option, the starting GA payment from all ratepayers in 2017 is lowered by $4.4 and $5 billion and increases at 2% each year until the borrowed money is paid back over a 25 and 30 year financing period respectively.

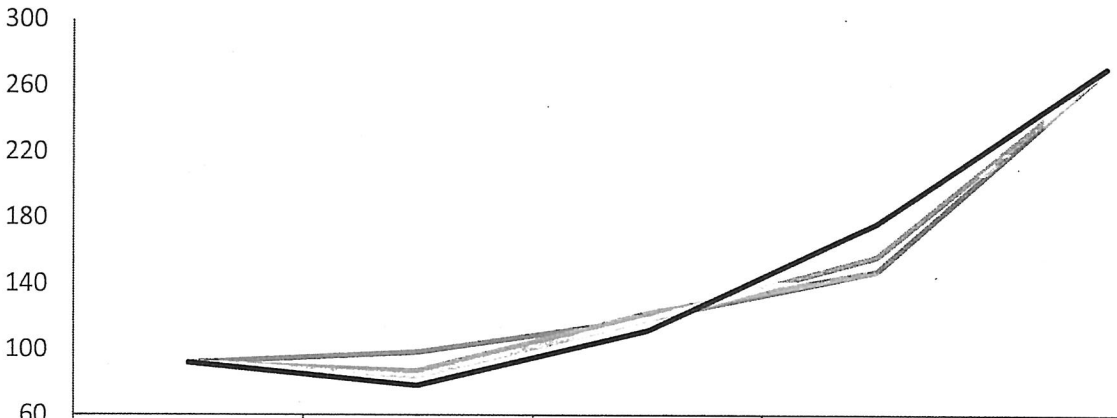


- By **borrowing up to $65 billion**, this scenario results in **a short-term residential electricity cost reduction of up to $25-$28/month** at the cost of **increased future electricity bills over 12-17 years of up to $46-$51/month** above the true cost of electricity production.

1. GA Financing – Impact of the Level of Financing on Large Industrial Electricity Consumers

- Below graph illustrates the estimated impact of the level of GA financing for an average Class A electricity consumer over a 25 year amortization period.

Estimated All-In Electricity Price
for Average Class A in $/MWh



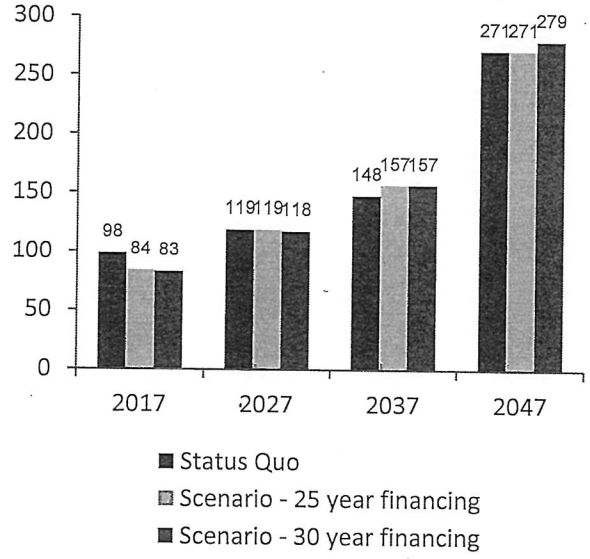
	2016	2017	2027	2037	2047
Status Quo	92	98	119	148	271
Low Financing		87	122	148	271
Moderate Financing	-	84	119	157	271
High Financing		78	112	177	271

Note: Assumes that demand by industrial sector continues at average 2011-2015 levels. Please see the Appendix or more information on the estimated impact on large industrial electricity consumers.

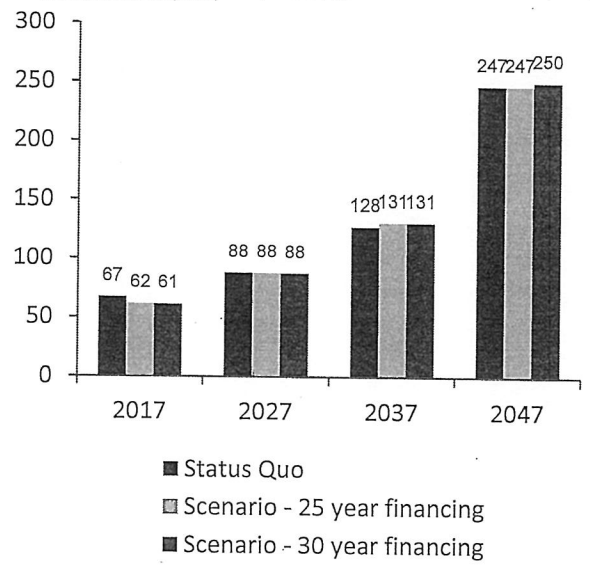
GA Financing – Illustrative Impact for Large Industrial Electricity Consumers

- Below graphs illustrate the estimated impact under the moderate GA financing scenario for an average Class A electricity consumer, a consumer that pays low GA (i.e., pulp and paper) and high GA (i.e., refining and chemical manufacturing).

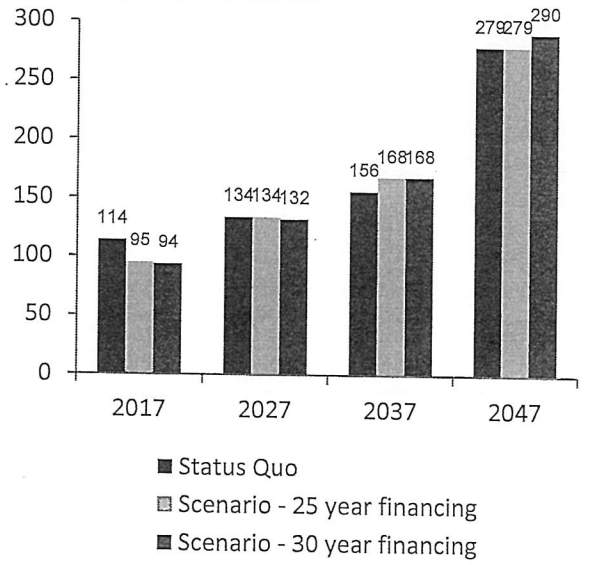
Estimated All-In Electricity Price
for Average Class A in $/MWh



Estimated All-In Electricity Price
for Pulp & Paper in $/MWh



Estimated All-In Electricity Price
for Refining & Chemicals in $/MWh



Note: Assumes that demand by industrial sector continues at average 2011-2015 levels.

Other Options Considered – Typical Residential Electricity Consumer

$/750kWh	2017	2018	2019	2020	2021	2022	Timing of Benefit
Conservation Funding Options							
a. Amortize Conservation Program Costs (15-Year Amortization)	1.62	1.88	1.16	1.20	0.82	0.69	Immediate
b. Fund Conservation Programs Through The Tax-Base	3.47	3.83	3.17	3.35	2.84	2.90	Immediate
Eliminate the Industrial Conservation Initiative (ICI)	4.40	4.24	4.10	4.24	3.73	3.58	Immediate
Cancel LRP I	-	-	TBD	TBD	TBD	TBD	Medium-Term
Expand the Scope of Trillium Trust to Make Investments in Energy Infrastructure (e.g., Transmission upgrade, etc.)	-	-	-	2.16	2.16	2.17	Medium to Long-Term
Dedicate Departure Tax	1.39	1.39	1.39	1.39	1.39	1.39	Immediate
Give Residential Consumers More Rate Choices	-	-	-	-	-	-	n/a
Help Small Business Manage Their Electricity Costs (i.e., End DRC early for Class B electricity consumers)**	-	-	-	-	-	-	n/a

Note: The above initiatives will provide similar benefits for non-RPP Class B electricity consumers. Proposal 1 assumes OESP participation of 50% and 5-year maturity. *Assessing the range of ratepayer impacts will be done through the LTEP development and implementation process in conjunction with the OEB. **Class B includes small-medium enterprises (SMEs).

Options Considered – Average Industrial Electricity Consumers

$/MWh	2017	2018	2019	2020	2021	2022	Timing of Benefit
Conservation Funding Options							
a. Amortize Conservation Program Costs (15-Year Amortization)	1.12	1.30	0.80	0.83	0.57	0.47	Immediate
b. Fund Conservation Programs Through The Tax-Base	2.88	3.17	2.66	2.77	2.36	2.41	Immediate
Eliminate the Industrial Conservation Initiative (ICI)	(24.12)	(23.21)	(22.45)	(23.23)	(20.42)	(19.61)	Immediate
Cancel LRP I	-	-	TBD	TBD	TBD	TBD	Medium-Term
Expand the Scope of Trillium Trust to Make Investments in Energy Infrastructure (e.g., Transmission upgrade, etc.)	-	-	-	1.79	1.79	1.79	Medium to Long-Term
Dedicate Departure Tax	1.86	1.86	1.86	1.86	1.86	1.86	Immediate
Give Residential Consumers More Rate Choices	-	-	-	-	-	-	n/a
Help Small Business Manage Their Electricity Costs (i.e., End DRC early for Class B electricity consumers)**	-	-	-	-	-	-	n/a

Note: The above initiatives will provide similar benefits for non-RPP Class B electricity consumers. Proposal 1 assumes OESP participation of 50% and 5-year maturity. *Assessing the range of ratepayer impacts will be done through the LTEP development and implementation process in conjunction with the OEB. **Class B includes small-medium enterprises (SMEs).

Comment Draft: April 10, 2017

CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including

under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will benefit present and future electricity consumers in the Province.

The imputed costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn

forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment"). The Global Adjustment is included as a charge billed to electricity consumers in their monthly electricity invoices.

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under

the Green Generation Initiative, which may be higher than prevailing market price for electricity. These differences arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with long-term price certainty for electricity, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. In general, whenever amounts payable under these procurement

contracts exceed the market price for electricity, the Green Costs Adjustment passes through the amount of such differences as part of the monthly charge to electricity consumers. Such amount then becomes available to IESO to meet its obligations under the procurement contracts. It has been determined that the useful lives of many of the assets encouraged by the Green Generation Initiative will be well in excess of the respective terms of the related procurement contracts, and in many cases

may extend over more than one generation of electricity consumers.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective durations of the procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be

passed through to Retail Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Retail Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future Retail

Consumers (the "Fair Allocation Plan").

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the Retail Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such Retail Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by

the IESO to the generators in respect of such period. In this case IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred by IESO to cover such a shortfall during one period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in one or more future periods. In order for IESO to obtain a reliable and

committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on Retail Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which

will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf such financing entities by a financial services agent under the Financing Plan contemplated in this Act. The Financing Plan will seek to reasonably match the

payment obligations arising under such funding obligations, to be borne by the future Retail Consumers of the period in which such payment obligations become due, with the benefits of the Green Generation Initiative allocated to such future Retail Consumers under the Fair Allocation Plan.

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present

and future Retail Consumers on an equitable and cost effective basis.

Article 2 - Definitions

In this Act:

"Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition.

"Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or

payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services Agent whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.

"Additional Funding Charges" means, for a Reference Period in respect of an Absolute Assignee, the fees, charges, expenses, costs, indemnities, reimbursements and other

amounts (including any applicable tax amounts) that are or become payable by or on behalf of the Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including (without

duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the Financial Services Agent on behalf of, the Absolute Assignee under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on the Absolute Assignee or incurred by on behalf of the Absolute Assignee under any obligation to pay tax gross-up amounts to

counterparties under Funding Obligations; (c) any amounts payable to the Financial Services Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the

calculations, determinations or confirmations to be made by or on behalf of the Absolute Assignee; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing

expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith by the Financial Services Agent for recovery and payment under the Financing Plan.

"Allocation Factor" means, in respect of a Retail Consumer for a Reference Period, the number (expressed as a percentage) determined in respect of the Retail Consumer

by the OEB based on the application of the Attribution Methodology in respect of the Reference Period.[1]

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

[1] Confirm that this will be based on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those may be identified and caught by the True-Up.

behalf of the Regulatory Asset Owners.

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

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative

(expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[2] means the methodology specified in the Fair Allocation Plan for allocating the Period Transition Charges for a Reference Period to individual

[2] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

Retail Consumers of the applicable Retail Consumer Group based on its Allocation Factor.

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services Agent, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all

Transition Charge Collections for the True-Up Period.[3]

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

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

[4] Consider adding the Financial Services Agent and the Servicer as parties.

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

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of an Investment Interest to an Absolute Assignee pursuant to a Disposition Document.

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

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

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

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

"Electricity Invoice" means an invoice issued by any of a Electricity Distributor (or in its stead, by an Alternative Servicer), by the Servicer or by a Retailer, in each case to a Retail Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and

related services and amounts incurred, assessed or charged in respect of connectivity to a distribution network in the Electricity Distributor's designated Service Area and in respect of applicable Transition Charges to be charged to the Retail Consumer under this Act.

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

of such costs, expenses or payments determined by the Financial Services Agent; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to any Retail Consumer Group, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the

purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Retail Consumers from the establishment and implementation of the Green Generation Initiative during the

eriod from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Retail Consumers from the establishment and implementation of the Green Generation Initiative up to and

including the Measurement Date.

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

"Finance Amount" means, for a Reference Period in respect of an Absolute Assignee, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of the Absolute Assignee: (a) Repayments; (b) Funding Costs; (c) Redemption Amounts; (d) Finance Reserve

Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals.

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan.

"Financial Services Agent" means OPG or, following any Replacement Event, such other person or persons who may be

appointed as the Financial Services Agent of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]

"Financing Entity" means an entity established in accordance with the Financing Plan to acquire all or an interest in the Regulatory Asset as an Absolute Assignee and to enter into Funding Obligations to finance such

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

acquisition under the Financing Plan.[6]

"Financing Plan" means the written plan prepared by the Financial Services Agent on behalf of each Absolute Assignee in compliance with Article 9 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding

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[6] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

Obligations may be incurred by an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be

made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (j) the cash flows arising from time to time or otherwise derived from an Investment Interest may otherwise be applied, as the same may be amended, amended and restated or terminated by the Financial Services Agent in compliance with Article 9 from time to time.

"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit

enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to its Funding Obligations, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute

Assignee during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Absolute Assignee under derivatives and any Finance Reserve

Withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the payment of the Funding Costs payable in respect of a Funding Obligation for the Reference Period.

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including each obligation to pay: principal, interest, premiums and other

financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services Agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges incurred by

or on behalf of the Absolute Assignee under the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

"Generator" means a generator of electricity that is subject to the *Electricity Act, 1998*.

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

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

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

"IESO Available Amount" means, for a Reference Period, the lesser of (a) the amount (if any) by which (i) the Maximum Transition Charge Amount for the Reference Period, exceeds (ii) Period Finance Amount for the Reference Period, and (b) the IESO Retained Interest Amount as of the [35th] day prior to the first day of a Reference Period plus any IESO Financing Costs that are due and payable and remain unpaid as of the [35th] day prior

to the first day of a Reference Period.

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

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

Retained Interest during the Reference Period.

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO

Electricity Distribution Receipts payable to IESO for the month[7]; provided that if the amount of any such shortfall is determined to have been based on incomplete information, variances or estimates that were inaccurate, an adjustment shall be made in determining the amount of any subsequent shortfall for the month in which the inaccuracy is identified.

[7] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

"IESO Recovery" means each amount remitted to IESO (including by IESO retaining such amount) in respect of the IESO Retained Interest pursuant to Section 5(6)(b), and "IESO Recoveries" means, collectively, all such amounts received by IESO.

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have

not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO Retained Interest" means IESO's right, title and ownership interest (if any) in, to

and under the Regulatory Asset, which shall exclude each Investment Interest.

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

Interest paid to IESO by or on behalf of such Absolute Assignee prior to the day, and minus (d) the IESO Recoveries received by IESO prior to the day.

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

"Investment Interest" means an ownership interest in, to or

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

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

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

Assignees in respect of the month.

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

"Measurement Date" means [Insert relevant date around the

Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

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

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

"Over-Assessed Amount" means, in respect of a

Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount and (b) the True-Up Amount in respect of the immediately preceding Reference Period.

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

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided

basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding

Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) June 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and

(c) any other period specified as such in the Fair Allocation Plan.

"Reference Period Length" means, for a Reference Period, the number of months in the Reference Period.

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net

proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of the IESO Retained Interest and each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives

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

"Regulatory Asset Owner" means each of (a) IESO, as owner of (and to the extent of) the IESO Retained Interest and (b) each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively IESO and each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

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

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO or if applicable the Alternative Collection Agent as specified in accordance with

any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the Business Day preceding each Settlement Date.

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute

Assignee under a Funding Obligation.

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

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

"Retail Consumer" means:

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

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

and each case includes all such consumers and Retailers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or

purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO.

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

Electricity Invoices during the Reference Period.

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

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

"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is

licensed to distribute electricity in accordance with the *Electricity Act, 1998*.

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.

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

"Transition Charge" means, for a Retail Consumer in respect of a Reference Period, (a) the Period Transition Charge, (b)

multiplied by its Allocation Factor in respect of the Reference Period, divided by (c) the applicable Reference Period Length.

"Transition Charge Collection" means any amount received or deemed by this Act to have been received upon the collection of a Transition Charge paid by or on behalf of a Retail Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests

under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services Agent equal to (a) the Estimate of the Finance Amount for the related True-Up Period, minus (b) the Actual Finance Amount for such related True-Up Period, plus (c) the Collected Amount Adjustment for such related True-Up Period.

"True-Up Period" means, in relation to a Reference Period, the period from and including the [30th] day immediately preceding the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the Reference Period.

"Undertaking of the Lieutenant Governor in Council" means the undertaking of the Lieutenant Governor in Council given under Section 11(2).

Article 3 – Transition Charges

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

(2) Indebtedness of Retail Consumers – Until paid, a Transition Charge charged to a

Retail Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the Retail Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a

single and separate[8] debt obligation owing by the Retail Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Retail Consumer under the Electricity Invoice or otherwise.[9]

(3) No Set-Off or Reduction – A Retail Consumer may not set-off or reduce (by

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

[9] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such Retail Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) Allocation of Retail Consumer Payments – If an Electricity Distributor receives a payment made by or on behalf of a Retail Consumer in

respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collection.

(5) Transition Charges are Irrevocable – The Transition

Charges arising under or in respect of Funding Obligations incurred under the Financing Plan (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater

certainty, a Transition Charge may include Finance Amounts for a Reference Period whether or not the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, whether or not the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent

amendment to the Fair Allocation Plan.

Article 4 – Invoicing of Transition Charges

(1) Inclusion of Transition Charges in Electricity Invoices – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a Retail Consumer pursuant to Section 4(4) in respect of a related Reference

Period in each Electricity Invoice issued by the Electricity Distributor or if applicable by the Alternative Servicer to the Retail Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable Retail Consumer.

(2) Calculation of the Period Transition Charge – Not later than [35] days prior to the first day of a Reference Period,

each Absolute Assignee (or the Financial Services Agent on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. [35] days prior to the first day of a Reference Period, IESO or Successor IESO if applicable shall specify the IESO Retained Interest Amount and any IESO Financing Costs that are due and payable and remain unpaid on such day. Not later

than one month prior to the first day of a Reference Period, the OEB shall calculate the Period Transition Charge applicable to the Reference Period based on the calculations and information set forth in such written notices received from the Absolute Assignees and based on such amounts specified by IESO or Successor IESO, which calculations, information and amounts shall be determinative, except to the

extent of manifest calculation error or misstatement.

(3) Calculation and Attribution of Transition Charges – Not later than 25 days prior to the first day of a Reference Period, the OEB shall apply the Attribution Methodology to determine the Allocation Factor for each Retail Consumer of the applicable Retail Consumer Group.

(4) Notice of Transition Charges – Not later than 20 days prior to the first day of a

Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each Retail Consumer of the applicable Retail Consumer Group who has a billing address in the Electricity Distributor's Service Area.

(5) Adjustments – The amount of any Transition Charge charged to a Retail Consumer and specified as such in an

Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) Successors of Electricity Distributors – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the

same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) IESO Successor – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation

to calculate and provide notice of Transition Charges.

(8) Appointment of an Alternative Servicer – If a Replacement Event occurs in respect of any Electricity Distributor, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this

Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such

obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners.

(9) Absolute Assignees have Standing – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring

actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to Retail Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure.

(10) No Set-Off or Reduction – No Servicer or Electricity

Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(11) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to Retail

Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable][10] efforts to collect amounts owing by Retail Consumers in respect of Transition Charges charged to

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[10] Mirror collection "standard of care" under applicable legislation.

such Retail Consumers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent.

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from Retail Consumers and deposit such Transition Charge Collections into its Regulatory

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

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit

[11] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

all Transition Charge Collections received by it from Retail Consumers in respect of the related Reference Period to or to the account of IESO or if applicable the Alternative Collection Agent.

(4) **Duty to Collect Electricity Distributor Remittances** – IESO or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable] efforts to accept and collect Electricity Distributor

Remittances from Electricity Distributors and Transition Charge Collections from Retail Consumers that pay their Electricity Invoices directly to IESO.[12]

(5) **Segregation of Electricity Distributor Remittances** – IESO and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it

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

and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, IESO or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners.

(6) **IESO Remittances** – On each Settlement Date[13], IESO

[13] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

and if applicable the Alternative Collection Agent shall remit all amounts on deposit in its Regulatory Asset Account (a) first, to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month and (b) second, to IESO (including by IESO retaining such amount) an amount equal to the lesser of (i) the Maximum IESO Recovery for the related month and (ii) the IESO Retained Interest

Amount as of the Settlement Date.

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

make remittances of Electricity Distributor Remittances.

(8) **IESO Successor** – IESO Successor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[14], then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to Retail Consumers in its applicable

[14] This is in anticipation of a possible future restructuring of the distribution system.

service area, including all consumers connected to the electricity distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by Retail Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each

in accordance with its Investment Interest.

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from Retail

Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure.

(11) **Appointment of an Alternative Collection Agent** – If a Replacement Event occurs in respect of any

Electricity Distributor or IESO, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations otherwise required to be undertaken by such Electricity Distributor or IESO, as applicable, under Article 5, as and to the extent specified in such appointment. Upon

acceptance of such appointment, the Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor or IESO, as applicable. Any Electricity Distributor or IESO, as applicable, that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including

its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the Absolute Assignees.

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a

Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any Retail Consumer, any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, IESO,

Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[15]

(13) **Sequestration** – If any Electricity Distributor, IESO, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any

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

required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge

Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable.[16]

(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

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

Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and

interest consisting, collectively, of the following rights and interests (without duplication):

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

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

c. the right to enforce the obligations and indebtedness of each Retail Consumer to pay the Transition Charges charged to the Retail Consumer from time to time in accordance with Article 3, together with all related late

payment fees or interest charges arising in respect thereof under the related Electricity Invoices;

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

e. the right to enforce the duties and obligations of each Electricity Distributor and if

applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of IESO or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the

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

f. the right to enforce the duties and obligations of IESO and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each

case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

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

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

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and

maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further

actions that may not have occurred.

(2) **Validity of Dispositions** – Despite any limitations or restrictions on a Disposition that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Disposition that may arise by operation of any applicable law of the Province, a Disposition by IESO to an Absolute Assignee made under the Financing Plan, or by one Absolute Assignee to another

Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the applicable Investment Interest (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable

Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the Regulatory Asset Owner's applicable right, title, and interest in, to and under the Regulatory Asset (or relevant portion thereof), and not merely as a Pledge thereof,

and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the Investment Interest subject to the Disposition, including all rights under the Investment Interest arising after such Disposition.

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when

such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the transferring Regulatory Asset Owner and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the transferring Regulatory Asset Owner, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free

and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Pledge that may arise by operation of any applicable law of the Province, a Pledge by an Absolute Assignee may be made to secure any related Funding Obligation and when made shall be valid and

enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the Pledge. Other than as required by the Financing Plan, no consent of any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act*

(the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall

be perfected pursuant to the PPSA.[17] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. Subject to the terms of the

[17] Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

Collective Action Agreement, a Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such

Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall

be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document, in each case under the Financing Plan. In no circumstance may the

specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such

right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement.

Article 7 – Establishment of the Fair Allocation Plan[18]

(1) Adoption of the Fair Allocation Plan – The Delegate may, [by written declaration,] designate and adopt a Fair Allocation Plan in

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18 The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with Section 7(4).

(2) Principles and Parameters – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Retail Consumer Groups

on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. The Fair Allocation Plan should specify the Reference Periods for the purpose of identifying applicable Retail Consumer Groups and

allocating Future Fair Share of Green Transition Benefits among them on a relative basis over time.

3. The share of Future Fair Share of Green Transition Benefits allocable to a particular Retail Consumer Group in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to the Retail Consumer Group over such Reference Period.

4. The share of Future Fair Share of Green Transition Benefits to be allocated to a Retail Consumer Group and any future Retail Consumer Group at a particular time should not exceed the Estimated Future Green Transition Benefits, measured in respect of the Reference Periods following such particular time and to the Program End Date.

5. No future Retail Consumer Group should be allocated an unreasonably

disproportionate share of Estimated Future Green Transition Benefits. Except in exceptional circumstances or in the case of any reallocation of an Over-Assessed Amount as contemplated in 7, below, the Future Fair Share of Green Transition Benefits to be allocated under a Fair Allocation Plan to any future Retail Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is*

determined to be appropriate].

6. The time value of money should be reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Retail Consumer Groups over time.

7. To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may

determine that an adjustment should fairly be made to rebate Retail Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such Retail Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair

Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more Retail Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the

principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) Attribution Methodology – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Transition Charges across the Retail Consumers of a particular Retail Consumer Group. The Attribution

Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation.

(4) Amendments of the Fair Allocation Plan – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination

shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation and (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation.

Article 8 – The IESO Retained Interest

(1) Maintain Books of Account – IESO may maintain books of account to record the IESO Retained Interest Amount and all adjustments thereto from

time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset.

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

(3) Dispositions – IESO may effect a Disposition to an Absolute Assignee if (a) the Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; (c) the Financial Services Agent confirms in writing that the Disposition is permitted under the Financing Plan; and (d) the net proceeds payable to IESO from the sale of the related

Investment Interest would not exceed the IESO Retained Interest Amount immediately before the time of such Disposition.

(4) No Continuing Interest in any Investment Interest – IESO shall have no continuing right or interest in any Investment Interest subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party and IESO shall not assert any such right or interest or take or omit to take any action to exercise

or enforce its rights or interests under the IESO Retained Interest if such action or omission would impede or obstruct the rights of any Absolute Assignee or a Pledgee to enforce its rights and interests in any Investment Interest, except if IESO is expressly permitted to take or omit to take such action, respectively, under the related Disposition Document or the Collective Rights Agreement.

(5) IESO Financing Costs – IESO shall be entitled in good

faith to incur reasonable financing costs (including interest and other reasonable financing charges) reflecting market terms and conditions and which are payable in arrears, in order to finance its ownership of the IESO Retained Interest from time to time.

(6) IESO Recoveries – IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if

any) available to IESO under Section 5(6)(b).

Article 9 – The Financing Plan

(1) Power to Prepare, Implement and Amend the Financing Plan – The Financial Services Agent shall be authorized to prepare, implement and amend the Financing Plan. If the Financial Services Agent is unwilling or unable to prepare and propose the adoption of the Financing Plan, the Delegate may by written declaration designate

one or more other persons who shall be authorized to prepare, implement and amend the Financing Plan.

(2) **Terms and Conditions of the Financing Plan** – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions. The Financing Plan shall have regard to the principles and parameters set forth in Schedule 3 and such other conditions and requirements as may be specified in a written declaration of the Delegate or

in accordance with the Regulation.

(3) OEB Approval – Any Additional Funding Charge payable to or for the benefit of the Financial Services Agent shall be subject to review and approval by the OEB.

(4) OEB Review – The OEB [shall] undertake an annual review of the records maintained by the Financial Services Agent for the purpose of confirming that the Funding Obligations incurred and the

Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan.

(5) Replacement of the Administrative Agent – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Administrative Agent shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the

recommendations of the OEB in relation to further actions undertaken by the Financial Services Agent under the Financing Plan. If the Financial Services Agent is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services.

(6) Obligation to Apply IESO Remittances – The Financial

Services Agent shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Absolute Assignees, or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose.

(7) Non-Recourse – The Financing Plan shall be implemented so that Funding Obligations incurred shall be

without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services Agent, the OEB, the Province or the Lieutenant Governor in Council, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in

relation to a Finance Amount. [All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]

(8) Incurrences are Binding – Notwithstanding anything to the contrary in this Act, each Disposition made to or by an Absolute Assignee and all amounts payable or becoming due and payable by or on

behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation, shall be binding for the purposes of this Act, including in determining the amount of related Transition Charges, despite any impairment or defect resulting from such failure.

[Article 10 – Compliance Matters[19]

(1) Right of the [OEB] to Inspect Books and Records -

[9] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) [OPG's Rate Settings – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Agent [in excess of the actual

incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Agent; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][20]

[20] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Administrative Agent of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

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

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – The [Lieutenant Governor in Council] shall not in any way take or permit any action to reduce, impair, postpone or terminate the obligation of Retail Consumers to pay Transition Charges or to

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

impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken

or failure by the Lieutenant Governor in Council, including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) Undertaking and Agreement – The [Lieutenant Governor in Council] shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments

made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any

Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) Successor IESO – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, Successor IESO shall

be established to perform such obligations.

(4) Compensation for Failure – Absolute Assignees shall be compensated for any losses suffered by them as a result of any failure by the Lieutenant Governor in Council to comply with its undertakings and agreements in this Article 11.[22]

(5) No Wind-up of Financing Entity. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one

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[22] Requested by Torys. For discussion.

year after all of its Funding Obligations are repaid.

(6) References to the Undertaking and Agreement – Any non-confidential reference to the Undertaking of the Lieutenant Governor in Council, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to

establish guidelines regarding all-in funding costs; permitted Additional Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous[23]

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

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

(2) Conflict of law – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) No further acts or approvals required - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other

than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental

contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) Effect of invalidity after the Incurrence of any Funding Obligation - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed

under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) Severability - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the

constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of

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

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3[24]

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

(1) in respect of each Reference Period, make reference to the allocations of Future Fair Share of Green Transition Benefits to each Reference Group

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

contemplated by the Fair Allocation Plan;

(2) estimate IESO Funding Shortfalls for each Reference Period;

(3) consider alternative funding arrangements suitable to fund the estimated IESO Funding Shortfalls, including short term and/or long term Funding Obligations;

(9) consider quantities, maturities, payment obligations, prepayment or redemption rights and such

other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(4) if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and

benefits of the Green Generation Initiative to the applicable Retail Consumer Group under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(5) reflect the assumptions and requirements specified in any contemplated Funding

Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical Retail Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation having regard to the application of the Allocation Methodology);

(6) incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the

size and type contemplated, and having regarding to the following parameters:

a. whether the Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of

such short-term liquidity would not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations should not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such

Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

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

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets

outside of Canada if considered by the Financial Services Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Financial Services Agent shall cause the applicable Absolute Assignee to enter into hedging transactions to

mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the Financial Services Agent will select counterparties under any transaction to be entered into by an Absolute

Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard to concentration,

credit and other identified risks with respect to individual counterparties or countries;

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

(7) the basis upon which Funding Obligations may be redeemed, prepaid,

repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding Shortfalls from time to time on a basis that is consistent with the allocations of Future Fair Share of Green Transition Benefits to applicable Reference Groups under the Fair Allocation Plan;

(8) the basis upon which any Repayments, Funding Costs

and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

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

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

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

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

enforcement and realization scenario;

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

(14) the basis upon which any Disposition may be made or effected by an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the

subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(15) describe the requirements applicable to any special purchase entity that will purchase an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities; and

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

CC: Taking nuclear order as a model, how does timing line up? What do you get from IESO?

Lynne: The regular course is: regulation comes out, and an applicant applies for order. We need to look at the delegated authority to staff to see if it falls under such delegation. If not, there are other provisions that do not require hearing. There will be an application from applicant.

CC: if we are using the same model, we would introduce the legislation, make the reg in a few days, and then ask the Board for order to create reg asset.

Mary Ann: The Regulation would have to authorize that account. It is not that difficult if we have the regulation. A hearing is not required.

CC: When do you need the accounting order (for the balance sheet account)?

OEB: right now, the current variance account (what IESO and LDCs need to do) is provided in the RPP Manual. If 95/05 is amended, RPP manual will be updated.

IESO: KPMG wants the OEB to issue the accounting order.

OEB: We charge all LDCs the market rate. It is incumbent on the LDCs to provide the delta. There is usually one month's delay. The first shortfall will be around June 14.

CC: How often do you need the order?

OEB: For reporting, once a year. There does not need to have a frequency. We can also put a sunset date depending on the order.

CC: So we have a process.

Lynne: Yes, but one thing to note is that the recovery mechanism is not through an application, but through the selling process. There is no recovery through the OEB. The accounting order must make this

clear. Things may be different in 6 years as well.

JW: Is this the method by which we'll meet Cindy's requirements for OEB's involvement?

Nadine: Yes. When it comes to recovery of financing costs, there is nothing from OEB. They will be charged through rates.

CC: this is how we create the regulatory asset, subject to recovery concern (ie. need to true up thru the settlement process). We are still

interested in the role of the OEB in administrative costs of the trust.

CONFIDENTIAL
DRAFT: APRIL 10, 2018 9:30 AM

FAIR HYDRO PLAN – DEALERS TOP ISSUES

General

1. **Market Disruption**. In the event of a market disruption that renders it impossible to refinance debt when required (or where financing of amounts required to service the debt is not available because of a market disruption where the Financing Entity was relying on such further issuance of debt until the recovery is set to begin to fund interest), either the Province must

step in and payout the debt or there must be the right to recover the debt from ratepayers as it becomes due, notwithstanding the intended rate cut.

2. **Fair Allocation Plan**. There is a strong preference not to have the "Fair Allocation Plan" form a part of the regulatory structure. If it is required, it will need to be finalized with all required approvals before any debt is incurred. The Fair Allocation Plan cannot be changed so as to adversely affect the recovery of Finance Amounts and Transition

Charges owing to any Regulatory Asset Owner. Also, the Fair Allocation Plan cannot be a cap on the Financing Plan in terms of any Funding Obligations, Refinancings, Finance Amounts or Transition Charges which may be required for any Regulatory Asset.

3. **Financing Plan**. The legislation must not be overly prescriptive in terms of the principles, parameters, requirements and conditions for establishing the Financing Plan. Also, there needs to be sufficient flexibility to permit the Financing Plan to

change over time to address the need for future Funding Shortfalls and Refinancings.

4. **Provincial Commitments**. The Province must commit in the legislation not to amend or repeal the statute (including the regulations), in the case of an amendment, where that amendment adversely impacts the ability of a Financing Entity to fully recover a Regulatory Asset in order to fully repay all indebtedness incurred by a Financing Entity to purchase such Regulatory Asset ("Change of

Law"). The legislation must require the Province to appoint a successor to carry out the duties of IESO in the event is IESO is restructured, dissolved or becomes insolvent. The Province must also provide a contractual guarantee (i) in the event there is a Change of Law or all or a portion of the legislation is *ultra vires*, at the lenders option, the Province will either step in and pay the debt service (principal and interest) on the outstanding debt until maturity or payout the entire debt including any make-wholes, and (ii) that the

IESO will perform its duties as servicer under any sale and servicing agreement with a Financing Entity.

5. **Limitation on Deferrals**. The legislation must put a time limit on the period during which IESO can continue to create deferrals under the program. This would provide investors with a necessary assurance that at some point ratepayers will be required to pay down the Regulatory Assets rather than IESO continuing to create deferrals in order to service the

debt issued by the Financing Entities.

6. **Fixed Recovery Timeframes**. There can be no additional impairment on the ability to recover Regulatory Assets after the first **[five]** years of the program (that is, no limit on year over year increases). There must also be an outside date for recoveries set out in the regulation (i.e. 2047).

7. **Limited OEB Role**. The OEB must not have any approval rights or oversight or other role over Regulatory Assets, Funding Costs,

Transition Charges or the Financing Plan; however, to the extent required for constitutional reasons or in order for Regulatory Assets to be treated as an asset of the Financing Entity, it would be possible for the OEB to (i) approve the Fair Allocation Plan at the outset of the program and (ii) have limited oversight over the Financing Entity's expenses so long as such oversight may not extend to the Finance Amount necessary to recover all principal and interest and other financing charges on the debt incurred by

the Financing Entity to purchase the Regulatory Asset.

8. **Possibility of Multiple Financing Entities**. While the Dealers preference would be to have a single Financing Entity own all of the Regulatory Assets, the legislation may provide flexibility for there to be more than one Financing Entity, provided that each of which is permitted to (i) purchase and aggregate Regulatory Assets, (ii) disaggregate and sell Regulatory Assets, (iii) grant security over its Regulatory Assets so as to enable

the grantee of the security interest to realize on its security by selling the Regulatory Asset.

9. **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until the earlier of (i) one year after all of its debt is repaid and (ii) the date designated by the Minister for the winding up, liquidation or dissolution of the FE (in which case the Province's guarantee would apply).

Transition Charges

10. **Priority of Transition Charges**. The Transition Charges must take priority over other amounts recovered by LDCs. LDCs must not have any rights of set-off in respect of amounts collected in respect of any Transition Charges.

11. **Sequestration of Transition Charges**. Any court in the Province must, upon application of a Regulatory Asset Owner, order the sequestration and payment of Transition Charges

collected by any LDC or the IESO.

12. **Beneficiaries Defined**. There must be certainty around the category of Ratepayers who will benefit from the Fair Hydro program and who will ultimately pay for the program (although it may be that this could be left to the Regulations). Once the category of Ratepayers is established at the outset of the program, the Province cannot expand or reduce the category of Ratepayers benefitting from the program unless such change does

not in any way adversely affect the rights of any Regulatory Asset Owner under an Regulatory Asset.

13. **True-Up of Transition Charges**. Transition Charges need to be trued-up at least semi-annually, but true-ups may need to be applied more frequently to ensure repayment of Funding Obligations as they become due and payable.

14. **Retroactive True-up**. In order to ensure that only the category of ratepayers that benefits from the program is left paying for the program, there is likely a need for

a retroactive true up by IESO so that the amount deferred by IESO in respect of the Fair Hydro program is the correct amount (in other words, amounts deferred in respect of other programs or variances are not covered by Fair Hydro ratepayers and vice versa).

15. **Allocation to Ratepayers**. The Transition Charges must be allocated to all Ratepayers on a unit (*i.e.* per kWh) basis, not fixed charge per Ratepayer, in order to reduce the risk associated with a challenge to the enabling legislation.

16. **Invoicing and Collection of Transition Charges**. Transition Charges must be separately identified in all invoices from the IESO to the LDCs. It would also be preferable that Transition Charges also be separately identified in invoices from LDCs to Ratepayers (as opposed to Transition Charges being included in the RPP payable by Ratepayers). All Transition Charges collect by LDCs and the IESO must be segregated from all other amounts received and

deposited into a Regulatory Asset Account.

Regulatory Asset

17. **Regulatory Asset Definition**. The Regulatory Asset must be defined to reflect both the recording of a deferral and the right to collect Transition Charges. Transition Charges must be separately tracked **[by the IESO]**. It is not necessary for the chain of liability to run all the way to the Ratepayer level, so long as the IESO's and LDCs' obligations are clear in terms of invoicing and collecting Transition Charges.

There cannot be any requirement for a Financing Entity to enter into a contract with LDCs.

18. **Ownership of Regulatory Assets**. The sale of Regulatory Assets must be restricted to Financing Entities controlled by a single entity (initially, OPG). For greater certainty, the IESO would not be permitted to own any Regulatory Assets.

19. **No Obligation to Buy**. A Financing Entity will not be required to purchase a Regulatory Asset from IESO unless it is able to finance the purchase.

20. **Sale of Regulatory Asset is Final**. The legislation must provide that any transfer, sale, conveyance or assignment of a Regulatory Asset to a Financing Entity is conclusively considered to be a sale for all purposes and may not be re-characterized or found by a court to be a loan or any other arrangement.

21. **Security Interests**. The assignment and granting of a security interest over Regulatory Assets and all proceeds derived therefrom either (i) must be exclusively governed by the

enabling legislation which should provide for the perfection and priority of such assignments and security interests in detail in such legislation, notwithstanding any provisions of the PPSA or any other provincial statute or, (ii) must deem the Regulatory Asset to be an "intangible" for purposes of the PPSA and provide that (a) no perfection is required under the PPSA to perfect the assignment of the Regulatory Asset to a Financing Entity, (b) the sale of a Regulatory Asset by IESO to a Financing Entity shall be free and

clear of any security interest that IESO may have purported to grant over such asset, (c) only a Financing Entity may grant a security interest over the Regulatory Asset, and (d) perfection and priority of a security interest granted by a Financing Entity in a Regulatory Asset is governed by the PPSA on the basis that the Regulatory Asset is an "intangible" thereunder.

Draft: Feb 10, 2017

FAIR HYDRO ACT
ALLOCATION OF RESPONSIBILITIES

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

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

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

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

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

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

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

FAIR HYDRO PLAN – DEALERS TOP ISSUES

General

1. **Market Disruption**. In the event of a market disruption that renders it impossible to refinance debt when required (or where financing of amounts required to service the debt is not available because of a market disruption where the Financing Entity was relying on such further issuance of debt until the recovery is set to begin to fund interest), either the Province must step in and payout the debt or there must be the right to recover the debt from ratepayers as it becomes due, notwithstanding the intended rate cut.

2. **Fair Allocation Plan**. There is a strong preference not to have the "Fair Allocation Plan" form a part of the regulatory structure. If it is required, it will need to be finalized with all required approvals before any debt is incurred. The Fair Allocation Plan cannot be changed so as to adversely affect the recovery of Finance Amounts and Transition Charges owing to any Regulatory Asset Owner. Also, the Fair Allocation Plan cannot be a cap on the Financing Plan in terms of any Funding Obligations, Refinancings, Finance Amounts or Transition Charges which may be required for any Regulatory Asset.

3. **Financing Plan**. The legislation must not be overly prescriptive in terms of the principles, parameters, requirements and conditions for establishing the Financing Plan. Also, there needs to be sufficient flexibility to permit the Financing Plan to change over time to address the need for future Funding Shortfalls and Refinancings.

4. **Provincial Commitments**. The Province must commit in the legislation not to amend or repeal the statute (including the regulations), in the case of an amendment, where that amendment adversely impacts the ability of a Financing Entity to fully recover a Regulatory Asset in order to fully repay all indebtedness incurred by a Financing Entity to purchase such Regulatory Asset ("Change of Law"). The legislation must require the Province to appoint a successor to carry out the duties of IESO in the event is IESO is restructured, dissolved or becomes insolvent. The Province must also provide a contractual guarantee (i) in the event there is a Change of Law or all or a portion of the legislation is *ultra vires*, at the lenders option, the Province will either step in and pay the debt service (principal and interest) on the outstanding debt until maturity or payout the entire debt including any make-wholes, and (ii) that the IESO will perform its duties as servicer under any sale and servicing agreement with a Financing Entity.

5. **Limitation on Deferrals**. The legislation must put a time limit on the period during which IESO can continue to create deferrals under the program. This would provide investors with a necessary assurance that at some point ratepayers will be required to pay down the Regulatory Assets rather than IESO continuing to create deferrals in order to service the debt issued by the Financing Entities.

6. **Fixed Recovery Timeframes**. There can be no additional impairment on the ability to recover Regulatory Assets after the first **[five]** years of the program (that is, no limit on year over year increases). There must also be an outside date for recoveries set out in the regulation (i.e. 2047).

7. **Limited OEB Role**. The OEB must not have any approval rights or oversight or other role over Regulatory Assets, Funding Costs, Transition Charges or the Financing Plan; however, to the extent required for constitutional reasons or in order for Regulatory Assets to be treated as an asset of the Financing Entity, it would be possible for the OEB to (i) approve the Fair Allocation Plan at the outset of the program and (ii) have limited oversight over the Financing Entity's expenses so long as such oversight may not extend to the Finance Amount necessary to recover all principal and interest and other financing charges on the debt incurred by the Financing Entity to purchase the Regulatory Asset.

8. **Possibility of Multiple Financing Entities**. While the Dealers preference would be to have a single Financing Entity own all of the Regulatory Assets, the legislation may provide flexibility for there to be more than one Financing Entity, provided that each of which is permitted to (i) purchase and aggregate Regulatory Assets, (ii) disaggregate and sell Regulatory Assets, (iii) grant security over its Regulatory Assets so as to enable the grantee of the security interest to realize on its security by selling the Regulatory Asset.

9. **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until the earlier of (i) one year after all of its debt is repaid and (ii) the date designated by the Minister for the winding up, liquidation or dissolution of the FE (in which case the Province's guarantee would apply).

Transition Charges

10. **Priority of Transition Charges**. The Transition Charges must take priority over other amounts recovered by LDCs. LDCs must not have any rights of set-off in respect of amounts collected in respect of any Transition Charges.

11. **Sequestration of Transition Charges**. Any court in the Province must, upon application of a Regulatory Asset Owner, order the sequestration and payment of Transition Charges collected by any LDC or the IESO.

12. **Beneficiaries Defined**. There must be certainty around the category of Ratepayers who will benefit from the Fair Hydro program and who will ultimately pay for the program (although it may be that this could be left to the Regulations). Once the category of Ratepayers is established at the outset of the program, the Province cannot expand or reduce the category of Ratepayers benefitting from the program unless such change does not in any way adversely affect the rights of any Regulatory Asset Owner under an Regulatory Asset.

13. **True-Up of Transition Charges**. Transition Charges need to be trued-up at least semi-annually, but true-ups may need to be applied more frequently to ensure repayment of Funding Obligations as they become due and payable.

14. **Retroactive True-up**. In order to ensure that only the category of ratepayers that benefits from the program is left paying for the program, there is likely a need for a retroactive true up by IESO so that the amount deferred by IESO in respect of the Fair Hydro program is the correct amount (in other words, amounts deferred in respect of other programs or variances are not covered by Fair Hydro ratepayers and vice versa).

15. **Allocation to Ratepayers.** The Transition Charges must be allocated to all Ratepayers on a unit (*i.e.* per kWh) basis, not fixed charge per Ratepayer, in order to reduce the risk associated with a challenge to the enabling legislation.

16. **Invoicing and Collection of Transition Charges.** Transition Charges must be separately identified in all invoices from the IESO to the LDCs. It would also be preferable that Transition Charges also be separately identified in invoices from LDCs to Ratepayers (as opposed to Transition Charges being included in the RPP payable by Ratepayers). All Transition Charges collect by LDCs and the IESO must be segregated from all other amounts received and deposited into a Regulatory Asset Account.

Regulatory Asset

17. **Regulatory Asset Definition.** The Regulatory Asset must be defined to reflect both the recording of a deferral and the right to collect Transition Charges. Transition Charges must be separately tracked **[by the IESO]**. It is not necessary for the chain of liability to run all the way to the Ratepayer level, so long as the IESO's and LDCs' obligations are clear in terms of invoicing and collecting Transition Charges. There cannot be any requirement for a Financing Entity to enter into a contract with LDCs.

18. **Ownership of Regulatory Assets.** The sale of Regulatory Assets must be restricted to Financing Entities controlled by a single entity (initially, OPG). For greater certainty, the IESO would not be permitted to own any Regulatory Assets.

19. **No Obligation to Buy.** A Financing Entity will not be required to purchase a Regulatory Asset from IESO unless it is able to finance the purchase.

20. **Sale of Regulatory Asset is Final.** The legislation must provide that any transfer, sale, conveyance or assignment of a Regulatory Asset to a Financing Entity is conclusively considered to be a sale for all purposes and may not be re-characterized or found by a court to be a loan or any other arrangement.

21. **Security Interests.** The assignment and granting of a security interest over Regulatory Assets and all proceeds derived therefrom either (i) must be exclusively governed by the enabling legislation which should provide for the perfection and priority of such assignments and security interests in detail in such legislation, notwithstanding any provisions of the PPSA or any other provincial statute or, (ii) must deem the Regulatory Asset to be an "intangible" for purposes of the PPSA and provide that (a) no perfection is required under the PPSA to perfect the assignment of the Regulatory Asset to a Financing Entity, (b) the sale of a Regulatory Asset by IESO to a Financing Entity shall be free and clear of any security interest that IESO may have purported to grant over such asset, (c) only a Financing Entity may grant a security interest over the Regulatory Asset, and (d) perfection and priority of a security interest granted by a Financing Entity in a Regulatory Asset is governed by the PPSA on the basis that the Regulatory Asset is an "intangible" thereunder.

FHP OEB

The draft as currently configured departs some way from the original intent of the FHP, which was expressed as relating to refinancing the Global Adjustment as an input to the RPP.

The OEB suggests that it would be simpler, more in keeping with the announcement and the current regulatory structure in place in Ontario, and and still familiar enough to the Markets to use the RPP approach currently in place, by leveraging existing IESO processes and OEB regulatory tools.

The approach of having each ratepayer obligated is problematic as it raises serious enforcement issues, is unnecessary as will be explained further below, and does not work as a component of RPP.

Using current RPP price setting regime

- The new proposed commercial regime proposed in the April 6th draft is different from the regime that Ontario currently has and would likely be more costly to set up. It essentially sets up a parallel collection scheme in order to provide commercial certainty. This parallel regime which has as a tenet that each individual rate payer is a debtor, is not necessary, as an effective scheme is already in place.

- Currently a Ratepayer pays its commodity charges based on usage under the Regulated Price plan (RPP).)This is accomplished through the RPP price setting exercise undertaken by the Board, in accordance with The OEB Act section 79(16) and the accompanying regulation. This system is well established and workable for the type of ratepayers this plan will cover.

- The OEB does not see the value/rationale for a "fixed cost" attribution. If the Allocation Factor is set as a cents/kwh charge, then this charge could be included in RPP and have the advantage of also working as a bypass charge by relying on Gross Load billing (similar to the Debt retirement charge.) for any ratepayer who chooses to load displace/net meter.

- the best approach would be for the Administrator to provide the required information to the IESO and the OEB on the amount to be recovered. Based on that information, the OEB would calculate RPP cost, then design the prices. The bypass charge would be calculated using the cost from the Administrator to calculate a per/kwh amount, in the same way the OEB calculates the RPP Variance settlement factor today that LDCs charge a customer who is exiting the RPP. That same per/kwh should be used for RPP eligible consumers.

- The specified amount if it is a cents/kWh would work for RPP (allocated to TOU) and could be used for calculating some form of amount owing (for bypass).The Transition Charge could be billed on a Gross Load basis so that whether a ratepayer was net metered or had complete load displacement there would still be a charge each month, just as there was for DRC (all self-generation after 1999 had to pay DRC on a gross load basis.)

- In terms of variances, there could be one RPP variance that would track the difference between what is paid by Ratepayers and what is owed (Transition Charges + Market variance + weather+ exit/bypass payments for Load displacement and net metering).. IESO would need to have a separate variance for the non RPP customers, with similar costs collected.

- the Rights sections would need to be drafted differently so it is clear a Ratepayer Group is responsible (not individual ratepayers) That Ratepayer Group would be the RPP class plus the RPP Eligible class, plus potentially any others one may want to include.

- This approach would be much simpler to draft and for the markets here to understand as it uses existing well understood and enforceable processes . It could follow what is in GA legislation today rather then being completely and wholly new.

<u>Ability to make sure payments are made</u>

- the current draft seeks to ensure that all amounts advanced by Creditors are secure. It does this by making each individual rate payer in effect a debtor, with the OEB and the LDCs acting as enforcers. This is neither desirable nor necessary. (FN 19 –makes the LDCs responsible. This could be a serious issue for the scheme as this could affect credit ratings for the LDCs with a corresponding upward pressure on distribution rates.)

- The charges should not be enforceable against individual ratepayers, but should be enforceable by virtue of requiring the LDCs to collect charges from ratepayers through the RPP rate order. This type of enforcement would rely on existing OEB powers with which the market, including current credit agencies is familiar.

- Under the rates/licensing regime that is in place the OEB can Order/obligate the LDCs to collect an amount (and require compliance with those Orders. The Rate Order would therefore ensure collection and repayment

- There are also other statutory provisions in place which make the payment of the amounts owing secure. See Chapter 9 of IESO's market rules which spells out settlement and billing for various charges; Refer also to sections 25.33 of the Electricity Act (adjustments to ensure prices reflect the cost of electricity) and 32 (market rules) .

- The OEB licensing regime has supported the other government initiatives and can support these processes. The licensing regime, together with the rate orders would support the repayment of the amounts. The whole market/sector today relies on the OEB Licensing and Enforcement powers.

OEB role in approving the Treasury (Financing Plan)

- The OEB agrees that it should not be required to assess the prudence of the Treasury Plan as approved by the OPG trust.

- if there is a desire for some oversight role the OEB would suggest that it be limited to a role akin to the role it was given in the IPSP approval process, which was basically to confirm the Plan meets the government's expectations (some version of what is set out in the Schedule).

- One approach might be to assess the rigour of the process a company designs to issue debt/arrange repayment, and perhaps also an examination of the extent to which the company followed its own plan. This could be akin to the way the OEB would have approved OPA's procurement strategies (but not the results) after an IPSP approval.

OEB role in setting up the regulatory asset

- Legislation has in the past established deferral or variance accounts (IESO, OPG) and in some cases the OEB issued accounting orders as a formality effectively duplicating what is in the regulation, for administrative ease (e.g. OPG COS payment amount orders include accounting orders for all active accounts – old and new) in the absence of further information we cannot comment further on what is contemplated here

Other matters

(FN 16) speaks to expanding the base to include suite-metered customers,the OEB would clarify for the drafters that ALL suite metered customers are customers of Electricity Distributors (as they get supply at bulk meter).

Also in definitions "Electricity Distributor" needs to be tied to rate-regulated, otherwise Cornwall is caught.

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

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]**

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.

[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.

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

["Consumer Base" means, for a Reference Period, the total number of Ratepayers in the

[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.

Ratepayer Group determined by the Administrative Agent as of the [30th] day immediately preceding the first day of the Reference Period.]

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

under the Regulatory Asset to an Absolute Assignee.

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

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received by the Electricity Distributor prior to the Remittance Date and that have not otherwise been

remitted to IESO or if applicable the Alternative Collection Agent in accordance with Section 5(3) , including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by an Electricity Distributor (or in its stead, an Alternative Invoicing Agent) in respect of electricity charges

and related services and amounts incurred, assessed or attributed in respect of a residence located in the Electricity Distributor's designated Service Area.

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

principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Part in the absence of a manifest calculation error.

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

"Finance Amount" means, in respect of a Reference Period, the sum (without duplication) of the following amounts for the Reference Period: (a) Repayments; (b) Funding

Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Receipts" means, for a Reference Period, all amounts received by or on behalf of the Regulatory Asset Owner during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges

paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Regulatory Asset Owner under derivatives and any withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a Funding Obligation.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Treasury Plan, exceed (b) any Finance Reserve Withdrawals.

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during

the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Treasury Plan.

"Funding Costs" means, for a Reference Period, the amount by which (a) the aggregate of all interest and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the

Regulatory Asset Owner during the Reference Period in respect of all Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or

other account established under any indenture, ancillary agreement or other financing document relating to a Funding Obligation, exceeds (b) the aggregate of all Finance Receipts for the Reference Period.

"Funding Obligation" means each payment obligation (including indebtedness, payment obligations arising under or in respect of derivatives, payment obligations owing to service providers, administrative

agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies) incurred by or on behalf of the Regulatory Asset Owner under the Treasury Plan in order to fund a Funding Shortfall for a Reference Period, including any Refinancing of another such payment obligation.

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

"GA Power Contract Contribution" means, for a Reference Period, the aggregate of the payments to be made by the applicable Ratepayer Group in respect of

the portion of the Global Adjustment attributable to the Power Contracts in accordance with the Fair Allocation Plan.

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

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

including amounts attributable to the Power Contracts.

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

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

day of the immediately preceding Reference Period.

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

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

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor

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

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

Periods occurring prior to the time.

"Period Transition Charge" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount and (b) the True-Up Amount in respect of the immediately preceding Reference Period.

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

portion (including a specified portion on a divided basis or by way of an undivided interest) of the Regulatory Asset.

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

"Power Contracts" means long-term power contracts entered into by IESO with certain Generators, under which IESO has agreed to pay such Generators amounts, determined in respect of

quantities of electricity over specified periods, to the extent that applicable market prices for such quantities of electricity during a specified period are less than specified reference prices for such quantities of electricity, and, correspondingly, Generators have agreed to pay IESO amounts if the market prices for such quantities exceed the applicable reference prices for such quantities.[3]

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

"Province" means the Province of Ontario.

"Ratepayer" means present and future [retail] consumers of electricity [in the Province] who are [RPP][or OREC-eligible] consumers, which shall include all such retail consumers who are connected to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or

purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or IESO.[4]

"Ratepayer Group" means, in relation to a Reference Period, the Ratepayers who receive

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

Electricity Invoices during the Reference Period.

"Redemption Amount" means the amount payable by or on behalf of a Regulatory Asset Owner to redeem, prepay or repurchase a Funding Obligation, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the [Legislation Implementation Date] to (and including) June 30, 2017, (b) each six month period commencing [July 1st and January 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

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

Regulated Asset Owner incurring one or more other Funding Obligations.

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

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; (b) for IESO, any bank account into which IESO deposits or receives Electricity Distributor

Remittances; and (c) if applicable, for the Alternative Collection Agent, any bank account into which the Alternative Collection Agent deposits or receives Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means, collectively, (a) IESO, to the extent that it has retained any ownership interest in, to or under the Regulatory Asset and (b) each Absolute Assignee, to the extent that it

has acquired and owns any ownership interest (including a specified portion on a divided basis or by way of an undivided interest) in, to or under the Regulatory Asset, which together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Generation Assets" means the [facilities, plants and equipment] constructed, acquired or developed in

connection with the Green Generation Initiative.

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

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to

IESO or if applicable the Alternative Collection Agent in accordance with any Funding Obligation or, if no such day is specified in relation to any Funding Obligation, then the Business Day preceding each Settlement Date.

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a Finance Reserve Deposit) of, all or a portion of the amount advanced to the

Regulatory Asset Owner under a Funding Obligation.

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

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

"Service Area" means, in respect of an Electricity Distributor, the geographic

area or region in which it is [permitted] to distribute electricity to residences in accordance with this Act.

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

"Treasury Plan" means the written plan prepared by the Administrative Agent in compliance with Article 8 to set forth the basis upon which, among other things: (a) any Disposition may be made or effected; (b) any Funding

Obligations may be incurred in order to fund a Funding Shortfall, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may

be made; and (h) the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied.

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

"Transition Charge Collection" means any amount received or deemed by this Part to have been received upon the

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[5] See footnote 1, above.

collection of a Transition Charge paid by or on behalf of a Ratepayer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Administrative Agent equal to (a) the Estimate of the Finance Amount for the related True-Up Period, minus (b) the

Actual Finance Amount for such related True-Up Period, plus (c) the Collected Amount Adjustment.

"True-Up Period" means, in relation to a Reference Period, the period from and including the [30th] day immediately preceding the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the Reference Period.

"Undertaking of the Lieutenant Governor in Council" means

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

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

Article 3 – Transition Charges

(1) Ratepayer Obligation to Pay a Transition Charge –

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

(2) **Indebtedness of Ratepayers** – Until paid, a Transition Charge attributed to a Ratepayer and recorded in an Electricity Invoice shall,

together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute indebtedness of the Ratepayer to the Regulatory Asset Owner. Such indebtedness shall constitute a single and separate debt obligation owing by the Ratepayer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the

Ratepayer under the Electricity Invoice or otherwise.

(3) No Set-Off or Reduction – A Ratepayer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such Ratepayer by its Electricity Distributor, the Regulatory Asset Owner or any other person.

(4) Allocation of Ratepayer Payments – If an Electricity Distributor receives a payment made by or on behalf of a Ratepayer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition

Charges shall be deemed to constitute a Transition Charge Collection.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred under the Treasury Plan (including any adjustments based on modifications to such Funding Obligations made in compliance with the Treasury Plan or as a result of amendments to the Treasury Plan made in accordance with

Section 8(3)) are deemed to be irrevocable, final and effective without any further action. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period whether or not the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable whether or not the related Funding Obligation was properly incurred under the Treasury Plan. In no case shall

a Funding Obligation incurred under the Treasury Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(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

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

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

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

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 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 the Province or invoices or collects electricity distribution rates in the Province[8], then such person shall, if requested by the Regulatory Asset Owner, be obligated to act diligently to (a) facilitate the invoicing and collect of any Transition Charges applicable to

[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.

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 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.

(11) **Appointment of an Alternative Collection Agent** – If a Replacement Event occurs in respect of any Electricity Distributor or IESO, the Regulatory Asset Owner shall be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations otherwise required to be undertaken by such Electricity Distributor or IESO, as applicable, under Article 5, as

and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor or IESO, as applicable. Any Electricity Distributor or IESO, as applicable, that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or

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

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges,

Transition Charge Collections, and the interests of the Regulatory Asset Owner, any Absolute Assignee and any Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense by any Ratepayer, any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province [or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of

any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.]

(13) **[Sequestration** – If any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of

Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by a Regulatory Asset Owner or Pledgee and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the

Regulatory Asset Owner or Pledgee.] [Such order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or other person or entity authorized to collect Transition Charges, as applicable.]

(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 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 respect of a Funding Obligation incurred under the Treasury Plan shall be deemed to have been and shall be perfected, valid and

binding from the time when the Pledge is made and shall be valid and binding as against the Regulatory Asset Owner making the Pledge and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the pledging Regulatory Asset Owner, irrespective of whether such persons have notice of the Pledge and the security interests of the Pledgee under such Pledge shall have priority over any liens in favour of such other persons. All proceeds of

the Regulatory Asset that are subject to such a Pledge that are received by the Regulatory Asset Owner shall immediately be subject to the such Pledge, and such proceeds shall be perfected, without any physical delivery thereof, registration of any financing statement with respect thereto pursuant to the [PPSA] or any other further act. A Pledge shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise,

that may subsequently attach to the property rights and interests in the Regulatory Asset subject to the Pledge unless the Pledgee has otherwise agreed in writing. Any Pledgee shall have a perfected security interest in Transition Charge Collections or other related proceeds that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have

commingled such Transition Charge Collections or such other proceeds with other funds. [A Pledgee shall cause a financing statement to be filed in respect of a Pledge for informational purposes only under the [PPSA].

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

(7) Collective Action Required – If a Regulatory Asset Owner's right and interest in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective [and joint] basis with each other Regulatory Asset Owner, and any agreement among all of the Regulatory Asset Owners in furtherance of such collective action shall be

valid and binding on each Regulatory Asset Owner and each Absolute Assignee, Pledgee and successor of a Regulatory Asset Owner in accordance with its terms.

Article 7 – Establishment of the Fair Allocation Plan

(1) **Adoption of the Fair Allocation Plan** – The Minister of Energy may by written order designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated

and adopted shall be the Fair Allocation Plan for all purposes of this Part, except if amended, amended and restated or terminated by a further written order issued by the Minister of Energy [in compliance with Section •].

(2) Principles and Parameters – A Fair Allocation Plan shall seek to allocate Unrecovered Transition Costs across present and future Ratepayer Groups on a basis that the Minister of Energy, in its sole and absolute discretion,

determines to be equitable, having regard to the following principles and parameters[9]:

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

[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.

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

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

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

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

terms, measured in respect of the period following such particular time.

5. No future Ratepayer Group should bear an unreasonably disproportionate share of the Unrecovered Transition Costs. Except in exceptional circumstances or in the case of any backward-looking adjustment made as contemplated in 7, below, the share of the Unrecovered Transition Costs to be allocated under a Fair Allocation Plan to any future

Ratepayer Group should have regard to [Insert formula if a year-over-year maximum amount is determined to be appropriate][10].

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

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

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

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

persons to prepare and implement such a Treasury Plan.

(2) Required Terms and Conditions of the Treasury Plan – The Treasury Plan shall establish the basis for funding decisions that have the effect of allocating the Unrecovered Transition Costs across present and future Ratepayer Groups on a basis that is consistent with the Fair Allocation Plan. The Treasury Plan shall be consistent with the principles, parameters,

requirements and conditions set forth in Schedule 3 and such other conditions and requirements as may be specified in a written order of the Minister of Energy [or in accordance with the Regulation].

(3) Power to Review and Approve the Treasury Plan – The Minister of Energy may, by written order, designate one or more persons to review the Treasury Plan and to review and assess the consistency of the Funding Obligations

incurred with such Treasury Plan, and the Minister of Energy may specify requirements in respect of such review in such written order. The Administrative Agent, or such other person(s) as may be designated by written order of the Minister of Energy made pursuant to Section 8(1), shall make any such amendments to the Treasury Plan, and submit a revised Treasury Plan to the **[OEB]** for approval within [the time period specified in such written order]/[[●] days of such

written order].[***Consider periodic amendments to the Treasury Plan following an annual review; provided that amendments cannot affect the existing Funding Obligations. Consider the level of oversight the MoE/OEB will have over this process?***]

(4) Approval of Treasury Plan – The **[OEB]** shall have the power to and shall approve or disapprove of the Treasury Plan based solely on whether the Treasury Plan is consistent

with (i) the principles, parameters, requirements and conditions set forth in Schedule 3, (ii) such other conditions and requirements as may be specified in a written order of the Minister of Energy [or in accordance with the Regulation] [and (iii) the Fair Allocation Plan]. If the **[OEB]** approves the Treasury Plan, then such Treasury Plan shall be implemented by the Administrative Agent. If the OEB disapproves of the Treasury Plan or otherwise

fails to approve the Treasury Plan, then the Administrative Agent shall re-submit the Treasury Plan with such amendments as the Administrative Agent shall consider necessary for the Treasury Plan to be approved by the OEB.

(5) **Consistency with the Fair Allocation Plan** - Funding Obligations should only be incurred if Repayments and Funding Costs would be borne by present and future Designated Ratepayers on a

basis that is [generally] consistent with their respective allocations of the costs and benefits of the Green Generation Initiative contemplated in the Fair Allocation Plan. In that regard, at the time of setting the Fair Allocation Plan for any particular period, the aggregate amount payable during future Reference Periods on account of Funding Obligations incurred on or before the date on which a new Funding Obligation is incurred should not exceed the

allocation of the costs and benefits of the Green Generation Initiative to the applicable Ratepayer Group contemplated in the Fair Allocation Plan. If, despite the foregoing, the Administrative Agent determines that the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green

Generation Initiative to the applicable Ratepayer Group under the then current Fair Allocation Plan, the Treasury Plan shall require the Administrative Agent to make diligent efforts to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances, if such a Refinancing or deferral is determined to be available the Treasury Plan shall require

the Administrative Agent to make diligent efforts to implement such Refinancing or deferral on a basis that is consistent with the Fair Allocation Plan.

(6) Establishment of Special Purpose Entities – If the implementation of the Treasury Plan contemplates the establishment of one or more special purpose finance entities to incur Funding Obligations under the Treasury Plan, as an Absolute Assignee and on a basis that limits the recourse

for the payment of such Funding Obligations to such Absolute Assignee's interest in, to and under the Regulatory Asset, the Administrative Agent shall have regard to the characteristics specified in Schedule 4 in establishing such special purpose entity.]

(7) Obligation to Apply IESO Remittances – The Administrative Agent shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Regulatory Asset Owner, or

otherwise in respect of or as proceeds from the Regulatory Asset shall only be applied or used to pay Finance Amounts when they are due and payable and for no other purpose.[11]

(8) Non-Recourse – The Treasury Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Invoicing Agent,

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

and Alternative Collection Agent, the Administrative Agent, the OEB, the Province or the Lieutenant Governor in Council, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Part or expressly pursuant to any Funding Obligation or obligation in relation to a Finance Amount. [All Funding Obligations shall contain a statement to the following effect: "Neither the full faith

and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]

(9) Incurrences are Binding – Despite any failure to adhere to the Treasury 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.

(2) Power to Investigate Compliance and Impose Regulatory Sanctions - Subject to the limitations set forth regarding the irrevocability of Transition Charges and the Undertaking of the Lieutenant Governor in Council, nothing in this Part shall (a) prevent or preclude the [OEB] from investigating

the compliance of any person who is or may become obligated or have duties that arise under this Part [or any Funding Obligation] with the terms and conditions of this Part and requiring compliance by such person therewith; or (b) prevent or preclude the authority or any successor regulator from imposing regulatory sanctions against any person who is or may become obligated or have duties that arise under this Part for its failure to comply with the

terms and conditions of this Part.

(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 Lieutenant Governor in Council

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – The Lieutenant Governor in Council may not in any way take or permit any action to reduce, impair,

postpone or terminate the obligation of Ratepayers to pay Transition Charges or impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, either directly or indirectly. The Lieutenant Governor in Council undertakes that the amount of Transition Charges determined hereunder shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by the

Lieutenant Governor in Council.

(2) **Undertaking and Agreement** – The Lieutenant Governor in Council undertakes to and agrees with the Regulatory Asset Owner, including any Absolute Assignee from time to time, and any Pledgee from time to time, that the Lieutenant Governor in Council will not in any way take or permit any action that limits, alters or impairs the value of the Regulatory Asset or, except as

required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, collected and remitted for the benefit of the Regulatory Asset Owner, including any Absolute Assignee from time to time, and any Pledgee from time to time.

(3) References to the Undertaking and Agreement – Any non-confidential reference to the Undertaking of

the Lieutenant Governor in Council, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 11 – Regulations

Regulations may be made under this Part for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable expectations of the Province associated with any Regulated Asset Owner incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Costs; required maturities and redemption and termination rights of

Funding Obligations; liquidity requirements, in each case to a Treasury Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Part;

(c) to set out reasonable expectations regarding the appointment or retention of advisors, agents, service providers, contract

counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Part [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by the

Regulatory Asset Owner of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Treasury Plan.

Article 12- Miscellaneous

(1) Choice of law – The law governing, as applicable, the validity, enforceability,

attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(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

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

(1) the Treasury Plan shall, in respect of each Reference Period, describe the allocations of Unrecovered Transition Costs to each Reference

Group as contemplated by the Fair Allocation Plan;

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

(3) the Administrative Agent shall describe alternative funding arrangements considered to be suitable for

the purpose of funding the estimated Funding Shortfalls, including by reference to short term and/or long term Funding Obligations that could reasonably be incurred by Regulatory Asset Owner for such purpose;

(4) such Funding Obligations shall reflect quantities, maturities, payment obligations, prepayment or redemption rights and such other features so that the effect of incurring such Funding Obligations would be that the

payments made thereunder in respect of each Reference Period (including the anticipated Finance Amounts becoming payable in relation to such Funding Obligations) would reasonably correspond to the allocations of Unrecovered Transition Costs to the applicable Reference Group under the Fair Allocation Plan;

(5) the Treasury Plan shall reflect the outcome of a financial model that incorporates the assumptions

and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges attributed to a hypothetical Ratepayer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation having regard to the application of the Allocation Methodology); [***Consider what outputs from OPG will be tested by the OEB and when.***

The modelling in the Treasury Plan may permit the OEB to check progress against the model from time to time, which may provide a basis for the MoE/OEB to require a review/amendment to the Treasury Plan if the ongoing operation of the program results in significant deviation from the model. Consider whether this flexibility is desirable.]

(6) the Administrative Agent, for and on behalf of each Regulatory Asset Owner, shall

seek to incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:

a. whether the Regulatory Asset Owner[s] will require committed access to short term liquidity to cover estimated Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment

terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not obligate a Regulatory Asset Owner to repay an amount in relation to a Reference Period that would have the effect of the Treasury Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Unrecovered Transition

Costs to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the Administrative Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations shall not obligate a Regulatory Asset Owner to repay an amount in relation to a Reference Period that would have the effect of the

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

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

d. the reference capital or finance market in which such

Funding Obligation would be incurred, including markets outside of Canada if considered by the Administrative Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Administrative Agent shall cause the [applicable]

Regulatory Asset Owner to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the Administrative Agent will select counterparties under

any transaction to be entered into by a Regulatory Asset Owner, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the Administrative Agent will manage counterparty risk, including by providing for maximum counterparty

exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

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

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

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

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

may be determined, allocated and paid;

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

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

(12) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including

in relation to any counterparty enforcement and realization scenario;

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

(14) the basis upon which any Disposition may be made or effected by a Regulatory Asset Owner, including parameters for determining the purchase price for the interest in the

Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

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

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

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Schedule 4

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

(1) Powers and Abilities:

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

provided for actual services rendered;

b. Each Regulatory Asset Owner shall be authorized to:

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

ii. contract for servicing of the Restructuring Asset and any bonds

contemplated by a Treasury Plan and for administrative services; and

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

c. So long as any Funding Obligations contemplated under a Treasury Plan are outstanding, the Regulatory Asset Owner shall not be authorized to merge or

consolidate, directly or indirectly, with any person or entity;

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

e. the Regulatory Asset Owner shall cause the proceeds obtained by incurring any Funding

Obligation to be placed in one or more separate accounts and used only to purchase the Regulatory Asset and pay any costs as provided for in a Treasury Plan; and

f. so long as the Regulatory Asset is pledged to secure Funding Obligations, the Regulatory Asset Owner must apply revenues from the collection of Transition Charges only to repay such Funding Obligations and

other costs as provided for in a Treasury Plan.

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

a. **[Number of trustees]**

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

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

d. **[Quorum and meetings]**

e. **[Fiduciary duty]**

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

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

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

Regulation Making Powers in *Ontario Fair Hydro Plan Act, 2017*

Section Reference (Version 15)	Description of Matters to be Prescribed	Notes
s. 1xx(1) "clean energy costs"	(a)(v): natural gas generation and capacity contracts	38xx(3)

	excluded from definition (b): Additional clean energy costs	
s. 1xx(1) "electricity vendor"	Additional persons as "electricity vendor"	38xx(2)
s. 1xx(1)	Criteria for	38xx(3)

“funding obligation”	additional funding obligations	
s. 1xx(1) “reference period”	Shorter reference periods between November 1, 2017 and April 30, 2047	38xx(9) [38(10) in version 18]
s. 1xx(1)	The terms of	See rider

“refinancing”	refinancing funding obligations	(item #1)not sure?
s.1xx(1) “specified consumers” s. 1xx(2)	s. 1xx(1): Additional persons as “specified consumer” s. 1xx(2): Criteria for	38xx(4)

	"specified consumers"	
s. 6.1xx (1)	Prescribing the criteria for a fictional regulated rate consumer referred to in subsection 6.1xx (1)	See rider (item #4)PART II
s. 6.1xx(3)	Prescribing	PART II

	the manner in which each invoice amount mentioned in subsection 6.1xx (1) is to be determined	
s. 6.2xx(2)	Prescribing classes of	Part II

	specified consumers for the purposes of subsection 6.2xx (2) Prescribing the adjustments to be determined by	

	the Board in subsection 6.2xx (2)	
s. 6.2xx(3)	Prescribing the method or methods mentioned in subsection 6.2xx (3), including prescribing	Part II

	different methods for different classes of specified consumers Prescribing different classes of specified	

	consumers for the purposes of subsection 6.2xx (3)	
s. 6.4xx(2)	Prescribing the means by which a specified consumer receives the difference	PART II

	between the amounts shown on the invoice and the amounts reflecting the Board's determination s under subsection 6.4xx (2)	

s. 7xx(1)	Prescribing the methodology to be applied by the Board for the purposes of subsection 7.1xx (1)	PART II
s. 7xx(2)	Prescribing	Part II

	other matters for the purposes of subsection 7xx (2)	
s. 7.1xx(2)	Prescribing the determination of the amount payable under subsection	Part II

	7.1xx (1)	
s. 8xx(6)	How a specified consumer who provides electricity through a sub-meter may collect the clean energy	

	adjustment	
s. 10xx(2) and (3)	Principles to determine the estimated finance amount and true-up amount	See rider (item #3) 38xx(5)
s. 10xx(4)	Information FSM shares with OEB,	38xx(7) [38(7) seems to deal with

	related to determination of clean energy adjustment	invoices to consumers; this may fall under 38(5) as well?] 38xx(8)??? [notices to prescribed persons]
s. 10xx(5)	OEB's	38xx(7)

	determination of rates to recover clean energy adjustment	[same as above]
s. 11xx(2)	Payment of clean energy adjustment received by IESO from electricity	

	vendors	
s. 11xx(5)	Remittance by IESO to the investment asset owners	
s. 12xx(1) and (1.1)	Invoice from electricity vendors to specified consumers	38xx(6)

	and information reporting to IESO	
s. 12xx(2)	Collection of clean energy adjustment by electricity vendor	
s. 12xx(5)	Remittance by electricity	

	vendors to IESO	
s. 14xx(2) Paragraph 1	Information to be provided to OEB in respect of funding obligations and clean energy adjustment in	

	administering the investment asset	
s. 14xx(2) Paragraph 3	Additional duties of the Financial Services Manager in administration of investment	

	asset	
s. 14xx(3)	OEB review of administrative costs	38xx(9)
s. 15xx(2) and (3) paragraph 4	Additional principles and assumptions in calculating the fair allocation	

	amount	
s. 15xx(7)	Process for recalculating the fair allocation	
s. 16xx(2) paragraph 3	Principles in preparing the Financing Plan	See rider (item #2)
s. 20xx(1) and (1.1)	Determining the IESO	

	deferral, including retrospective amounts	
s. 20xx(2)	Information shared with IESO by electricity vendors	
s. 20.1xx(2) paragraph	Additional adjustments	(xx)

3	to the IESO deferral to be recorded in variance account	
s. 21xx(1)	IESO's right to recover the IESO deferral	(xx)
s. 21xx(4)	Restrictions on OEB's power to set	(xx)

	rates in connection with IESO's right to recover IESO deferral	
s. 22xx(1)	Transfer of regulatory asset	N/A
s. 25xx(1)	Investment Asset: Right	38xx(9.1)

	to collect from prescribed parties (para.2) and rights under prescribed accounts (para.3)	
s. 29xx	"Replacement Event" for invoicing or	N/A; "Prescribing circumstance

	collection agent	s under which LGIC may appoint persons under s. 29xx"??
s. 36xx	Requirements for offering documents	
s. 38xx	Regulation making power	

	for: 1. Anything required to be prescribed in the Act 2. Definitions 3. Types of funding obligations	

	4. Calculation of true up amount and clean energy adjustment 5. Invoicing of clean energy adjustment 6. Invoice	

	presentment 7. Time limits 8. Other matters LGIC considers advisable	
s. 200.1xx(1)	Amounts paid or incurred by	Regulation to be made

and (1.1) (s. 25.33 (1) and (2) of the *Electricity Act*)	IESO in relation to Ontario Fair Hydro Plan Act	under the *Electricity Act*
s. 200.1xx(2) (s. 25.33(3) paragraph 4 of the	Additional consumers prescribed for the purposes of s. 25.33(3)	Regulation to be made under the *Electricity Act,*

Electricity Act)	of the Electricity Act	replicating language in regulation made under OEBA
s. 200.1(3) (s. 25.33(4)(b) of the *Electricity Act*)	Payments, set-offs and credits made or received by IESO, distributors	Regulation to be made under the *Ontario Fair Hydro Plan Act*, 2017 or

	and retailers	the *Electricity Act*, 1998

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SCHEDULE 2

AMENDMENTS TO THE ONTARIO ENERGY BOARD ACT, 1998

EXPLANATORY NOTE

The *Ontario Energy Board Act, 1998* is amended. Among the amendments:

1. Section 79 of the Act is amended so that compensation for the rate

protection provided to certain classes of rural or remote consumers may be funded out of money appropriated by the Legislature, rather than by consumers.

2. Section 79.2 of the Act, which governs the Ontario Electricity Support Program, is repealed and replaced. The program is continued, but will be funded out of money appropriated by the Legislature after the variance account maintained by the Independent Electricity System Operator formerly established

under the Plan is exhausted, rather than by consumers. There are provisions relating to the sharing, use and disclosure of information relating to the administration of the Ontario Electricity Support Program.

3. Programs are established to aid certain distribution rate-protected residential consumers and on-reserve consumers.

4. Various amendments of a technical and administrative nature are made to support the implementation and oversight of

these programs including provisions related to auditing, record-keeping, inspections and inquiries, offences and penalties

SCHEDULE 2

AMENDMENTS TO THE ONTARIO ENERGY BOARD ACT, 1998

1. (1) Subsection 79 (4) of the *Ontario Energy Board Act, 1998* is repealed and the following substituted:

Liability for compensation

(4) All consumers are required, in accordance with the

regulations, to contribute towards the amount of any compensation required under subsection (3) that is not otherwise provided under subsection (4.1).

Payments for certain classes

(4.1) Compensation required under subsection (3) may be provided with respect to one or more prescribed classes of consumers who receive rate protection under this section, in

a manner provided for in the regulations.

Money appropriated by the Legislature

(4.2) The compensation provided for in subsection (4.1) shall be paid for out of the money appropriated for those purposes by the Legislature.

Information, etc.

(4.3) If provided for in the regulations, the Board, the IESO, distributors, or any of

them shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of the rate protection or of anything else provided for in this section.

(2) Clause 79 (5) (e) of the Act is repealed and the following substituted:

(e) prescribing rules respecting the amounts that must be collected to compensate distributors, taking into account any compensation provided under subsection (4.1), including rules,

(i) respecting the calculation of those amounts,

(ii) respecting the calculation of any off-set to the liability of consumers under subsection (3)

having regard to those amounts,

(iii) establishing the time and manner of collection,

(iv) requiring the amounts to be paid in instalments and requiring the payment of interest or penalties on late payments,

(v) prescribing methods of ensuring that the amounts

required cannot be bypassed, and

(vi) respecting the distribution of those amounts to consumers;

(e.1) prescribing classes of consumers for the purposes of subsection (4.1), and governing how and when the compensation is to be provided with respect to the rate protection provided to them, including, without

restricting the generality of the foregoing, requiring the IESO to receive payments or amounts from the Minister of Energy and to make payments to licensed distributors or to prescribed persons and prescribing how and when payments are to be made;

2. Section 79.2 of the Act is repealed and the following substituted:

Rate assistance

79.2 (1) The Minister shall make provision for rate assistance for rate-assisted consumers having regard to their economic circumstances, and where the Ministers makes such provision, shall do so out of the money provided for in subsection (4).

OESP

(2) The program known as the "Ontario Electricity Support Program" in English and

"Programme ontarien d'aide relative aux frais d'électricité" in French is continued for the purpose of providing rate assistance to rate-assisted consumers having regard to their economic circumstances.

Administered by Board

(3) The Ontario Electricity Support Program shall be administered by the Board, or when the regulations so provide, by a Minister of the

Crown or other entity provided for in the regulations.

Money appropriated by the Legislature

(4) The money required for the purposes of the Ontario Electricity Support Program shall be paid out of the money appropriated for those purposes by the Legislature, once the amounts recorded in the variance account referred to in subsection (5) are no longer sufficient to provide for the

funding of the program when taken on their own.

Variance account

(5) The money required for the purposes of the Ontario Electricity Support Program shall be provided out of the credit balance in the variance account maintained by the IESO under the Program as it existed before the coming into force of section 2 of Schedule 2 to **[**Insert name of omnibus bill**]**until the amounts

recorded in the account are no longer sufficient, when taken on their own, to fund the Program.

Variance account depleted

(6) The IESO shall provide the Ministry of Energy with advance notice, on a timely basis, of the time the IESO estimates that the amounts reflected in the variance account would be less than the amount required to meet its obligations related to funding the Ontario

Electricity Support Program for the upcoming month.

How provided

(7) Rate assistance provided under this section shall be provided with respect to consumers prescribed in the regulations, and shall be provided at the times provided for in the regulations and in the amounts and in the manner provided for in the regulations.

Payments with respect to prior use

(8) The regulations may require provision of rate assistance to prescribed classes of rate-assisted consumers with respect to electricity consumed during a period prior to the date of the making of the regulation, but no such rate shall be required under the regulations with respect to electricity consumed before January 1, 2016.

Transitional

(9) The regulations may require the provision of rate assistance for a rate-assisted consumer with respect to a period prior to the date on which the consumer became a rate-assisted consumer if the consumer meets all of the criteria prescribed by the regulations.

Compensation

(10) A distributor, a unit sub-meter provider and any other

person or entity that may be prescribed is entitled to be compensated from the money referred to in subsection (4) or subsection (5), as the case may be, for any lost revenue resulting from the provision of rate assistance under the Ontario Electricity Support Program.

Deemed licence conditions, IESO, settlements, payments, etc.

(11) Every licence issued to the IESO, a distributor or unit sub-meter provider or a retailer of electricity shall be deemed to contain conditions requiring the licensee to do anything necessary to implement and administer the provision of rate assistance under this section as may be required by the regulations or the Board,

including requirements with respect to,

(a) making payments to the IESO, distributors, unit sub-meter providers and other persons and entities identified by the regulations;

(b) receiving payments or other amounts from the IESO, distributors, unit sub-meter providers and other persons

and entities identified by the Minister;

(c) requiring licensees to pass any rate assistance provided for under this section through to rate-assisted consumers in the manner provided for in the regulations;

(d) engaging in settlement activities;

(e) providing information to and receiving information from the Ministry of Energy, the Board, the IESO, distributors, unit sub-meter providers, retailers of electricity and any other prescribed persons and entities in the time and in the manner provided for by the Board or as may be prescribed; and

(f) entering into agreements or arrangements with licensees and other persons.

Information, etc.

(12) If provided for in the regulations, the Board, the IESO, distributors, retailers of electricity and unit sub-meter providers, or any of them shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration,

funding and delivery of rate-assistance or of anything else required under this section.

Conflicts, etc.

(13) Where any conflict exists between an order of the Board, a code issued by the Board or a licence condition and this section or a regulation made under this section, this section or the regulation made under this section shall prevail to the extent of the conflict.

Regulations

(14) The Lieutenant Governor in Council may make regulations governing anything dealt with in this section and without limiting the generality of the foregoing, may make regulations,

(a) governing anything that is described in this section as being prescribed or as being provided for in the regulations or that is required to be done in

accordance with the regulations;

(b) governing the time or times at which rate assistance shall be paid or become payable to rate-assisted consumers;

(c) governing the determination of classes of consumers who are rate-assisted consumers, including providing for different classes of rate-assisted consumers;

(d) requiring that certain costs and expenditures related to the Ontario Electricity Support Program be only incurred with the prior approval of the Minister, and governing those costs and expenditures;

(e) establishing rules for the calculation of the amount of the rate assistance to be provided;

(f) governing payments under this section, including determining the method or methods of calculating the amount of rate assistance to be provided;

(g) setting maximum amounts of the total annual value of rate assistance that may be provided;

(h) requiring a distributor, the IESO or a unit sub-meter provider or other prescribed

person or entity to make or receive payments in respect of rate assistance, including requiring them to make or receive payments directly from the Ministry of Energy or to receive overpayments directly or indirectly from consumers or other persons entitled to receive the rate assistance and prescribing the circumstances in which such payments are to be made and received and such overpayments are to be

received as well as methods for determining the amounts payable or to be received;

(i) requiring the IESO to receive payments from the Minister and requiring the IESO to make payments to the Board, to licensed distributors, to unit sub-meter providers or to prescribed persons, in respect of the rate assistance provided under this section and governing methods for

determining the amounts payable;

(j) governing the Board's or other prescribed entity's administration and program-related costs in administering the Ontario Electricity Support Program;

(k) governing transitional matters arising from the changes made to the Ontario Electricity Support Program

as a result of the enactment of the *Fair Hydro Financing Plan Act, 2017*.

Retroactivity

(15) A regulation made under this section is, if it so provides, effective with reference to a period before it is filed.

General or particular

(16) A regulation under this section may be general or particular in application, may provide for different classes of

persons and entities and may prescribe different rules for different persons or entities or different classes of persons or entities.

Verification of eligibility

(17) Section 11 of the *Ministry of Revenue Act* applies with respect to the Ontario Electricity Support Program as a government assistance program administered by the Board.

Definitions

(18) In this section,

"Government assistance program" has the meaning provided for in subsection 11 (2) of the *Ministry of Revenue Act*; "**(French)**"

"rate-assisted consumer" means a consumer referred to in subsection (7). "**(French)**"

3. The Act is amended by adding the following section:

Confidentiality, information sharing, etc.

79.2.1 (1) For the purposes of section 79.2, the Board or the Minister or entity having responsible for administering the Ontario Electricity Support Program may enter into an agreement with the Minister of Community and Social Services to provide the services to the public listed in subsection (2) on behalf of the Board, Minister or the entity, as the case may

be, in relation to the administration of the Ontario Electricity Support Program.

Agreement, etc.

(2) The services that may be included in an agreement referred to in subsection (1) are the following:

1. Providing documents and information about the Ontario Electricity Support Program.

2. Processing applications for the Ontario Electricity Support Program.

Arrangements with others

(3) The Minister of Community and Social Services may arrange with another person or entity to provide, on behalf of that Minister, services that that Minister is authorized to provide under an agreement referred to in subsection (1).

Personal information

(4) The Minister of Community and Social Services is authorized to collect, use, disclose and retain personal information necessary to provide the services authorized by an agreement referred to in subsection (1), but shall not collect, use, disclose or retain more personal information than is reasonably necessary to provide the services.

Limitation

(5) Except where otherwise authorized under subsection (7), the Minister of Community and Social Services shall not collect, use, disclose or retain personal information provided for in subsection (4) without the consent of the individual to whom the information relates.

Duty to transfer personal information

(6) The Minister of Community and Social Services

shall transfer an individual's personal information provided for in subsection (4) into the control of the Board, Minister or entity responsible for administering the Ontario Electricity Support Program promptly after processing an application for the Ontario Electricity Support Program, but may retain such personal information as is reasonably necessary to confirm that an individual has been provided a service.

Use of personal information, etc.

(7) The Minister of Community and Social Services may use personal information maintained by that Minister in connection with the administration of the Ontario Disability Support Program and the program established pursuant to the *Ontario Works Act, 1997*, for the purpose of identifying and contacting individuals eligible for the rate

assistance provided under the Ontario Electricity Support Program, and to provide services authorized under an agreement referred to in subsection (1).

Deemed compliance

(8) The use of personal information as allowed by subsection (7) is deemed to comply with section 41 of the *Freedom of Information and Protection of Privacy Act*.

Disclosure of list

(9) In order to assist the Minister of Community and Social Services to identify individuals eligible for rate assistance, the Board or the Minister or entity having responsibility for administering the Ontario Electricity Support Program shall, as soon as practicable after the coming into force of this section, disclose to the Minister of Community and Social Services a list of individuals who are enrolled in

the Ontario Electricity Support Program, together with their mailing address and other contact information.

Use of list

(10) The Minister of Community and Social Services may use the information on the list provided under subsection (9) to determine whether an individual who is currently enrolled in the Ontario Disability Support Program or the program established under

the *Ontario Works Act, 1997* is also enrolled in the Ontario Electricity Support Program.

Destruction of list

(11) The Minister of Community and Social Services shall destroy the list provided under subsection (9) no later than one year after receiving the list.

Notification about the management of personal information

(12) The Minister of Community and Social Services shall ensure that a notice is published on a website describing,

(a) the purpose for which that Minister collects, uses, discloses and retains personal information in connection with the Ontario

Electricity Support Program;

(b) the types of personal information that may be collected, used, disclosed and retained in connection with the Ontario Electricity Support Program, and the circumstances in which the personal information may be collected, used, disclosed and retained in connection with that Program;

(c) the title, and contact information, including an email address, of an employee who can answer an individual's questions about the use of the personal information under this section.

4. The Act is amended by adding the following sections:

Distribution rate-protected consumers

79.3 (1) The Minister shall provide for distribution rate protection to distribution rate-protected residential consumers having regard to the costs of the distribution of electricity to such consumers with respect to electricity consumed on or after the date prescribed by the regulations.

Money appropriated by the Legislature

(2) The money required for the purposes of the provision of distribution rate protection under this section shall be paid out of the money appropriated for those purposes by the Legislature.

Maximum charge

(3) Despite any order of the Board, or anything else under this Act, where the regulations so provide, a prescribed

distributor who distributes electricity to distribution rate-protected residential consumers shall not charge those consumers, or a prescribed class of those consumers, any amount for monthly base distribution charges more than,

(a) the maximum amount for the charge that is provided for in the regulations; or

(b) the amount determined by the Board after applying any

calculations, processes or methods provided for in the regulations.

Compensation

(4) A distributor who is prescribed under this section is entitled to be compensated from the money referred to in subsection (2) for lost revenue resulting from the provision of the distribution rate protection to distribution rate-protected residential consumers under this section.

Information, etc.

(5) If provided for in the regulations, the Board, the IESO, distributors, or any of them shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of distribution rate protection or of anything else required under this section.

Limitation periods for distribution rate protection, consumer

(6) Despite any past entitlement of a consumer who is eligible to distribution rate protection under this section, no distribution rate protection is payable to a consumer after a limitation period prescribed by the regulations in respect of the consumer, other than in such circumstances as may be prescribed by the regulations.

Limitation, reimbursement of distributor, etc.

(7) Despite any requirement under this Act to reimburse a prescribed distributor or other person for distribution rate protection provided by them to distribution rate-protected residential consumers under this section, no amounts for reimbursement are payable to the prescribed distributor or other person after a limitation period prescribed by the regulations in respect of the

prescribed distributor or other person, where such reimbursement is based on a consumer's past entitlement under this section which has not yet been paid or reimbursed under this section, other than in such circumstances as may be prescribed by the regulations.

Transitional

(8) If, for technical or operational reasons, a distributor referred to in subsection (3) is unable to adapt

its invoices to comply with this section and the regulations by the time it issues its first invoice for electricity consumed after the prescribed date in respect of an account of a consumer who is eligible for distribution rate protection under this section,,

(a) the distributor shall adapt its invoices as soon as possible and, in any event, no later than a date prescribed in the regulations; and

(b) consumers continue to be entitled to receive the distribution rate protection to which they are entitled under this Act and may receive it as a lump sum credit on the invoice for the first billing period after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Regulations

(9) The Lieutenant Governor in Council may make regulations,

(a) prescribing consumers or classes of consumers as distribution rate-protected residential consumers for the purposes of this section;

(b) prescribing dates for the purposes of subsections (1) and (8);

(c) prescribing distributors for the purposes of this section;

(d) governing anything that is described in this section as being prescribed or as being provided for in the regulations or that is required to be done in accordance with the regulations;

(e) governing the provision of distribution rate protection by the Minister in respect of

distribution rate-protected residential consumers under this section including determining the method or methods of calculating the amount of rate protection to be provided;

(f) requiring the IESO to receive payments from the Minister and to make payments to licensed distributors, or to persons prescribed by the regulations, in respect of the

distribution rate protection provided for under this section and prescribing methods for determining the amounts payable to distributors or distribution rate-protected residential consumers in respect of that protection.

Interpretation

(10) In this section,

"distribution rate-protected residential consumer" has the

meaning provided for in the regulations; **(French)**

"monthly base distribution charges" has the meaning provided for in the regulations. **(French)**

Delivery credit for on-reserve consumers

79.4 (1) The Minister shall provide a delivery credit to on-reserve consumers who meet the criteria prescribed under this section with respect to

electricity consumed on or after the date prescribed by the regulations.

Money appropriated by the Legislature

(2) The money required for the purposes of the provision of the credits required under this section shall be paid out of the money appropriated for those purposes by the Legislature.

Eligible costs

(3) The eligible costs for the delivery credit referred to in subsection (1) are,

(a) the sum of the following charges for which the consumer would otherwise be liable,

(i) all variable and fixed distribution charges,

(ii) all charges based on the retail transmission network service rate,

(iii) all charges based on the retail transmission connection service rate,

(iv) all charges related to losses incurred in the distribution of electricity, except for such amounts that are included in regulatory charges

provided for in the regulations, and

(v) any other charges that may be prescribed in the regulations; or

(b) where no separate charges for delivery are provided for by the distributor or other person or entity that may be prescribed in the regulations, the monthly service charge or such other amount as may be

prescribed for or in respect of a prescribed distributor.

Delivery credit

(4) A distributor, person or entity shall, unless the regulations provide otherwise, provide the delivery credit referred to in subsection (1) by crediting the account of an on-reserve consumer.

Same

(5) The regulations may require that distributors and any

other persons or entities provide a delivery credit to an on-reserve consumer who is entitled to a delivery credit under subsection (1) in such manner or in accordance with such methods as may be prescribed.

Compensation

(6) A distributor or any person or entity as may be prescribed is entitled to be compensated from the money referred to in subsection (2) for

any lost revenue resulting from the provision of the delivery credits under this section.

Information, etc.

(7) If provided for in the regulations, the Board, the IESO, distributors, and other persons or entities, or any of them, shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and

delivery of the delivery credits or of anything else required under this section.

Limitation periods for delivery credit, consumer

(8) Despite any past entitlement of an on-reserve consumer who is eligible for a delivery credit under this section, no delivery credit is payable to an on-reserve consumer after a limitation period prescribed by the regulations in respect of the on-

reserve consumer, other than in such circumstances as may be prescribed by the regulations.

Limitation, reimbursement of distributor, etc.

(9) Despite any requirement under this Act to reimburse a distributor or other persons or entities for delivery credits provided by them to on-reserve consumers under this section, no amounts for reimbursement are payable to the distributor or other persons or entities after a

limitation period prescribed by the regulations in respect of the distributor or other persons or entities, where such reimbursement is based on an on-reserve consumer's past entitlement under this section which has not yet been paid or reimbursed under this section, other than in such circumstances as may be prescribed by the regulations.

Transitional

(10) If, for technical or operational reasons, a distributor referred to in subsection (4) is unable to adapt its invoices to comply with this section and the regulations by the time it issues its first invoice for electricity consumed after the prescribed date in respect of an eligible account,

(a) the distributor shall adapt its invoices as soon as possible and, in any event, no later

than a date prescribed in the regulations; and

(b) on-reserve consumers continue to be entitled to receive the distribution rate protection to which they are entitled under this Act and may receive it as a lump sum credit on the invoice for the first billing period after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Regulations

(11) The Lieutenant Governor in Council may make regulations,

(a) governing who is an on-reserve consumer for the purposes of this section, and without limiting the generality of the foregoing, may provide that consumers who occupy certain areas are on-reserve consumers, and may do so without

regard to whether those areas constitute a "reserve" under any other Act or law;

(b) prescribing dates for the purposes of subsections (1) and (10);

(c) governing provision of the delivery credits provided to on-reserve consumers under this section, and without restricting the generality of the foregoing, governing anything that under this

section is to be prescribed or provided for in the regulations, or that is to be done in accordance with the regulations;

(d) determining the method or methods of calculating the amount of the delivery credits to be provided by the Minister in respect of on-reserve consumers under this section;

(e) requiring the IESO to make and receive payments from and to the Minister and to make payments to licensed distributors, or to persons prescribed by the regulations, in respect of the delivery credits provided for under this section and prescribing methods for determining the amounts payable to distributors or on-reserve consumers in respect of the credits provided.

Interpretation

(12) In this section,

"on-reserve consumer" has the meaning provided for in the regulations.

Application

79.5 Sections 79.6 through 79.11 apply to the programs provided for under sections 79, 79.2, 79.3 and 79.4 to the extent that they are funded by money

appropriated for those purposes by the Legislature.

Definition

79.6 In sections 79.7 to 79.11,

"Finance Minister" means the Minister of Finance or such other member of the Executive Council to whom the administration of those sections is assigned under the *Executive Council Act*.

Records

79.7 (1) Every distributor and every other person prescribed by regulation shall keep at a location in Ontario such records as are necessary to determine and verify compliance with sections 79, 79.2, 79.3 and 79.4 and the regulations associated with them and any records required by those regulations to be kept.

Electronic records

(2) If a person keeps records in an electronic form, the person shall ensure that, from the time the records are first made and for as long as they are required to be retained,

(a) they remain complete and unaltered, apart from any changes or additions made in the normal course of communication, storage or display; and

(b) they are capable of being printed and of being produced in electronically readable format for inspection, examination or audit.

Retention of records

(3) Records required to be kept under subsection (1) shall not be destroyed unless authorization has been given in writing by the Finance Minister.

Offence

(4) Every person who fails to keep records in accordance with this section is guilty of an offence and, on conviction, is liable to a fine of not less than $50 and not more than $5,000.

Inspections and inquiries

79.8 (1) The Finance Minister may appoint one or more inspectors who are authorized to exercise any of the powers and perform any of the duties of a person

authorized by the Minister under subsection 31 (1) of the *Retail Sales Tax Act* for any purpose related to the administration and enforcement of sections 79, 79.2, 79.3 and 79.4 of this Act.

Same

(2) Subsections 31 (1), (2), (2.1) and (2.2) of the *Retail Sales Tax Act* apply, with necessary modifications, with respect to the administration

and enforcement of sections 79, 79.2, 79.3 and 79.4 of this Act.

Admission of evidence

(3) The Finance Minister, or a person authorized by the Finance Minister, may, for any purpose related to the administration of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them, reproduce from original data stored electronically any information previously submitted as

required under those sections or regulations in any form by any person, and the electronically reproduced document shall be admissible in evidence and shall have the same probative force as the original document would have had if it had been proved in the ordinary way.

Inquiry

(4) The Finance Minister may, for any purpose related to the administration of sections 79, 79.2, 79.3 and 79.4 of this

Act or the regulations made in association with them, authorize any person, whether or not the person is an employee in the Ministry of the Finance Minister, to make such inquiry as the Finance Minister considers necessary with reference to anything relating to the administration of this Act or the regulations.

Copies

(5) If a book, record or other document is examined or

produced under this section, the person by whom it is examined or to whom it is produced or any officer of the Ministry may make, or cause to be made, one or more copies of it, and a document purporting to be certified by the person to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have if proved in the ordinary way.

Compliance

(6) No person shall hinder or molest or interfere with any person doing anything that the person is authorized by this section to do or prevent or attempt to prevent any person doing any such thing.

Same

(7) Despite any other law to the contrary, every person shall, unless the person is unable to do so, do everything the person is required by this section to do.

Administration of oaths

(8) Declarations or affidavits in connection with statements of information submitted pursuant to this section may be taken before any person having authority to administer an oath or before any person specially authorized for that purpose by the Lieutenant Governor in Council, but any person so specially authorized shall not charge any fee for doing so.

Application of *Public Inquiries Act, 2009*

(9) Section 33 of the *Public Inquiries Act, 2009* applies to an inquiry under subsection (4).

Recovery of overpayments

Definitions

79.9. (1) In this section,

"inspector" means an inspector referred to in section 79.8; ("inspecteur")

"overpayment" means an amount received by a person in excess of that to which the person is entitled under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them. ("trop-perçu")

Notice of overpayment

(2) If it appears to an inspector that a person has received an overpayment, the Finance Minister may send a written notice to the person

advising the person of the following:

1. That the person has received an overpayment.

2. The amount of the overpayment and how it was calculated.

3. The required steps to be taken by the person with respect to the overpayment.

4. The date, not more than six months after the date of the notice, by which these steps must be completed.

5. That the Finance Minister has the authority to assess the person for the amount of the overpayment, plus interest, if the person fails to complete the required steps by the specified date.

Calculation of amount of overpayment

(3) for the purposes of this section, an inspector shall calculate an overpayment or the outstanding balance of an overpayment in the manner and form and using such procedures as the Finance Minister considers adequate and expedient.

Assessment

(4) If a person fails to complete the steps required in a

notice under subsection (2) within the time specified in the notice, and any additional time requested by the person and permitted by the Finance Minister, the Finance Minister may assess or reassess the amount of the overpayment, or the outstanding balance of the overpayment, based on the inspector's calculation described in subsection (3).

Penalty

(5) If the Finance Minister makes an assessment or reassessment under subsection (4) and is satisfied that the person's non-compliance with the required steps in the notice was attributable to neglect, carelessness, wilful default or fraud, the Finance Minister may assess a penalty against the person equal to the outstanding balance of the overpayment when the penalty is assessed.

Time limit

(6) The Finance Minister shall not assess or reassess under subsection (4) more than 48 months after the end of the month in which the person received the overpayment.

Exception, where misrepresentation, etc.

(7) Subsection (6) does not apply if the Finance Minister establishes that the person has made a misrepresentation that is attributable to neglect,

carelessness or wilful default or has committed any fraud in supplying information under this Act or the regulations or in omitting to disclose information.

Deemed debt retirement charge

(8) An amount assessed or reassessed by the Finance Minister under this section is deemed for the purposes of the administration and enforcement of this Act to be a debt

retirement charge owing and payable, as defined in subsection 85 (1) of the *Electricity Act, 1998*, that has been collected, on the last day of the month in which the person received the overpayment, by the person as a collector appointed under subsection 85.3 (1) of the *Electricity Act, 1998* and, for those purposes,

(a) sections 85.11, 85.12, 85.14, 85.17 and 85.30 of that Act

apply with necessary modifications;

(b) in the application of sections 85.11 and 85.14 of that Act and without limiting the generality of clause (a), references to the Financial Corporation are read as references to the Minister of Finance and references to the Minister of Finance are read as references to the Finance Minister as defined in section 79.6 of this Act;

(c) the regulations made under that Act for the purposes of calculating the rate or rates of interest payable under section 85.11 of that Act and the manner of calculating the amount of interest apply with necessary modifications; and

(d) sections 23 and 36, subsections 37 (1), (1.1) and (2) and sections 37.1, 38

and 39 of the *Retail Sales Tax Act* apply with necessary modifications.

Disposition of repaid amounts

(9) If all or part of an overpayment is repaid to the Finance Minister, the Minister of Energy shall make such financial arrangements and payments as may be necessary to ensure that any person entitled to all or part of the overpayment receives the appropriate amount.

Confidentiality

79.10 (1) Except as authorized by this section, no person employed by the Government of Ontario shall,

(a) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister of Energy or the Finance Minister for the purposes of sections 79,

79.2, 79.3 and 79.4 or the regulations made in association with them; or

(b) knowingly allow any person to inspect or to have access to any record or thing obtained by or on behalf of either Minister for the purposes of this Act.

Testimony

(2) No person employed by the Government of Ontario shall

be required, in connection with any legal proceedings,

(a) to give evidence relating to any information obtained by or on behalf of the Minister of Energy or Finance Minister for the purposes of this Act; or

(b) to produce any record or thing obtained by or on behalf of either Minister for the purposes of this Act.

Exception

(3) Subsections (1) and (2) do not apply in respect of,

(a) criminal proceedings under any Act of the Parliament of Canada;

(b) proceedings in respect of the trial of any person for an offence under an Act of the Legislature; or

(c) proceedings relating to the administration or

enforcement of this Act or Part V.1 or VI of the *Electricity Act, 1998*.

Communication

(4) A person employed by the Government of Ontario may, in the course of duties in connection with the administration or enforcement of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them

(a) communicate or allow to be communicated to another person employed by the Government of Ontario in the administration or enforcement of any law or to an employee of the Board information obtained by or on behalf of either Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them and

(b) allow another person employed by the Government of Ontario in the administration or enforcement of any law or an employee of the Board to inspect or have access to any record or thing obtained by or on behalf of either Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

Reciprocal communication

(5) A person who receives information or obtains access to any record or thing under subsection (4) has a duty to communicate or furnish to that Minister on a reciprocal basis any information, record or thing obtained by the person that affects the administration or enforcement of this Act.

Use of information

(6) Any information, record or thing communicated or

furnished under this section may be used only for the administration or enforcement of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them or an Act that is administered or enforced by the person receiving the information, record or thing.

Same

(7) The Finance Minister may permit information or a copy of any record or thing obtained by or on behalf of the Finance

Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them to be given to,

(a) the person from whom the information, record or thing was obtained;

(b) any person by whom an amount is payable or has been paid under sections 79, 79.2, 79.3 and 79.4 or the

regulations made in association with them; or

(c) the legal representative of a person mentioned in clause (a) or (b) or the agent of the person authorized in writing in that behalf.

Information

(8) The Finance Minister may permit information or a copy of any record or thing obtained by or on behalf of the Finance Minister for the purposes of

sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them to be given to any person employed by any government if,

(a) the information, record or thing obtained by that government for the purpose of any Act that imposes a tax or duty are communicated or furnished on a reciprocal basis to the Minister; and

(b) the information, record or thing will not be used for any purpose other than the administration or enforcement of a law that provides for the imposition of a tax or duty.

Offence

(9) Every person who contravenes any provision of this section is guilty of an offence and on conviction is liable to a fine of not more than $2,000.

Offences
False statements, etc., and fraud

79.11 (1) Every person who engages in any of the following acts or omissions is guilty of an offence:

1. Making, participating in, assenting to or acquiescing in the making of a false or deceptive statement in any document or answer required or submitted under

sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

2. Destroying, altering, mutilating, hiding or otherwise disposing of information or records of any person, for the purpose of evading compliance with sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

3. Making, assenting to or acquiescing in the making of a false or deceptive entry of a material particular in a record of any person required to maintain records for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

4. Omitting to make or assenting to or acquiescing in the omission of an entry of a material particular in a

record of any person required to maintain records for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

5. Wilfully evading or attempting to evade, in any manner, compliance with an obligation under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

Penalty upon conviction

(2) A person convicted of an offence under subsection (1) is liable to either or both of the following penalties in addition to any other penalty assessed under this Act:

1. A fine in an amount that is not less than $1,000 and not more than $10,000.

2. Imprisonment for a term of not more than two years.

General offence

(3) Every person who contravenes, by any act or omission, any other requirement imposed under sections 79, 79.2, 79.3 and 79.4 is guilty of an offence and, on conviction, is liable, where no other penalty is provided for the offence, to a fine of not less than $50 and not more than $5,000.

Limitation period

(4) A proceeding to prosecute an offence provided for in this

section must be commenced within six years after the date on which the matter of the offence arose.

Payment of fines

(5) Fines imposed on conviction of an offence provided for in this section are payable to the Finance Minister on behalf of the Crown in right of Ontario.

Commencement

5. (1) Subject to subsection (2), this Schedule comes into force on the day [insert name of omnibus bill**]receives Royal Assent.**

(2) Section 2 comes into force on a day to be named by proclamation of the Lieutenant Governor.

-If it can't be enforceable, then what's the penalty or consequence.

→ [Compensation] ←

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Rehob, James (ENERGY)

To: Spakowski, Mark (MAG)

-Suggestion (1)(b) – the priority – what that means • priority of debt repayment

-the details about ht epublic entities – under the control of the Minister (do we really know who we want to catch?) Yes OEB IESO etc

-change in law – very broad – whether just "This Act and the Regulations" would work;

-11(6) – ask about enforceability of this – to limit people – what kind of enforceability mechanism are we thinking of? If none, why are we going to do.

79.2(8) making of
reys - settlements

Concern

- Whether model makes sense
- Flagging for you
  79.2 "settlements"
  will this model

Le transition
to a tax base
model

1.

① OESP - changes req'd
- alternative
6-0391

② Brophy - -

③ Nick & Paul
OESP OPCD

TBS

① Amendments appear to contemplate
- CRF - admin arrangements - Audits
- Briefing materials -
- here's how the progs are going to add in admin arrangements -
- Audit
Briefing materials to back up Admin. - rate base v. tax base
② Reward of 79.2 - normal admin scheme.

- MARK'S ONE PAGER AS WEEK

→ O

→ Jerry to do

Byson.

- MARK's Document

→ MARK - Call now

-1/ Leg - RA

- Regs

- IESO asks for RA

OEB RA

→ IESO says LPC → monthly

↳ OEB order process →

IESO needs 4 VAs

↳ for - RPP Forecast

- GA deferral → that's what they sell

ATMT-based approach

- OEBA to authorize the MCSS
- ~~authorize the~~
auth to collect & use
prog. information - to
act as intake
agents and to access their
specific data base

on line access to access of OESP data
base or popolate the
intake screen

DOW - Chief Legal Prog

- for the swat team
has to have statutory
authority -
- from MCSS standpoint, any time
~~they~~ collect
specific auth to use
disclosure
- into sharing agreement.

- root problem " "
- Don: suggests a focussed PIA discussion
w/ IPC.

→ open OEBA to address Notice

→ OEB / Don - presuming theres notice? disclosure

- the can you enroll w/o contacting that person.

Ian - contemplated that info would be provided by MGSS.

- Brett: app form for OESP is very simple

- No appetite to change

- MGSS Swat team would populate info.

- ICF doesn't have to speak w/ client/recipient at all.

MGSS verifies that there would be customer interaction b/f sending over to OEB (similar to Healthy Smiles Ont prog w/ MGCS administers)

- Front end → no real info (just intake)

MGCS ↗

→ Swat team for existing prog

- No prior consent provided

→ SWAT team - looks in ODSP data base - use of ODSP for the OESP purpose.

- Bell - The info provided to/by MGCS is not sufficient in its own
  - LDC has to be given
  - Opportunity to give notice
  - then have consent

→ Asking client

- Service Ontario -

OW (Municipalities

- Collection on behalf of the Ministry

- see OEB suggested language re phase 1.
- if we were to skip that we go into MGSS → then
  → perpetue - Notice & consent

SAMS - social assistance M. S.
- 110,000 people → diff to auto enroll than Service Ontario model -

disclosure & consent 39 FIPPA

1 awareness
2 assistance
3 - electronic data match - (system to system info sharing by systems) s. 39 FIPPA

OEB/MGCS -1- Privacy Issue April 24/17

Brett - a no go
→ Leg. pens down

- Legislation for OW/ODSP
  - progs that provide social bens
  - OESP & social assist prog
  & automatic enrolment
  via OW/ODSP

- ODSP & OW Act have info

S. 53 →

- Ian Richler & in both Acts, we're concerned that the OEB takes the position that its just another "rate".
→ even after OESP moves to the tax base → might be arguable
53(H) -
M ↔

→ Stand 79.2(17) already deems Gov't assistance program.

+: Removing prog. from
→ Could just require that s. 53 of ORSP applies.

Rate Mitigation -1- April 12/17

Steve: - First 5 years - Blakes thinking that FAP will be a new cost integenerational

- FAP New - by Reg
  - Fair Adjustment - defined by ~~ref to implementing reg~~ to be addressed
  - Directive under FP that no increments should be recognized under FP for first 5 five years
  - It will reduce amount OPG can incur
  - The FAP relates to Fair Adjustment
  - Leave first 5 years free
  - tie it into lowering elect rates

Well tell treasures in first five year

Fair adjustment needs to be reflected in FAP

You have

cap in 1st five year

FA

Suppressed due to No repayment

FA

For 1st / Corre

FAP 5 years

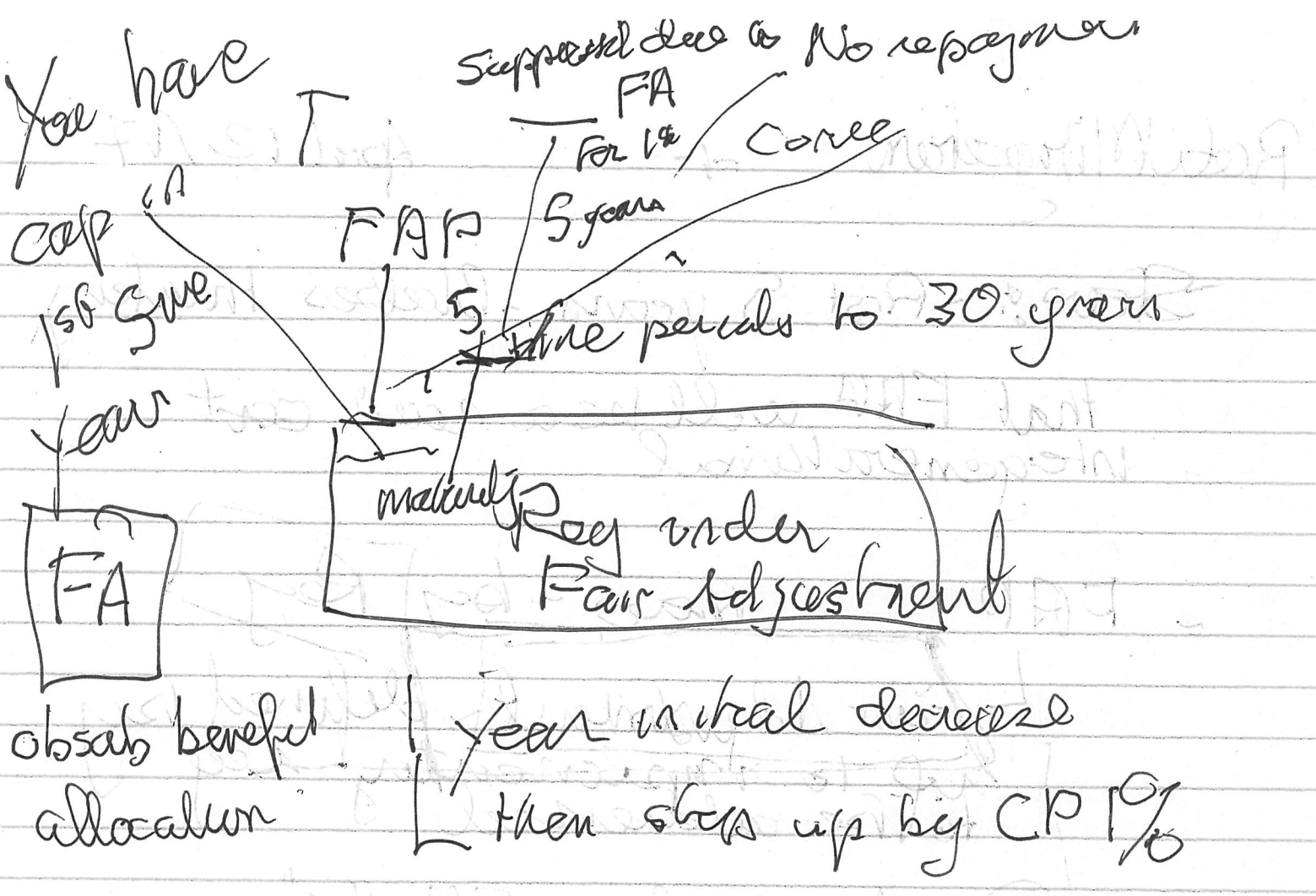
5 five periods to 30 years

maturity Reg under Fair Adjustment

obsab benefit allocation

year initial decrease

then step up by CP 1%



Rate shock

Fair Adjustment => Exemption

- OPG - no maturities in 1st five yrs

no repayments

-> Govt Reg = to push # down

year FA →

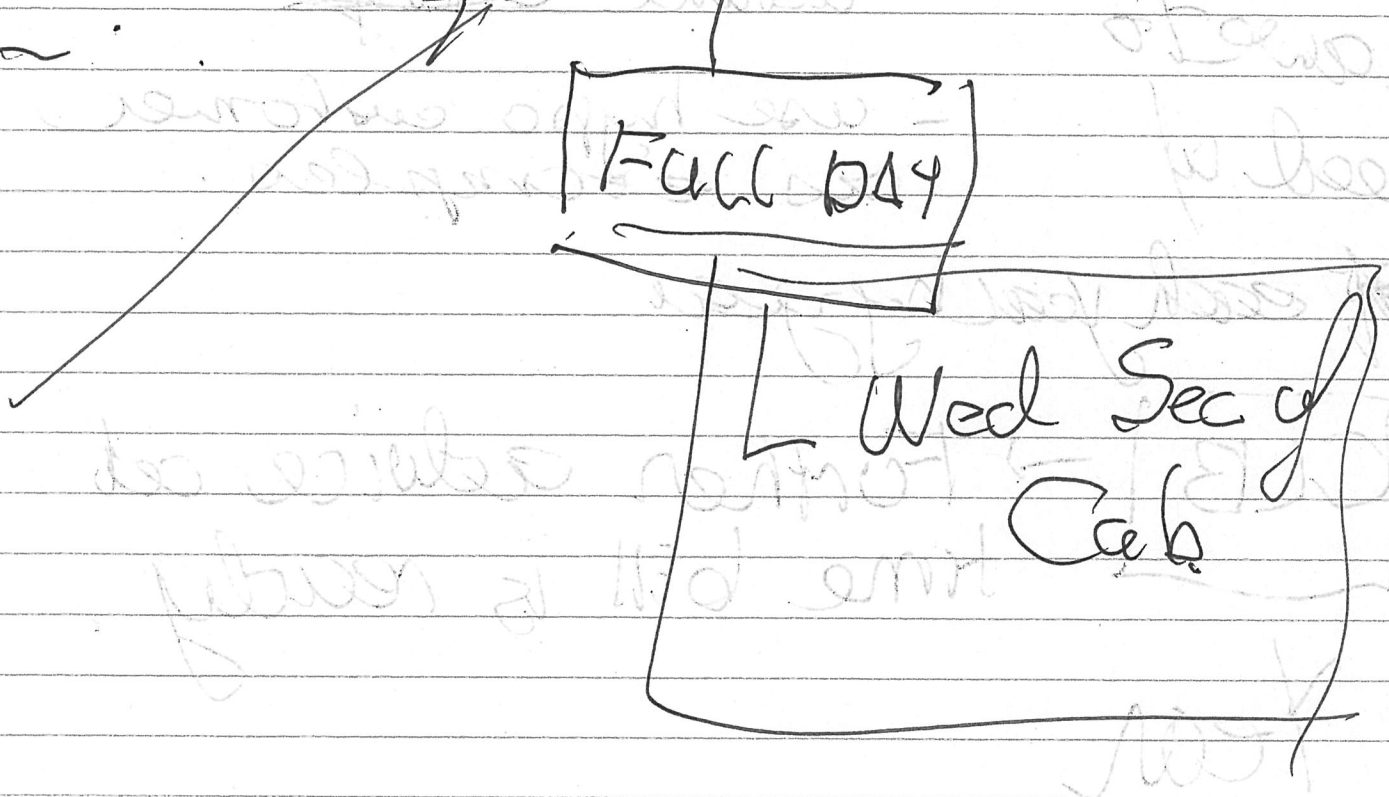
- CC: we'd post a reg that sets out proposed

OPG has to have regard

-4-

→ Track Blades doc
- in Chart to
track crosswalk
below / the docs

- Comments by Saturday
- Meeting Monday



~

FULL DAY

Wed Sec of
Cab

We can't

→ direct what OPG can mean

- at back we can just push it outward.

FA — Steve sees this as a "separate thing"

- Act - 17%

Prescribes: - Year 2-5 to be prescribed numbers

- actual ~~charge~~

- use hypo customer as examples.

Have to deal w/ each year by year

CLB → Further advice at time bill is ready.

Year

- OEB to order the
that a Reg asset

OPCD - When minister creates
FAP it can be based on
today info. Mr
→ held harmless

RPP plus

- 1st = ave rate
- consumption pattern - historical - then
TOC
Tiered.
(based on

→ FRs will not be posted

→ We expect OP to keep FP close to check
- ongoing role to manage / plan

→ Imposes
→ OEB role? (apparently to Rec)

-1-

→ Should LGIC

→ Gov't can't do anything

→ Gov't → | LGIC

└ [Cabinet]

1/ - appearance of restriction to bind a future legislature

→ └ Steve: can't permit anything deleterious than

- Steve likes OLC language

Bryson:

→ Cast the net wide as we are able to do

- Gov't?

→ Market must review

- or create a contract

→ OLC likes critical thoughts

[Gov't]

→ LGIC = better fit - bonds the most serious decision-making

Auth → Blakes agrees

2/ - where there is express rule to create it w/ intent not

- don't use reg to avoid/reduce obs.

3/ "Permit", "Failure"

"DAN" If OLC → if they're accepting Gov't" - "Take any actions"

- Issue - less about the "words" and more about Gov't's commitment/buy in.

- Gov't buy in.

- "Failure" to take an action

- (c) / Could merge into 1)
- Steve: looking for a contract - Steve
- deem a contract w/ Govt a

"in rem" - to any person now or in future

to or benefit in group

- any one who could maint an action for damages

- Anything that impairs the Trust
- beneficiary ⇒ Trust

AGMNT betw/ Prov. & Trust.

⇒ 10(3) What is US supposed to do
- reflects references

Back to BLAKES

→ More in Purpose clause / Preamble

→ Preamble → more if possible

- Definitions - changes

- R/A to be subdivided "investment interest"

"IESO retained int"

"Assessed Past Green Tr. Costs"

G - Measurement date ⇒ CAP can change measurement date

Grey

Imp! Estimated Future / Past Green Tr. bens

"Over Assessed Amt"

- pre & post pogg bank & reset curve looking forward.

"Electricity Inst.

- e. invoice -1

Red - strike out

- Green - moved

- Blue - new

"Financial Sos' Agent" → OPG

Manager trust

"Future Fair Share"

or → Piggy bank

Trust empty to begin

(- unrecovered Transition Costs)

Two End dates

1/ Prog. end date (FAP has to end on Prog End Date)

2/ "Article 8 - can't go beyond an [x] date,

Transitions changes could continue past end date.

until the obs are paid (like a True

→ Have to determine how log picks ups future deals marketed

Article 8 - Funding obligations

→ Absolute assignee shall perform all of its funding obs

(Legislating

"**First Nation Lands**" means in respect of a particular First Nation within the meaning of paragraph (a) of the definition of First Nation Community (the "Corresponding First Nation Community"), the following:

(a) "reserve land" as set out in the Indian Act, RSC 1985, c I-5;

(b) "designated lands" as set out in the Indian Act, RSC 1985, c I-5;

(c) “special reserves” as set out in s. 36 of the Indian Act, RSC 1985, c I-5;

(d) fee simple lands that are held in trust for the benefit of a First Nation in Ontario that is a “band” as defined in the Indian Act, RSC 1985, c I-5, provided that those lands are the subject of an application by such First Nation to have Canada set the lands apart as reserve lands pursuant

to Canada's "Additions to Reserve Policy";

(e) Crown lands or other lands that Canada has agreed to recommend be set apart as reserve for a First Nation in Ontario that is a "band" as defined in the Indian Act, RSC 1985, c I-5 in settlement of such First Nation's land claim; or
(f) lands acquired and held by a First Nation in Ontario that is a "band" as defined in the Indian Act, RSC

1985, c I-5 in the exercise of its powers under paragraph 18(2)(a) of the First Nations Land Management Act, SC 1999, c 24, provided that such lands are the subject of an application by such First Nation to have Canada set the lands apart as reserve pursuant to Canada's "Additions to Reserve Policy".

[NTD: This would give us the flexibility to add new cost categories by reg.]

"reduction period" means the period commencing May 1, 2017 and ending April 30, 2018;

"RPP-eligible consumer" means a consumer who is a member of a class of consumers prescribed by the regulations **[for the purposes of this section and sections 25.34 and 25.35?]**;

[NTD: This would be set out in O. Reg. 95/05 and would reflect OREC-eligible consumers other than non-grid connected

customers of IPAs (who would not pay a GA charge anyway).]

"RPP Regulation" means Ontario Regulation 95/05 (Classes of Consumers and Determination of Rates);

"smoothing period" means the period commencing May 1, 2018 and ending April 30, 2022;

[NTD: The year-over-year increases in the "proxy" Toronto Hydro consumer's monthly all-in tax included bill will be limited to specified inflation measure (e.g. CPI) for the first four years of the smoothing period. This will be

set out in the proposed amendments to 95/05.

Thereafter, until the end of the deferral recovery period, certain other principles (set out in 95/05) would be applied to limit bill increases.]

Electricity pricing to reflect costs IESO to make adjustments

25.33 (1) ~~The~~ Subject to section 25.34 and 25.35, the IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by

regulation reflect the electricity supply cost. ~~,~~

(a) ~~amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the *Ontario Energy Board Act, 1998*; and~~

(b) ~~amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract.~~ ;

Distributors and retailers to make adjustments

(2) Subject to section 25.34 and 25.35, ~~D~~distributors and retailers

shall, through their billing systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of consumers in Ontario that are prescribed by regulation reflect the electricity supply cost.~~reflect,~~

~~(a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the *Ontario Energy Board Act, 1998*; and~~

~~(b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the~~

~~procurement contract. 2014, c. 7, Sched. 7, s. 8 (2).~~

Exception

(3) ~~Any~~ Subject to sections 25.34 and 25.35, any adjustment that would otherwise be made under subsection (1) or (2) and that relates to electricity that is consumed by any of the following types of consumers shall instead be made in accordance with the regulations to one or more variance accounts established and maintained by the IESO:

1. REPEALED: 2009, c. 12, Sched. B, s. 6 (2).
2. A consumer whose rates are determined by the Board under section 79.16 of the *Ontario Energy Board Act, 1998*.

3. A consumer who is a member of a class of consumers prescribed by the regulations.

Adjustments, payments, set-offs and credits

(4) The IESO, distributors and retailers shall,

(a) make such adjustments in their accounts as may be required or permitted by the regulations to record adjustments described in subsections (1), (2) and (3); and

(b) make and receive such payments, set-offs and credits as may be required or permitted by the regulations with respect to consumers described in subsection (3).

Variance accounts

(5) ~~The~~ Subject to sections 25.34 and 25.35, the IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section.

Compliance

(6) The Board shall ensure that adjustments, payments, set-offs and credits required or permitted under this section are made in accordance with the regulations.

Adjustment not assignable

(7) An adjustment made under subsection (1) or (2) is not assignable by a consumer in a contract with a retailer, whether the contract is

entered into before or after this section comes into force.

No cause of action

(8) No cause of action against a consumer, a retailer or the Crown arises as the result of a contract or a term of a contract ceasing to have effect because of the operation of subsection (7).

[NTD: New sections 25.34 and 25.35 below]

Deferral account

25.34 (1) The IESO shall establish a deferral account to record, for each month during the reduction period and the smoothing period, the difference between,

(a) the amounts that would be payable by RPP-eligible

consumers in respect of the electricity supply cost for the month under section 6 of the RPP Regulation; and

(b) the amounts payable by RPP-eligible consumers in respect of the electricity supply cost for the month under section 6.1 of the RPP Regulation.

[NTD: This would require that 95/05 be amended *before* the introduction of the proposed legislative amendments, to create the new section 6.1 that is referenced in (b) above.]

(2) The IESO shall record interest on the balance of the global

adjustment deferral account at a rate or rates reflecting the IESO's cost of financing the amounts recorded in the GA deferral account as determined by the Board from time to time.

[NTD: We need to ensure that IESO can recover (subject to Board scrutiny – e.g. prudency?] its costs of any interim/bridge financing to cover amounts in the deferral account that are not 100% financed by the Trust with no gap between the time the amounts must be paid by the IESO and the time corresponding amounts are paid to IESO by the Trust.

Separately, we also need to ensure that the Trust can recover its interest rate and admin costs. As a placeholder for further thinking, this has been included in the assignment provision below.]

Recovery of GA deferral amounts

25.35 (1) The IESO shall have the right to recover the balance recorded in the GA deferral account. **[The Board shall authorize?]** recovery of the balance on a **[straight line basis?]** over the GA deferral recovery period.

[NTD: On what basis should the recovery occur? Over what

period of time? Is it important to be this prescriptive (e.g. for financing purposes)? What role should the Board have in determining the recovery period?]

Assignment of right of recovery

(2) The IESO shall have the right to assign, in whole or in part, to one or more authorized third parties, the IESO's rights under subsection (1).

[NTD: This is largely a placeholder for what needs to be addressed here. We will need to determine how to characterize this transaction. For e.g., will it be an outright assignment? Will

it be a series of assignments? How will this transaction be implemented – e.g. by way of a contract between the IESO and the Trust?]

Same

(2) Any assignment under subsection (1) **[shall be deemed to be …? What protections do we need to build in here for bondholders?]**.

ONTARIO ENERGY BOARD ACT, 1998:

Commodity price for electricity: low volume consumers, etc.

79.16 (1) Despite any order under section 78 and, subject to subsection (7), despite any agreement to the contrary entered into or renewed on or before December 9, 2002, the rates for electricity payable by a consumer who is a member of a class of consumers prescribed by the regulations for the purposes of this section are,

[NTD: This appears to allow for the creation of more than one class of prescribed consumers. Need to confirm, since we will be creating a new class of consumers in 95/05 who will receive the GA deferral.]

(a) with respect to electricity used on or after the day this subsection

comes into force and before the day prescribed by the regulations for the purposes of this subsection, the price determined in accordance with the regulations; and

(b) with respect to electricity used on or after the day prescribed by the regulations for the purposes of this subsection, the rates determined by the Board in accordance with the regulations.

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 25.34 and 25.35 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.

RPP CONSUMERS REG. 95/05:

Definitions

1. In this Regulation,

[NTD: These definitions could also cross-reference the definitions set out in the proposed new s. 25.33 (0.1) of the *Electricity Act, 1998* (see above). That way, if there were any amendments to these definitions in the EA, the amendments would

automatically flow through to 95/05]

"reduction period" means the period commencing May 1, 2017 and ending April 30, 2018;

"smoothing period" means the period commencing May 1, 2018 and ending April 30, 2022;

"deferral recovery period" means the period that commences May 1, 2022 and ends on April 30, 2047;

Class of consumers, s. 79.16

4. (1) REVOKED: O. Reg. 494/10, s. 2 (1).

(2) On and after November 1, 2009, the following are prescribed as ~~the~~ a

class of consumers for the purposes of subsection 79.16 (1) of the Act:

1. Low-volume consumers.
2. A consumer who has a demand of 50 kilowatts or less.
3. A consumer who has an account with a distributor, if the account relates to,
   i. a dwelling,
   ii. a property as defined in the *Condominium Act, 1998*,
   iii. a residential complex as defined in the *Residential Tenancies Act, 2006*, or
   iv. a property that includes one or more dwellings and that is owned or leased by a co-

operative as defined in the *Co-operative Corporations Act*.

4. A consumer who annually uses at least 150,000 but not more than 250,000 kilowatt hours of electricity.

5. A consumer who has an account with a distributor if the consumer,

   i. carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993*, and

   ii. holds a valid registration number assigned under that Act or the consumer's obligation to file a farming

business registration form was waived pursuant to an order made under subsection 22 (6) of that Act. O. Reg. 58/08, s. 1; O. Reg. 115/09, s. 1 (2); O. Reg. 494/10, s. 2 (2, 3).

(3) Commencing May 1, 2017 and continuing until the end of the deferral recovery period, the following are prescribed as a class of consumers for the purposes of subsection 79.16 (1) of the Act [and sections 25.34 and 25.35 of the *Electricity Act, 1998*]:

[NTD: This will describe those consumers who will be covered by the GA deferral. It will also feed into the creation of the GA deferral "proxy" consumer. This

covers all consumers who are entitled to OREC except for those not paying a GA charge (i.e. non-grid connected consumers of IPAs). The changes (relative to the description of RPP consumers in the existing section 6) are highlighted in green.]

1. Low-volume consumers.
2. A consumer who has a demand of 50 kilowatts or less.
3. A consumer who has an account with a licensed distributor, a licensed retailer or the IESO, if the account relates to,

[NTD: These changes are needed to properly capture the consumers entitled to the deferral - e.g. "licensed" distributor to exclude IPAs]

i. a dwelling,

ii. a property as defined in the *Condominium Act, 1998*,

iii. a residential complex as defined in the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

iv. a property that includes one or more dwellings and that is owned or leased by a co-operative as defined in the *Co-operative Corporations Act*.

4. A consumer who annually uses at least 150,000 but not more than 250,000 kilowatt hours of electricity.

5. A consumer who has an account with a licensed distributor, a licensed retailer or the IESO, if the consumer,

[NTD: These changes are needed to properly capture the consumers entitled to the deferral - e.g. "licensed" distributor will exclude off-grid IPAs whose consumers don't pay GA]

i. carries on a business that is a farming business for the

purposes of the *Farm Registration and Farm Organizations Funding Act, 1993*, and

ii. holds a valid registration number assigned under that Act or the consumer's obligation to file a farming business registration form was waived pursuant to an order made under subsection 22 (6) of that Act. O. Reg. 58/08, s. 1; O. Reg. 115/09, s. 1 (2); O. Reg. 494/10, s. 2 (2, 3).

Determining rates, s. 79.16

6. (1) ~~For~~ Subject to section 6.1, for the purpose of clause 79.16 (1) (b) of the Act, the Board shall determine

rates for the consumers described in subsection 4 (2) in the following manner:

1. The Board shall determine rates in a manner that is consistent with the Standard Supply Service Code issued by the Board.
2. The first rates determined by the Board shall remain in effect for not less than 12 months. The Board shall determine separate rates after that time for periods of not more than 12 months or for such shorter time periods as the Minister may direct.
3. In determining the rates, the Board shall forecast the cost of

electricity to be consumed by the consumers to whom the rates apply, taking into consideration adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect those costs.

4. In determining rates commencing May 1, 2011, the Board shall set an off-peak period associated with the regulated price referred to as RPEMOFF in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board,

   i. that begins no later than 7 p.m. on every weekday and ends,

A. no earlier than 7 a.m. on the next day if the next day is a weekday, or

B. no earlier than 12 a.m. on the next day if the next day is Saturday, Sunday or a holiday, and

ii. that begins no later than 12 a.m. on every Saturday, Sunday and holiday and ends no earlier than,

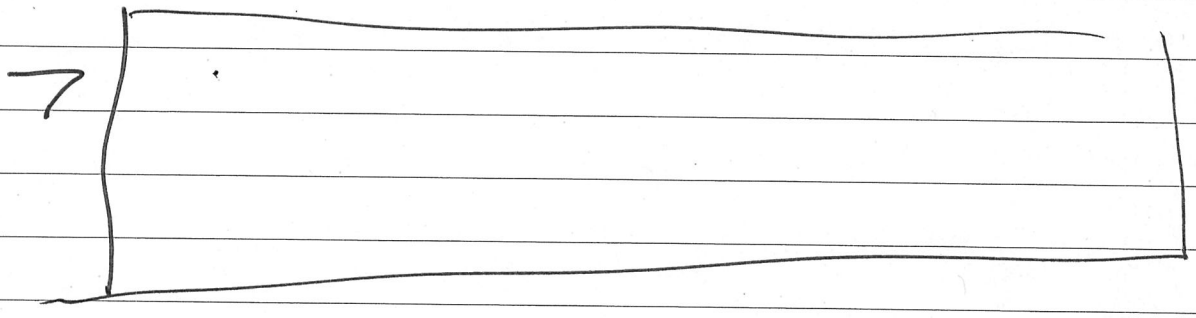
A. 12 a.m. on the next day, if the next day is Saturday, Sunday or a holiday, or

B. 7 a.m. on the next day if the next day is a weekday. O. Reg. 95/05, s. 6 (1); O. Reg. 494/10, s. 3 (1).

(2) The times of day set out in subparagraphs 4 i and ii of subsection (1) are in central standard or daylight saving time or eastern standard or daylight saving time, whichever is then prevailing in the particular location in Ontario. O. Reg. 494/10, s. 3 (2).

(3) Despite paragraph 4 of subsection (1), the Board may set different off-peak periods for the purpose of such electricity price pilot projects as it specifies. O. Reg. 476/16, s. 1.

- Money is coming from financing entity
- basis on which money is siphoned off



INSTRUCTIONS FOR A REGULATION

GENERAL REGULATION

TO BE MADE UNDER THE FAIR HYDRO PLAN ACT, 2017

GENERAL REGULATION

CONTENTS:

Part 1: Definitions:

Part II: Determination of Value of Regulatory Asset;

Part III: Transfer of the regulatory asset

Part IV: Investment Interest

Part V: Financial Services Manager and Financing Plan

Part VI: Fair Allocation Amount

Part VII: Clean Energy Adjustments, liability for

Part VIII+: invoicing

PART I – DEFINITIONS AND SPECIAL CASES

Definitions:

- **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 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.

    - Identify any contracts to be excluded (as prescribed)

- **Clean Energy Costs –** These are costs (attributable to the "clean energy initiative") that are to be more fairly distributed among generations of consumers.

- **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 **established by the Minister** 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.

- **Financing entity** – prescribing any entities for the purposes of s.22(2) of the Act

- **Funding obligation** means …… [the amount calculated under section x]

- **IESO deferral** means the amount determined under section [x]

- **Investment Asset** – This is the asset that results when the regulatory asset is transferred to the (OPG) financing entities.

- **Refinancing means,** with respect to a funding obligation, the following: [. . .]

- ***[Reference period** – defined in the Act.]*

- **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;

- **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.

- **Financing entities:** The financing entities will fund the acquisition (transfer) of the investment asset in the capital markets *[NTD – implicitly established by OPG.]*

- **Financials Services Manager** means the entity *[or subsidiary?]* established by Ontario Power Generation Inc. to establish, implement and operate the *[one or more?]* Financing Entity (entities?);

- ***Future consumers*** *refers to consumers who are determined by virtue of the Fair Allocation calculation to have received clean energy benefits under the Act and upon whom clean energy charges are exigible by virtue of the receipt of those benefits.*

- ***Present consumers*** *refers to consumers who have paid or are currently paying clean energy costs in amounts which exceed the clean energy benefits allocated to them under the fair allocation calculation.*

- *[**Regulated rate consumer** means a consumer referred to in section 6(1) of the Act.]*

- **True-up amount** refers to the amount determined under section [x]

- Variance account refers to the amount determined under section x.

SPECIAL CASES

PART II – REGULATORY ASSET

SECTION 2 CALCULATION OF REGULATORY ASSET

Determination of regulatory asset

2(1) For the purposes of section [23] / 25 of the Act, the Regulatory Asset referred to shall be calculated as follows: ***[NTD: We have to describe the IESO deferral and the "Regulatory Asset"] - Some or all of what follows may be more pertinent to the determination of the "IESO deferral" under s.23 versus the calculation (description) of the "Regulatory asset" under s.25. Lets start with this approach recognizing that we'll have to distinguish between these two important concepts.]***

(a) If the regulatory asset arises during the period May 1, 2017 and June 30, 2017, the value of the regulatory asset shall be determined as follows *[by calculating the sum of]*

(i) The difference, calculated on a monthly basis, between the amount the IESO must provide to generators and other persons referred to under clause 25.33(1)(a) of the *Electricity Act, 1998* and the amount that is provided to the IESO by consumers pursuant to rates determined by the Board pursuant to clause 79.16(1)(b) and the regulations made under that Act; ***[NTD: This element, in particular, may be more pertinent to the determination under s.23 than under s.25.]***

(b) If the regulatory asset arises during the period July 1, 2017 and April 30, 2018, the value of the regulatory asset shall be determined as follows *[by calculating the sum of]*

(i) The difference, calculated on a monthly basis, between the amount the IESO must provide to generators and other persons referred to under clause 25.33(1)(a) of the *Electricity Act, 1998* and the amount that is provided to the IESO by specified consumers *[ntd: alternative: by distributors, USMPs on behalf of specified consumers]* pursuant to the adjustments made under sections 7 and 8 *[ntd do we need to reference 12 – USMPs?]* of the Act and the regulations; and,

(ii) Any amounts relating to one or more variance accounts provided for under section 79.16(3) of the *Ontario Energy Board Act, 1998* or otherwise that relate to the amounts in (i).

(c) If the regulatory asset arises during the period May 1, 2018 and April 30, 2048, the value of the regulatory asset shall be determined as follows *[by calculating the sum of,*

(i) The difference, calculated on a monthly basis, between the amount the IESO must provide to generators and other persons referred to

under clause 25.33(1)(a) of the *Electricity Act, 1998* and the amount that is provided to the IESO by specified consumers *[ntd: alternative: by distributors, USMPs on behalf of specified consumers]* pursuant to the adjustments made under sections 11 and 12 of the Act and the regulations; and,

(ii) Any amounts relating to one or more variance accounts provided for under section 79.16(3) of the *Ontario Energy Board Act, 1998* or otherwise that relate to the amounts in (i).

Variance account, IESO deferrals,

2.1(1) The IESO shall establish the variance account referred to in section 24 of the Act to record, along with the amounts referred to in subsection 24(1), the following further adjustments as provided for under clause 3 of subsection 24(1):

[. . .]

PART III – TRANSFER OF REGULATORY ASSET

Transfer of regulatory asset,

3(1) For the purposes of section 26 of the Act, and in accordance with any agreement referred to in that section duly entered into between the IESO and the financing entity, the IESO shall transfer a [specified portion of a?] regulatory asset referred to in that section, and incur a funding obligation *[as set out under subsection (2)]* when the following circumstances arise:

[x, y. z]

Determination, specified portions,

(2) For the purposes of subsection (1), the specified portion referred to therein is that portion of the regulatory asset which is described in the agreement referred to in subsection (1). ***[ntd: this could be moved to the bottom of this section as a local definition for "specified portion" but might work better as a descriptive definition as shown here.]***

Reduction of variance account,

(3) For greater certainty, upon receipt of the payment referred to in subsection 26(3), the IESO shall reduce the balance in the variance account by the amount provided for under the contract referred to in subsection (1) in a manner consistent with that subsection *[e.g. 26(3)]* of the Act.

Transfer agreement,

(4) The IESO shall retain a copy of each transfer agreement referred to in section 27 of the Act for the purposes of making any determination required by the Act or this regulation.***[Local definitions: "transfer agreement", "transferor", "transferee", etc.]***

PART 4 INVESTMENT INTEREST

Section 28 matters,

4(1) For the purposes of section 28 of the Act, the IESO shall, and as a result of the [a?] transfer of the specified portion of the regulated asset referred to in section 3 to the [a] financing entity, reflect the transfer in [its accounts? Documents?] in order to track / reflect the conclusive disposition of the regulatory asset.

Section 29 matters,

(2) In addition to the rights referred to in paragraph 29(1) 2 of the Act, the investment asset referred to in that section comprises amounts held by the following entities:

[. . .]

(3) The prescribed accounts referred to in paragraph 29(1) 3 of the Act are as follows:

[. . .]

PART 6 – FINANCIAL SERVICES MANAGER – FURTHER REQUIREMENTS

6(1) The Financial Services Manager shall provide the IESO with the following information, in relation to Part III of the Act, about the following activities ….

(2) The Financial Services Manager shall provide the IESO with such information relating to the transfer referred to in section

SECTION 7 – REQUIREMENTS RE. FEES

7(1) The Financial Services Manager may establish fees for the following activities:

Limitation

(2) The Financial Services Manager shall not establish fees to recover amounts related to….:

Submission to Board

(3) Not later than 120 days in advance of the Financial Services Manager's upcoming fiscal year, the Manager shall submit its fees to the Board for approval and shall comply with such other administrative requirements as the Board may require.

NOTE: The OFHPA does not provide Government with any legislative or regulation-making authority over the OEB to require that the OEB issue its decision embodying its order approving or not approving the FSM's fees within any specified time period. This is consistent with most expressions of OEB approval being required, but just so that's understood.

PART 8 - DETERMINATION OF FAIR ALLOCATION AMOUNT

Fair allocation amount,8

8(1) For the purposes of section 20(2), the further principles to be considered and taken into account by the Minister in determining the Fair Allocation Amount are as follows:

[. . .]

(2) For the purposes of section 20(3), the further assumptions to be considered and taken into account by the Minister in determining the Fair Allocation Amount are as follows:

[. . .]

PART IX: FINANCING PLAN

9(1) For the purposes of section 21 of the Act, the further principles to be taken into account pursuant to paragraph 21(3) 4 by the Financial Services Manager in preparing the Financing Plan referred to in that section are as follows

[. . .]

Limitation, incurrence of funding obligations

(2) For the purposes of subsection 21(4) of the Act, the limits that are not to be exceeded by the financial services manager in relation to the incurrence of one or more funding obigations during the period referred to in subsection 21(4) of the Act are [x] or are determined by [y].

PART VII – CLEAN ENERGY ADJUSTMENTS

SECTION 10 – CALCULATION / RECIEPT OF CLEAN ENERGY ADJUSTMENTS

10(1) For the purposes of section 16 of the Act, the IESO shall establish a [separate?] account to track the amounts referred to in subsections 16(1) and 17(6) for the benefit of the investment interest owners to which the amounts relate: ….

Remittance process, etc.

(3) The IESO shall remit the amounts referred to in subsection (1) in accordance with the following steps *[processes] – [need IESO input here.]*

PART VII: INVOICING *[Whether s.17 OFHPA invoicing requirements are/are not covered off in Part II regs]*

Rehob, James (ENERGY)

Subject: FW: True-up Amount

Confidential/Solicitor & Client Privileged

May 11, 2017.

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

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

Overview

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

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

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

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

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

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

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

5. **S. 23 IESO Monthly Deferral:** IESO begins experiencing a funding shortfall that stems from the difference between the amounts it must provide to generators/contract counter-parties, etc. per EA .25.33, and the amounts provided by distributors from consumers (due to RPP rates set to recapture less than the Global Adjustment liability calculation would provide for).

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

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

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

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

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

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

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

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

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

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

Regulations re true up amount

(2) The Lieutenant Governor in Council shall, in making regulations with respect to the determination of the true up amount, have regard to the following principles:

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

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

ences between the estimated and actual finance amount for the applicable reference period,

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

tions in billings due to variations in electricity consumption.

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

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

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

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

Best,

James

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legislation arise from the "clean energy initiative".

- **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.

- Identify any contracts to be excluded (as prescribed)

- **Clean Energy Costs** – These are costs (attributable to the "clean energy initiative") that are to be more fairly distributed among generations of consumers.

- **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 **established by the Minister** 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.

- **Financing entity** – prescribing any entities for the purposes of s.22(2) of the Act

- **Funding obligation** means …… [the amount calculated under section x]

- **IESO deferral** means the amount determined under section [x] → Reg deferral
  its "funding shortfall"

- **Investment Asset** – This is the asset that results when the regulatory asset is transferred to the (OPG) financing entities.

- **Refinancing means,** with respect to a funding obligation, the following: [. . .]

- *[**Reference period** – defined in the Act.]*

- **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;

- **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.

- **Financing entities:** The financing entities will fund the acquisition (transfer) of the investment asset in the capital markets *[NTD – implicitly established by OPG.]*

- **Financials Services Manager** means the entity *[or subsidiary?]* established by Ontario Power Generation Inc. to establish, implement and operate the *[one or more?]* Financing Entity (entities?);

- ***Future consumers*** *refers to consumers who are determined by virtue of the Fair Allocation calculation to have received clean energy benefits under the Act and upon whom clean energy charges are exigible by virtue of the receipt of those benefits.*

- ***Present consumers*** *refers to consumers who have paid or are currently paying clean energy costs in amounts which exceed the clean energy benefits allocated to them under the fair allocation calculation.*

- *[**Regulated rate consumer** means a consumer referred to in section 6(1) of the Act.]*

- **True-up amount** refers to the amount determined under section [x]

- Variance account refers to the amount determined under section x.

SPECIAL CASES

PART II – REGULATORY ASSET

SECTION 2 CALCULATION OF REGULATORY ASSET

Determination of regulatory asset

2(1) For the purposes of section [23] / 25 of the Act, the Regulatory Asset referred to shall be calculated as follows:
[NTD: We have to describe the IESO deferral and the "Regulatory Asset"] - Some or all of what follows may be more pertinent to the

determination of the "IESO deferral" under s.23 versus the calculation (description) of the "Regulatory asset" under s.25. Lets start with this approach recognizing that we'll have to distinguish between these two important concepts.]

(a) If the regulatory asset arises during the period May 1, 2017 and June 30, 2017, the value of the regulatory asset shall be determined as follows *[by calculating the sum of]*

(i) The difference, calculated on a monthly basis, between the amount the IESO must provide to generators and other persons referred to under clause 25.33(1)(a) of the *Electricity Act, 1998* and the amount that is provided to the IESO by consumers pursuant to rates determined by the Board pursuant to clause 79.16(1)(b) and the regulations made under that Act; ***[NTD: This element, in***

particular, may be more pertinent to the determination under s.23 than under s.25.]

(b) If the regulatory asset arises during the period July 1, 2017 and April 30, 2018, the value of the regulatory asset shall be determined as follows *[by calculating the sum of]*

(i) The difference, calculated on a monthly basis, between the amount the IESO must provide to generators and other

persons referred to under clause 25.33(1)(a) of the *Electricity Act, 1998* and the amount that is provided to the IESO by specified consumers *[ntd: alternative: by distributors, USMPs on behalf of specified consumers]* pursuant to the adjustments made under sections 7 and 8 *[ntd do we need to reference 12 – USMPs?]* of the Act and the regulations; and,

(ii) Any amounts relating to one or more variance accounts provided for under section 79.16(3) of the *Ontario Energy Board Act, 1998* or otherwise that relate to the amounts in (i).

(c) If the regulatory asset arises during the period May 1, 2018 and April 30, 2048, the value of the regulatory asset shall be determined as follows *[by calculating the sum of,*

(i) The difference, calculated on a monthly basis,

between the amount the IESO must provide to generators and other persons referred to under clause 25.33(1)(a) of the *Electricity Act, 1998* and the amount that is provided to the IESO by specified consumers *[ntd: alternative: by distributors, USMPs on behalf of specified consumers]* pursuant to the adjustments made under sections 11 and 12 of the Act and the regulations; and,

(ii) Any amounts relating to one or more variance accounts provided for under section 79.16(3) of the *Ontario Energy Board Act, 1998* or otherwise that relate to the amounts in (i).

Variance account, IESO deferrals,

2.1(1) The IESO shall establish the variance account referred to in section 24 of the Act to record, along with the amounts referred to in subsection 24(1), the following further adjustments as

provided for under clause 3 of subsection 24(1):

[. . .]

PART III – TRANSFER OF REGULATORY ASSET

Transfer of regulatory asset,

3(1) For the purposes of section 26 of the Act, and in accordance with any agreement referred to in that section duly entered into between the IESO and the financing entity, the IESO shall transfer a [specified portion of a?] regulatory asset referred to in that section, and incur a funding obligation *[as set out under subsection (2)]* when the following circumstances arise:

[x, y. z]

Determination, specified portions,

(2) For the purposes of subsection (1), the specified portion referred to therein is that portion of the regulatory asset which is described in the agreement referred to in subsection (1). ***[ntd: this could be moved to the bottom of this section as a local definition for "specified portion" but might work better as a descriptive definition as shown here.]***

Reduction of variance account,

(3) For greater certainty, upon receipt of the payment referred to in subsection 26(3), the IESO shall reduce the balance in the variance account by the amount provided for under the contract referred to in subsection (1) in a manner consistent with that subsection *[e.g. 26(3)]* of the Act.

Transfer agreement,

(4) The IESO shall retain a copy of each transfer agreement referred to in section 27 of the Act for the purposes of making any determination required by the Act or this regulation.***[Local***

definitions: "transfer agreement", "transferor", "transferee", etc.]

PART 4 INVESTMENT INTEREST

Section 28 matters,

4(1) For the purposes of section 28 of the Act, the IESO shall, and as a result of the [a?] transfer of the specified portion of the regulated asset referred to in section 3 to the [a] financing entity, reflect the transfer in [its accounts? Documents?] in order to track / reflect the conclusive disposition of the regulatory asset.

Section 29 matters,

(2) In addition to the rights referred to in paragraph 29(1) 2 of the Act, the investment asset referred to in that section comprises amounts held by the following entities:

[. . .]

(3) The prescribed accounts referred to in paragraph 29(1) 3 of the Act are as follows:

[. . .]

PART 6 – FINANCIAL SERVICES MANAGER – FURTHER REQUIREMENTS

6(1) The Financial Services Manager shall provide the IESO with the following information, in relation to Part III of the Act, about the following activities ….

(2) The Financial Services Manager shall provide the IESO with such information relating to the transfer referred to in section

SECTION 7 – REQUIREMENTS RE. FEES

7(1) The Financial Services Manager may establish fees for the following activities:

Limitation

(2) The Financial Services Manager shall not establish fees to recover amounts related to….:

Submission to Board

(3) Not later than 120 days in advance of the Financial Services Manager's upcoming fiscal year, the Manager shall submit its fees to the Board for approval and shall comply with such other administrative requirements as the Board may require.

NOTE: The OFHPA does not provide Government with any legislative or regulation-making authority over the OEB to require that the OEB issue its decision embodying its order approving or not approving the FSM's fees within any specified time period. This is consistent with most expressions of OEB approval being required, but just so that's understood.

PART 8 - DETERMINATION OF FAIR ALLOCATION AMOUNT

Fair allocation amount,8

8(1) For the purposes of section 20(2), the further principles to be considered and taken into account by the Minister in determining the Fair Allocation Amount are as follows:

[. . .]

(2) For the purposes of section 20(3), the further assumptions to be considered and taken into account by the Minister in

determining the Fair Allocation Amount are as follows:

[. . .]

PART IX: FINANCING PLAN

9(1) For the purposes of section 21 of the Act, the further principles to be taken into account pursuant to paragraph 21(3) 4 by the Financial Services Manager in preparing the Financing Plan referred to in that section are as follows

[. . .]

Limitation, incurrence of funding obligations

(2) For the purposes of subsection 21(4) of the Act, the limits that are not to be exceeded by the financial services manager

in relation to the incurrence of one or more funding obigations during the period referred to in subsection 21(4) of the Act are [x] or are determined by [y].

PART VII – CLEAN ENERGY ADJUSTMENTS

SECTION 10 – CALCULATION / RECIEPT OF CLEAN ENERGY ADJUSTMENTS

10(1) For the purposes of section 16 of the Act, the IESO shall establish a [separate?] account to track the amounts referred to in subsections 16(1) and 17(6) for the benefit of the investment interest owners to which the amounts relate: ….

Remittance process, etc.

(3) The IESO shall remit the amounts referred to in subsection

(1) in accordance with the following steps *[processes]* – *[need IESO input here.]*

21(4)

PART VII: INVOICING *[Whether s.17 OFHPA invoicing requirements are/are not covered off in Part II regs]*

Funding Obligations

→ RPP – differential OEB

→ 2ST → Fail Safe (1A)

– 2G → OPG Trust – pay money (2R)

– P Financing plan

Financing Plan Schedule 3

Transfers → no reg – do we need anything in Act – regs under 2G = fail safe

greements – remove agnets on file

[illegible]

Blakes - Mar 28 '17

+ Nailing down IESO & LDC collection mechanism

→ Reg Asset defined "right to collect" → might want to define as "a thing" but

- Concept of fleshing out idea - fundamentals in leg

① Gov't right to pre-determine curve - rate smoothing policy - selling right

② We're separating the transaction from leg

③ A treasury plan subject to criteria that has to be met - But obligation to establish in leg w/ certain criteria - get need discretion that OPG is to have - but not regulated by Gov't is not ...

Carolyn - Not sure re Treasury Plan - speak to Tim, Steen, Scott

Judy

- Concept would be a regulated Treasury Plan - sends away the major detail away from the leg.

cc - OPG has presented it as OT Gov't NOT having a role, so has to be discussed w/ clients

July

- How do we step up the consultation on leg.

2) CC - 5 Meetings in Calendar to walk people through

7/ Judy: Treasury Plan - leaving the operation w/ OPG but setting up terms & reqs Leg / regs

- Dan: whether one sale or succession of sale

→ Meeting at 4 pm → Plow through section by section "clause by clause" & analysis of consultation

→ Easy Next meeting - Next week

Blakes' Mar 15/17

- all streams receive in parallel

Send to all

→ OEB || May Amee

Not yet

ICI – LRC April 11th

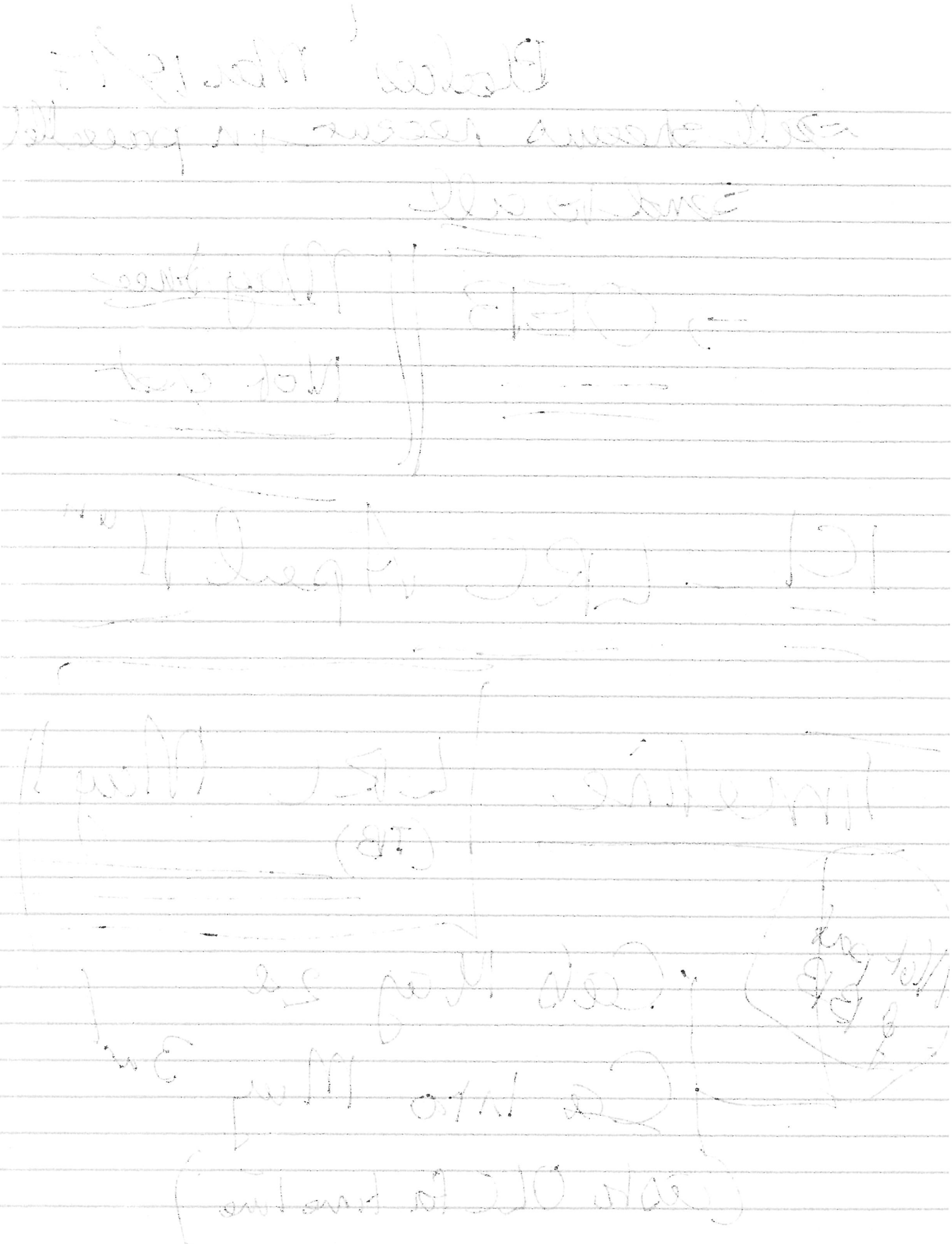
Timeline | LRC May 1 (TB)

Not part of BP

→ Cab May 2nd

→ Ca into May 3rd

(caste OLC for timeline)



2

Blakes March 15/0

→ Peter → Judy

3:30

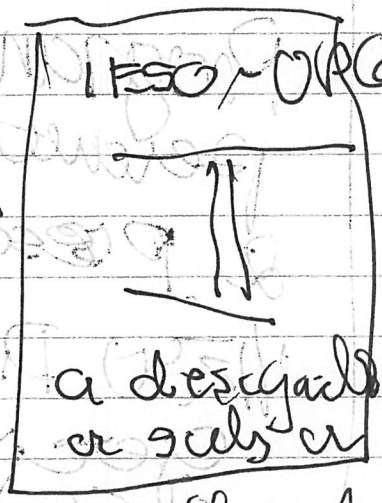
Tryve

- Do you ask her (OLC)

→ Check w/ Judy
- Talk client
- (Talk OLC)

IESO ~ OPG

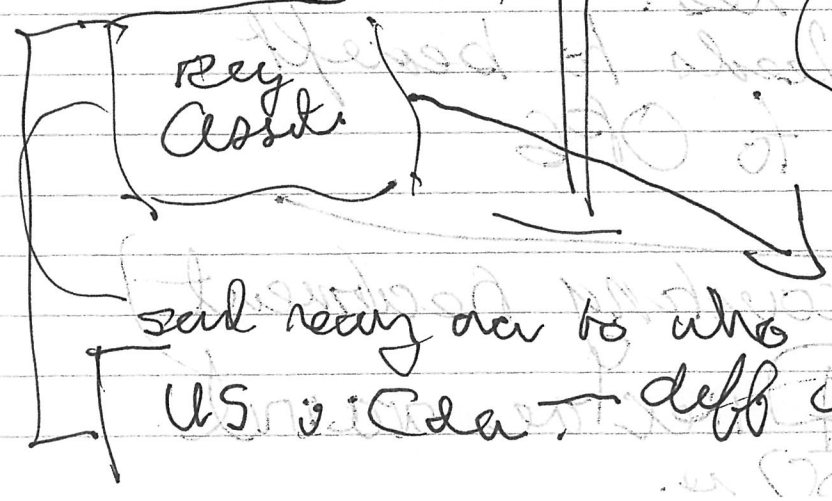
a designate or subs or other vehicle



OPG - banks
- rating agencies
- starting to understand in nuanced ways
- John Lee → start w/ all asset (or one asset & grow)

Key Asset

sent reading over to who is going to US & Cdn - diff vehicles:



→ Hard end-date
- Ftec.

- OPG - Funding in arrears to achieve discount (OPG goes out after the IESO)

Program parameters & prescribe IESO Directive goes (CC)

, IESO warehousing of funds & s.t. borrowing

- OPG exploring diff. classes of shares & artills (not leg.)
→ s.ter dec/res.
→ Needs to benefit to OPG

(to achieve accounting treatment)
- Ministers Directive around IESO re.

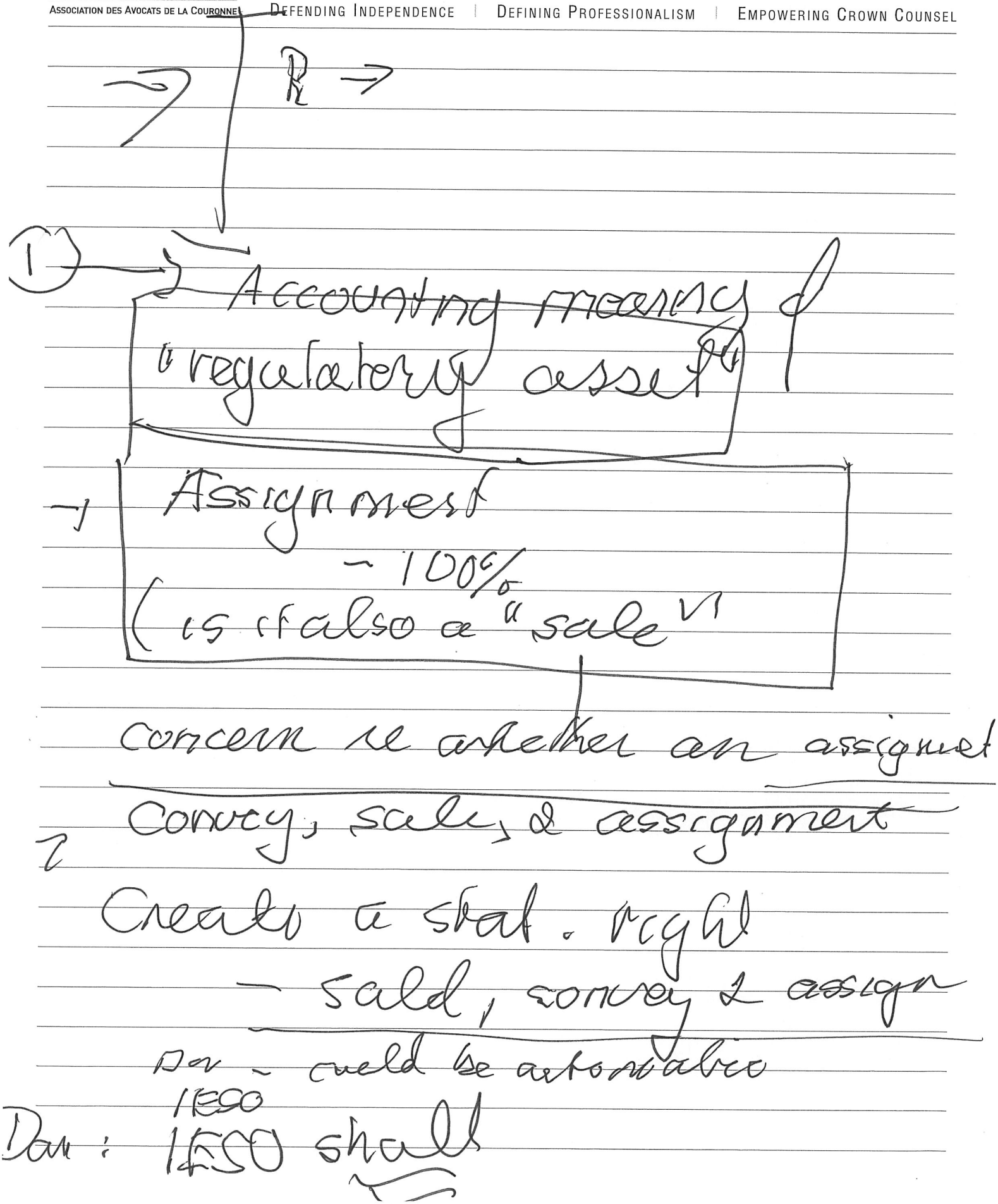
- intergenerational share (const. pers spectrum)
- In the years the current rate payers - if we had smoothed curve - Wonder if current rate payers

Market price
Marginal costs

- Why is it that we're limited to measure
  - taking into account the current
- "intergenerational financing" (add in)

objects
perhaps a statement or two

S.6.


R
1
Accounting meaning of "regulatory asset"
Assignment
- 100%
(is it also a "sale"?
concern re whether an assignment
Convey, sell, & assignment
Create a stat. right
- sell, convey & assign
Dan - could be actionable
IESO
Dan: IESO shall

Judy: View

① What is asset & how created in leg.

- how does it transfer

CC: Pressure to show work
~ GAM - eod
drafting instruction

Steve:
(Blakes Hogg, Cathy

When look at US model
- Vetting on cost structure flows back into asset
- Less (legally) req'd in Cda.
- Leg can delegate details etc

-3-

Steve - Key ingredients Fundam

- ~~Skeletal~~ - Dimensions

Broad Groups (Property right

① Creation of asset

- amount of money re asset
- certainty that costs will be paid
- definitive payor
  - enforcement right

IN

LEG

debt

② PLUMBING PIECES

connect rate base to Finance entity

How is asset demonstrable traceable (chain of collect on readily apparent)

(2) (a) LDC INVOICE for AMOUNT

(b) - acting cost for IESO

(a)

Debt

→ Legislation deems asset

- first item is collection

Law has to deem LDCs to deem to be collection agent

Bryson → Collection risk is w/ the LDC (consumer) LDC only one that can trade

- LDC ⇔ can't be left to bear credit risk → its consumer (rate base)

(other customer make up difference)

Steve

(2) cont'd US Models are based on credit of customer ~~risk~~ base

- US model → 1 LDC not 73

Could

highly capitalized ~~many~~ predict ed

Can't impose obligation LDCs → (LDCs have some weaker players

---

define that portion of revenue (describe)

Bryson → Bec/Reg Rate customer → INVOICE → Line on invoice to show ben in short 275/

Description | Nature of asset

Asset ⇒ ~~gap~~

Steve | 17%

CPI for nesh

Total bill

rep customer

Is the asset to push elect. bill down - [YES]

Asset = diff between what we want consumers to pay & cost

OVER

Legal (const law) analysis

Steve: Direct linkage betw/ deferral & arbitrary asset

→ Bryson: work done & there's been 20 years on contracts

CCB
- If this is a regulatory program - do current taxpayer

CC: If GA falls away b/c of price increases
- even if we focus on GA

(

- If GA does ↓ b/c commodity rises (HOEP)

17+ GAP → GA reduced

- linking the innediate GA GAP and

Asset is GA asst to pay back

IESO ~ Can finance

GA - new number

Could be fixed or Volumetric	Defined Class of people who owe is first order

IESO decides its going to raise debt

transition amount = 17%

IF HOEP TOO HIGH

IESO must determine to raise $ to cover

- if

IESO uses $ from generator

covers asset from either direction

IESO → borrowing limits

Bryson | asset all in cost

LGIC - Regs subject to one caveat

- Caveat - Treasury plan has to be consistent with "treasury"

Once the asset creates the obligation it can't be changed!

- have to ~~reg~~ auth to create use a sinking fund

- Complete carve out
  - always able to link back to GA

(as a limitation to the prog)

Judy: For share of the prog that we ascribe to feed.

→ All consumers would continue to pay the entire GA

- This deferral = 25% of total bill

(See Dan's 95/05 amendments)

1. 25% = year 1 - total bill
   - 4 years + CPI

5 year - 10% years + 10%

Steve: Leg should broadly cast the recovery line

CC → probably IESO

- maybe OEB

Fund to that curve

deferred GA: ~~GA Billed~~ ← GA billed

→ Leg needs to describe the curve a cap

(Judy - does it need to have merely an obligation re time & & y (30 years) as time

You can run the prog.

- having regard to total amount you need

CAP: The total amount of

What is the goal of the financ. to defer only the difference or plus some unknown amount

Stove Purpose clause

→ Whereas clauses

Purpose Clause

CAP = value of legacy cost

Now therefore Gov't can map out the line re recovery!

CAP ⇒

CC - 1st 4 years blue line is hard wire wired

Yo S - someone ~~should~~ will decide

Steve → can be more definitive re up front

→

Monetizing an asset in accord w/ policy-based construction in reg. who draws the line

Leg to prescribe fairness principals - no generation shall more than fair share

CC's can't be Gov't - OPG IESO OEB

i No generation should bear more than they share nor than fair share

(2)

Steve: question of intergenerational fairness

Judy → Nature of curves a classic OEB

→ CC: OEB is making its decision to follow Govt policy

Bryson → Gov't's role re trust → Bifurcation of responsibility of responsibility after five year

Judy →

OPG does not set those that curve

Curve: has to include debt

Bryson
IESO → Kim → doesn't reflect our under
- OPG (John Lee)

(1) asset
(2) plumbing

Fair curve of payment and what Yale pay ESG in future should pay

Policy Curve is what we are to finance toward w/in a band with

Steve:
Bryson

Curve

Curve - selling
- curve
- borrowing

IESO adjust to reflect curve
2 borrowing

→ IESO deemed to have asset create

→ IESO incurs debt (financial liab that offsets asset

Borrowing +

Timing - of incurring debt

→ Treasurer - in scenario wh/ sch on asset - IESO has a financiable asset re cost recovery

- What if Treasurer can't match curve then must incur more debt

IESO must have
→ Redemption rights to smooth out curve

IESO debt to pay generators up front
warehousing activities

Moment of sale from IESO to OPG

When

Day 1 – IESO incurs debt

IESO or any assignee in accord to reg. ~~shear~~ asset

W

creation of financing entities

IESO or c

OPG Trust | Don if ~~or~~ Prov. reqd to buy shares re capitalizing share

Why not create buckets

CC – comfort

cc: People will want ~~sec~~ certainty about

borrow security, equity creation

Who does what

There'll be a ~~drive~~ drive toward less flex.

→ Bryson →

OPG Board - separate council → have

Formula

Right to recover sum certain plus interest etc →

Reg. asset

Asset →

Don

Start right to recover the amount

presented - determinable, ~~payable~~ sum payable at part point in time

IESO IESO

> growing the deemed asset

= to amount its growing liab.

IESO sells —

— Gap = receipts from LDC ≤ from customers

OPG

— curve informs size of month

(curve baked into RPP Reg.

asset = payment obligation (liability)

- "contingency reserve"
+ "finance reserve"
- "liquidity" to finance ~~[illegible]~~ amount

Trust pays

- Securitized in tranches

Bryan Are we creating one asset

~~[illegible]~~ Yes

Single asset - sell an undivided fractional interest

hazardous part - the incentives for diff time-tranches based are different.

cross contamination

⇒

Judy → Equity injection

- decrease total borrowing
- reduce to IESO lab
- How does leg work after 1st 4 years

Ontario

MINISTRY OF
ENERGY

Global Adjustment Financing

Working Draft

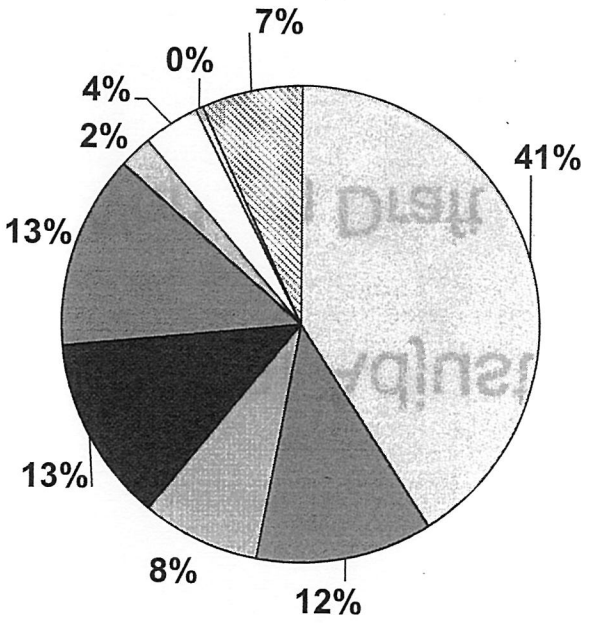
January 2017

CONFIDENTIAL DRAFT

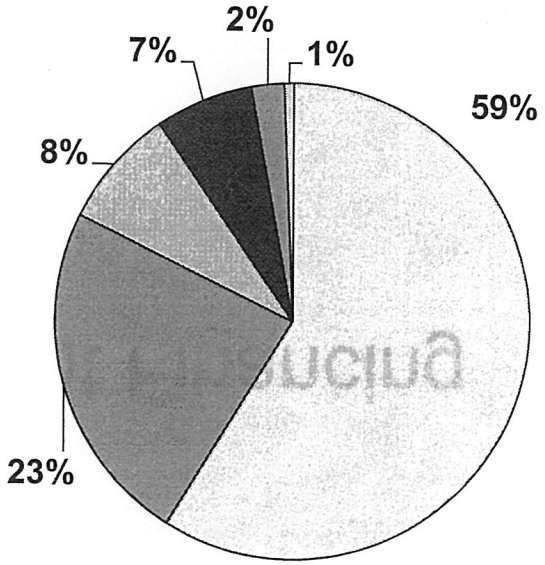
Context – GA Cost Breakout

- 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 generators enter and come out of service.

2016 GA Cost: $12.3 billion



2016 Generation: 155 TWh

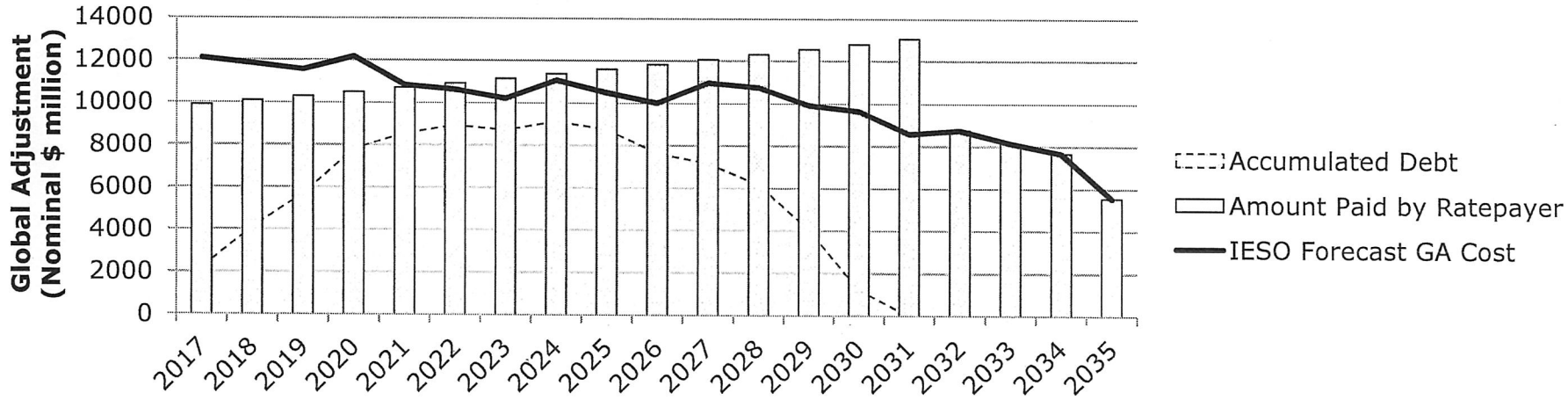


	GA ($M)	Gen. (TWh)
Nuclear	5,053	91
Hydro	1,473	36
Natural Gas	985	13
Wind	1,552	10
Solar	1,630	3
Biomass, Landfill and Byproduct	278	1
Conservation	467	
IEI Program	60	
OEFC*	842	

*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.

Proposal – Global Adjustment (GA) Financing

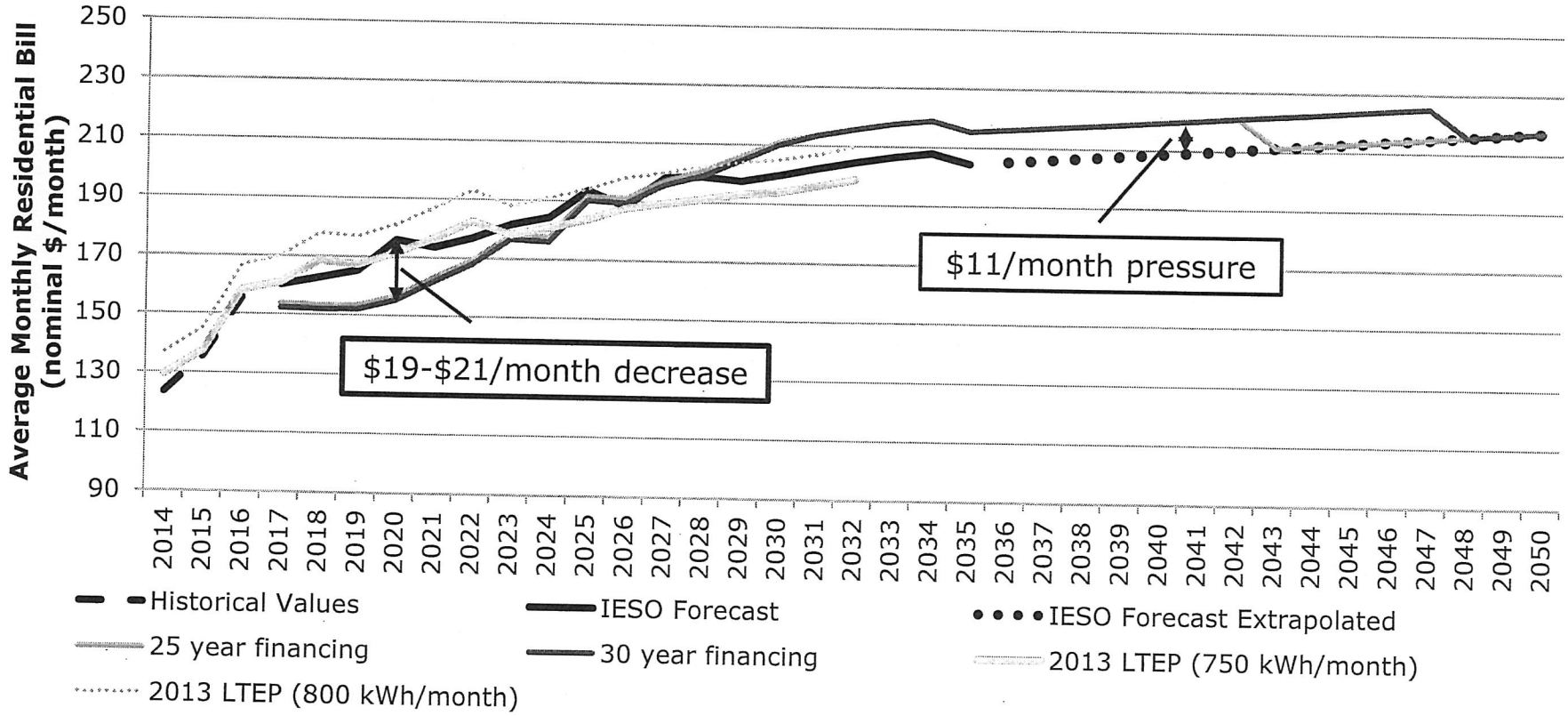
- It is proposed that the amount of global adjustment (GA) paid by ratepayers in each year over the forecast period is set at a fixed amount and money is borrowed to make up the remainder of the GA cost in each year.
- Starting on January 1, 2017, the amount of GA paid by ratepayers is set at a value lower than the true cost of GA in 2017 and is increased according to a pre-defined schedule until the debt has been paid off.
- GA costs will be "smoothed" over time by lowering costs in the short term and increasing costs in the long term.
- In some scenarios, the amount of GA paid by ratepayers *above* the expected actual cost of GA is capped so as to limit large increases in the cost of electricity in any given year.
- All analysis is based on forecasts from the Independent Electricity System Operator (IESO), assumes a 5% annual borrowing interest rate and an inflation rate of 2% per year.



Sample financing: Ratepayers pay less than the cost of GA in early years, borrowing up to $9 billion that is fully paid off in 2031 by charging ratepayers more than the cost of GA in later years.

Proposal – Moderate / GA Financing with Delayed Increase in Payments (Impact on Residential Electricity Bills)

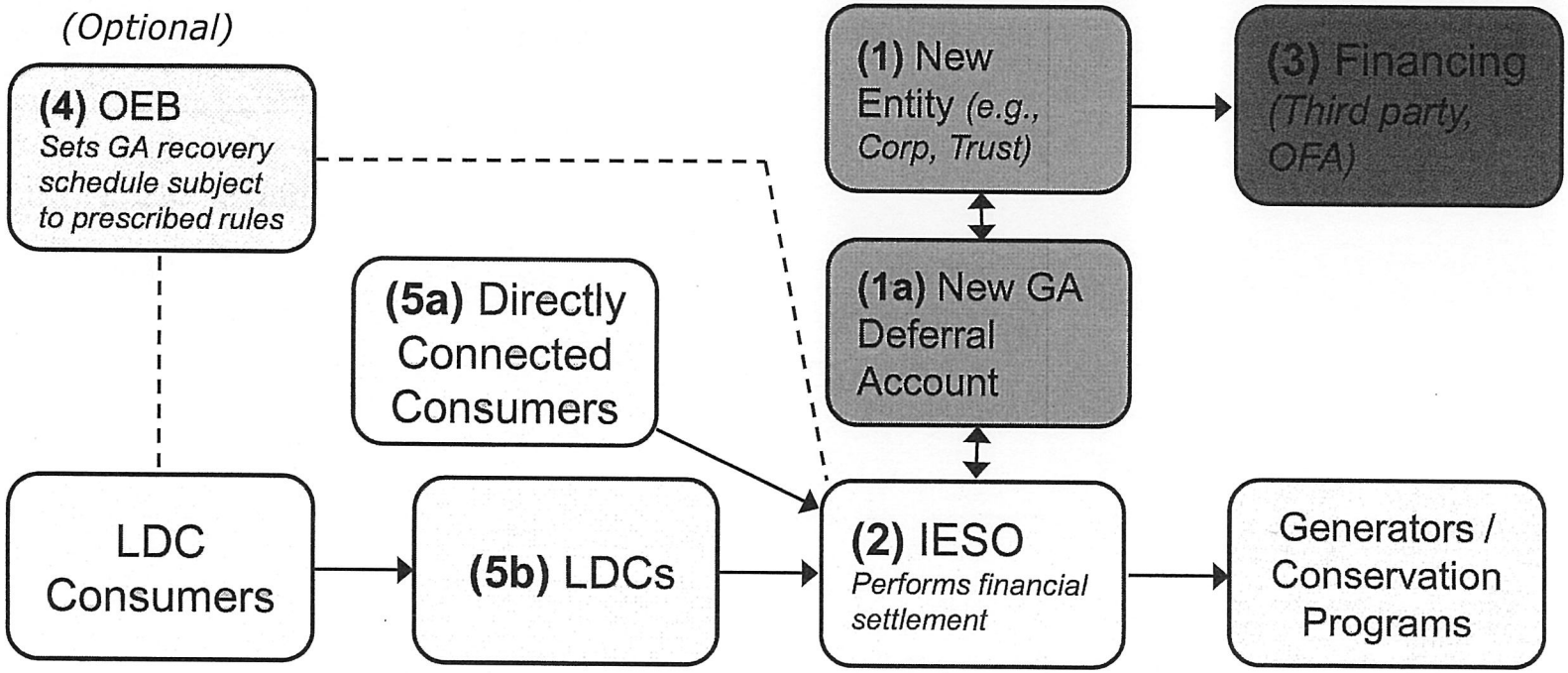
- In this option, the starting GA payment from all ratepayers in 2017 is lowered by $1.1 billion (green line) and $1.4 billion (red line), ratepayer payments *decrease* in the short term to keep residential bills relatively flat, then increases at 3% each year – up to a maximum of $2 billion above the true cost of GA – until the borrowed money is paid back over a 25 and 30 year financing period respectively.



- By **borrowing up to $19-$23 billion**, this scenario results in **a short-term residential electricity cost reduction of up to $19-$21/month** at the cost of **increased future electricity bills over 14-19 years of up to $11/month** above the true cost of electricity production.

GA Financing – Implementation Approach

- The diagram outlines a implementation approach that includes a new entity.



Questions / Next Steps (cont'd)

- What is the mandate of the new entity?
  - Narrow focus (i.e., Financing and Recovery)
  - Broader focus
- What is the corporate structure?
  - Trust
  - Not-for-Profit Corporation (Under Corporation Act)
  - Business Corporation (Under Business Corporation Act)
- What is the legislative framework?
- What is your governance structure?
- What is recovery mechanism?
  - Regulatory charge
  - Tax

Questions / Next Steps (cont'd)

- What is financing mechanism? And, who is the financer ?
  - Type of financing (e.g., debt, equity)
  - Financier (OFA , Third Party, Hybrid Approach

- What is the interaction with other entities in the sector (i.e., IESO, OEB, LDCs)?
  - Oversight
  - Flow funds

- What is the accounting treatment?
  - New Entity
  - IESO
  - Province

- Timing / Expectations

Appendix

Accounting Indicators

SECTION PS 1300 / Government Reporting Entity

DETERMINING WHETHER CONTROL EXISTS

- As noted in paragraphs PS 1300.10-.11, whether a government controls an organization is a question of fact that requires the application of professional judgment based on the definition of control in this Section and the substance of the relationship in each case.
- The following guidance would be applied in the context of the definition of control and the particular circumstances of each case. It is the preponderance of evidence that would be considered in assessing whether a government controls an organization.

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 by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members;
  - Appoint or remove the CEO or other key personnel;
  - Establish or amend the mission or mandate of the organization;

Endnotes **1 (Popup - Popup)**

- 1. "Golden share" refers to a class of share that entitles the holder to specified powers or rights generally exceeding those normally associated with the holder's ownership interest or representation on the governing body.

Source: CPA Canada Standards and Guidance Collected

Accounting Indicators (cont'd)

Other useful sections of the accounting standards:

.22 A government's ability to take temporary control of another organization in exceptional circumstances, such as a crisis situation like bankruptcy or a board failure, does not, in and of itself, constitute control for the purposes of this Section. Such circumstances would arise as a result of a specific event that caused the government to intervene in the activities of the organization. Temporary control is short term in nature with the intention to relinquish control as soon as the crisis has been addressed.

.23 A government's ability to regulate an organization does not, in and of itself, constitute control. Government may establish the regulatory environment in an industry or sector within which organizations operate and impose conditions or sanctions on their operations. The governing bodies of those regulated organizations make independent decisions within the regulatory framework. A government may require the organization to submit reports to demonstrate compliance with the regulations. These reports are not considered evidence of control because the government's interest in these organizations extends only to the regulatory aspects of operations.

.24 An organization's financial dependence on the government, in and of itself, does not constitute control. While financial dependence would usually give rise to a relationship based on influence, it is unlikely that financial dependence alone would enable the government to control an organization. The governing body of that organization may make independent decisions on its financial and operating policies. A government may require the organization to submit reports to demonstrate compliance with the terms and conditions of funding. These reports are not considered evidence of control because the government's interest in the organization extends only to the funding aspects of operations. For example, a private sector day care service that receives government funding may be required to demonstrate compliance with the terms and conditions of government funding. However, the governing body retains discretion as to whether it will take funding from, or do business with, the government.

Description of a "Trust"

Topics	Commentary
1. PURPOSE	• Purpose established and set out in trust instrument • Rules regarding objects of trust must be met in order for trust to be valid. • Purpose trusts must have charitable objectives
2. REGULATION OF VEHICLE	• No statutory regulator

3. CREATION	• Trust instrument should be comprehensive and must have certainty
	• An effective and recognized trust must have three essential characteristics: certainty of intent to create a trust, trust property must be certain and it must be possible to ascertain the intended beneficiaries→ description of a class of beneficiaries must be sufficiently precise to permit a determination as to whether or not a particular person is a member of the class.
	  ○ Identifying the beneficiaries may be challenging
	  ○ Instrument must spell out terms for trustees' actions, including distribution of proceeds of trust

4. PUBLIC FILING	• Trust instrument not required to be filed
5. APPOINTMENT OF PRINCIPALS	• Settlor can appoint initial trustees • Trust instrument can specify how subsequent trustees are appointed and removed • Settlor determines number of trustees • Trustees can be beneficiaries • No legal requirements for term of trustee.

Description of a "Trust" (cont'd)

Key Topics	Commentary
6. OBLIGATIONS & RESPONSIBILITIES OF PRINCIPALS	• Trustees subject to fiduciary obligations: duty of care (reasonable and prudent business person, or, if specially qualified, reasonable and prudent person with that training), duty to act personally (cannot delegate), duty to avoid conflict of interest and act solely for the benefit of the beneficiaries. • Trustees can be given a range of flexibility and discretion in exercising powers in trust document • Trustees must adhere to terms of trust, therefore the declaration must be carefully drafted → may be difficult for Province to retain control • Trustees have full liability for actions but liability could be limited by trust instrument
7. POWERS OF VEHICLE	• Not a legal person
8. STATUS OF ENTITY	• Relationship between trustee and beneficiary established and scoped by trust instrument
9. RIGHTS & OBLIGATIONS OF VEHICLE	• Cannot acquire rights and obligations independent of the parties to the obligation.
10. CONTRACTS & LIABILITIES	• Trustees enter into contracts and can incur liabilities
11. AMENDMENTS	• Power of amendment can be inserted into (or omitted from) trust instrument
12. END	• When all trust property has been distributed or when revoked or amended and property is returned to the settlor

Schedule for GA Financing

- The table below shows a sample schedule of borrowing and re-payments under financing of the GA.

Debt Borrowing/Payment Schedule for GA Financing

$ millions	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Amount by which debt account changes in present year, not including interest	-3,107	-2,667	-2,201	-2,630	-1,115	-710	-90	-757	41	721	-19	411	1,480	1,977
Amount by which debt account changes in present year, including interest	-3,107	-2,822	-2,498	-3,052	-1,689	-1,369	-817	-1,525	-802	-163	-911	-526	516	1,039

$ millions	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044
Amount by which debt account changes in present year, not including interest	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	0	0
Amount by which debt account changes in present year, including interest	1,114	1,169	1,228	1,289	1,354	1,421	1,492	1,567	1,645	1,728	1,814	1,905	0	0

Auction Proceeds Recycling

- Initially, GA financing would provide, for the majority of consumers, a price reduction that is greater than what would be provided as a result of "all hours" proceeds recycling proposal.
- As shown in Tables 1 and 2 below, only a consumer operating a day-shift and paying an extremely low GA would be worse off under GA financing over the short term.
- Over the longer term, proceeds recycling provides a greater benefit for all consumers.

Table 1 – Benefit of GA Financing Net of Cap and Trade

$/MWh	2017	2018	2019	2020
Class A	-13.24	-10.89	-8.68	-10.21
Low GA (e.g., Pulp & Paper)	-3.35	-2.00	-0.97	-0.83
High GA (e.g., Chemical)	-18.26	-15.38	-12.57	-14.93
Extreme Low GA Day-Shift	0.68	2.02	2.82	3.93
Class B	-23.21	-19.92	-16.58	-19.85

Table 2 – Benefit of "All Hours" Proceeds Recycling Net of Cap and Trade

$/MWh	2017	2018	2019	2020
Class A	-2.10	-2.48	-2.65	-3.26
Low GA (e.g., Pulp & Paper)	-1.16	-1.27	-1.32	-1.50
High GA (e.g., Chemical)	-2.55	-3.05	-3.27	-4.09
Extreme Low GA Day-Shift	0.24	0.49	0.59	1.01
Class B	-2.67	-2.67	-2.67	-2.68

Ontario

Executive Council
Conseil exécutif

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

Sur la recommandation de la personne soussignée, la lieutenante-gouverneure, sur l'avis et avec le consentement du Conseil exécutif, décrète ce qui suit :

the appended Regulation be made under the *Ontario Energy Board Act, 1998*.

Recommended _____
Minister of Energy

Concurred _____
Chair of Cabinet

Approved and Ordered APR 12 2017
Date

_____
Lieutenant Governor

R.O.C./Décret (R) 66/2017

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ONTARIO REGULATION

made under the

ONTARIO ENERGY BOARD ACT, 1998

Amending O. Reg. 314/15

(ONTARIO ELECTRICITY SUPPORT PROGRAM)

1. Section 1 of Ontario Regulation 314/15 is amended by adding the following definitions:

"account-holder" means a consumer who has an account with a distributor that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the Act, and who lives at the service address to which the account relates for at least six months in a year;

"electricity-intensive medical device" means an oxygen concentrator, a mechanical ventilator or a kidney dialysis machine;

"household" means the account-holder and any other people living at the accountholder's service address for at least six months in a year, including people other than the account-holder's spouse, children or other relatives;

"household income" means the combined annual after-tax income of all members of a household aged 16 or over;

"Indigenous person" includes a person who is a First Nations person, a Métis person or an Inuit person.

2. Section 5 of the Regulation is revoked and the following substituted:

Amount of OESP rate assistance

5. (1) Effective May 1, 2017, the Board shall fix the amount of monthly rate assistance to the classes of consumers that are identified as rate-assisted consumers in Schedule 1, based on the amount of monthly assistance for each class set out in subsection (2).

(2) The monthly amount of rate assistance to be fixed by the Board for each class of rate-assisted consumer is,

(a) $35 for consumers in Class A;

(b) $40 for consumers in Class B;

(c) $45 for consumers in Class C;

(d) $51 for consumers in Class D;

(e) $52 for consumers in Class E;

(f) $57 for consumers in Class F;

(g) $60 for consumers in Class G;

(h) $63 for consumers in Class H;

(i) $68 for consumers in Class I;

(j) $75 for consumers in Class J;

(k) $83 for consumers in Class K;

(l) $90 for consumers in Class L; and

(m) $113 for consumers in Class M.

3. The Regulation is amended by adding the following Schedule:

SCHEDULE 1
CLASSES OF RATE ASSISTED CONSUMERS

The following are classes of rate-assisted consumers for the purposes of subsection 79.2 (5) of the Act and section 5 of this Regulation:

1. Class A is composed of the following account-holders, other than account-holders who also meet the requirements of Class E:

i. Account-holders with a household income of more than $39,000 and no more than $48,000 living in a household of three persons.

ii. Account-holders with a household income of more than $48,000 and no more than $52,000 living in a household of five persons.

2. Class B is composed of the following account-holders, other than account-holders who also meet the requirements of Class G:

i. Account-holders with a household income of more than $28,000 and no more than $39,000 living in a household of two persons.

ii. Account-holders with a household income of more than $39,000 and no more than $48,000 living in a household of four persons.

iii. Account-holders with a household income of more than $48,000 and no more than $52,000 living in a household of six persons.

3. Class C is composed of the following account-holders, other than account-holders who also meet the requirements of Class I:

i. Account-holders with a household income of $28,000 or less living in a household of one or two persons.

ii. Account-holders with a household income of more than $28,000 and no more than $39,000 living in a household of three persons.

iii. Account-holders with a household income of more than $39,000 and no more than $48,000 living in a household of five persons.

iv. Account-holders with a household income of more than $48,000 and no more than $52,000 living in a household of seven or more persons.

4. Class D is composed of the following account-holders, other than account-holders who also meet the requirements of Class J:

i. Account-holders with a household income of $28,000 or less living in a household of three persons.

ii. Account-holders with a household income of more than $28,000 and no more than $39,000 living in a household of four persons.

iii. Account-holders with a household income of more than $39,000 and no more than $48,000 living in a household of six persons.

5. Class E is composed of account-holders with a household income and household size described under Class A who also meet any of the following requirements:

   i. The dwelling to which the account relates is heated primarily by electricity.

   ii. The account-holder or any member of the account-holder's household is an Indigenous person.

   iii. The account-holder or any member of the account-holder's household regularly uses, for medical purposes, an electricity-intensive medical device at the dwelling to which the account relates.

6. Class F is composed of the following account-holders, other than account-holders who also meet the requirements of Class K:

   i. Account-holders with a household income of $28,000 or less living in a household of four persons.

   ii. Account-holders with a household income of more than $28,000 and no more than $39,000 living in a household of five persons.

   iii. Account-holders with a household income of more than $39,000 and no more than $48,000 living in a household of seven or more persons.

7. Class G is composed of account-holders with a household income and household size described under Class B who also meet any of the following requirements:

   i. The dwelling to which the account relates is heated primarily by electricity.

   ii. The account-holder or any member of the account-holder's household is an Indigenous person.

   iii. The account-holder or any member of the account-holder's household regularly uses, for medical purposes, an electricity-intensive medical device at the dwelling to which the account relates.

8. Class H is composed of the following account-holders, other than account-holders who also meet the requirements of Class L:

   i. Account-holders with a household income of $28,000 or less living in a household of five persons.

ii. Account-holders with a household income of more than $28,000 and no more than $39,000 living in a household of six persons.

9. Class I is composed of account-holders with a household income and household size described under Class C who also meet any of the following requirements:

i. The dwelling to which the account relates is heated primarily by electricity.

ii. The account-holder or any member of the account-holder's household is an Indigenous person.

iii. The account-holder or any member of the account-holder's household regularly uses, for medical purposes, an electricity-intensive medical device at the dwelling to which the account relates.

10. Class J is composed of,

i. account-holders with a household income of $28,000 or less living in a household of six or more persons, other than account-holders who also meet the requirements of Class M,

ii. account-holders with a household income of more than $28,000 and no more than $39,000 living in a household of seven or more persons, other than account-holders who also meet the requirements of Class M, and

iii. account-holders with a household income and household size described under Class D who also meet any of the following requirements:

A. The dwelling to which the account relates is heated primarily by electricity.

B. The account-holder or any member of the account-holder's household is an Indigenous person.

C. The account-holder or any member of the account-holder's household regularly uses, for medical purposes, an electricity-intensive medical device at the dwelling to which the account relates.

11. Class K is composed of account-holders with a household income and household size described under Class F who also meet any of the following requirements:

i. The dwelling to which the account relates is heated primarily by electricity.

ii. The account-holder or any member of the account-holder's household is an Indigenous person.

iii. The account-holder or any member of the account-holder's household regularly uses, for medical purposes, an electricity-intensive medical device at the dwelling to which the account relates.

12. Class L is composed of account-holders with a household income and household size described under Class H who also meet any of the following requirements:

i. The dwelling to which the account relates is heated primarily by electricity.

ii. The account-holder or any member of the account-holder's household is an Indigenous person.

iii. The account-holder or any member of the account-holder's household regularly uses, for medical purposes, an electricity-intensive medical device at the dwelling to which the account relates.

13. Class M is composed of account-holders with a household income and household size described under subparagraph i or ii of the description of Class J who also meet any of the following requirements:

i. The dwelling to which the account relates is heated primarily by electricity.

ii. The account-holder or any member of the account-holder's household is an Indigenous person.

iii. The account-holder or any member of the account-holder's household regularly uses, for medical purposes, an electricity-intensive medical device at the dwelling to which the account relates.

Commencement

4. This Regulation comes into force on May 1, 2017.

Ontario

MINISTRY OF
ENERGY

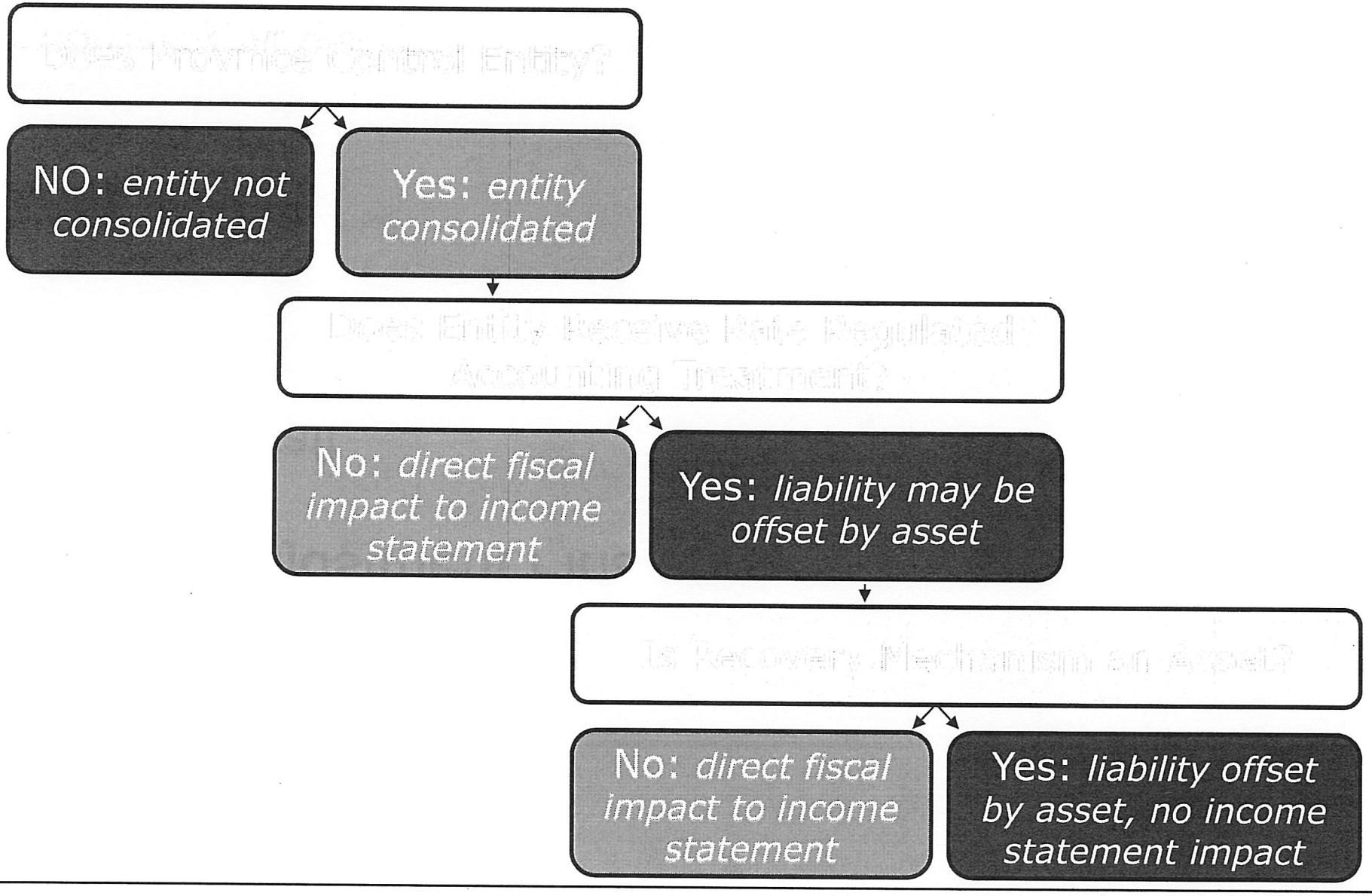
Global Adjustment Financing

Working Draft

January 2017

CONFIDENTIAL DRAFT

Accounting Treatment: Key Tests



Accounting Treatment: Does Province Control Entity?

Determining Whether Control Exists

- 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.

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.

Accounting Treatment: Is the Entity Rate Regulated?

Determining Whether Rate Regulated Accounting Treatment is Applicable

- **TBD**

Accounting Treatment: Is the Recovery Mechanism an Asset?

In order to establish an asset, for accounting purposes

- Need to demonstrate that future cash flow / value can be derived
- Financing costs can be recoverable
- The counterparty has the willingness and ability to pay
- **ETC TBD**

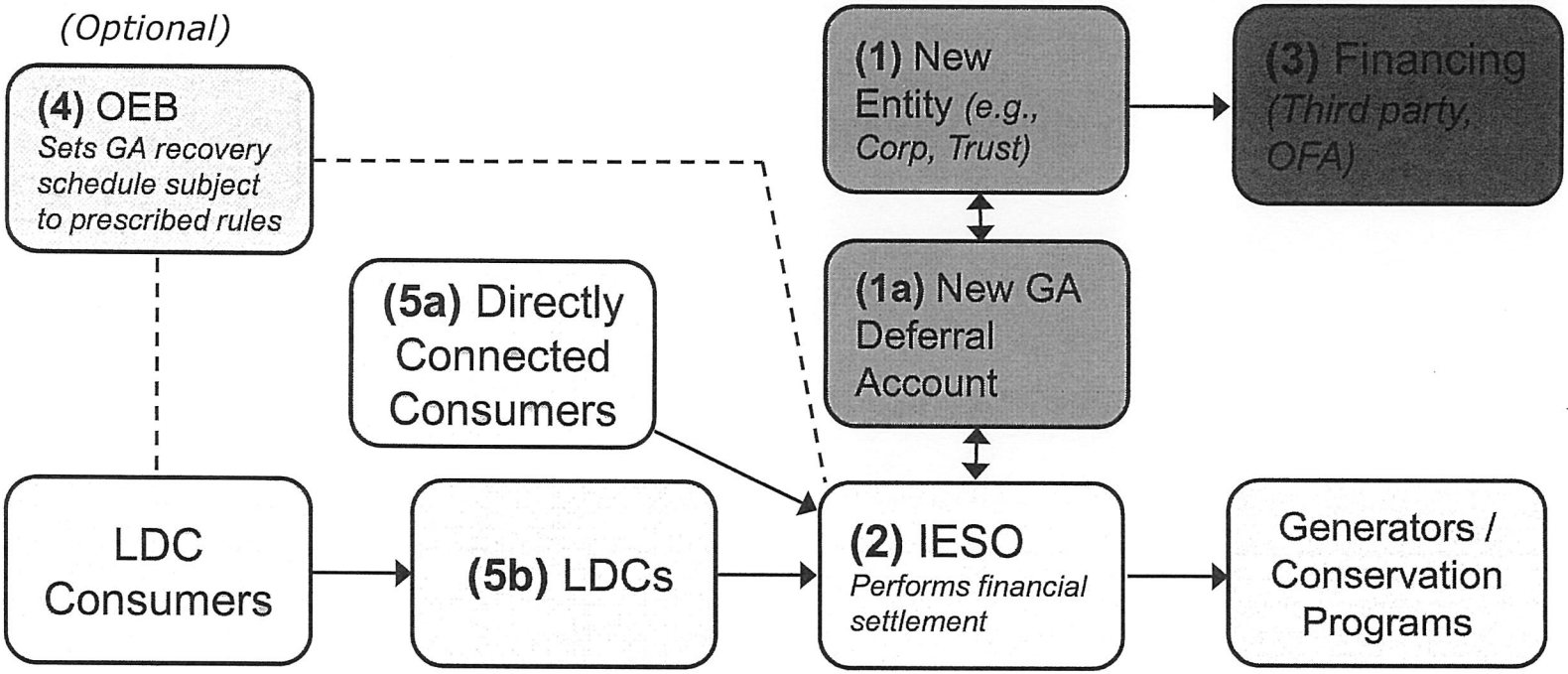
Accounting Treatment: IESO and the Province

- In addition to considering accounting treatment for the entity, also need to consider impacts to IESO and consolidation to the Province's financials
- **IESO Considerations**
  - Will funds flow through IESO and if so, will IESO record on its financials?
  - Does IESO and the recovery mechanism constitute and asset, per the tests described on prior slides?
  - If these tests are not met, are there alternative mechanisms to flow funds that do not involve the IESO?

- **Provincial Consolidation Considerations**
  - Ongoing analysis on whether such changes to the financing of the GA would affect the Province's current accounting treatment for the GA and represent a potential fiscal risk (i.e., consolidation).
  - The significant amount of additional Provincial borrowing needed to finance the GA, and associated risks (e.g., interest rates, repayment timelines), could put pressure on the Province's credit rating and overall borrowing capacity.
  - The Auditor General (AG) may comment on the appropriateness of financing the Global Adjustment and/or on the need to consolidate any financing on the Province's books.

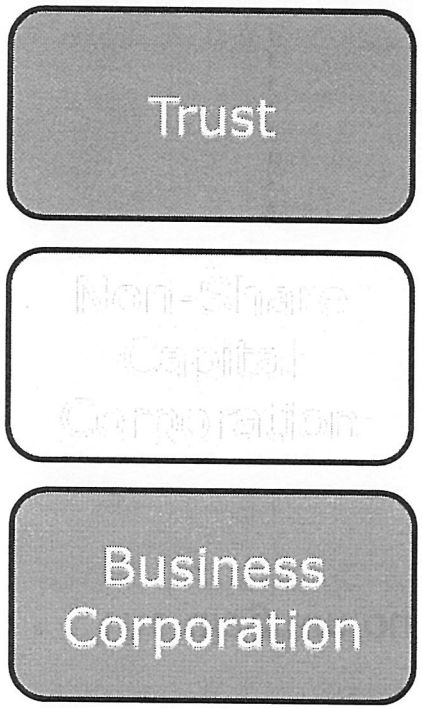
GA Financing – Implementation Approach

- The diagram outlines a implementation approach that includes a new entity.



Corporate Structure: Overview

- The following three structures are under consideration
- Regardless of the preferred model, control and flexibility will depend on the legislative and governance framework associated with the specific entity



High level descriptions to be filled in

Corporate Structure: Trust

A trust is managed by trustees for beneficiaries, who in this case would be the debt holders
A trust is not a legal entity in its own right and can only act through its trustees.
A trust could be established by statute, a trust indenture or a combination of both instruments
To meet the control test, the Province would not be able to preserve any ability to alter the trust after the Province settles the property of the trust (the debt) with the trustees
While the Province would appoint the first trustees, the trust structure would have to include mechanisms for subsequent appointments. Ongoing governance would be entirely within the purview of the trustees

Corporate Structure: Non-Share Capital Corporation

Managed by a board of directors to achieve the objects of the corporation.
Could be created by statute and corporate documents and objects and powers would be set out therein.
Board of directors is accountable to members, who may be the board.
To meet the control test, the Province would choose the first board members but then would not have ongoing involvement in the selection of the board or key personnel. The Province could have no right to approve the entity's business plan, budget or financing. Mechanisms would have to be created to prevent the Province from winding up the corporation through legislation or otherwise.

Corporate Structure: Business Corporation

Similar to non-share corporations.
Board of Directors is accountable to shareholders.
Could be created by statute and corporate documents and objects and powers would be set out therein.
To meet the control test, the Province would choose the first board members but then would not have ongoing involvement in the selection of the board or key personnel. The Province could not have a majority of shares. The Province could have no right to approve the entity's business plan, budget or financing. Mechanisms would have to be created to prevent the Province from winding up the corporation through legislation or otherwise.

Corporate Structure: Summary

- [eventually want something high level that allows for comparison across options]

	1. Trust	2. NSCC	3. Business Corporation
Mandate & Flexibility to Amend	• xx	• xx	
Appointment of Directors	• xx	• xx	
Contracts & Obligations	• xx	• xx	
Other Considerations	• xx	• xx	

Issues for Future Consideration

- Other issues to consider in the coming days / weeks (see appendix for details):
  - Mandate of the entity
  - Recovery Mechanism
  - Financing
  - Interaction with other entities in the sector (IESO/OEB/LDCs)
  - Legislative framework

Test Case: Non-Share Capital Corporation

- [suggest we build out a live example and apply accounting tests to it]
- *NTD: Consider using the IESO as a model and then show how this would be different*

Timing/Expectations

Hypothesis Development/ Due Diligence (Late Jan 2017)

- Develop strategic options
- Conduct preliminary analysis and assessment(fiscal/ accounting/govern ance)

Internal Market Sounding (Early Feb 2017)

- Canvas players on options for initial thoughts/insight
- Further due diligence

Due Diligence / Communications / Dev. Legislation (Feb 2017)

- Conduct analysis to understand financial impact
- Understand governance structures and public interest protections
- Fiscal/cash implications
- Ratepayer impacts
- Develop communications strategy
- Develop legislative framework / begin drafting

Announcement (February 16, 2017)

- Announcement of high level rate mitigation plan

Legal/Governa nce Analysis (Feb/March)

- Understand legal and regulatory implications
- Evaluate changes required to facilitate
- Draft legislative/regulatory changes

Legislative Changes (Spring 2017)

- Introduce enabling legislation/ regulations

Governance Set-Up (May/June)

- Creation of new entity
- Filing documents
- Recruit Directors

Administrative/Oper ational Changes (June)

- Fund flow mechanisms in place
- Management functions in place

Rate Reductions (Summer 2017)

- Rate reduction kicks in

☐ A. Planning ☐ B. Preparation ☐ C. Implementation

Timing/Expectations: Next Two Weeks

- More detailed workplan showing what we can do between now and February 16th

Appendix

Legislative Framework

- Legislation would be required to authorize the financing proposal.
  - Amendments to the *Electricity Act, 1998* (EA) could authorize the financing of certain costs within or part of the GA. However, whether any other legislation requires amendment is not known at this time.
  - The GA regime currently provides that "true costs" represent the true costs of making payments to generators or counter parties to contracts, not the incurring of discretionary financing or interest costs or the administrative costs of a new entity.

Mandate

- Consider benefits and drawbacks of various mandates

- **Narrow Mandate**: To finance and recover a specific amount of the GA over a specified period of time

- **Broad Mandate**: To better implement and recover the Global Adjustment
  - Consider inter-generational equity
  - Ability to shift financing and recovery in order to protect and benefit ratepayers
  - Potential to directly subsidize and collect from IESO market participants (LDCs and directly connected customers)
  - Less certainty with meeting rate reduction targets as well as mechanism and rate of recovery, but more likely to meet accounting thresholds

Recovery Mechanism

- Exploring different recovery / administrative options
  - Separate charge on the bill (DRC)
  - Included as part of RRP
  - Tax Rebate (OCEB)
  - A regulatory charge must be ancillary to a regulatory scheme and meet indicia outlined by the Supreme Court of Canada [legal advice pending]

Financing Mechanism

- Regardless of corporate structure, the entity would require the financial and operating authority to carry out its mandate
- Type of financing
  - Debt/Equity
- Financier
  - (OFA , IO, Third Party, Hybrid Approach)
  - Historically electricity sector financing has been conducted by the Ontario Financing Authority (i.e., managing OEFC's stranded debt and borrowing on behalf of IESO)
  - Private debt will cost more than public debt
  - Lenders would require certainty of payment (e.g. through legislation) absent assets to secure the debt

Interaction with Sector

- What is the interaction with other entities in the sector:
  - IESO/OEB/LDCs
    - Oversight
    - Flow Funds (either through IESO or direct interaction with LDCs and large consumers)

- The OEB could provide oversight over the entity's administrative costs through regulatory processes
- The entity would transact with the IESO, which would receive funds from the entity to pay the GA and pay funds to the entity to repay the debt and interest

Accounting Case Studies: IESO and Conservation

- EY analyzed whether CDM costs under an amortized scenario could still be considered an asset. In this regard, EY notes that *" In evaluating the costs incurred by the IESO to reimburse the LDCs, an argument could be made to support the recognition of the costs as an asset as the costs meets the three essential characteristics prescribed by PS 100".* The three characteristics include:
  - Future economic benefit- IESO expect to generate future economic benefit from the reimbursement of amortized CDM costs, i.e. IESO has the ability under the current regulatory framework to recover reasonable costs through GAM.
  - IESO controls access to the recovered funds.
  - Transaction or event giving rise to IESO's control has already occurred- i.e, the CDM costs being amortized have been incurred

Structures Case Studies: WSIB (not recommended)

- TBS
- *WSIB is a statutory corporate body that holds money in trust for workers, but is not a trust. The Workplace Safety Insurance Act requires the Board to maintain an insurance fund. The Board receives money from employers and pays money out to injured workers, in accordance with the scheme set out in the Act. Use this model if it's helpful, but it seems to me that there is a tremendous amount of misunderstanding about it.*

Structures Case Studies: ISO-NE (NSCC)

- TBS

Structures Case Studies: GTAA (NSCC)

- TBS

Structures Case Studies: Aggregate Resources (Trust)

- Aggregate Resources Trust is a potential example because it is administered outside government – tbc

Structures Case Studies: TBD (Business Corporation)

- TBS

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Déposé auprès du registrateur des règlements

APR 13 2017

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2. Section 5 of the Regulation is revoked and the following substituted:

Amount of OESP rate assistance

5. (1) Effective May 1, 2017, the Board shall fix the amount of monthly rate assistance to the classes of consumers that are identified as rate-assisted consumers in Schedule 1, based on the amount of monthly assistance for each class set out in subsection (2).

(2) The monthly amount of rate assistance to be fixed by the Board for each class of rate-assisted consumer is,

(a) $35 for consumers in Class A;

(b) $40 for consumers in Class B;

(c) $45 for consumers in Class C;

(d) $51 for consumers in Class D;

(e) $52 for consumers in Class E;

(f) $57 for consumers in Class F;

(g) $60 for consumers in Class G;

(h) $63 for consumers in Class H;

(i) $68 for consumers in Class I;

(j) $75 for consumers in Class J;

(k) $83 for consumers in Class K;

(l) $90 for consumers in Class L; and

(m) $113 for consumers in Class M.

3. The Regulation is amended by adding the following Schedule:

SCHEDULE 1
CLASSES OF RATE ASSISTED CONSUMERS

The following are classes of rate-assisted consumers for the purposes of subsection 79.2 (5) of the Act and section 5 of this Regulation:

1. Class A is composed of the following account-holders, other than account-holders who also meet the requirements of Class E:

Ontario

Executive Council
Conseil exécutif

R.O.C./Décret 66/2017

I certify that the attached is a true copy of the Regulation under the Ontario Energy Board Act, 1998, made by Her Honour the Lieutenant Governor in Council on April 12, 2017.

Dated at Toronto, April 13, 2017

Deputy Clerk, Executive Council

Filed with the Registrar of Regulations
Déposé auprès du registrateur des règlements

APR 13 2017

Number (O. Reg.)
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REG2017.0128.e
6-RA

ONTARIO REGULATION

made under the

ELECTRICITY ACT, 1998

Amending O. Reg. 429/04

(ADJUSTMENTS UNDER SECTION 25.33 OF THE ACT)

1. (1) Section 6.1.1 of Ontario Regulation 429/04 is amended by adding the following subsection:

(1.2) A consumer in Ontario that does not satisfy the condition set out in clause 6.1 (2) (a) in respect of a load facility for an adjustment period that begins on or after July 1, 2017 (the "applicable adjustment period") is a Class A consumer for that load facility and adjustment period, if the following conditions are satisfied:

1. The consumer elects, under subsection (3), to be a Class A consumer for the load facility for the applicable adjustment period, or has made such an election for a prior adjustment period and the election has not been revoked.

2. Throughout the applicable base period, the load facility is identified by a NAICS code commencing with the digits "31", "32", "33" or "1114".

3. The conditions set out in paragraphs 1, 2 and 4 of subsection 6 (1) are satisfied for the load facility for the applicable adjustment period.

4. The consumer's maximum hourly demand for electricity for the load facility in a month from the licensed distributor exceeds an average of 500 kilowatts but is less than or equal to an average of 1 megawatt for the applicable base period.

(2) Subsection 6.1.1 (4) of the Regulation is amended by adding the following paragraph:

4. For a consumer to whom subsection (1.2) applies, during the applicable base period for the applicable adjustment period, the load facility ceases to be identified by a NAICS code described in paragraph 2 of that subsection.

2. The Regulation is amended by adding the following sections:

Former Class A consumers, continued status

6.2 (1) A consumer in Ontario that does not satisfy the condition set out in paragraph 3 of subsection 6 (1) for an adjustment period under this Part that begins on or after July 1, 2017 (the "applicable adjustment period") is a Class A consumer for that adjustment period if the following conditions are satisfied:

1. The conditions set out in paragraphs 1, 2 and 4 of subsection 6 (1) are satisfied for the applicable adjustment period.

2. The consumer was a Class A consumer for a previous adjustment period that began on or after July 1, 2016.

3. During the base period for any adjustment period that began on or after July 1, 2016 in which the consumer was a Class A consumer,

    i. the consumer entered into a contract with the IESO, with a licensed distributor, or with the Ontario Climate Change Solutions Deployment Corporation, to participate in an eligible program, pilot or project listed in subsection (3) offered by the IESO, the licensed distributor or the Ontario Climate Change Solutions Deployment Corporation, or any combination of them, and

    ii. the consumer has received, or is entitled to receive, funding or another incentive under the program, pilot or project.

4. The consumer gives its licensed distributor the information requested by the licensed distributor to establish that the consumer satisfies the conditions described in paragraph 3 on or before June 15 of the calendar year in which the adjustment period begins.

(2) Subsections 6 (2) and (3) apply, with necessary modifications, with respect to the consumer.

(3) The eligible programs, pilots and projects for the purposes of paragraph 3 of subsection (1) are the following:

Ontario

Executive Council
Conseil exécutif

R.O.C./Décret 67/2017

I certify that the attached is a true copy of the Regulation under the Electricity Act, 1998, made by Her Honour the Lieutenant Governor in Council on April 12, 2017.

Dated at Toronto, April 13, 2017

Deputy Clerk, Executive Council

Ontario

Executive Council
Conseil exécutif

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

Sur la recommandation de la personne soussignée, la lieutenante-gouverneure, sur l'avis et avec le consentement du Conseil exécutif, décrète ce qui suit :

the appended Regulation be made under the

Electricity Act, 1998.

Recommended _____
Minister of Energy

Concurred _____
Chair of Cabinet

Approved and Ordered APR 12 2017
Date

_____
Lieutenant Governor

R.O.C./Décret (R) 67/2017

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REG2017.0128.e
6-RA

ONTARIO REGULATION

made under the

ELECTRICITY ACT, 1998

Amending O. Reg. 429/04

(ADJUSTMENTS UNDER SECTION 25.33 OF THE ACT)

1. (1) Section 6.1.1 of Ontario Regulation 429/04 is amended by adding the following subsection:

(1.2) A consumer in Ontario that does not satisfy the condition set out in clause 6.1 (2) (a) in respect of a load facility for an adjustment period that begins on or after July 1, 2017 (the "applicable adjustment period") is a Class A consumer for that load facility and adjustment period, if the following conditions are satisfied:

1. The consumer elects, under subsection (3), to be a Class A consumer for the load facility for the applicable adjustment period, or has made such an election for a prior adjustment period and the election has not been revoked.

2. Throughout the applicable base period, the load facility is identified by a NAICS code commencing with the digits "31", "32", "33" or "1114".

3. The conditions set out in paragraphs 1, 2 and 4 of subsection 6 (1) are satisfied for the load facility for the applicable adjustment period.

4. The consumer's maximum hourly demand for electricity for the load facility in a month from the licensed distributor exceeds an average of 500 kilowatts but is less than or equal to an average of 1 megawatt for the applicable base period.

(2) Subsection 6.1.1 (4) of the Regulation is amended by adding the following paragraph:

4. For a consumer to whom subsection (1.2) applies, during the applicable base period for the applicable adjustment period, the load facility ceases to be identified by a NAICS code described in paragraph 2 of that subsection.

2. The Regulation is amended by adding the following sections:

Former Class A consumers, continued status

6.2 (1) A consumer in Ontario that does not satisfy the condition set out in paragraph 3 of subsection 6 (1) for an adjustment period under this Part that begins on or after July 1, 2017 (the "applicable adjustment period") is a Class A consumer for that adjustment period if the following conditions are satisfied:

1. The conditions set out in paragraphs 1, 2 and 4 of subsection 6 (1) are satisfied for the applicable adjustment period.

2. The consumer was a Class A consumer for a previous adjustment period that began on or after July 1, 2016.

3. During the base period for any adjustment period that began on or after July 1, 2016 in which the consumer was a Class A consumer,

    i. the consumer entered into a contract with the IESO, with a licensed distributor, or with the Ontario Climate Change Solutions Deployment Corporation, to participate in an eligible program, pilot or project listed in subsection (3) offered by the IESO, the licensed distributor or the Ontario Climate Change Solutions Deployment Corporation, or any combination of them, and

    ii. the consumer has received, or is entitled to receive, funding or another incentive under the program, pilot or project.

4. The consumer gives its licensed distributor the information requested by the licensed distributor to establish that the consumer satisfies the conditions described in paragraph 3 on or before June 15 of the calendar year in which the adjustment period begins.

(2) Subsections 6 (2) and (3) apply, with necessary modifications, with respect to the consumer.

(3) The eligible programs, pilots and projects for the purposes of paragraph 3 of subsection (1) are the following:

1. Conservation and Demand Management (CDM) Programs and Pilots delivered under the 2015 to 2020 Conservation First Framework, administered by the IESO, established or included under a direction of the Minister, dated March 31, 2014, entitled "2015-2020 Conservation First Framework" and other programs and pilots under initiatives of the IESO established or included under that direction.

2. CDM Programs and Pilots under the 2015 to 2020 Industrial Accelerator Program, administered by the IESO, established under a direction of the Minister dated July 25, 2014 entitled "Industrial Accelerator Program".

3. IESO Demand Response Auctions and Pilots, established under the market rules.

4. Ontario Climate Change Solutions Deployment Corporation programs and initiatives established by the Corporation, where the program or initiative includes an electricity conservation, efficiency, load-management or demand-management component.

(4) A licensed distributor shall rely on the information provided by the consumer under this section.

Former Class A consumer, continued status — calculation for separate load facilities

6.3 (1) For the purpose of subsection 6.2 (1), a consumer in Ontario that does not satisfy the condition set out in clause 6.1 (2) (a) in respect of a load facility for an adjustment period under this Part that begins on or after July 1, 2017 (the "applicable adjustment period") is a Class A consumer for that load facility and adjustment period if the following conditions are satisfied:

1. The consumer was a Class A consumer in respect of the load facility for a previous adjustment period that began on or after July 1, 2016.

2. During the base period for any adjustment period that began on or after July 1, 2016 in which the consumer was a Class A consumer in respect of the load facility,

    i. the consumer entered into a contract with the IESO, with a licensed distributor, or with the Ontario Climate Change Solutions Deployment Corporation, to participate in an eligible program, pilot or project listed in subsection 6.2 (3) offered by the IESO, the licensed distributor or the Ontario Climate Change Solutions Deployment Corporation, or any combination of them, and

    ii. the consumer received, or is entitled to receive, funding or another incentive under the program, pilot or project in respect of the load facility.

3. The consumer gives its licensed distributor the information requested by the licensed distributor to establish that the consumer satisfies the conditions described in

paragraph 2 on or before June 15 of the calendar year in which the adjustment period begins.

(2) If the conditions set out in subsection (1) are not satisfied in respect of a load facility for the applicable adjustment period, the consumer is a Class B consumer in respect of the load facility for that adjustment period.

(3) Subsections 6.1 (3), (4) and (5) apply, with necessary modifications, with respect to the consumer and the load facility.

(4) A licensed distributor shall rely on the information provided by the consumer under this section.

3. (1) Section 7.1.1 of the Regulation is amended by adding the following subsection:

(1.2) A market participant in Ontario that does not satisfy the condition set out in clause 7.1 (2) (a) in respect of a load facility for an adjustment period that begins on or after July 1, 2017 (the "applicable adjustment period") is a Class A market participant for that load facility and adjustment period, if the following conditions are satisfied:

1. The market participant elects, under subsection (3), to be a Class A market participant for the load facility for the applicable adjustment period, or has made such an election for a prior adjustment period and the election has not been revoked.

2. Throughout the applicable base period, the load facility is identified by a NAICS code commencing with the digits "31", "32", "33" or "1114".

3. The conditions set out in paragraphs 1, 2 and 4 of subsection 7 (1) are satisfied for the load facility for the applicable adjustment period.

4. The market participant's maximum hourly demand for electricity for the load facility in a month, as determined by the IESO, exceeds an average of 500 kilowatts but is less than or equal to an average of 1 megawatt for the applicable base period.

(2) Subsection 7.1.1 (4) of the Regulation is amended by adding the following paragraph:

4. For a market participant to whom subsection (1.2) applies, during the applicable base period for the applicable adjustment period, the load facility ceases to be identified by a NAICS code described in paragraph 2 of that subsection.

4. The Regulation is amended by adding the following sections:

Former Class A market participants, continued status

7.2 (1) A market participant in Ontario that does not satisfy the condition set out in paragraph 3 of subsection 7 (1) for an adjustment period under this Part that begins on or after July 1, 2017 (the "applicable adjustment period") is a Class A market participant for that adjustment period if the following conditions are satisfied:

1. The conditions set out in paragraphs 1, 2 and 4 of subsection 7 (1) are satisfied for the applicable adjustment period.

2. The market participant was a Class A market participant for a previous adjustment period that began on or after July 1, 2016.

3. During the base period for any adjustment period that began on or after July 1, 2016 in which the market participant was a Class A market participant,

    i. the market participant entered into a contract with the IESO, with a licensed distributor, or with the Ontario Climate Change Solutions Deployment Corporation, to participate in an eligible program, pilot or project listed in subsection (3) offered by the IESO, the licensed distributor, the Ontario Climate Change Solutions Deployment Corporation or any combination of them, and

    ii. the market participant has received, or is entitled to receive, funding or another incentive under the program, pilot or project.

4. The market participant gives the IESO the information requested by the IESO to establish that the market participant satisfies the conditions described in paragraph 3 on or before June 15 of the calendar year in which the adjustment period begins.

(2) Subsections 7 (2) and (4) apply, with necessary modifications, with respect to the market participant.

(3) The eligible programs, pilots and projects for the purposes of paragraph 3 of subsection (1) are the following:

1. Conservation and Demand Management (CDM) Programs and Pilots delivered under the 2015 to 2020 Conservation First Framework, administered by the IESO, established or included under a direction of the Minister, dated March 31, 2014, entitled "2015-2020 Conservation First Framework" and other programs and pilots under initiatives of the IESO established or included under that direction.

2. CDM Programs and Pilots under the 2015 to 2020 Industrial Accelerator Program, administered by the IESO, established under a direction of the Minister dated July 25, 2014 entitled "Industrial Accelerator Program".

3. IESO Demand Response Auctions and Pilots, established under the market rules.

4. Ontario Climate Change Solutions Deployment Corporation programs and initiatives established by the Corporation, where the program or initiative includes an electricity conservation, efficiency, load-management or demand-management component.

(4) The IESO shall rely on the information provided by the market participant under this section.

Former Class A market participant, continued status — calculation for separate load facilities

7.3 (1) For the purpose of subsection 7.2 (1), a market participant in Ontario that does not satisfy the condition set out in clause 7.1 (2) (a) in respect of a load facility for an adjustment period under this Part that begins on or after July 1, 2017 (the "applicable adjustment period") is a Class A market participant for that load facility and adjustment period if the following conditions are satisfied:

1. The market participant was a Class A market participant in respect of the load facility for a previous adjustment period that began on or after July 1, 2016.

2. During the base period for any previous adjustment period that began on or after July 1, 2016 in which the market participant was a Class A market participant in respect of the load facility,

    i. the market participant entered into a contract with the IESO, with a licensed distributor, or with the Ontario Climate Change Solutions Deployment Corporation, to participate in an eligible program listed in subsection 7.2 (3) offered by the IESO, the licensed distributor, the Ontario Climate Change Solutions Deployment Corporation or any combination of them, and

    ii. the market participant has received, or is entitled to receive, funding or another incentive under the program, pilot or project in respect of the load facility.

3. The market participant gives the IESO the information requested by the IESO to establish that the market participant satisfies the conditions described in paragraph 2 on or before June 15 in the calendar year in which the adjustment period begins.

(2) If the conditions set out in subsection (1) are not satisfied in respect of a load facility for the applicable adjustment period, the market participant is a Class B market participant in respect of the load facility for that adjustment period.

(3) Subsections 7.1 (3), (4) and (5) apply, with necessary modifications, with respect to the market participant and the load facility.

(4) The IESO shall rely on the information provided by the market participant under this section.

O. Reg. 366/16

5. Section 1 of Ontario Regulation 366/16, which would revoke the definition of "NAICS" in subsection 5 (1) of the Regulation, is revoked.

Commencement

6. This Regulation comes into force on the day it is filed.

CONFIDENTIAL

GOV2016.146.e

8-TP

Intergenerational Fairness in Hydro Rates Act, 2017

[OLC Notes re this draft:
- all numbering of provisions will need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)

- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*
- Consider references to "an investment asset" vs. "the investment asset" and "an investment asset owner" vs. "the investment asset owner" -- do we want to only use "the" and provide an interpretive provision that clarifies that we are talking about all owners collectively and all assets collectively? Check whether we ever need to refer to "an" investment asset owner as an individual owner.]

Preamble

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

The Government of Ontario has established a regulatory and contractual framework related to the generation and sale of electricity to ensure significant investment in

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

decarbonizing and modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom.[2]

Given the long-term benefits that future generations of Ontarians will receive from many of these investments, it is appropriate and fair to raise money in respect of these generating sites and facilities[3] in a manner that allocates the costs of these investments fairly among present and future consumers.

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

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

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PART I
GENERAL

Interpretation
Definitions

1. (1) In this Act,

"clean energy adjustment" means the amount determined under section 11x; ("French")

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

(a) fostering the growth of and investment in renewable energy projects and cleaner energy sources and technologies, including alternative energy sources,

(b) removing barriers to and promoting opportunities for

renewable energy projects and cleaner energy sources and technologies and clean energy, and

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

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

[OLC Note - waiting for further instructions on unit sub-meter providers and their customers.]

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

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

"Financial Services Manager" means Ontario Power Generation Inc. or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section 12.1; ("French")

"Financing Plan" means the plan prepared under section X, as amended from time to time in

accordance with this Act; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner under section x; ("French")

"holiday" means New Year's Day, Family Day, Good Friday, Christmas Day, Boxing Day, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day and, if any of those days falls on a Saturday or Sunday, the weekday next

following that day that is not one of those days; ("jour férié")

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

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section X for the reference period; ("French")

"investment asset" means all or part of the regulatory asset that is deemed to be an investment asset under section x; ("French")

[OLC Note: As noted above, need to determine whether we need to refer to one investment asset or multiple investment assets and define accordingly. Consider how in some places we refer to the investment asset owner's "interest" in the investment asset….]

"invoice amount" means, in respect of a consumer, the sum of the following amounts:

1. The commodity price of the electricity [used by the consumer?] during the invoice period.

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

3. Any adjustment required [in respect of the consumer?] under section 25.33 of the *Electricity Act, 1998*.

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

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

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

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this

Act under the *Executive Council Act*; ("ministre")

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

"reference period" means,

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

[OLC Note: Is clause (a) still correct -- or is the first reference period now the full 12 months (i.e. ending on April 30, 2018?)].

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

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

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

"regulatory asset" means the regulatory asset established under section X; ("French")

[OLC Note: If I'm understanding correctly, the previous definition was wrong because the regulatory asset itself will not undergo a conceptual 'decrease" in size when part of it is sold… rather the right of recovery will just be for a smaller amount of money. So I think the desire is for the definition to just state what I've included above. Please confirm.]

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

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

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

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

"weekday" means any Monday, Tuesday, Wednesday, Thursday or Friday that is not a holiday. ("jour de semaine")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the

person must meet any one of the following criteria:

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

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

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm*

Organizations Funding Act, 1993 and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

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

   i. a dwelling,

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

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

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

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

Invoice amount, exclusions

(2) For the purposes of the definition of "invoice amount" in subsection (1), an invoice amount does not include any of the following amounts:

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

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

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

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

ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a

residential-rate classification as specified in a rate order made by the Board under section 78 of the Act;

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

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

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

Effect of invalidity, etc.[5]

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

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act

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

before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

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

(a) to ensure that the costs of the clean energy initiative are fairly distributed among specified customers over time;

(b) to recognize the long-term benefits of the clean energy initiative that accrue over time

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

and will continue to benefit present and future electricity consumers in the Province;

(c) to promote the use of clean energy sources and technologies, including low carbon, alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario;

(d) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity;

(e) to facilitate the maintenance of a financially viable electricity industry, including by raising money in respect of sites and facilities in the Province for the generation of electrical energy and the production therefrom;[7] and

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

[7] FLS - as per the note in the Preamble on this language, please see 92A (4) of the *Constitution Act, 1867.*

Crown bound

3. This Act binds the Crown.

Protection and guarantee of scheme

Prohibition

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

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

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or

lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

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

Agreements for compensation

(3) The Minister may enter into agreements for the purposes of

guaranteeing that compensation will be paid to an investment asset owner for losses suffered as a result of,

(a) a contravention of subsection (1);

(b) a change in law that would adversely affect the rights under this Act of an investment asset owner;

(c) approval by the Lieutenant Governor in Council of a Fair Allocation Plan, or an amendment to a Fair Allocation Plan, that fails to recognize the principles set out in section x; or

(d) a final determination by a court of final jurisdiction rendering invalid or ineffective all or any of the provisions of this Act.[8]

Electricity vendors, obligations

(5) If an electricity vendor fails to carry out its obligations under this Act for any reason, including because the electricity vendor is dissolved or restructured or because it becomes insolvent, the Government of Ontario shall carry out those obligations or ensure they

[8] Note to translator: See s. 9 of the Public Authorities Protection Act.

are carried out by another appropriate entity.

PART II
FAIR ADJUSTMENT

Determination of rates, May 1, 2017 to April 30, 2018

6. (1) The Ontario Energy Board shall determine the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 in the following manner:

1. Determine the average rate payable by a representative

consumer in accordance with subsection (2).

2. Determine the average monthly invoice amount that would be payable by a representative consumer under the rate determined under paragraph 1.

3. Determine the amount that is [# tbc] per cent less than the monthly invoice amount determined under paragraph 2.

4. Determine the average rate payable by a representative consumer that would result in the

monthly invoice amount mentioned in paragraph 3 for a representative consumer.

[OLC Note: ENE LSB raised the question of whether 79.16 of the OEBA should be replaced to clearly state that the price-setting work that the OEB does under the RPP is authorized and that the work it must do to accommodate the Fair Adjustments is also authorized going forward.]

Determination of baseline, average rate

(2) For the purposes of paragraph 1 of subsection (1), the average rate

payable shall be determined as follows:[9]

1. The Board shall determine rates in a manner that is consistent with the Standard Supply Service Code issued by the Board.

2. The Board shall forecast the costs of electricity to be consumed by the representative consumer, taking into consideration adjustments required under section 25.33 of the *Electricity Act, 1998* and

[9] FLS: Please see section 6 of O. Reg. 95/05 (a bilingual reg).

shall ensure that the rates reflect those costs.

3. The Board shall set an off-peak period associated with the regulated price referred to as RPEMOFF in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board,

    i. that begins no later than 7 p.m. on every weekday and ends,

A. no earlier than 7 a.m. on the next day if the next day is a weekday, or

B. no earlier than 12 a.m. on the next day if the next day is Saturday, Sunday or a holiday, and

ii. that begins no later than 12 a.m. on every Saturday, Sunday and holiday and ends no earlier than,

A. 12 a.m. on the next day, if the next day is Saturday, Sunday or a holiday, or

B. 7 a.m. on the next day if the next day is a weekday.

Determination of rates, on and after May 1, 2018

7. On and after May 1, 2018, the Board shall determine the rate for electricity payable by a specified consumer as follows:

1. Determine the rate by applying the steps set out in section 6.

2. Adjust the rate determined under paragraph 1 <u>for inflation</u> in accordance with the regulations.

[OLC Note: Just to confirm, section 7 applies not just in the first 5 years but on a continuing basis. (This is now the effect because I removed the provision that said the above part applies only for the first 5 year period.]

[OLC Note: Is "for inflation" sufficiently precise? Check other references to this throughout.]

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

9x. (1) Subject to subsection (1.1), upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the owner of the investment asset, in accordance with such terms of payment as may be specified in the invoice, which may include terms

relating to late payment fees and interest charges.

Limitation

(1.1) No clean energy adjustment shall be collected from a specified consumer before May 1, 2022. [OLC Note: We say the same thing in different ways in several places -- consider whether this needs to be repeated or if it could all be said just once and achieve the desired effect. See 12x (1.1) and 22 (1.1) para. 2.]

Same

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

(a) whether the clean energy adjustment is inconsistent with the Fair Allocation Plan applicable at the time when the payment is due; and

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

Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid

by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each owner's respective interest in the investment asset.

Same

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

Irrevocability of clean energy adjustment

10x. (1) Any clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

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

Determination of clean energy adjustment

11x. (1) The Ontario Energy Board shall apply the method set out in Schedule 1 to determine the amount of the clean energy adjustment payable on a monthly basis by each electricity vendor on behalf of the electricity vendor's specified consumers.

[OLC Note: We don't have to keep the contents of Schedule 1 separated out as a schedule. I just wanted to separate it out for now so that we could get some clarity around the steps occurring outside of the

calculations, and putting it in a schedule helps with that. If you would prefer to insert it here, I can do so in a subsequent draft.]

True up amount

(2) The Ontario Energy Board may, in accordance with the regulations, adjust the amount determined under Schedule 1 from time to time to address the any difference between the amount of the clean energy adjustment payable in respect of the reference period and the amount of the clean energy adjustment collected as of the date of the determination.

[OLC Note: I had assumed that we didn't need to list the details of true-up calculation because this would all be handled in the regulations. If there are particular elements that you want to set out in the Act itself, let me know and I can work them in. (I see a list of possible items on page 20 of the instructions sent late evening of April 13th but I assumed these details would all appear in the regulations.) Also not sure if those instructions are still current as they also say that the true up "shall" be applied in respect of each reference period whereas I believe the latest instructions are for this to be an

optional, discretionary exercise to be engaged in as the OEB considers appropriate.

Please also confirm -- is it the OEB that should be doing the calculations in subs. (1) and (2) or should I be changing this to the FSM?]

Communication to electricity vendors

(4) The Ontario Energy Board shall communicate to each electricity vendor information relating to the clean energy adjustment to be allocated by the electricity vendor to

each specified consumer in respect of a reference period.

[OLC Note: Just to confirm, the OEB sends this communication but then the IESO is the one that actually invoices the electricity vendor? ENE LSB to confirm roles here.]

IESO to invoice electricity vendors

12x. (2) The IESO shall issue an invoice to each electricity vendor for the clean energy adjustment in accordance with the regulations.

IESO to collect

(3) The IESO shall, as an agent of the investment asset owner, make

reasonably diligent efforts to collect the clean energy adjustment from electricity vendors.

Collection account

(3.1) The IESO shall establish an account in which to record its collection of the following:

[OLC note - Compare to s. 15x -- should the accounts be for "record of collection" or should the accounts be a place for IESO to "deposit and receive" amounts? Should be consistent?]

1. Amounts remitted from accounts established under section 15x.

2. Payments made by specified consumers directly to the IESO as electricity vendor, in respect of clean energy adjustment.

Deposit

(4) The IESO shall promptly deposit all amounts received in respect of the clean energy adjustment into the account established under subsection (3.1).

Same, held in trust

(2) The amounts collected are deemed to be held in trust for the investment asset owner.

IESO to remit

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

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable Fair Allocation Plan, the

IESO [may? Shall?] collect the difference from specified consumers.

Electricity vendor to apply rate

13x. (1) Each electricity vendor shall, in accordance with the codes and orders of the Ontario Energy Board, determine the proportionate share of the clean energy adjustment payable on a monthly basis by each of its specified consumers.

Electricity vendor to invoice specified consumers

(2) The electricity vendor shall issue an invoice to each specified consumer for the applicable amount

of the clean energy adjustment in accordance with the regulations.

Electricity vendor to collect

(3) Each electricity vendor shall, as an agent of the IESO, make reasonably diligent efforts to collect clean energy adjustments from specified consumers.

Pro rating of payments

14x. (1) This section applies if,

(a) an electricity vendor receives a payment made by or on behalf of a specified consumer in respect

of amounts payable under one or more invoices; and

(b) the amount paid is less than the total amount payable.

Same

(2) The electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices.

Deposit

(3) The electricity vendor shall deposit the portion of the payment allocated to the clean energy

adjustment into the account established under X.

Electricity vendor, account

15x. (1) Each electricity vendor shall establish and maintain an account into which the electricity vendor deposits or receives only the following:

1. Payments by specified consumers in respect of the clean energy adjustment.

2. Portions of payments by specified consumers that are allocated to the clean energy

adjustment under subsection 14x (2).

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

Held in trust

(2) The amounts required to be deposited or received into the account are deemed to be held in trust for the investment asset owner.

Remittance to IESO

(5) The electricity vendor shall remit amounts received in respect of

the clean energy adjustment to the IESO for the benefit of the investment asset owner in accordance with the regulations.

PART IV
FAIR ALLOCATION PLAN AND FINANCING PLAN

MINISTER TO PREPARE FAIR ALLOCATION PLAN

Minister to prepare plan

8. (1) In order to fairly measure and allocate amounts described in section 8.0.1 for a reference period among specified consumers for the purposes of this Act, the Minister

shall prepare and provide to the Lieutenant Governor in Council a written plan entitled the Fair Allocation Plan.

Amendments to the plan

(2) Subject to the approval of the Lieutenant Governor in Council, the Minister may amend the Fair Allocation Plan from time to time, as the Minister considers appropriate, having regard to the requirements of this Act.

Effective date

(3) The Fair Allocation Plan or an amendment to the plan takes effect

on the day that the plan or the amendment, as the case may be, is approved by the Lieutenant Governor in Council.

Publication

(4) The Minister shall ensure that the Fair Allocation Plan and any amendments to the plan are made available to the public in a manner that the Minister considers appropriate.

Amounts to be allocated

8.0.1 The amounts referred to in subsection 8 (1) are, in relation to a reference period,

(a) the costs incurred by the IESO previously or expected to be incurred by the IESO during the reference period and after the reference period in relation to,

(i) payments made or expected to be made under section 78.1 of the *Ontario Energy Board Act, 1998*, other than payments made under contracts with Bruce Power L.P or Bruce Power A. L.P. or their successors or assigns, and

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

(b) such other costs, benefits or amounts as may be prescribed, in respect of the clean energy initiative, made or received before the reference period or expected to be incurred during or after the reference period. ("French")

Principles

8.1 In preparing the Fair Allocation Plan or any amendments to the plan,

the Minister shall have regard to the following principles:

1. Costs of the clean energy initiative should be allocated among specified consumers during the period beginning on the day this Act comes into force and ending on April 30, 2047 or such later day as may be prescribed.

2. The allocation of the costs among specified consumers should be proportionate to the benefits of the clean energy

initiative to those specified consumers over time.

3. During a reference period, no specified consumer should bear an unreasonably disproportionate share of the costs.

4. To the extent that specified consumers have borne an unreasonably disproportionate share of the costs over periods that occurred before the coming into force of this Act, the allocation should provide for a fair adjustment for those specified consumers.

5. The allocation of costs among specified consumers over future reference periods should include reasonable assumptions about the time value of money, the rate of inflation, electricity consumption and the composition of specified consumers as a class of individuals.

[OLC note: I don't think the underlined phrase appears anywhere else - what is this supposed to be conveying?]

Implementation

8.2 The IESO shall ensure that the IESO funding shortfall during a reference period does not exceed the maximum amount set out for the reference period in the Fair Allocation Plan.

FINANCIAL SERVICES MANAGER TO PREPARE FINANCING PLAN

Ontario Power Generation Inc. appointed as Financial Services Manager

8.3 Subject to section 12.1, Ontario Power Generation Inc. is appointed

as the Financial Services Manager for the purposes of this Act.

Financial Services Manager to prepare plan

11. (1) The Financial Services Manager shall prepare and provide to the Minister a plan entitled the Financing Plan for the purpose of ensuring that decisions made under this Act are cost effective and consistent with the Fair Allocation Plan.

Consistency with Fair Allocation Plan

(2) The Financing Plan in effect at any given time shall be consistent with the applicable Fair Allocation Plan.

Amendments to approved plan

(3) The Financial Services Manager may propose amendments to the Financing Plan at any time.

[OLC note - still need to deem Financial Plan to be third party confidential information for the purposes of s. 17 of FIPPA? (Sorry I missed this in the previous version.]

Implementation of Financing Plan

11.1 The Financial Services Manager shall implement the Financing Plan.

Contents of plan

12. (1) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following:

1. The allocation of costs of the clean energy initiative among specified consumers over reference periods, as described in the Fair Allocation Plan.

2. The estimated IESO funding shortfall for each reference period.

3. The funding obligations incurred as part of the consideration for the sale of the regulatory asset.

4. The need for the clean energy adjustment payable by a specified consumer to be proportionate to the benefit that the specified consumer receives from the clean energy initiative.

5. Reasonable compensation for the Financial Services Manager on

terms that balance market terms and conditions with the interests of specified consumers.

6. Such other matters as may be prescribed.

Limitation

(1.1) The Financing Plan shall not provide for the collection of the clean energy adjustment by specified consumers before May 1, 2022. [OLC Note: As noted above, consider the fact that this is repetitive of 9x (1.1) and 22 (1.1) para. 2.]

Special purpose financing entities

(2) The Financing Plan may provide for the Financial Services Manager to,

(a) if the Financial Services Manager is Ontario Power Generation Inc., establish one or more special purpose financing entities under subsection 53.1 (1.2) of the *Electricity Act, 1998*, that may incur funding obligations; or

(b) if the Financial Services Manager is appointed under section 12.1, establish one or more special purpose financing entities under

subsection (3) that may incur funding obligations.

[OLC note: Above drafting is awkward and needs work but let me know if something like this might work.]

Same

(3) If the Financial Services Manager is appointed under section 12.1, it may create one or more special purpose entities in order to more efficiently conduct its activities under this Act.

Prohibition

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

Funding obligations unaffected by amendment to Fair Allocation Plan

(4) No change to a funding obligation shall result from an amendment to the Fair Allocation Plan or Financing Plan that is made after the funding obligation has been incurred.

[OLC Note: I think that subs. (4) above perhaps belongs in Part V, rather than here.]

[OLC Note: Consider Article 8 (9) entitled "incurrences are binding" -- I believe we have already stated in the Part dealing with the regulatory

asset that the rights are enforceable etc. even if charges have been imposed in a manner that does not follow the Financing Plan. Is more drafting required? Please advise.]

Termination of appointment

12.1 (1) The Minister may [by what means? Written order?] terminate an appointment as Financial Services Manager under section 8.3 or subsection (2) if,

(a) the Minister has advised the appointee that the Financing Plan is not consistent with the Fair Allocation Plan;

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

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

Replacement

(2) Upon terminating an appointment under subsection (1), the Minister may, in accordance with the regulations, appoint a new person

or entity as the Financial Services Manager.

PART V
THE REGULATORY ASSET [AND INVESTMENT ASSET]

Regulatory asset established

22. (1) The IESO has property rights and interests, which together constitute a regulatory asset, in the recovery of the IESO funding shortfall.

[OLC Note to draft - Is it sufficient to say "*property rights and interests in the recovery of the IESO funding shortfall*"? Does that convey the

right to enforce other parties' obligations that would allow for the shortfall to be recovered by the IESO?]

Limitation

(1.1) The right to recover the IESO funding shortfall under subsection (1) is subject to the following limits:

1. The amount of the IESO funding shortfall recovered in respect of a reference period may not exceed the amount determined in the Fair Allocation Plan for the reference period, minus the amount of the clean energy

adjustment for the reference period.

[OLC Note: Will want to link up the language in para. 1 above with the language relating to this in provision above that authorizes the IESO to collect this amount (where some of the R.A. has not been sold) - s. 12x (6).]

[OLC Note: You mentioned that you are still working on para. 1 - concern re the need for an obligation to pay this amount.]

2. No part of the IESO funding shortfall shall be collected from

specified consumers before May 1, 2022.

[OLC Note: As noted above - consider repetition here vs. s. 9x (1.1) and 12 (1.1)]

Same

(2) The establishment of the regulatory asset is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

Recording of IESO funding shortfall in books

22.1 (1) Subject to the approval by order of the Ontario Energy Board,

the IESO shall record the IESO funding shortfall from time to time in its books, including adjustments resulting from any transfer of the regulatory asset.

Order

(2) The Ontario Energy Board may, in accordance with the regulations, by order specify how the IESO funding shortfall must be recorded.

Recording in books determinative

(3) A recording in its books is determinative of the amount of IESO funding shortfall at the time of the recording.

No hearing

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

No appeals, etc.

(5) No appeal lies from the order of the Ontario Energy Board.

Judicial review

(6) The *Judicial Review Procedures Act* does not apply to an order made under this section.

[OLC Note: I haven't checked to see if this subsection is used elsewhere

but is this trying to say "no judicial review allowed"? Or are you trying to say "don't apply the procedures in the JRPA when you're doing a JR of the order". Of course we can't actually oust the courts so I'm just not sure what this is meant to do beyond subs. (5) above which takes care of no statutory appeal.]

IESO funding shortfall

22.2 (1) The IESO shall determine the IESO funding shortfall for each month in a reference period by calculating the difference between the following amounts:

1. The sum of all invoice amounts issued to specified consumers for the month.

2. The sum of all invoice amounts that would have been issued to specified consumers for the month if paragraphs 1 and 2 of section 7.2 did not apply.

[OLC Note: The value of any consideration received as part of a transfer should be reflected in this section -- see below para. 2 of subs. 23 (2) which says the payment should cause a reduction in the shortfall.]

Same

(2) The determination under subsection (1) shall be made based on the amount of electricity actually used by specified consumers during the reference period.

Transfer of regulatory asset

23. (1) The IESO may transfer the regulatory asset in accordance with the Financing Plan.

Consideration

(2) The IESO may receive consideration for the transfer of the regulatory asset, subject to the following rules:

1. The prospective investment asset owner shall pay to the IESO an amount equal to all or part of the IESO funding shortfall.

2. Upon receipt of the payment, the IESO shall record the payment as a reduction of the IESO funding shortfall in its books.

3. Upon receipt of the payment, the IESO shall have no continuing right or interest in, or maintain any right to recover all or any part of the transferred regulatory asset.

Investment asset

Regulatory asset deemed to be investment asset upon transfer

23.1 Upon transfer of the regulatory asset or a portion of the regulatory asset, the regulatory asset or portion is deemed to be an investment asset and is vested in the investment asset owner.

Same

(2) An investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

[OLC Note: For the moment I have more or less just cut and pasted the language you proposed in instructions received on April 14th. If we have time, we should revisit the language.]

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

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are

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

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

4. The right to enforce the duties and obligations under this Act of each electricity vendor to

impose, attribute, charge, bill and invoice the clean energy adjustment.

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

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

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

commingled with other revenue, collections, claims, payments, money and proceeds.

Same

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

No set off, etc.

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

(a) by a consumer, an electricity vendor, an agent of the

investment asset owner or an owner of distribution system assets in the Province;

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

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

Transfer of investment asset

24. The investment asset owner may transfer all or a portion of its rights and interests in an investment asset to any other investment asset

owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

[OLC Note: What is meant by "any other investment asset owner"? Do you mean to say anyone who already has the status of "investment asset owner" by virtue of the fact that the IESO has transferred a portion of the initial R.A. to that person previously?]

Validity of transfer

25. (1) A transfer of a regulatory asset or an investment asset under this Act that is expressed to be a sale

or an absolute assignment is a valid and enforceable sale and absolute assignment of the regulatory asset or investment asset, as the case may be, and confers upon the owner of the investment asset acquired a valid property right and interest in, to and under the applicable investment asset in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer

of IESO's right to recover the IESO funding shortfall or an investment asset owner's right, title and interest in, to and under an investment asset, as applicable (or relevant portion thereof), and not merely as a pledge thereof, and upon such absolute transfer the transferor shall retain no right, title or interest in regulatory asset or the investment asset (or relevant portion thereof) subject to the transfer, including all rights to recover the IESO funding shortfall or the investment asset arising after such transfer.

[OLC Note: I have reproduced the requested language for now but I

don't understand what subs. (2) is saying that is different from subs. (1).]

Deemed perfection, etc.

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

Priority of transfer, assignment, etc.

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

Administration of investment asset

26. (1) The Financial Services Manager may administer an investment asset on behalf of the investment asset owner.

[OLC note: Consider location of this section with other roles of FSM above.]

Same

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

1. Providing information to the Ontario Energy Board in respect of the funding obligation and the determination of the clean energy adjustment in accordance with section 11x.

2. Providing information to electricity vendors in respect of their obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

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

Investment asset owner may grant pledge

27. (1) The owner of an investment asset may grant a pledge

to or in favour of a person in, to and over all or a specified portion of its right, title and interest in, to and under the investment asset in connection with any funding obligation.

Types of pledge

(2) A pledge may be a lien, mortgage, charge, right of set-off or security interest.

Validity

(3) The pledge may be made to secure a funding obligation and when granted shall be valid and enforceable in accordance with its

terms and shall be effective to confer upon the person to whom the pledge is granted a valid security interest in, to and in respect of the investment asset in accordance with the terms of the pledge.

[OLC Note: You asked for a additional content relating to the PPSA, which I have not had time to review in any detail. Please review all subsections that contain the (x) below and advise what is needed. It seems to me that some of this content was already covered by some of the numbered subsections in this draft. Also please advise as to the

updated language based on most recent drafting.]

Perfection and priority of pledges

(x) For purposes of the *Personal Property Security Act*, the regulatory asset shall be intangible personal property and any pledge made by the owner of an investment asset in respect of a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Same

(x) All provisions of the *Personal Property Security Act* shall apply to the regulatory asset on the basis that it is intangible personal property, except to the extent otherwise provided in this section.

Same

(x) All proceeds of a related [Investment Interest?] that are subject to the pledge that are received by the owner of the investment asset shall immediately be subject to the pledge, and the security interest in the proceeds shall

be perfected pursuant to the *Personal Property Security Act.*

Same

(x) A pledge perfected under the *Personal Property Security Act* shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the [Investment Interest?] subject to the pledge unless the pledgee has otherwise agreed in writing.

Same

(x) A pledgee shall have a perfected security interest in a related [Investment Interest?], including the owner of the investment asset's rights and interests in and to [the clean energy adjustment?] or other related proceeds in respect of the [Investment Interest?] and that are deposited in any [which account?] or other account of any [Electricity Distributor, IESO, Alternative Servicer or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds].

Proceeds

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

[OLC Note: Isn't the above subs. (8) already covered by the general section in our "Miscellaneous" part that deals with "no further acts or approvals required"? (Article 12 (3) of Blakes doc.]

Perfection

(9) The pledge shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment asset subject to the Pledge, subject to the written consent of the person to whom the pledge has been granted.

Same

(10) The person to whom the pledge has been granted shall have a perfected security interest in

revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

Collective action required

28. If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset

owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms.

[OLC Note: It seems that successors may need to be addressed here. Also Pledgees have not yet been addressed in this draft.]

Exercise of rights

29. The rights of the investment asset owner to collect and enforce its

rights and interests in, to and in respect of the investment asset shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

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

electricity vendor with respect to invoicing or collection.

Not Crown agent

35.1 For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.
[OLC Note: would there be any doubt about whether any investment asset owner is a Crown agent? Is that where this needs to be articulated instead?]

Sequestration

35.2 (1) A court in the Province may, upon application by an

investment asset owner [or pledgee?], order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner [or pledgee] by any person or entity authorized to collect the clean energy adjustment, defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

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

Same

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

Choice of law

37.1 The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a

security interest in the regulatory asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

38. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or PLEDGE,

[OLC Note: Please confirm that the underlined list of verbs is correct,

taking into consideration the defined terms we are using in the draft Bill.]

No further approvals, etc.

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

Immunity

97x. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in

respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

98x. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[10]

99x. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

100x. The Lieutenant Governor in Council may make regulations,

(a) governing the calculation [true-up amount] and how the amount

[10] FLS - see s. 51 of the Electricity Act, 1998

is to be applied to the clean energy adjustment.

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

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

PART VII[11]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

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

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the [Fair Hydro Act];

[OLC Note: Given that we are listing some FHA "objects" in the EA here, it would be a bit unusual

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

to then prescribe additional FHA-related objects in the regulations under the FHA (as opposed to the regs under the EA). Would you want to list the FHA-related objects of the IESO in the FHA proper, which would then make it more logical for additional FHA-related objects to be set out in the regs under the FHA? Same considerations apply to the OPG objects below (amendments to s. 53.1).]

(q.1) to enter into agreements or arrangements with for the purposes of the FHA;

(q.2) to engage in activities related to making payments to and receiving payments as contemplated under the FHA and to engage in related settlement activities;

(q.3) to engage in activities related to the creation, transfer and administration of the regulatory asset created under the FHA, which activities may include,

[OLC Note: Why is "creation" listed above? Isn't that fully accomplished through the statute?]

(i) incurring liabilities in relation to the regulatory asset

(ii) transferring the regulatory asset for consideration;

(q.4) acting as a recovery agent under the FHA;

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

Same, [FHA]

53.1 (1.1) In addition to the objects mentioned in subsection (1), the

objects of Ontario Power Generation Inc. include the following, in addition to any other objects, relating to the FHA: [OLC Note: I'm wondering if the proposed structure of setting out FHA objects as "in addition to" the general objects of the OPG will sufficiently communicate the idea that both sets of objects are to be carried out concurrently by the OPG.]

1. Exercising the powers and rights and performing the duties and obligations assigned to it under that Act.

2. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by that Act subject to the right of reimbursement from amounts available to the financing entity.

3. Preparing reports on behalf of the financing entity.

4. Enforcing the rights of the financing entity.

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

6. Exercising the powers and performing the duties of the Financial Services Manager under that Act.

Subsidiaries, etc.

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

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

Exception

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

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

Exception

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

[OLC Note: Drafting still to be added to the EA consequential

amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

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

6. To facilitate the implementation of the [TBD - language should

link up with language from new Act.]

205x. Section 71 of the Act is amended by adding the following subsection

[OLC Note - still need to draft new subs. 70 (2.1) - instructions on pp. 8-9 of Rider instructions rec'd April 14th]

PART VII
COMMENCEMENT AND SHORT TITLE

Commencement

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

Short title

104x. The short title of this Act is the *[TBD], 2017*.

SCHEDULE 1
METHOD FOR DETERMINING AMOUNT OF CLEAN ENERGY ADJUSTMENT FOR REFERENCE PERIOD

1. The amount of the clean energy adjustment for a reference period shall be determined by calculating the sum of the following:

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

[OLC Note: Para. 1 is the definition of "repayment" from the Blakes doc. However, that definition include bracketed text that says: (*including making Finance Reserve Deposits).* I don't understand this because (1) Finance Reserve Deposit is listed as a separate line item in the definition of "finance amount" (see para. 4 below). In order to avoid duplication, can we exclude "finance reserve deposits" from para. 1?]

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

determined under section 2 to this Schedule.

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

[OLC Note: Para. 3 is the definition of "redemption amount" from the Blakes doc.]

[OLC Note: What is meant by "make-whole" -- need some assistance in order to translate this term accurately. Do you have any examples of bilingual legislation where this term has been used?]

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

5. The sum of any other amounts payable by owners of investment assets for the reference period that were incurred or committed to directly or indirectly in

connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

[OLC Note: Para. 5 is based on the definition of "additional funding charges".]

Funding costs

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

1. Calculate the aggregate of all interest and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of owners of investment assets during the reference period in respect of all funding obligations, including the following:

   i. Standby commitment fees or charges paid to any lender.

   ii. Credit enhancement fees or charges paid to any credit enhancer.

iii. Liquidity fees or charges paid to any liquidity provider.

iv. Payments, including termination payments, made under derivatives.

v. Deposits made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a funding obligation.

2. Calculate the aggregate of all amounts received by or on behalf of the owners of investment assets during the reference period in respect of a funding obligation, including reimbursement of any amounts referred to in subparagraphs 1 i to v.

[OLC Note: Para. 2 is the definition of "finance receipts" in the Blakes doc.]

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

Finance reserve balance

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

[OLC Note: This section is a modification of the definitions provided in the Blakes document for "Finance Reserve Deposits" and "Finance Reserve Withdrawals". The proposed definition of "FR deposit" involved a subtraction of the "FR withdrawal" so the term 'deposit' was not really descriptive of a pure deposit but rather the balance.]

1. Calculate the sum of all amounts deposited [to what account?] during the reference period in order to pre-fund, collateralize, over-collateralize or establish

reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn from the account during the reference period from deposits previously made [e.g. during a previous reference period?] as described in paragraph 1.

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

Hi James,

I know the draft Legislation has the FNDC applying to customers “on-reserve”.

Is there sufficient flexibility in the draft Legislation to include “Additions-to-Reserve” (ATR) within the definitions of “reserve” through regulations? Will a small tweak to the draft legislation be required to give sufficient flexibility to include Additions-

There are four stages to the Addition to Reserve process:

1. initiation
   - the First Nation submits a Band Council Resolution and Reserve Creation Proposal to the INAC regional office
2. assessment and review
   - INAC reviews the proposal and advises the First Nation in writing of the results, issuing a letter of support to First

Nations with successful proposals

3. <u>proposal completion</u>
   - INAC and the First Nation work together to create and execute a work plan to complete the proposal
4. <u>approval</u>
   - the Minister of Indigenous and Northern Affairs approves proposals by Ministerial Order or recommends approval by the Governor

in Council for Order in Council proposals

Cheers
Dave

Hi James,

For your reference here's the definition of First Nation Lands in the FIT Standard Definitions that might be helpful for developing definitions in the regulations.

This definition is scoped broadly to be as inclusive as possible within the context of procurement programs. This approach may provide an opportunity to address the concerns of the Algonquins of

"Additions to Reserve Policy"; or

(b) in respect of either (1) a particular First Nation within the meaning of paragraph (a) of the definition of First Nation Community without any lands as defined in paragraph (a) of - 15 this definition of First Nation Lands, or (2) a First Nation Community within paragraph (b) of the definition of First Nation Community (in either case the "Corresponding First Nation

Community"), real property in respect of which the Corresponding First Nation Community has the following rights, held directly or indirectly:

(i) a fee simple;

(ii) the equity of redemption to such real property;

(iii) a power or right to grant, assign or exercise a power of appointment in respect of such real property;

(iv) a lease to such real property or other right in the nature of an exclusive use to

such real property for a period of greater than 21 years; or

(v) beneficial rights to possession or occupancy of such real property, for a period of greater than 21 years.

You can access the FIT Standard Definitions here: http://www.ieso.ca/sector-participants/feed-in-tariff-program/fit-5-documents-and-resources

Cheers

Dave

Ontario Energy Board Act, 1998
Loi de 1998 sur la Commission de l'énergie de l'Ontario

ONTARIO REGULATION 314/15
ONTARIO ELECTRICITY SUPPORT PROGRAM

Consolidation Period: From January 1, 2016 to the e-Laws currency date.

No amendments.

This Regulation is made in English only.

Interpretation

1. (1) In this Regulation,

"Cornwall Power" means Cornwa Street Railway Light & Powe Company Limited;

"Distribution System Code" means the Distribution System Code issued by the Board, as amended from time to time;

"embedded distributor" means a licensed distributor who is not a market participant and to whom a host distributor distributes electricity;

"embedded generator" means a generator who is not a market participant and whose generation facility is connected to a distribution

system of a licensed distributor, but does not include a generator who consumes more electricity than it generates;

"host distributor" means a licensed distributor who is a market participant and who distributes electricity to another licensed distributor who is not a market participant;

"licensed distributor" means a distributor who is licensed under Part V of the Act;

"OESP" means the Ontario Electricity Support Program referred to in section 79.2 of the Act;

"OESP administrative costs" means any payments the IESO is required by the Board to make, pursuant to the IESO's licence, in respect of the implementation and administration of the OESP;

"rate assistance" means OESP rate assistance under section 79.2 of the Act;

"rate-assisted consumer" has the same meaning as in subsection 79.2 (18) of the Act.

(2) For the purpose of section 79.2 of the Act and this Regulation,

"lost revenue resulting from rate assistance" includes OESP administrative costs.

IESO

2. The IESO is prescribed as an entity that is entitled to compensation for any lost revenue resulting from rate assistance under section 79.2 of the Act. [Why?]

Compensation for distributors, unit sub-meter providers and the IESO

3. (1) The Board shall, as often as is necessary and no less frequently than annually, calculate the amount of the charge to be collected by the

IESO under subsection (2) for each kilowatt hour of electricity that is withdrawn from the IESO-controlled grid, as determined in accordance with the market rules, for use by consumers in Ontario, or that is supplied by embedded generators for use by consumers in Ontario, so that the total amount forecast to be collected is equal to the sum of the total amount of rate assistance to be provided and OESP administrative costs.

(2) The IESO shall collect the charge calculated by the Board under subsection (1) from market

participants and any other person who, with the approval of the IESO, withdraws electricity from the IESO-controlled grid for use by consumers in Ontario.

(3) For the purposes of subsection (2), the amount that the IESO shall collect from each market participant and any other person contemplated in that subsection shall be based on the total of,

(a) the net volume of electricity withdrawn by the market participant or other person from the IESO-controlled grid during the month; and

(b) if the market participant is a licensed distributor, the sum of,

(i) the total volume of electricity supplied by embedded generators during the month to the market participant, adjusted for losses as required by the Retail Settlement Code, and

(ii) the total volume of electricity supplied by embedded generators during the month to all embedded distributors for whom the market participant is the host distributor, adjusted for losses as required by the Retail Settlement Code.

(4) Each month, the IESO shall pay distributors, unit sub-meter providers and any other persons or entities that are entitled to compensation under subsection 79.2 (9) of the Act the compensation to which they are entitled under that subsection, and shall retain for itself the compensation to which it is entitled under that subsection.

(5) In any year or other period for which the Board calculates the charge under subsection (1), if the amount collected under subsection (2) is greater or less than the sum of the total amount of rate assistance

provided and the OESP administrative costs, the excess or shortfall shall be considered by the Board in calculating the amount of the charge that is to be collected under subsection (2) for a subsequent period or periods.

(6) For the purpose of calculating the amount referred to in subsection (1),

(a) at least 60 days before the end of each calendar year the IESO shall submit to the Board,

(i) a forecast of the number of net kilowatt hours of electricity that are expected to be withdrawn

from the IESO-controlled grid, as determined in accordance with the market rules, for use by consumers within Ontario during the IESO's next fiscal year,

(ii) a forecast of the total volume of electricity that is expected to be supplied to distributors and embedded distributors by embedded generators, and

(iii) documentation supporting the forecasts referred to in subclauses (i) and (ii), and

(b) before the expiry of a period specified by the Board, the IESO shall submit to the Board any other

information the Board may require for the purposes of this Regulation, in the form specified by the Board.

Cornwall Power

4. (1) Cornwall Power shall collect, from every entity to whom it distributes electricity, the amount of the charge contemplated in subsection 3 (1) for each kilowatt hour of electricity that is distributed to the entity.

(2) On or before the day of the month required by the IESO, Cornwall Power shall,

(a) deliver to the IESO such information concerning the

amounts required to be collected by Cornwall Power under subsection (1) during the prior month as the IESO may require; and

(b) remit to the IESO the amount of all such charges.

Amount of OESP rate assistance

5. For 2016, the Board shall fix the amount of monthly rate assistance for each class of consumers that has been identified as rate-assisted consumers in the Distribution System Code as follows:

1. $30 for consumers in Class A.
2. $34 for consumers in Class B.

3. $38 for consumers in Class C.
4. $42 for consumers in Class D.
5. $45 for consumers in Class E.
6. $50 for consumers in Class F.
7. $55 for consumers in Class G.
8. $60 for consumers in Class H.
9. $75 for consumers in Class I.

Variance account

6. (1) The IESO shall establish a variance account in connection with subsections 3 (2) and (3) that records differences between the amounts collected by the IESO under subsection 3 (2) and the amount of compensation paid or retained by the IESO under subsection 3 (4).

(2) The IESO shall record interest on the balance of the account as the Board may direct.

Reliance on information

7. (1) For the purposes of this Regulation, the IESO shall rely on the information provided to it by distributors, unit sub-meter providers, retailers of electricity, and any other persons or entities that are required to provide information under this Regulation or by an order of the Board or under the authority of another regulation made under the Act.

(2) For the purposes of this Regulation, host distributors shall rely on the information provided to them by their embedded distributors.

8. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION).

Back to top

Kacaba, Jennifer (ENERGY)

From: Rehob, James (ENERGY)
Sent: April 24, 2017 9:33 AM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Huang, Jackson (MEDG/MRIS)
Cc: Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: Re: instructions

OK, understood.

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: Monday, April 24, 2017 9:20 AM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Huang, Jackson (MEDG/MRIS)
Cc: Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: RE: instructions

Hi – I was able to go through OPG's and the dealers comments on drafting points.

Notes

- I didn't deal with s. 5 at all. James, I will leave you to take this up with CLOC, MOF and probably TBS (Paul will fill you in on their interests after he speaks with Len Hatzis). Please consider OPG's and the dealers comments on those sections as well
- Dan, I didn't deal with any of the Part II comments. I would note that the CoS would like the proxy customer detail moved to the regs (he is worried about explaining why we are focused on a Toronto Hydro consumer). This work has been important to getting to this point, so please don't think moving this detail undermines your work.
- Dan, I have also left all of the OEB comments to you and will leave you to follow up with Martine, as you propose.
- I will discuss OPG's role as FSM and with respect to the fair allocation at a meeting this morning and I am hoping we will resolve outstanding questions on that front this morning.

We do need to get Tara working on the next turn, so please focus on getting this out the door. If it makes more sense to send her what we have now and then approach the other pieces in riders, I am open to it. I am very focused on – and nervous about - our expiring timeline.

Carolyn

From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April-23-17 6:16 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Huang, Jackson (MEDG/MRIS)
Cc: Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: instructions

Hi – here is a starting point for drafting instructions. I tried to respond to comments received from Blakes and I accepted most of IESO's suggestions and put them in here as well. I haven't yet looked at the OPG comments, so I will leave it to Dan and James to figure out which changes from them need to be incorporated.

<< File: Instructions 23 April 2017.docx >>

A few notes on the IESO comments:

- I did not adopt their reference to procurement contracts (definition of clean energy costs). James, would you please consider whether this should also go in.
- Dan, please look at the IESO's comments in Part II - about the "average baseline rate", rate determination and the fair adjustment (s 6(1), (2) and 7). I did not address those comments.
- I put in the comments about the determination of the clean energy adjustment (s. 10). Dan and James, please consider whether this works.
- I did not adopt IESO's comments on s. 23 or 24. I would like Blakes to take a look at those provisions.
- I would also like Blakes' views on s. 31(3) and 33.
- I didn't address IESO's comments on the consequential amendments.

Blakes made the point that the definition of refinancing doesn't deal with redemptions. I would like to clarify with them whether we should be referring to redemptions and refinancing or whether a redemption is a type of refinancing. I will send Blakes an email on these points shortly.

Dan, a small point, but please consider if the reference in s. 6xx(5) to "adapt its invoices" should be to "adapt its billing processes".

I also haven't dealt with the question of OPG's cash flow needs in the first period (16xx(4)). James, I think you are reaching out to Bryson on the language you circulated on Friday night.

James, I believe you are also looking at OPG's comments on the consequential amendments.

Given the extent of the changes required, we need to get instructions to Tara no later than noon tomorrow and earlier if at all possible.

If you would like to talk through any of these matters, please call me at 647-883-7091. I may not be instantly available, but I will try to keep my bb handy and I will get back to you as soon as I can.

Thank you all.

Carolyn

From: Rehob, James (ENERGY)
Sent: April-23-17 5:20 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Kacaba, Jennifer (ENERGY); Shear, Dan (ENERGY)
Cc: Huang, Jackson (MEDG/MRIS)
Subject: LSB Energy Responses to OPG cmnts - Fair Hydro Plan Act (OPG_Torys_ Comments - April 23 2017) Consultation.docx

Confidential/Solicitor & Client Privileged

Hi, Team. Here are my proposed responses (with some suggested drafting language in where I could). Regarding OPG Governance, it didn't appear that Tory's / OPG took much in the way of issue with the provisions related to EA s.53.1 so there was nothing really to react to in t his document on that front.

Pleased to have your feedback. I gather the plan is to settle on instructions by mid-morning tomorrow so that we can ship them over to Tara.

Best, and have a good night.

James

<< File: LSB Energy Responses to OPG cmnts - Fair Hydro Plan Act (OPG_Torys_ Comments - April 23 2017) Consultation.docx >>

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→ How Fair Allocation → a # in future as we pays the

- Crown Protection - Paul | ~~other~~ Finance amount
⇒ Jennifer → holds pen | - cost amount

- Year 4 v. 5 to CLOC, CUB

- To Carolyn -

→ MOT → Performance guarantee

→ Performance

Steve → talked about how they can help
- process of balancing interest

→ Regs →

TBS →

- Funding Rebate

Rehob, James (ENERGY)

From: Rehob, James (ENERGY)
Sent: Tuesday, April 25, 2017 9:00 PM
To: Rehob, James (ENERGY)
Subject: FW: OFHPA

From: PRESTAGE, JA [mailto:JA.PRESTAGE@blakes.com]
Sent: Tuesday, April 25, 2017 11:16 AM
To: Rehob, James (ENERGY)
Cc: ASHBOURNE, STEPHEN; Kacaba, Jennifer (ENERGY); JACKSON, ADAM; Calwell, Carolyn (ENERGY/MEDEI/MRI)
Subject: RE: OFHPA

James:

We have not previously shared new possible language but are suggesting the following:

Replace 5(1) with

> 5xx. (1) No act or omission by the Minister, the Board or the Crown shall be effective to:
>
> (a) change in a prejudicial manner any of the rights, interests or remedies of an investment interest owner in an investment interest; or
>
> (b) change in a prejudicial manner any entitlement of any counterparty of an investment interest owner to receive amounts under any funding obligation.

Delete section 5(2) and add as 38(2):

> 38(2) Notwithstanding subsection 38(1) or the terms of this or any other any other Act, the Lieutenant Governor in Council may not make any regulation which has the effect of:
>
> (a) changing in a prejudicial manner any of the rights, interests or remedies of an investment interest owner in an investment interest; or
>
> (b) changing in a prejudicial manner any entitlement of a counterparty of an investment interest owner to receive amounts under any funding obligation.

Happy to discuss.

J.A.

J.A. Prestage
Partner
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From: Rehob, James (ENERGY) [mailto:James.Rehob@ontario.ca]
Sent: Tuesday, April 25, 2017 10:56 AM
To: JACKSON, ADAM; PRESTAGE, JA
Cc: ASHBOURNE, STEPHEN; Kacaba, Jennifer (ENERGY)
Subject: FW: OFHPA

Hi, JA and Adam. I was checking in with Carolyn to see whether she's received changes to accommodate our s.5 discussion (protection of scheme). Have you provided for this – it may be that I'm unable to see your changes to s.5 or the reg-making authority we discussed (not sure).
Please cut & paste it into an email for me if you would be so kind.
Thank you!
James

From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: Tuesday, April 25, 2017 10:01 AM
To: Rehob, James (ENERGY)
Subject: Fwd: OFHPA

James, I think you will find the s. 5 stuff in here. Please also take a look at the "funding rebate" language that has been provided. I will deal with the PPSA stuff.

Carolyn

Carolyn Calwell
416.212.8392

Begin forwarded message:

From: "JACKSON, ADAM" <ADAM.JACKSON@blakes.com>
Date: April 25, 2017 at 9:59:04 AM EDT
To: "Calwell, Carolyn (ENERGY/MEDEI/MRI)" <Carolyn.Calwell@ontario.ca>

Cc: "WILSON, JUDY" <JUDY.WILSON@blakes.com>, "ASHBOURNE, STEPHEN" <STEPHEN.ASHBOURNE@blakes.com>, "STOKES, BRYSON" <BRYSON.STOKES@blakes.com>
Subject: RE: OFHPA

Hi Carolyn,

I attach a mark-up to address the transfer concepts, the funding rebate, the PPSA and some minor clean-ups.

Feel free to call if you have questions.

Thanks,
Adam

Adam Jackson
adam.jackson@blakes.com
Dir: 416-863-4324

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Ontario

Date : June 9, 2017

Re : ENE
Proposed regulation under the Ontario Fair Hydro Plan Act, 2017

FAIR ADJUSTMENT UNDER PART II OF THE ACT
reg2017.0246.e09

This proposed regulation has been sealed under the authority of the Registrar of Regulations.



Ontario

Executive Council
Conseil exécutif

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

Sur la recommandation de la personne soussignée, la lieutenante-gouverneure, sur l'avis et avec le consentement du Conseil exécutif, décrète ce qui suit :

the appended Regulation be made under the

Ontario Fair Hydro Plan Act, 2017.

Recommended _____
Minister of Energy

Concurred _____
Chair of Cabinet

Approved and Ordered _____
Date

_____
Lieutenant Governor

R.O.C./Décret (R)

Date : June 9, 2017

Re : ENE
Proposed regulation under the Ontario Fair Hydro Plan Act, 2017

FAIR ADJUSTMENT UNDER PART II OF THE ACT
Reg2017.0246.e09

This appended regulation has been sealed under the authority of the Registrar of Regulations.



Authority Verified
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Telephone
Téléphone _____

Recommended by the Management Board of Cabinet on
Recommandé par le Conseil de gestion du gouvernement le _____

Secretary
Secrétaire _____

CONFIDENTIAL
Until filed with the
Registrar of Regulations

REG2017.0246.e
9-TP

ONTARIO REGULATION

made under the

ONTARIO FAIR HYDRO PLAN ACT, 2017

FAIR ADJUSTMENT UNDER PART II OF THE ACT

Interpretation

1. (1) In this Regulation,

"billing period" means a period of time in respect of which an invoice for electricity is issued by an electricity vendor, a specified consumer or a unit sub-meter provider providing unit sub-metering for a specified consumer;

"Ontario Consumer Price Index" means, for a 12-month period, the Consumer Price Index for Ontario (All-Items) as reported monthly by Statistics Canada under the authority of the *Statistics Act* (Canada), averaged over the 12-month period;

"Toronto Hydro" means Toronto Hydro-Electric System Limited;

"Total Invoice Amount A" means the total invoice amount described in subsection (2);

"Total Invoice Amount B" means the total invoice amount described in subsection (3);

"Total Invoice Amount C" means the total invoice amount described in subsection (4).

(2) Total Invoice Amount A consists of the following types of amounts that would be invoiced in respect of a billing period to a hypothetical regulated rate consumer who meets the criteria set out in section 2:

1. The commodity price of the electricity, as determined under the comparison rates described in subsection 7 (3) of the Act.

2. The rates and charges as of May 1, 2017 as set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*, except for the rates and charges related to any rural or remote rate protection compensation required under subsection 79 (4) of the *Ontario Energy Board Act, 1998* or any compensation required under subsection 79.2 (10) of that Act.

3. The rates and charges as of April 30, 2017 as set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*, related to any rural or remote rate protection compensation required under subsection 79 (4) of the *Ontario Energy Board Act, 1998* or any compensation required under subsection 79.2 (10) of that Act.

4. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in paragraphs 1, 2 and 3.

(3) Total Invoice Amount B consists of the following types of amounts that would be invoiced in respect of a billing period to a hypothetical regulated rate consumer who meets the criteria set out in section 2:

1. The commodity price of the electricity, as determined under the rates determined in accordance with section 3.

2. The rates and charges as of May 1, 2017 as set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*, except for the rates and charges related to any rural or remote rate protection compensation required under subsection 79 (4) of that Act.

3. The rates and charges as of July 1, 2017 as set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*, related to any rural or remote rate protection compensation required under subsection 79 (4) of that Act.

4. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in paragraphs 1, 2 and 3.

(4) Total Invoice Amount C consists of the following types of amounts that would be invoiced in respect of a billing period to a hypothetical regulated rate consumer who meets the criteria set out in section 2:

1. The commodity price of the electricity, as determined under the rates determined in accordance with subsection 5 (1).

2. The rates and charges as of May 1, 2018 as set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

3. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in paragraphs 1 and 2.

(5) The following types of amounts shall be excluded from Total Invoice Amount A, Total Invoice Amount B and Total Invoice Amount C:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the consumption of electricity.

4. Any of the following charges that may be set out in the applicable rate 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".

5. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in paragraphs 1, 2, 3 and 4.

(6) The Board shall take into account any financial assistance under the *Ontario Rebate for Electricity Consumers Act, 2016* when determining Total Invoice Amount B and Total Invoice Amount C, but shall not do so when determining Total Invoice Amount A.

(7) For the purposes of making a determination under clause 11 (1) (a) of the Act, the rate of inflation is the percentage change between,

(a) the value of the Ontario Consumer Price Index for the 12-month period immediately preceding the 12-month period described in clause (b), and

(b) the value of the Ontario Consumer Price Index for the 12-month period ending on the last day of February immediately preceding the day on which the determination of the Board under clause 11 (1) (a) of the Act takes effect.

Hypothetical regulated rate consumer

2. For the purposes of subsection 7 (2) of the Act, a hypothetical regulated rate consumer meets the following criteria:

1. The consumer purchases electricity directly from Toronto Hydro.

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's billing period is 30 days.

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

5. The consumer is not a rate-assisted consumer within the meaning of section 79.2 of the *Ontario Energy Board Act, 1998*.

6. The consumer uses 750 kilowatt hours of electricity in each billing period.

7. The consumer's time-of-use consumption profile in each billing period is described as follows:

    i. 65 per cent of the consumer's usage occurs during off-peak periods associated with the regulated price referred to as $RPEM_{OFF}$ in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board.

    ii. 17 per cent of the consumer's usage occurs during mid-peak periods associated with the regulated price referred to as $RPEM_{MID}$ in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board.

    iii. 18 per cent of the consumer's usage occurs during on-peak periods associated with the regulated price referred to as $RPEM_{ON}$ in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board.

Regulated rate consumers, first fair adjustment under s. 7 of the Act

3. For the purposes of section 7 of the Act, the Board shall determine the rates that would, when applied for the purposes of determining the commodity price of the electricity included in Total Invoice Amount B, result in Total Invoice Amount B being 25 per cent less than Total Invoice Amount A.

Other specified consumers, first fair adjustment under s. 8 of the Act

4. (1) For the purposes of section 8 of the Act, the Board shall determine a dollar per megawatt hour amount that represents the difference between the following:

1. The comparison rates described in subsection 7 (3) of the Act.

2. The rates determined by the Board under section 3 of this Regulation.

(2) The adjustment to be applied by electricity vendors in respect of each billing period with respect to specified consumers who are not regulated rate consumers shall be determined as follows:

1. The electricity vendor shall multiply the dollar per megawatt hour amount determined by the Board under subsection (1) by the total volume of electricity consumed by the specified consumer during the billing period.

2. The electricity vendor shall deduct the amount determined under paragraph 1 from the amount otherwise payable by the specified consumer in respect of the billing period for adjustments made under section 25.33 of the *Electricity Act, 1998*.

(3) For the purposes of paragraph 1 of subsection (2), the total volume of electricity consumed by a specified consumer in a billing period shall be,

(a) in the case of a specified consumer that is a market participant as defined in the *Electricity Act, 1998*, the net volume of electricity withdrawn from the IESO-controlled grid by the specified consumer during the billing period, as determined in accordance with the market rules made under section 32 of that Act; or

(b) in any other case, the volume of electricity distributed to the specified consumer during the billing period by the electricity vendor, adjusted for total losses as defined in and in accordance with the Retail Settlement Code, issued by the Board under the *Ontario Energy Board Act, 1998*.

(4) For greater certainty, if the amount determined under paragraph 2 of subsection (2) in respect of a billing period is a negative amount, that amount shall be a credit for the specified consumer for that billing period.

Subsequent adjustments, regulated rate consumers, s. 11 (1) (a) of the Act

5. (1) For the purpose of determining the electricity rates payable by regulated rate consumers for the period beginning on May 1, 2018 and ending on April 30, 2019, the Board shall,

(a) if the rate of inflation is a negative amount or is zero, determine electricity rates for regulated rate consumers in accordance with subsection (2); or

(b) in any other case, determine electricity rates for regulated rate consumers in accordance with subsection (3).

(2) For the purposes of clause (1) (a), the Board shall determine the rates that would, when applied for the purposes of determining the commodity price of the electricity included in Total Invoice Amount C, result in Total Invoice Amount C being equal to Total Invoice Amount B.

(3) For the purposes of clause (1) (b), the Board shall determine the rates that would, when applied for the purposes of determining the commodity price of the electricity included in Total Invoice Amount C, result in Total Invoice Amount C being greater than Total Invoice Amount B by the rate of inflation.

Subsequent adjustments, other specified consumers, s. 11 (1) (b) of the Act

6. (1) For the purpose of determining adjustments to be applied in respect of specified consumers who are not regulated rate consumers for the period beginning on May 1, 2018 and ending on April 30, 2019, the Board shall determine a dollar per megawatt hour amount that represents the difference between the following:

1. The rates mentioned in subsection (4).

2. The rates determined by the Board under subsection 5 (1).

(2) The adjustment to be applied by electricity vendors in respect of each billing period for the period beginning on May 1, 2018 and ending on April 30, 2019 with respect to specified consumers who are not regulated rate consumers shall be determined as follows:

1. The electricity vendor shall multiply the dollar per megawatt hour amount determined by the Board under subsection (1) by the total volume of electricity consumed by the specified consumer during the billing period.

2. The electricity vendor shall deduct the amount determined under paragraph 1 from the amount otherwise payable by the specified consumer in respect of a billing period for adjustments made under section 25.33 of the *Electricity Act, 1998*.

(3) For the purposes of paragraph 1 of subsection (2), the total volume of the electricity consumed by a specified consumer in a billing period shall be,

(a) in the case of a specified consumer that is a market participant as defined in the *Electricity Act, 1998*, the net volume of electricity withdrawn from the IESO-controlled grid by the specified consumer during the billing period, as determined in accordance with the market rules made under section 32 of that Act; or

(b) in any other case, the volume of electricity distributed to the specified consumer during the billing period by the electricity vendor, adjusted for total losses as defined in and in accordance with the Retail Settlement Code issued by the Board under the *Ontario Energy Board Act, 1998*.

(4) The rates referred to in paragraph 1 of subsection (1) are the rates that would have been effective May 1, 2018 if they had been determined by the Board using the method prescribed by regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, without taking into account any forecasted impact of any provision of the Act.

(5) For greater certainty, if the amount determined under paragraph 2 of subsection (2) in respect of a billing period is a negative amount, that amount shall be a credit for the specified consumer for that billing period.

Sub-metering

7. For the purposes of subsection 12 (2) of the Act, the amount payable for the electricity by the person who is liable to pay the invoice shall, in respect of each billing period, reflect the person's proportionate share of any determination of the Board under section 9 or 11 of the Act that applies to the invoice for electricity payable by the specified consumer.

Commencement

8. This Regulation comes into force on the day it is filed.

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Ontario

Date : June 5, 2017

Re : ENE
Proposed regulation under the Electricity Act, 1998
Amending - O. Reg. 280/14
IESO: ELIGIBLE INVESTMENTS AND BORROWING
reg2017.0295.e03

This proposed regulation has been sealed under the authority of the Registrar of Regulations.



Ontario

Executive Council
Conseil exécutif

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

Sur la recommandation de la personne soussignée, la lieutenante-gouverneure, sur l'avis et avec le consentement du Conseil exécutif, décrète ce qui suit :

the appended Regulation be made under the

Electricity Act, 1998.

Recommended _____
Minister of Energy

Concurred _____
Chair of Cabinet

Approved and Ordered _____
Date

_____
Lieutenant Governor

R.O.C./Décret (R)

Date : June 5, 2017

Re : ENE
Proposed regulation under the Electricity Act, 1998
Amending - O. Reg. 280/14
IESO: ELIGIBLE INVESTMENTS AND BORROWING
Reg2017.0295.e03.

This appended regulation has been sealed under the authority of the Registrar of Regulations.



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Telephone
Téléphone _____

Recommended by the Management Board of Cabinet on
Recommandé par le Conseil de gestion du gouvernement le _____

Secretary
Secrétaire _____

CONFIDENTIAL
Until filed with the
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REG2017.0295.e
3-TK

ONTARIO REGULATION

made under the

ELECTRICITY ACT, 1998

Amending O. Reg. 280/14

(IESO: ELIGIBLE INVESTMENTS AND BORROWING)

1. Subsection 3 (2) of Ontario Regulation 280/14 is amended by adding the following paragraph:

5. To provide such funds as may be required for the purposes of the *Ontario Fair Hydro Plan Act, 2017*, including borrowing,

    i. to fund IESO deferrals under section 23 of that Act, and

    ii. to fund the activities in which the IESO is authorized or required to engage under that Act.

Commencement

2. This Regulation comes into force on the later of July 1, 2017 and the day it is filed.

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Ontario

Date : June 26, 2017

Re : ENE
Proposed regulation under the Ontario Fair Hydro Plan Act, 2017

GENERAL
reg2017.0290.e07

This proposed regulation has been sealed under the authority of the Registrar of Regulations.

REGISTRAR OF REGULATIONS

Ontario

Executive Council
Conseil exécutif

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

Sur la recommandation de la personne soussignée, la lieutenante-gouverneure, sur l'avis et avec le consentement du Conseil exécutif, décrète ce qui suit :

the appended Regulation be made under the

Ontario Fair Hydro Plan Act, 2017.

Recommended _____
Minister of Energy

Concurred _____
Chair of Cabinet

Approved and Ordered _____
Date

_____
Lieutenant Governor

R.O.C./Décret (R)

Date : June 26, 2017

Re : ENE
Proposed regulation under the Ontario Fair Hydro Plan Act, 2017

GENERAL
Reg2017.0290.e07

This appended regulation has been sealed under the authority of the Registrar of Regulations.



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Recommended by the
Management Board of Cabinet on
Recommandé par le Conseil de
gestion du gouvernement le _____

Secretary
Secrétaire _____

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Until filed with the
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REG2017.0290.e
7-TP

ONTARIO REGULATION

made under the

ONTARIO FAIR HYDRO PLAN ACT, 2017

GENERAL

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DEFINITIONS

Definitions

1. (1) In this Regulation,

"capital account" means an account established by or on behalf of a financing entity under the governing documents of a funding obligation for the purpose of accumulating funds to be used to make repayments in respect of the funding obligation;

"derivative agreement" means any derivative agreement, including interest rate swaps and cross-currency swaps and any associated collateral, entered into in connection with or to hedge the exposure of a financing entity under a funding obligation;

"derivative payment" means any payment required to be made in connection with a derivative agreement, including ordinary course payments, payments on termination and payments made in connection with margining or collateral arrangements;

"finance reserve account" means an account established by or on behalf of a financing entity under the governing documents of a funding obligation for the purposes of pre-funding, collateralizing, over-collateralizing or establishing reserves for the payment of funding obligations and other finance amounts or for related contingencies;

"financing entity expense" includes,

(a) fees, including fees charged by the Financial Services Manager, charges, costs, indemnities, reimbursements, other amounts incurred or committed to, by or on behalf of a financing entity as a result of an activity authorized or permitted under the Act, and

(b) any taxes on amounts mentioned in clause (a);

"funding cost" means interest, commitment fees or other similar costs payable by or on behalf of a financing entity in respect of funding obligations, including a derivative payment;

"governing documents" means, in respect of a funding obligation, the documents governing the terms of the funding obligation or other matters relating to the funding obligation;

"maturity date" means, in respect of a funding obligation, the date set out in the governing documents of the funding obligation on which all outstanding principal, interest and other amounts outstanding are due and payable;

"recovery amount" means the aggregate of all amounts received by or on behalf of financing entities in respect of funding obligations;

"redemption amount" means the amount payable by or on behalf of a financing entity to redeem, prepay or repurchase a funding obligation incurred by or on behalf of the financing entity, including any premium, make-whole or other amount payable to give effect to the prepayment, redemption or repurchase;

"refinancing amount" means the principal amount of a funding obligation incurred by a financing entity in respect of a refinancing;

"repayment" means the payment by or on behalf of a financing entity or the provision by or on behalf of a financing entity for the payment of all or a portion of the principal amount advanced to the financing entity under a funding obligation;

"tax" means a tax, duty, fee, premium, excise, assessment, impost, levy or other charge payable to Her Majesty in right of Ontario, Her Majesty in right of Canada or the government of any other country, province, state, municipality or other political territory and imposed or authorized to be imposed by any law of Ontario, Canada, or any other country, province, state, municipality or other political territory and includes,

(a) a tax, duty, fee, premium, excise, assessment, impost, levy or other charge,

(i) levied on, measured by or described with respect to income, earnings, gross receipts, profits, capital, capital gains, sales or use, or

(ii) referred to as branch tax, net worth tax, alternative tax, minimum tax, goods and services tax, harmonized sales tax, value-added tax, excise tax, *ad valorem* tax, franchise tax, transfer tax, withholding tax, property tax, surtax, payroll tax, employment tax or employer health tax,

(b) government pension plan premiums or contributions, social security premiums, workers' compensation premiums and employment or unemployment insurance or compensation premiums and contributions,

(c) an amount or charge under Part VI of the Electricity Act, 1998,

(d) an instalment in respect of an amount mentioned in clauses (a) to (c), and

(e) interest, penalties, fines, additions to tax or other amounts imposed on or in respect of an amount mentioned in clauses (a) to (c);

"tax liability" means all tax paid or payable by or on behalf of a financing entity, incurred directly or indirectly by the financing entity or for which the financing entity is otherwise liable as a result of any activity, undertaking, transaction or event authorized or permitted under the Act;

"tax refund" means all amounts received by or on behalf of a financing entity as a refund of tax and to which the financing entity is entitled as a result of any activity, undertaking, transaction or event authorized or permitted under the Act.

(2) For the purposes of subsection 21 (8) of the Act and this Regulation,

"readjustment amount" means, in respect of a reference period, the amount determined by applying the following steps:

1. Determine the amount, if any, by which the total amount payable by specified consumers for electricity in respect of the reference period is forecast to be reduced as a result of a determination of the Board under Part II of the Act.

2. Determine the amount, if any, by which the determination under paragraph 1 exceeds the fair allocation amount determined by the Minister under subsection 20 (1) of the Act in respect of the reference period.

Funding obligation

2. (1) For the purposes of the definition of "funding obligation" in subsection 1 (1) of the Act, a payment obligation in respect of any of the following types of amounts is also a funding obligation if it is incurred by or on behalf of a financing entity:

1. A refinancing.

2. A derivative payment.

3. An amount raised for the purposes of a financing entity acquiring and financing an investment interest, including any amounts raised that also constitute, and are recoverable as, a finance amount.

(2) Funding obligations include principal, interest, fees and other amounts owing in respect of the funding obligations.

Refinancing

3. (1) For the purposes of the definition of "refinancing" in subsection 1 (1) of the Act, a refinancing includes the incurrence of a debt if the following criteria are met:

1. The debt is incurred no earlier than six months before the maturity date of a funding obligation.

2. The proceeds of the debt are designated by the Financial Services Manager to repay the funding obligation mentioned in paragraph 1.

3. The proceeds are applied as designated.

(2) For greater certainty, if the proceeds mentioned in paragraph 2 of subsection (1) are not applied as designated, the debt ceases to be a refinancing but remains a funding obligation.

Unit sub-metering, collection

4. For the purposes of subsection 13 (6) of the Act, amounts in respect of the clean energy adjustment may be collected by the specified consumer as follows:

1. If an invoice for electricity is issued to a person by the specified consumer, the specified consumer may collect from the person the person's proportionate share of the amount of the clean energy adjustment shown on the invoice for electricity payable by the specified consumer.

2. If an invoice for electricity is issued to a person by a unit sub-meter provider providing unit sub-metering for a specified consumer, the unit sub-meter provider may collect from the person the person's proportionate share of the amount of the clean energy adjustment shown on the invoice for electricity payable by the specified consumer.

Determining the finance amount

5. (1) Subject to subsection (2), the finance amount in respect of a financing entity and a period of time shall be determined as follows:

1. After eliminating any duplication in the following amounts, calculate the sum of the following amounts:

    i. Amounts paid or payable during the period in respect of repayments.

    ii. Funding costs paid or payable during the period.

    iii. Redemption amounts paid or payable during the period.

    iv. Derivative payments required to be made during the period.

    v. Amounts deposited, as required under the governing documents of funding obligations, into capital accounts or finance reserve accounts during the period.

    vi. Financing entity expenses paid or payable during the period.

    vii. Tax liabilities payable during the period.

2. After eliminating any duplication in the following amounts, calculate the sum of the following amounts:

i. Amounts withdrawn, as required under the governing documents of funding obligations, from capital accounts or finance reserve accounts during the period.

ii. Amounts received during the period in respect of funding rebates.

iii. Recovery amounts received during the period.

iv. Refinancing amounts that are applied to repayments during the period.

v. Any payments received in connection with a derivative agreement, including ordinary course receipts, payments received on termination and payments received in connection with margining or collateral arrangements.

vi. Tax refunds received during the period.

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

(2) Subject to subsection (3), the following rules apply with respect to the determination of the finance amount:

1. The determination shall be made by applying a cash basis accounting method.

2. If the determination is in respect of a past period of time, the determination shall reflect cash amounts actually paid, deposited, received, applied, withdrawn or made available during that period of time.

3. If the determination is in respect of a future period of time, the determination shall reflect the estimated cash amounts that will be paid, deposited, received, applied, withdrawn or made available during that period of time.

4. If the determination is in respect of a period of time that includes both past and future dates, the determination may reflect a combination of actual and expected cash amounts.

(3) Despite subsection (2), taxes may be estimated in respect of a particular tax reporting period of a financing entity and allocated in respect of various periods of time that occur within the tax reporting period, in such manner as the Financial Services Manager considers to be reasonable, subject to the following rules:

1. The estimated taxes, less any taxes paid by way of instalment or otherwise by or on behalf of the financing entity during the period of time in respect of which the finance

amount is determined, shall be deemed to be a tax liability of the financing entity during that period of time.

2. The amount, if any, by which the estimated taxes exceeds the tax liability of the financing entity in respect of the particular tax reporting period, as determined without taking into account paragraph 1, shall be deemed to be a tax refund received by the financing entity during the period of time described in subsection (4).

3. The amount, if any, by which the tax liability of the financing entity in respect of the particular tax reporting period, as determined without taking into account paragraph 1, exceeds the estimated taxes shall be deemed to be a tax liability payable by the financing entity during the period of time described in subsection (4).

4. If a financing entity receives an assessment or reassessment of taxes for a particular tax reporting period that differs from the amount shown on a tax return filed with the applicable governmental authority, the following rules apply:

    i. The assessed or reassessed amount shall be deemed to be a tax liability payable by the financing entity during the first period of time, commencing after the date of the assessment or reassessment, in respect of which the finance amount is determined.

    ii. Any interest charged on the assessed or reassessed amount following the date of the assessment or reassessment shall be deemed to be a tax liability payable by the financing entity as the interest is paid or accrues.

    iii. Once there has been a final determination with respect to the tax liability payable by the financing entity in respect of the particular tax reporting period, the amount, if any, by which the tax liability payable by the financing entity during the tax reporting period is decreased from the assessed or reassessed amount, together with the after-tax amount of any refund interest received by the financing entity, shall be deemed to be a tax refund received by the financing entity during the first period of time, commencing after the final determination, in respect of which the finance amount is determined.

(4) For the purposes of paragraphs 2 and 3 of subsection (3), the period of time is the first period of time, commencing after the filing of the tax return with the applicable governmental authority for the particular tax reporting period, in respect of which the finance amount is determined.

(5) For the purposes of subparagraph 4 iii of subsection (3),

"final determination" means a determination made by the applicable governmental authority or court of competent jurisdiction and in respect of which all rights to object to or appeal have been exhausted or have expired.

Determining true up amount

6. (1) Unless all funding obligations and other finance amounts are paid in full, the Financial Services Manager shall calculate the true up amount in respect of each reference period.

(2) The Financial Services Manager may, at any time during a reference period, determine the true up amount in respect of the remaining portion of the reference period if,

(a) all funding obligations and other finance amounts have not been paid in full;

(b) the Board has made a determination under subsection 15 (4) of the Act in respect of the reference period; and

(c) the Financial Services Manager reasonably forecasts that the collection of the clean energy adjustment will be insufficient to pay the estimated finance amount for a reference period.

(3) The true up amount in respect of a reference period or a portion of the reference period shall be determined, as follows:

$$T = (A - B) + C$$

where,

T = the true up amount in respect of the period of time,

A = the aggregate of the finance amounts in respect of all reference periods preceding the current reference period and, if the determination is being made at a point in time during the current reference period, in respect of the portion of the current reference period that precedes the point in time,

B = the aggregate of all amounts of the clean energy adjustment remitted to or for the benefit of the investment interest owners during all reference periods preceding the current reference period and, if the determination is being made at a point in time during the current reference period, in respect of the portion of the current reference period that precedes the point in time,

C = the amount representing reasonably foreseeable differences between the amounts to be invoiced in respect of the clean energy adjustment and the amounts to be remitted by the IESO to the investment interest owners in respect of the invoices due to various

factors, including those mentioned in subparagraphs 2 ii and iii of subsection 15 (2) of the Act.

(4) The Financial Services Manager shall, when determining the amounts described in "C" in the formula set out in subsection (3), have regard to amounts payable that were not collected and any amounts in respect of which an overpayment was made, which may include amounts resulting from a default of specified consumers, an electricity vendor or the IESO, whether in its capacity as an electricity vendor or its activities as agent or otherwise under section 16 or 17 of the Act.

(5) If the Financial Services Manager determines that an error in the determination of the clean energy adjustment or any other error relating to the clean energy adjustment requires correction, the Financial Services Manager may reflect the correction in a subsequent determination of the true up amount.

Notification to Board

7. (1) The Financial Services Manager shall notify the Board of the clean energy adjustment in respect of a reference period or a portion of a reference period in accordance with this section.

(2) Subject to subsection (6), until such time as all funding obligations and other finance amounts have been paid in full, the notification in respect of each reference period shall be provided,

(a) in the case of a reference period that begins on May 1, on or before April 1 in the same year; and

(b) in the case of a reference period that begins on November 1, on or before October 1 in the same year.

(3) In addition to complying with subsection (2), the Financial Services Manager shall, starting on the day after the final scheduled payment date of the funding obligation described in subsection (4) and until such time as all funding obligations and other finance amounts have been paid in full, comply with subsection (5).

(4) For the purposes of subsection (3), the relevant funding obligation is the outstanding funding obligation that has the latest maturity date of all outstanding funding obligations.

(5) During the period of time mentioned in subsection (3), the Financial Services Manager shall update its most recent determination of the clean energy adjustment and notify the Board of the updated determination,

(a) on or before January 1 in each year, in respect of the months of February, March and April in the same year; and

(b) on or before July 1 in each year, in respect of the months of August, September and October in the same year.

(6) If the Financial Services Manager makes a determination of the true up amount under subsection 6 (2) in respect of the remaining portion of a reference period, the Financial Services Manager shall redetermine the clean energy adjustment in respect of the remaining months in the reference period for which the Board has made a determination under subsection 15 (4) of the Act and notify the Board of the redetermination as soon as possible.

Board to determine rates

8. (1) The Board shall, upon receiving a notice of the clean energy adjustment under section 7, determine the rates at which specified consumers are to be invoiced in respect of the period of time in respect of which the notice was given.

(2) The rates shall be expressed as a cent per kWh amount and determined by dividing the clean energy adjustment in respect of the relevant period of time by the forecast electricity consumption of specified consumers in respect of the period.

(3) For the purposes of subsection (2), the forecast electricity consumption of specified consumers shall be based on forecast information provided to the Board by the IESO.

(4) If notice is provided under subsection 7 (2) or (5), the rates shall be determined by the Board so that the rate takes effect on the first day of the month following the month in which the notice was required to be provided.

(5) If notice of a redetermination is provided under subsection 7 (6), the rates shall be determined by the Board so that they take effect,

(a) if the notice was provided before the 15th day in a month, on the first day of the month following the month in which the notice was provided; or

(b) if the notice was provided on or after the 15th day in a month, on the first day of the second month following the month in which the notice was provided.

IESO to receive, remit amounts

9. (1) The IESO shall ensure that amounts actually received in respect of the clean energy adjustment under subsection 16 (1) of the Act are identifiable as such.

(2) For the purposes of subsection 16 (4) of the Act, the IESO shall remit the amounts to the financing entities within a reasonable period of time.

Electricity vendors to invoice, collect

10. (1) Each electricity vendor shall ensure that invoices issued to specified consumers include a separate line item for the amount in respect of the clean energy adjustment.

(2) Each electricity vendor shall ensure that amounts collected from specified consumers in respect of the clean energy adjustment are deposited into a segregated account established for the purpose of receiving those amounts exclusively.

(3) Each electricity vendor shall maintain separate records with respect to amounts invoiced to specified consumers in respect of clean energy adjustments.

(4) Subject to any requirement to the contrary under any Act or regulation, each electricity vendor shall make the records mentioned in subsection (3) available, upon request, to the IESO, the Financial Services Manager, financing entities and investment interest owners.

FAIR ALLOCATION AMOUNT

Prescribed period, amount

11. (1) The prescribed period for the purposes of sub-subparagraph 1 ii B of subsection 20 (1) of the Act shall be the period beginning on January 1, 2005 and ending on April 30, 2017.

(2) If the sum of the amounts determined under paragraphs 1 and 2 of subsection 20 (1) of the Act is less than or equal to the amount determined under paragraph 3 of subsection 20 (1) of the Act, the amount determined by applying the following formula is prescribed for the purposes of paragraph 5 of subsection 20 (1) of the Act:

$$A = B - C$$

where,

A = the amount prescribed for the purposes of paragraph 5 of subsection 20 (1) of the Act,

B = the sum of the amounts determined under paragraphs 1 and 2 of subsection 20 (1) of the Act, and

C = the amount determined under paragraph 3 of subsection 20 (1) of the Act.

Determination of estimated financing costs

12. (1) For the purposes of paragraph 2 of subsection 20 (1) of the Act, the estimated financing costs in respect of a reference period shall consist of the sum of the following amounts, after eliminating any duplication, that are forecast to become payable during the reference period:

1. Estimated funding costs.

2. Estimated financing entity expenses.

3. Estimated funding rebates.

(2) In estimating amounts for the purposes of subsection (1), the Minister shall make the following assumptions:

1. The entire amount of the regulatory asset is transferred over time in accordance with section 26 of the Act.

2. The principal owing by a financing entity during a reference period is paid in full by applying funds that are forecast to be available to it under the Financing Plan after all other estimated finance amounts for the reference period have been paid in full.

(3) For the purposes of subsection 20 (2) of the Act, the prescribed circumstances are that one or more determinations under section 9 or 11 of the Act in respect of a past reference period have resulted in a readjustment amount.

(4) If the circumstances mentioned in subsection (3) apply, the Minister shall, in addition to calculating the sum of the costs set out in paragraphs 1 to 3 of subsection (1), calculate a portion of the readjustment amount that should be attributed to the reference period and include it in the determination of the estimated financing costs in respect of the reference period.

(5) For the purposes of subsection (4), the Minister shall determine the portion to be attributed to the reference period in such a manner as to ensure that readjustment amounts are recovered equally over the remaining reference periods.

Minister's considerations

13. For the purposes of subsection 20 (3) of the Act, the Minister shall have regard to the following matters:

1. Electricity prices.

2. Interest rates.

3. Inflation.

4. Electricity consumption.

5. The useful life of the assets that are subject to contracts referred to in clause (a) of the definition of "clean energy costs" in subsection 1 (1) of the Act.

FINANCING PLAN

Principles and assumptions

14. (1) The Financial Services Manager shall make reasonable assumptions regarding the following matters in preparing the Financing Plan:

1. The IESO deferral for future months, based on the most recent calculation of the fair allocation amount.

2. Future transfers of specified portions of the regulatory asset.

3. The maturities of funding obligations.

4. Cash flow requirements to meet contractual obligations associated with funding obligations.

5. Descriptions of current funding options, including terms and conditions.

6. Descriptions of currency and interest rate hedging programs, if applicable.

7. Financing entity expenses.

8. Interest rates.

9. The need for and the establishment of financing reserve accounts and capital accounts.

(2) In addition to the principles set out in subsection 21 (3) of the Act, the Financial Services Manager shall have regard to the following principles in preparing the Financing Plan:

1. The Financial Services Manager should,

    i. seek the best terms available at the time of incurrence of a funding obligation, having regard to other financing transactions of the size and type contemplated by the Financing Plan,

    ii. apply the principal proceeds of a funding obligation for the purpose of repaying or redeeming debt or for the purposes of paying the purchase price for investment interests,

    iii. consider the interests of specified consumers with respect to stable and predictable electricity rates,

    iv. act as any reasonably prudent financial services manager would act in similar circumstances, and

v. deal with related parties on arm's length terms.

2. The Financing Plan should,

i. identify the reference capital or finance markets in which the funding obligations are to be incurred, including markets outside of Canada,

ii. describe how recovery amounts will be applied to funding obligations over time,

iii. address the capitalization of proposed financing entities,

iv. describe strategies to mitigate risk, including currency and interest rate hedging measures, if applicable,

v. seek to minimize tax consequences associated with the incurrence of a funding obligation, and

vi. articulate the principles by which the Financial Services Manager will make decisions regarding the following:

A. Interest rates.

B. The term to maturity of funding obligations.

C. Refinancing.

D. Deposits to and withdrawals from reserve accounts.

E. Indemnifications.

F. Fees.

(3) The Financial Services Manager shall, no later than 90 days following the end of each fiscal year, submit to the Minister a report with respect to its affairs during the fiscal year, signed by an officer of the Financial Services Manager.

(4) Despite subsection (3), for the fiscal year commencing in 2017, the Financial Services Manager shall submit the report by such time as may be specified by the Minister, which time shall be on or after the 30th day following the end of the fiscal year.

THE REGULATORY ASSET

Determination of IESO deferral

15. The IESO may include the following amounts in the IESO deferral for each month:

1. The difference between the following amounts:

    i. The sum of all amounts payable to the IESO in the month by electricity vendors and specified consumers under the *Electricity Act, 1998* and the market rules made under section 32 of that Act, without taking into account any of the following:

        A. Variances reported to and recorded monthly by the IESO in a variance account under section 5 of Ontario Regulation 430/04 (Payments Re Section 25.33 of the Act) made under that Act.

        B. Rates determined by the Board under Part II of the Act.

    ii. The sum of all amounts payable in the same month by electricity vendors and specified consumers to the IESO, taking into account rates determined under Part II of the Act.

2. The costs incurred by the IESO in relation to the financing of the difference between the amounts referred to in subparagraphs 1 i and ii.

3. Any amounts incurred by the IESO on or after May 1, 2017 and before the Act came into force.

Adjustments that may be recorded by the IESO

16. For the purposes of paragraph 3 of subsection 24 (1) of the Act, the IESO shall record the following adjustments in a variance account each month:

1. All funding rebates and other amounts paid by the IESO to a financing entity during the month.

2. Any variance account balances in variance accounts established and maintained under subsection 25.33 (5) of the *Electricity Act, 1998* and costs incurred in relation to the balances.

MISCELLANEOUS

Investment asset

17. The prescribed accounts referred to in paragraph 3 of subsection 29 (1) of the Act are as follows:

1. Any specifically identified segregated account, regardless of the name in which the account is opened, if it is opened by the IESO or an electricity vendor and if amounts in respect of the clean energy adjustment are deposited into it.

2. Any accounts opened in the name of a financing entity by the Financial Services Manager.

Appointment of agent, invoicing or collection

18. For the purposes of subsection 33 (1) of the Act, the appointment may occur if the electricity vendor is unable or unwilling to perform its obligations under the Act, including if the electricity vendor becomes insolvent, bankrupt or enters into receivership.

Disclosure in marketing materials, offering documents, etc.

19. For the purposes of section 40 of the Act, a person may include the references in marketing materials or offering documents if,

(a) the inclusion is required by applicable law or is necessary for the purposes of any financing of funding obligations, including any requests for disclosure by rating agencies; and

(b) the Minister has been given written notice of the proposed inclusion of the references and has been given a reasonable opportunity to comment.

Commencement

20. This Regulation comes into force on the day it is filed.

UNDERTAKINGS OF THE CONSUMERS' GAS COMPANY LTD., ENBRIDGE CONSUMERS ENERGY INC., 311594 ALBERTA LTD., ENBRIDGE PIPELINES (NW) INC. AND ENBRIDGE INC.

TO: Her Honour The Lieutenant Governor in Council for the Province of Ontario

WHEREAS Enbridge Consumers Energy Inc. holds all of the issued and outstanding common shares of The Consumers' Gas Company Ltd. ("Consumers");

AND WHEREAS 311594 Alberta Ltd. holds all of the issued and outstanding common shares of Enbridge Consumers Energy Inc.;

AND WHEREAS Enbridge Pipelines (NW) Inc. holds all of the issued and outstanding common shares of 311594 Alberta Ltd.;

AND WHEREAS Enbridge Inc. ("Enbridge") holds all of the issued and outstanding common shares of Enbridge Pipelines (NW) Inc.;

the above named corporations do hereby agree to the following undertakings:

1.0 Definitions

In these undertakings,

1.1 "Act" means the *Ontario Energy Board Act, 1998*;

1.2 **"affiliate"** has the same meaning as it does in the *Business Corporations Act*;

1.3 **"Board"** means the Ontario Energy Board;

1.4 **"business activity"** has the same meaning as it does under the Act or a regulation made under the Act; and

1.5 **"electronic hearing", "oral hearing"** and **"written hearing"** have the same meaning as they do under the *Statutory Powers Procedure Act*.

2.0 Restriction on Business Activities

2.1 Consumers shall not, except through an affiliate or affiliates, carry on any business activity other than the transmission, distribution or storage of gas, without the prior approval of the Board.

3.0 Maintenance of common equity

3.1 Where the level of equity in Consumers falls below the level which the Board has determined to be appropriate in a proceeding under the Act or a predecessor Act, Consumers shall raise or Enbridge and its affiliates shall provide within 90 days, or such longer period as the Board may specify, sufficient additional equity capital to restore the level of equity in Consumers to the appropriate level.

3.2 Any additional equity capital provided to Consumers by Enbridge or its affiliates shall be provided on terms no less favourable to Consumers than Consumers could obtain directly in the capital markets.

4.0 Head Office

4.1 The head office of Consumers shall remain within the franchise area of Consumers.

5.0 Prior Undertakings

5.1 Subject to Article 5.2, these undertakings supersede, replace and are in substitution for all prior undertakings of Consumers, Enbridge and their affiliates.

5.2 The undertakings of British Gas PLC and Consumers dated June 16th, 1994 and approved by the Lieutenant Governor in Council on June 23rd, 1994, remain in full force and effect.

6.0 Dispensation

6.1 The Board may dispense, in whole or in part, with future compliance by any of the signatories hereto with any obligation contained in an undertaking.

7.0 Hearing

7.1 In determining whether to grant an approval under these undertakings or a dispensation under Article 6.1, the Board may proceed without a hearing or by way of an oral, written or electronic hearing.

8.0 Monitoring

8.1 At the request of the Board, Consumers, Enbridge and their affiliates will provide to the Board any information the Board may require related to compliance with these undertakings.

9.0 Enforcement

9.1 The parties hereto acknowledge that there has been consideration exchanged for the receipt and giving of the undertakings and agree to be bound by these undertakings.

9.2 Any proceeding or proceedings to enforce these undertakings may be brought and enforced in the courts of the Province of Ontario and Enbridge, Consumers and their affiliates hereby submit to the jurisdiction of the courts of the Province of Ontario in respect of any such proceeding.

9.3 For the purpose of service of any document commencing a proceeding in accordance with Article 9.2, it is agreed that Consumers is the agent of Enbridge and its affiliates and that personal service of documents on Consumers will be sufficient to constitute personal service on Enbridge and its affiliates.

10.0 Release from undertakings

10.1 Enbridge, Consumers and their affiliates are released from these undertakings on the day that Enbridge no longer holds, either directly or through its affiliates, more than 50 per cent of the voting securities of Consumers or on the day that Consumers sells its gas transmission and gas distribution systems.

11.0 Effective Date

11.1 These undertakings become effective on March 31, 1999.

DATED this 7th day of December, 1998.

THE CONSUMERS' GAS COMPANY LIMITED

by _____

_____

ENBRIDGE CONSUMERS ENERGY INC.

by _____

_____

311594 ALBERTA LTD.

by _____

_____

ENBRIDGE PIPELINES (NW) INC.

by _____

_____

ENBRIDGE INC.

by _____

_____

Ontario
Executive Council
Conseil des ministres

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

Sur la recommandation du soussigné, le lieutenant-gouverneur, sur l'avis et avec le consentement du Conseil des ministres, décrète ce qui suit :

WHEREAS Westcoast Energy Inc., 1001142 Ontario Inc., Union Energy Inc., Union Gas Limited, and Union Shield Resources Ltd. provided Undertakings dated the 27th day of November, 1992 to the Lieutenant Governor in Council and these Undertakings were referred to in Order in Council No. 3639/92;

AND WHEREAS Enbridge Inc. (previously IPL Energy Inc.) and The Consumers' Gas Company Ltd. provided Undertakings dated the 21st day of June, 1994 to the Lieutenant Governor in Council and these Undertakings were referred to in Order in Council No. 1606/94;

AND WHEREAS, with the receipt of Royal Assent for the *Energy Competition Act, 1998* on the 30th day of October, 1998, it is considered expedient to approve new Undertakings provided by Union Gas Limited, Centra Gas Utilities Inc., Centra Gas Holdings Inc., Westcoast Gas Inc., Westcoast Gas Holdings Inc. and Westcoast Energy Inc. and by The Consumers' Gas Company Ltd., Enbridge Consumers Energy Inc., 311594 Alberta Ltd., Enbridge Pipelines (NW) Inc. and Enbridge Inc.(the "New Undertakings");

NOW THEREFORE the New Undertakings, attached hereto, are accepted and approved.

Recommended _____
Minister of Energy, Science & Technology

Concurred _____
Chair of Cabinet

Approved & Ordered DEC 9 - 1998
Date

_____
Lieutenant Governor

O.C./Décret 2865/98

UNDERTAKINGS OF UNION GAS LIMITED, CENTRA GAS UTILITIES INC., CENTRA GAS HOLDINGS INC., WESTCOAST GAS INC., WESTCOAST GAS HOLDINGS INC., WESTCOAST ENERGY INC.

TO: Her Honour The Lieutenant Governor in Council for the Province of Ontario

WHEREAS Centra Gas Utilities Inc. holds all the issued and outstanding common shares of Union Gas Limited ("Union");

AND WHEREAS Centra Gas Holdings Inc. holds all the issued and outstanding common shares of Centra Gas Utilities Inc.;

AND WHEREAS Westcoast Gas Inc. holds all the issued and outstanding common shares of Centra Gas Holdings Inc.;

AND WHEREAS Westcoast Gas Holdings Inc. holds all the issued and outstanding common shares of Westcoast Gas Inc.;

AND WHEREAS Westcoast Energy Inc. holds all the issued and outstanding common shares of Westcoast Gas Holdings Inc. ("Westcoast");

the above named corporations do hereby agree to the following undertakings:

1.0 Definitions

In these undertakings,

1.1 "Act" means the *Ontario Energy Board Act, 1998*;

1.2 "affiliate" has the same meaning as it does in the *Business Corporations Act*;

1.3 "Board" means the Ontario Energy Board;

1.4 "business activity" has the same meaning as it does under the Act or a regulation made under the Act; and

1.5 "electronic hearing", "oral hearing" and "written hearing" have the same meaning as they do under the *Statutory Powers Procedure Act*.

2.0 Restriction on Business Activities

2.1 Union shall not, [except through an affiliate or affiliates,] carry on any business activity other than the transmission, distribution or storage of gas, without the prior approval of the Board.

3.0 Maintenance of common equity

3.1 Where the level of equity in Union falls below the level which the Board has determined to be appropriate in a proceeding under the Act or a predecessor Act, Union shall raise or Westcoast and its affiliates shall provide within 90 days, or such longer period as the Board may specify, sufficient additional equity capital to restore the level of equity in Union to the appropriate level.

3.2 Any additional equity capital provided to Union by Westcoast or its affiliates shall be provided on terms no less favourable to Union than Union could obtain directly in the capital markets.

4.0 Head Office

4.1 The head office of Union shall remain in the Municipality of Chatham-Kent.

5.0 Prior Undertakings

5.1 These undertakings supersede, replace and are in substitution for all prior undertakings of Union, Westcoast and their affiliates.

6.0 Dispensation

6.1 The Board may dispense, in whole or in part, with future compliance by any of the signatories hereto with any obligation contained in an undertaking.

7.0 Hearing

7.1 In determining whether to grant an approval under these undertakings or a dispensation under Article 6.1, the Board may proceed without a hearing or by way of an oral, written or electronic hearing.

8.0 Monitoring

8.1 At the request of the Board, Union, Westcoast and their affiliates will provide to the Board any information the Board may require related to compliance with these undertakings.

9.0 Enforcement

9.1 The parties hereto acknowledge that there has been consideration exchanged for the receipt and giving of the undertakings and agree to be bound by these undertakings.

9.2 Any proceeding or proceedings to enforce these undertakings may be brought and enforced in the courts of the Province of Ontario and Westcoast, Union and their affiliates hereby submit to the jurisdiction of the courts of the Province of Ontario in respect of any such proceeding.

9.3 For the purpose of service of any document commencing a proceeding in accordance with Article 9.2, it is agreed that Union is the agent of Westcoast and its affiliates and that personal service of documents on Union will be sufficient to constitute personal service on Westcoast and its affiliates.

10.0 Release from undertakings

10.1 Westcoast, Union and their affiliates are released from these undertakings on the day that Westcoast no longer holds, either directly or through its affiliates, more than 50 per cent of the voting securities of Union or on the day that Union sells its gas transmission and gas distribution systems.

11.0 Effective Date

11.1 These undertakings become effective on March 31, 1999.

DATED this 7th day of December, 1998.

UNION GAS LIMITED

by _____

CENTRA GAS UTILITIES INC.

by _____

CENTRA GAS HOLDINGS INC.

by _____

WESTCOAST GAS INC.

by _____

WESTCOAST GAS HOLDINGS INC.

by _____

WESTCOAST ENERGY INC.

by _____

UNDERTAKINGS OF THE CONSUMERS' GAS COMPANY LTD., ENBRIDGE CONSUMERS ENERGY INC., 311594 ALBERTA LTD., ENBRIDGE PIPELINES (NW) INC. AND ENBRIDGE INC.

TO: Her Honour The Lieutenant Governor in Council for the Province of Ontario

WHEREAS Enbridge Consumers Energy Inc. holds all of the issued and outstanding common shares of The Consumers' Gas Company Ltd. ("Consumers");

AND WHEREAS 311594 Alberta Ltd. holds all of the issued and outstanding common shares of Enbridge Consumers Energy Inc.;

AND WHEREAS Enbridge Pipelines (NW) Inc. holds all of the issued and outstanding common shares of 311594 Alberta Ltd.;

AND WHEREAS Enbridge Inc. ("Enbridge") holds all of the issued and outstanding common shares of Enbridge Pipelines (NW) Inc.;

the above named corporations do hereby agree to the following undertakings:

1.0 Definitions

In these undertakings,

1.1 **"Act"** means the *Ontario Energy Board Act, 1998*;

1.2 **"affiliate"** has the same meaning as it does in the *Business Corporations Act*;

1.3 **"Board"** means the Ontario Energy Board;

1.4 **"business activity"** has the same meaning as it does under the Act or a regulation made under the Act; and

1.5 **"electronic hearing", "oral hearing"** and **"written hearing"** have the same meaning as they do under the *Statutory Powers Procedure Act*.

2.0 **Restriction on Business Activities**

2.1 Consumers shall not, except through an affiliate or affiliates, carry on any business activity other than the transmission, distribution or storage of gas, without the prior approval of the Board.

3.0 **Maintenance of common equity**

3.1 Where the level of equity in Consumers falls below the level which the Board has determined to be appropriate in a proceeding under the Act or a predecessor Act, Consumers shall raise or Enbridge and its affiliates shall provide within 90 days, or such longer period as the Board may specify, sufficient additional equity capital to restore the level of equity in Consumers to the appropriate level.

3.2 Any additional equity capital provided to Consumers by Enbridge or its affiliates shall be provided on terms no less favourable to Consumers than Consumers could obtain directly in the capital markets.

4.0 Head Office

4.1 The head office of Consumers shall remain within the franchise area of Consumers.

5.0 Prior Undertakings

5.1 Subject to Article 5.2, these undertakings supersede, replace and are in substitution for all prior undertakings of Consumers, Enbridge and their affiliates.

5.2 The undertakings of British Gas PLC and Consumers dated June 16th, 1994 and approved by the Lieutenant Governor in Council on June 23rd, 1994, remain in full force and effect.

6.0 Dispensation

6.1 The Board may dispense, in whole or in part, with future compliance by any of the signatories hereto with any obligation contained in an undertaking.

7.0 Hearing

7.1 In determining whether to grant an approval under these undertakings or a dispensation under Article 6.1, the Board may proceed without a hearing or by way of an oral, written or electronic hearing.

8.0 Monitoring

8.1 At the request of the Board, Consumers, Enbridge and their affiliates will provide to the Board any information the Board may require related to compliance with these undertakings.

9.0 Enforcement

9.1 The parties hereto acknowledge that there has been consideration exchanged for the receipt and giving of the undertakings and agree to be bound by these undertakings.

9.2 Any proceeding or proceedings to enforce these undertakings may be brought and enforced in the courts of the Province of Ontario and Enbridge, Consumers and their affiliates hereby submit to the jurisdiction of the courts of the Province of Ontario in respect of any such proceeding.

9.3 For the purpose of service of any document commencing a proceeding in accordance with Article 9.2, it is agreed that Consumers is the agent of Enbridge and its affiliates and that personal service of documents on Consumers will be sufficient to constitute personal service on Enbridge and its affiliates.

10.0 Release from undertakings

10.1 Enbridge, Consumers and their affiliates are released from these undertakings on the day that Enbridge no longer holds, either directly or through its affiliates, more than 50 per cent of the voting securities of Consumers or on the day that Consumers sells its gas transmission and gas distribution systems.

11.0 Effective Date

11.1 These undertakings become effective on March 31, 1999.

DATED this 7th day of December, 1998.

THE CONSUMERS' GAS COMPANY LIMITED

by _____

_____

ENBRIDGE CONSUMERS ENERGY INC.

by _____

_____

311594 ALBERTA LTD.

by _____

_____

ENBRIDGE PIPELINES (NW) INC.

by _____

_____

ENBRIDGE INC.

by _____

_____

Appendix "B"

DECISION ON A PRELIMINARY MOTION
Enbridge Gas Distribution Inc.
EB-2009-0172
DATED: December 22, 2009

Ontario
Executive Council
Conseil des ministres

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

Sur la recommandation du soussigné, le lieutenant-gouverneur, sur l'avis et avec le consentement du Conseil des ministres, décrète ce qui suit:

WHEREAS Enbridge Gas Distribution Inc. and related parties ("Enbridge") gave undertakings to the Lieutenant Governor in Council that were approved by Order in Council on December 9, 1998 and that took effect on March 31, 1999 ("the Enbridge Undertakings"), and Union Gas Limited and related parties ("Union") gave undertakings to the Lieutenant Governor in Council that were approved by Order in Council on December 9, 1998 and that took effect on March 31, 1999 ("the Union Undertakings");

AND WHEREAS the Minister of Energy and Infrastructure has the authority under section 27.1 of the *Ontario Energy Board Act, 1998* to issue directives, approved by the Lieutenant Governor in Council, that require the Ontario Energy Board to take steps specified in the directives to promote energy conservation, energy efficiency, load management and the use of cleaner energy sources including alternative and renewable energy sources;

AND WHEREAS The Government of Ontario has, with the passage of the *Green Energy and Green Economy Act, 2009,* embarked upon a historic series of initiatives related to promoting the use of renewable energy sources and enhancing conservation throughout Ontario;

AND WHEREAS certain amendments to the *Ontario Energy Board Act, 1998* provided for by the above-noted statute authorize electricity distribution companies to directly own and operate renewable energy electricity generation facilities with a capacity of ten (10) megawatts or less, facilities that generate heat and electricity from a single source, or facilities that store energy, subject to criteria to be prescribed by regulation;

AND WHEREAS it is desirable that both Enbridge and Union are accorded authority similar to those of electricity distributors to own and operate the kinds of generation and storage facilities referenced above, while clarifying that the latter two activities, namely the ownership and operation of facilities that generate heat and electricity from a single source, or facilities that store energy, are to be interpreted to include stationary fuel-cell facilities each of which does not exceed 10 Megawatts in capacity, as well as to allow Enbridge and Union the authority to own and operate assets required in respect of the provision of services by Enbridge and Union that would assist the Government of Ontario in achieving its goals in energy conservation including where such assets relate to solar-thermal water and ground-source heat pumps;

AND WHEREAS the Minister of Energy has previously issued a directive pursuant to section 27.1 in respect of the Enbridge Undertakings and the Union Undertakings, under Order-in-Council No. 1537/2006, dated August 10, 2006.

NOW THEREFORE the directive attached hereto is approved and is effective as of the date hereof.

Recommended: _____
Minister of Energy and Infrastructure

Concurred: _____
Chair of Cabinet

Approved and Ordered: SEP 0 8 2009
Date

_____
Lieutenant Governor

O.C./Décret 1540/2009

MINISTER'S DIRECTIVE

Re: Gas Utility Undertakings Relating to the Ownership and Operation of Renewable Energy Electricity Generation Facilities, Facilities Which Generate Both Heat and Electricity From a Single Source and Energy Storage Facilities and the Ownership and Operation of Assets Required to Provide Conservation Services.

Enbridge Gas Distribution Inc. and related parties gave undertakings to the Lieutenant Governor in Council that were approved by Order in Council on December 9, 1998 and that took effect on March 31, 1999 ("the Enbridge Undertakings"); and Union Gas Limited and related parties gave undertakings to the Lieutenant Governor in Council that were approved by Order in Council on December 9, 1998 and that took effect on March 31, 1999 ("the Union Undertakings").

The Government of Ontario has, with the passage of the *Green Energy and Green Economy Act, 2009,* embarked upon a historic series of initiatives related to promoting the use of renewable energy sources and enhancing conservation throughout Ontario.

One of those initiatives is to allow electric distribution companies to directly own and operate renewable energy electricity generation facilities of a capacity of not more than 10 megawatts or such other capacity as is prescribed by regulation, facilities which generate both heat and electricity from a single source and facilities for the storage of energy, subject to such further criteria as may be prescribed by regulation.

The Government also wants to encourage initiatives that will reduce the use of natural gas and electricity.

Pursuant to section 27.1 of the *Ontario Energy Board Act, 1998*, and in addition to a previous directive issued thereunder on August 10, 2006 by Order in Council No. 1537/2006, in respect of the Enbridge Undertakings and the Union Undertakings, I hereby direct the Ontario Energy Board to dispense,

- under section 6.1 of the Enbridge Undertakings, with future compliance by Enbridge Gas Distribution Inc. with section 2.1 ("Restriction on Business Activities") of the Enbridge Undertakings, and

- under section 6.1 of the Union Undertakings, with future compliance by Union Gas Limited with section 2.1 ("Restriction on Business Activities") of the Union Undertakings,

in respect of the ownership and operation by Enbridge Gas Distribution, Inc. and Union Gas Limited, of:

(a) renewable energy electricity generation facilities each of which does not exceed 10 megawatts or such other capacity as may be prescribed, from time to time, by

regulation made under clause 71(3)(a) of the *Ontario Energy Board Act, 1998* and which meet the criteria prescribed by such regulation;

(b) generation facilities that use technology that produces power and thermal energy from a single source which meet the criteria prescribed, from time to time, by regulation made under clause 71(3)(b) of the *Ontario Energy Board Act, 1998*;

(c) energy storage facilities which meet the criteria prescribed, from time to time, by regulation made under clause 71(3)(c) of the *Ontario Energy Board Act, 1998*; or

(d) assets required in respect of the provision of services by Enbridge Gas Distribution Inc. and Union Gas Limited that would assist the Government of Ontario in achieving its goals in energy conservation and includes assets related to solar-thermal water and ground-source heat pumps;

(e) for greater certainty, the use of the word "facilities" in paragraphs (b) and (c) above shall be interpreted to include stationary fuel-cell facilities each of which does not exceed 10 Megawatts in capacity.

This directive is not in any way intended to direct the manner in which the Ontario Energy Board determines, under the *Ontario Energy Board Act, 1998,* rates for the sale, transmission, distribution and storage of natural gas by Enbridge Gas Distribution Inc. and Union Gas Limited.

George Smitherman

George Smitherman
Deputy Premier, Minister of Energy and Infrastructure

Appendix "C"

DECISION ON A PRELIMINARY MOTION
Enbridge Gas Distribution Inc.
EB-2009-0172
DATED: December 22, 2009

Ontario
Executive Council
Conseil des ministres

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

Sur la recommandation du soussigné, le lieutenant-gouverneur, sur l'avis et avec le con- sentement du Conseil des ministres, décrète ce qui suit:

WHEREAS Enbridge Distribution Inc. and related parties gave undertakings to the Lieutenant Governor in Council that were approved by Order in Council on December 9, 1998 and that took effect on March 31, 1999; and Union Gas Limited and related parties gave undertakings to the Lieutenant Governor in Council that were approved by Order in Council on December 9, 1998, and that took effect on March 31, 1999;

AND WHEREAS opportunities exist for Enbridge Distribution Inc. and Union Gas Limited to carry on business activities that could assist the Government of Ontario in achieving its goals in energy conservation;

AND WHEREAS the Minister of Energy may issue, and the Ontario Energy 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;

NOW THEREFORE the attached Directive is approved.

Recommended: _____
Minister of Energy

Concurred: _____
Chair of Cabinet

Approved and Ordered: AUG 10 2006
Date

_____
Administrator of the Government

O.C./Décret 1537/2006

Minister of Energy

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Ministre de l'Énergie

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Ontario

MINISTER'S DIRECTIVE

Re: Gas Utility Undertakings

Enbridge Gas Distribution Inc. and related parties gave undertakings to the Lieutenant Governor in Council that were approved by Order in Council on December 9, 1998 and that took effect on March 31, 1999 ("the Enbridge Undertakings"); and Union Gas Limited and related parties gave undertakings to the Lieutenant Governor in Council that were approved by Order in Council on December 9, 1998 and that took effect on March 31, 1999 ("the Union Undertakings").

Pursuant to section 27.1 of the *Ontario Energy Board Act, 1998*, I hereby direct the Ontario Energy Board to dispense,

- under section 6.1 of the Enbridge Undertakings, with future compliance by Enbridge Gas Distribution Inc. with section 2.1 ("Restriction on Business Activities") of the Enbridge Undertakings, and

- under section 6.1 of the Union Undertakings, with future compliance by Union Gas Limited with section 2.1 ("Restriction on Business Activities") of the Union Undertakings,

in respect of the provision of services by Enbridge Gas Distribution Inc. and Union Gas Limited that would assist the Government of Ontario in achieving its goals in energy conservation, including services related to:

(a) the promotion of electricity conservation, natural gas conservation and the efficient use of electricity;

(b) electricity load management; and

(c) the promotion of cleaner energy sources, including alternative energy sources and renewable energy sources.

.../cont'd

In addition, pursuant to section 27.1 of the *Ontario Energy Board Act, 1998*, I hereby direct the Board to dispense, under section 6.1 of the Enbridge Undertakings, with future compliance with section 2.1 of the Enbridge Undertakings in respect of research, review, preliminary investigation, project development and the provision of services related to the following business activities:

(a) the local distribution of steam, hot and cold water in a Markham District Energy initiative; and

(b) the generation of electricity by means of large stationary fuel cells integrated with energy recovery from natural gas transmission and distribution pipelines.

Further, pursuant to section 27.1 of the *Ontario Energy Board Act, 1998*, I hereby direct the Board to dispense, under section 6.1 of the Union Undertakings, with future compliance with section 2.1 of the Union Undertakings in respect of research, review, preliminary investigation, project development and the provision of services related to the following business activities:

(a) the generation of electricity by means of large stationary fuel cells integrated with energy recovery from natural gas transmission and distribution pipelines.

To the extent that any activities undertaken by Enbridge Gas Distribution Limited or Union Gas Limited in reliance on this Directive are forecast to impact upon their regulated rates, such activities are subject to the review of the Ontario Energy Board under the *Ontario Energy Board Act, 1998*.

In this directive, "alternative energy source" and "renewable energy source" have the same meanings as in the *Electricity Act, 1998*.

Dwight Duncan
Minister

Appendix "D"

DECISION ON A PRELIMINARY MOTION
Enbridge Gas Distribution Inc.
EB-2009-0172
DATED: December 22, 2009

AIRD & BERLIS LLP

Barristers and Solicitors

Fred Cass
Direct: 416-865-7742
E-mail:fcass@airdberlis.com

November 13, 2009

Kirsten Walli, Board Secretary
Ontario Energy Board
P.O. Box 2319, 26th Floor
2300 Yonge Street
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

Re: Enbridge Gas Distribution Inc. – 2010 Rate Adjustment
OEB File No. EB-2009-0172

In accordance with Procedural Order No. 1 in EB-2009-0172, Enbridge Gas Distribution Inc. (Enbridge) submitted a written argument to the Board that addressed the issues set out in the Procedural Order. This argument was filed on November 4, 2009. On November 9, 2009, the Board issued Procedural Order No. 2, which re-states the issues set out in the earlier Procedural Order. The re-stated issues are as follows:

> 1. Are the Green Energy Initiatives described in Enbridge's Application (Ex. B, Tab 2, Sch. 4), their associated costs, assets and revenues properly part of the regulated operations of Enbridge and thus under the Board's ratemaking authority?
>
> 2. If not, does the Board have jurisdiction to deal with the Green Energy Initiatives, their associated costs, assets and revenues outside of the ratemaking process?

Procedural Order No. 2 indicates that, if Enbridge is of the view that additional written submissions are required to establish the Board's ratemaking jurisdiction over those Green Energy Initiatives which are not characterized as electricity generation facility programs, it may do so by November 13, 2009. The Procedural Order also indicates the Board's expectations that any such submissions would be brief.

Enbridge was authorized to undertake the Green Energy Initiatives by a Directive issued by the Minister of Energy and Infrastructure under section 27.1 of the *Ontario Energy Board Act, 1998*. Prior to the issuance of the Directive, Undertakings given to the Lieutenant Governor in Council prevented Enbridge from engaging in any such activities (without prior approval of the Board).

The Minister's Directive was issued on September 8, 2009 and the scheduled date for filing of pre-filed evidence in this proceeding was October 1, 2009. While Enbridge proposes to move ahead in 2010 with activities authorized by the Directive, the period of

less than a month between issuance of the Directive and the date for filing of evidence was not sufficient for full development of Enbridge's plans.

That should not suggest any lack of urgency for Enbridge to proceed with its Green Energy Initiatives in 2010. The opposite is true. The Green Energy Initiatives are of urgent importance for 2010. The government will require immediate actions from stakeholders and industry participants to implement the aims of the *Green Energy and Green Economy Act* to create 50,000 jobs for Ontarians in the next three years and make Ontario a global leader in clean, renewable energy and conservation. Similarly, immediate action from market participants is necessary to begin to make steps towards the aggressive emissions reduction targets being proposed by the Ontario government. Utilities such as Enbridge are well positioned to deliver on the Government's green energy goals and must begin to do so as soon as possible. Enbridge has identified customers who have immediate interest in some of its Green Energy Initiatives. It is important to note that a defining characteristic of many Green Energy Initiatives, that they are long life assets, creates a real concern in terms of lost opportunities. That is, opportunities not realized now will be lost for a very long period of time, as less efficient and less environmentally sensitive technologies will be used instead. It is these circumstances that make it important for Enbridge to proceed with its Green Energy Initiatives starting in 2010.

Upon the filing of Enbridge's evidence, the Board raised issues about its jurisdiction with respect to electricity generation that are to be addressed as a preliminary matter at the outset of the proceeding. (Procedural Order No. 1 calls this a "preliminary motion.")

The context for the Board's issues about its jurisdiction in respect of electricity generation was the Green Energy Initiatives (as opposed to some other context, such as emergency backup electricity generation to support gas utility operations). Enbridge therefore addressed the Board's issues about electricity generation by way of submissions with regard to the Board's role and jurisdiction in respect of green energy matters. Because Enbridge made submissions about the Board's role and jurisdiction in respect of green energy matters, these submissions are generally applicable to all of the Green Energy Initiatives. Enbridge did not make detailed submissions about individual activities within the overall group of Green Energy Initiatives, nor could it have done so given the context already described (i.e., an evidentiary filing less than one month after Enbridge was given authority to undertake the Green Energy Initiatives and a requirement to address jurisdictional issues as a preliminary matter at the outset of the proceeding).

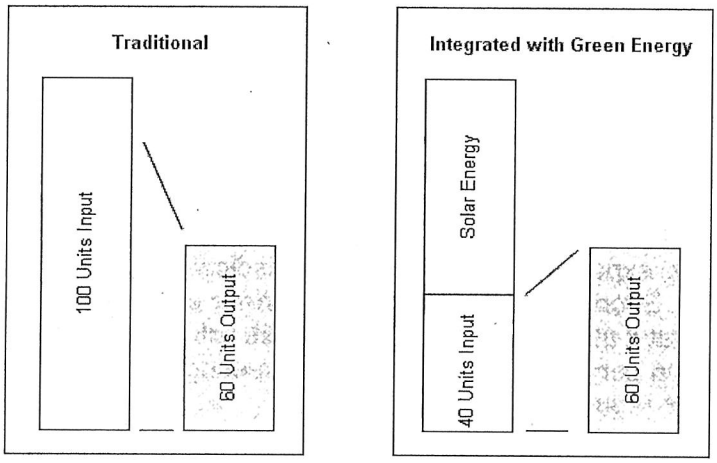
Procedural Order No. 2 broadened the Board's issues to encompass all of the Green Energy Initiatives. Enbridge assumes that, in so broadening the issues, the Board intends to address its role and jurisdiction with regard to green energy matters, rather than attempting to reach conclusions about individual activities within the overall group of Green Energy Initiatives. Nevertheless, given that the Board's issues have now been explicitly expanded beyond electricity generation, Enbridge believes that the Board's consideration of its role in relation to green energy matters would be aided by a greater understanding of some Green Energy Initiatives.

Enbridge's pre-filed evidence sets out some of the Green Energy Initiatives that it may choose to pursue in 2010. As explained in Enbridge's argument, its Green Energy Initiatives are all activities that are newly permitted under the Minister's Directives. The initiatives that Enbridge may pursue in 2010 and subsequent years will largely be driven by market opportunities and demand, which cannot be completely known at this time. For that reason, the list of Green Energy Initiatives set out in Enbridge's pre-filed evidence is intended to be illustrative, and not exhaustive.

That said, with the expanded scope of the "jurisdictional question" beyond electricity generation projects, Enbridge wishes to provide further details of four examples of Green Energy Initiatives that it plans to pursue. All of these will make substantial contributions to energy efficiency and conservation and assist in meeting government goals for emissions and greenhouse gas reductions.

One of Enbridge's proposed Green Energy Initiatives allows for waste energy from pressure let-down stations along the Company's transmission and distribution lines to be captured and converted into electricity. This is effected using technology called a "turboexpander", which is a flow turbine that harvests the energy from gas flows at the point where the pipeline pressures are reduced. The captured energy is then used to produce clean electricity. This technology represents an exciting opportunity for gas distributors to produce "green" electricity from an existing energy source that would otherwise go unused and wasted. Enbridge has identified 40 to 80 megawatts of potential generation from a number of such sources on its distribution system. The August 10, 2006 Minister's Directive permits this type of activity, which is described in the Directive as "project development and the provision of services related to .... the generation of electricity by means of large stationary fuel cells integrated with energy recovery from natural gas transmission and distribution pipelines". This is an opportunity that is exclusively available to gas transmitters and distributors, since it directly uses their pipes and is located within their facilities. Enbridge does not believe that it would be appropriate, for operational integrity and safety reasons, to make this opportunity available to third parties.

A second Green Energy Initiative that Enbridge plans to pursue in 2010 is solar thermal water heating technology. This involves attaching a solar thermal unit to a natural gas water heater, to increase its efficiency. The solar unit will provide more than half of the required water heating, so that less natural gas is required in total. The natural gas savings will be substantial, as seen in the following example. Assuming that a current house needs 60 units of hot water, then it would require 100 units of natural gas to achieve this (assuming that current natural gas water heaters are 60% efficient). If a solar thermal unit was attached to the water heater, then 36 of the 60 units of hot water would come from the sun through the solar panels and the other 24 units would require only 40 units of natural gas. Therefore, as seen in the chart below, the energy efficiency would move from 60% in the conventional case to 150% with the adoption of the solar panel.



Enbridge's role with this new technology would be as an enabler, to take steps to encourage its adoption by interested customers. The September 8, 2009 Minister's Directive permits this type of activity, which involves "assets required in respect of the provision of services by Enbridge .. that would assist the Government of Ontario in achieving its goals in energy conservation, including assets related to solar-thermal water". Given the negative impact that the use of this technology would have on Enbridge's system load, the Company is not prepared to pursue this opportunity unless it is able to include any investment as part of its regulated operations.

Another Green Energy Initiative that Enbridge plans to pursue in 2010 is the capture and use of biogas from landfills or anaerobic digesters. The project would include Enbridge's involvement with facilities and associated pipelines required to convert raw biogas from either a landfill operation or from an anaerobic digester to bio-methane. The resulting bio-methane would have the same chemical characteristics as natural gas and the bio-methane would be injected into the natural gas pipeline system. Careful monitoring and processes must be observed to ensure that the bio-methane would not pose any greater health risk to end use customers and distribution staff than natural gas, and that the bio-methane would have the same effectiveness as natural gas in any end-use appliances. Since the bio-methane would come from a waste stream, it would be considered a "green" gas or renewable in nature. This would assist end-use customers who would be users of the bio-methane to effectively reduce their greenhouse gas emissions. The August 10, 2006 Minister's Directive permits this type of activity, which involves "services that would assist the Government of Ontario in achieving its goals in energy conservation, including services related to: .. the promotion of cleaner energy sources, including alternative energy sources and renewable energy sources." Enbridge has had discussions with municipalities in its franchise area about these projects and the municipalities' desire to acquire these "green" energy sources for their operational needs and to aid municipalities in meeting their greenhouse gas emission reduction targets. One encouraging example of

such discussions is those being held with the City of Toronto about bio-methane opportunities within their Source Separated Organic facilities.[1]

Enbridge also intends to pursue District Energy projects.[2] One current District Energy project opportunity is to provide heat to homes in a subdivision by using thermal energy to provide hot water and space heating to all homes on the site. In this particular project, the ground source geo-exchange system would provide baseload heating and cooling and some electricity would be needed to meet peak heating and cooling requirements. There would be no natural gas system to the community and natural gas consumption would be eliminated. By relying on geothermal energy, the community's total energy (natural gas and electricity) consumption would be decreased significantly below what it would be with conventional natural gas and electrical options for thermal energy. There are also other types of District Energy projects that could be pursued in the future. The September 8, 2009 Minister's Directive permits this type of activity, which involves "the ownership and operation of ... assets required in respect of the provision of services by Enbridge ..that would assist the Government of Ontario in achieving its goals in energy conservation, including assets related to ... ground-source heat pumps.."[3] Enbridge's investigations into District Energy projects have revealed that customers and municipalities are eager to make use of Enbridge's thermal distribution expertise, and that without the participation of a major utility like Enbridge, these projects will not proceed. Because of the fact that these projects will generally decrease natural gas use (as is the case with solar thermal

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[1] The City of Toronto very recently issued its Sustainable Energy Strategy, titled "The Power to Live Green". This strategy recognizes the connection between green energy activities and "distribution". Among other things, it says "Smart energy distribution will improve security of supply, eliminate waste, promote efficiency and enable conservation. Deployment of distributed energy systems and further development to the smart grid will help decentralize energy production and move clean, renewable power to where it is needed, when it is needed."
(at p. 10) http://www.toronto.ca/livegreen/downloads/2009-10_report.pdf

[2] The City of Toronto's Sustainable Energy Strategy describes District Energy as follows: "Distributed or district energy is a recognized approach to meeting the heating, cooling, and domestic hot water needs of buildings, that also can support the process heating requirements of local industry. District energy is the distribution of thermal energy using a pipeline distribution system work. A district energy system may be designed with a single central energy plant or multiple smaller plants. These thermal plants may use various types of fuel including natural gas, renewable energy (geo-energy, bio-energy, solar), or industrial waste heat. By linking buildings and industrial activities together, district energy systems can aggregate the varying energy requirements into a steady heat load that can be effectively and efficiently managed. Modern high performance district energy systems provide an opportunity to meet the demand and minimize energy waste, reduce energy costs, provide increased security of energy supply, and reduce the need for large scale central generation." (at p. 18)

[3] Other types of District Energy projects are permitted under different provisions of the Directives, which allow for Enbridge to own and operate "generation facilities that use technology that produces power and thermal energy from a single source" and which encourage Enbridge to provide "services that would assist the Government of Ontario in achieving its goals in energy conservation, including services related to ... the promotion of electricity conservation, natural gas conservation and the efficient use of electricity .. and the promotion of cleaner energy sources, including alternative energy sources and renewable energy sources."

water heating technology), Enbridge is not prepared to pursue this opportunity unless it is able to include the investment as part of its regulated operations.

As stated, Enbridge's submissions are premised on the assumption that, in broadening the issues, the Board intends to consider its role and jurisdiction in green energy matters. However, the new, broader issues framed in Procedural Order No. 2 also raise the possibility that the Board could attempt to reach conclusions about (or, in essence, pre-judge) individual activities that are within the Green Energy Initiatives. Enbridge submits that, as is apparent from the examples given above, each activity within the Green Energy Initiatives will have its own particular features that must be considered in an activity-by-activity jurisdictional analysis. This is not an analysis that can be done on a preliminary motion at the outset of the 2010 rate proceeding.

Yours truly,

AIRD & BERLIS LLP

Fred D. Cass

Fred Cass

FDC/

Ontario

Ontario Energy Board | Commission de l'Énergie de l'Ontario

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February 19, 1996

Mr. Paul B. Pudge
Board Secretary
Ontario Energy Board
2300 Yonge Street, Suite 2601
Toronto, Ontario
M4P 1E4

Dear Mr. Pudge:

Re: Public Consultation on Utility Diversification

The Minister of Environment and Energy has requested that the Ontario Energy Board ("OEB")consult with interested parties and advise her regarding a framework for amendment of the undertakings between the Lieutenant Governor in Council ("LGIC") and each of Centra Gas, Consumers Gas and Union Gas regarding diversification into designated business areas. The amendments to the undertakings exempt Union, Centra and Consumers from the requirements for the prior approval of the Board under the affiliate transactions, intercorporate indebtedness, guarantees and investments, and diversification undertakings subject to certain conditions. The Minister also asked for advice on the business areas the three major gas utilities should be allowed to become involved in without the prior approval if the Board and advice as to the appropriate regulatory controls that should be put in place.

Board Technical Staff is not, at this time, providing a submission on the issues set out by the Board in its December 29, 1995 letter, but is providing a brief history of the development of the undertakings. Board Technical Staff is also providing a brief synopsis of the history of the public float undertaking relating to the ownership of Consumers Gas. As well, this letter includes a brief description of the Board's Report to the LGIC with regard to Ontario Hydro's investment plans for Ontario Hydro International Inc. Staff is hopeful that this information may provide some

context for the current day situation.

Background to the Current Undertakings

When the Ontario Energy Board Act ("the Act") was introduced in 1960, it made no provision for the review of changes in the ownership of the Ontario local distribution companies ("LDCs"). At that time the LDCs were broadly held, independent corporations.

In 1969, Consumers Gas attempted to buy all the assets of Union Gas. The Government of the day introduced a bill which amended the Act to require a review of changes in ownership of the LDCs (presently section 26 of the Act). The Board was asked by the LGIC to review the proposed purchase of Union by Consumers. In its E.B.O. 36 Report, the Board commented on the public interest in the context of a transfer of ownership. The Board found that one of the problems in assessing the public interest is that a benefit to one group is often a detriment to another. Thus some cost reductions which benefit the operating company and, under rate regulation, ultimately benefit the customers or the shareholders or both, might be at the expense of another sector of the public, for example, the employees. The Board found that it must weigh the various benefits versus the disadvantages and come to a conclusion as to whether there is an overall benefit or detriment to the public interest. The Board found that in this particular case that it was not in the public interest to allow this takeover.

Since 1969, all three of the Ontario natural gas distributors have undergone ownership changes which resulted in each of them being controlled by a holding company. Undertakings as to the future conduct of the parties have been given by the holding companies, the utilities, and their parents as an assurance of how the utility will be managed and financed once the takeover was completed.

In 1975, Norcen Energy Resources ("Norcen") through a subsidiary made an offer to purchase all the shares of Northern and Central. Norcen also planned to reorganize itself as a holding company with Northern and Central as a subsidiary. A hearing was held by the OEB pursuant to section 26.2 and the Board in its E.B.O. 71 Report recommended approval of the transaction, with some conditions. These conditions, or undertakings, included provisions for the review of the gas supply position of Northern and Central, notice to the Board of a change of control, exemption from an Alberta law regarding approval of equity capital issues, maintenance of common equity in the utility, and provisions for payment of existing intercorporate indebtedness.

In 1980, Consumers and Hiram Walker combined their resources and through a reorganization created Hiram Walker Resources Limited as a holding company and Consumers Gas as one of its subsidiary. This reorganization did not involve a change of control. The Minister of Energy was informed of the proposed reorganization and approval was given with certain undertakings as conditions. These undertakings required the companies to give notice of any change of control, and that a majority of directors be independent, as well they made provisions for additional equity to be injected into Consumers and the maintenance of common equity at appropriate levels, and restricted intercorporate indebtedness.

In 1984, Norcen sold its interest in Northern and Central to Inter City Gas Corporation. This did involve a change of control. A hearing was held by the Board under file number E.B.O. 118 and the change of ownership was approved with various conditions, which included provision for the maintenance of common equity, restrictions on intercorporate indebtedness, change of control notice, allocation of takeover costs, head office location, independent directors, restructuring of the corporation to make provision for a pure utility and guarantees on payment of an existing intercorporate note.

In 1985, Union Gas proposed to reorganize itself into a holding company (Union Enterprises) and two subsidiaries, Union Gas and Union Shield Resources. The reorganization triggered section 26 because of the purchase by Union Enterprises of all of Union's shares and the transfer of assets. Union Enterprises applied to the LGIC for an exemption from section 26, on the basis that there was no change in the control of Union. In the application Union Enterprises and Union proposed certain undertakings they would give to the LGIC. The application was granted by the government without a hearing, but required that undertakings relating to: the provision for restrictions on intercorporate indebtedness and guarantees, the maintenance of common equity, notice of change of control, and the allocation of costs of reorganization and management costs.

In 1985, the Board was ordered by the LGIC to hold a hearing on the impact of the purchase of Union Enterprises by Unicorp Canada Corporation. The Board was also asked to consider the more general question of the need for public review and regulation of both direct and indirect ownership and control, and transfers thereof, of the natural gas utilities in Ontario. The Board concluded that the purchase of Union Enterprises by Unicorp should be permitted.

In its E.B.R.L.G. 28 Report, the Board set out its discussion on the regulatory principles that underlay its findings on its proposed undertakings. One of the undertakings recommended by

the Board was a prohibition on affiliate transactions without the prior approval of the Board. The Board defined affiliate transactions as transactions between members of the holding company family. This is where a utility buys a product or service from a subsidiary or from the parent, grandparent or sister corporation. The danger for the utility customers is that the price or cost may be in excess of what the utility may pay in the market which would lead to unduly increased rates for the customers. the Board found that on the other hand a prudent management may enter into affiliated transactions which would be beneficial to customers.

On the issue of the indebtedness of the utility the Board found that the debt capacity of a utility should be reserved for utility related activities. This means that the utility should not borrow for the purposes of a parent or grandparent holding company, nor should the utility's credit be used indirectly by them. The Board further found that the utility should not lend money or make investments except for utility related purposes without the leave of the Board.The Board would grant exemptions for loans to employees and officers to purchase shares in the company or to accommodate employee relocation.

The Board stated some general conclusions on the issue of diversification by the utilities in its E.B.R.L.G. 28 Report. The Board attributed the utilities' desire to diversify as a result of the maturation of their pure utility markets. In some cases non-utility activities are undertaken by separate companies whether subsidiaries of the utility or sister or parent companies within a holding company. The utility is not kept pure in the sense of having no non-utility activity whatsoever. Difficulties arise such as cross-subsidization of non-utility activities by a utility, captive markets, capital structures and over-leveraging,all of which could adversely affect the rates charged to customers and the quality of the monopoly service. The Board considered the possibility that hypothetical capital structures can be created which could free the customer from the burden of cross-subsidization. However it determined that hypothetical capital structures have been used with limited success as a rate-making tool to isolate utility financing but can do little to correct areas of cross-subsidization. However, the Board also concluded that if diversification is restricted to the subsidiaries and the holding companies of utilities, then the Board need only approve the withdrawal of funds from the utility or the use of credit to support non-utility activity. Although, the problems with approving a particular diversification or purging after the fact remain. The Board determined that it should focus on the utility alone. The Board recommended that any diversification by the utility within the utility should be disallowed without the prior approval of the Board.

As part of its response to the order in council, the Board also discussed its concerns with the legality and enforceability of the undertakings. The Board was not certain whether the LGIC had the right in law to assign or to enforce past or proposed undertakings. The Board was concerned that a court of law may have trouble enforcing undertakings because they deal with complicated ongoing judgemental issues which can change frequently. As a result of these concerns,the Board recommended that the undertakings be enshrined in legislation.

In 1986, Gulf Canada Corporation through its wholly owned subsidiaries HWR Holdings Inc. and 685515 Ontario Inc. acquired the majority ownership of Consumers Gas. In September 1986, Gulf Canada applied to the Board under section 26 seeking leave of the LGIC for a corporate reorganization involving HWR Holdings Inc. and 685515 Ontario Inc. The Board held a public hearing under file number E.B.R.L.G. 30 and in its report to the LGIC the Board recommended approval of the transaction provided certain undertakings were agreed to by the companies. The undertakings included provision for the maintenance of the public float, independence of the board of directors, independence of auditors, location of the head office in the franchise area, prior notice of change of control, restriction on affiliated transactions and support arrangements, maintenance of common equity and restrictions on intercorporate indebtedness, guarantees and investments, and restrictions on the allocation of acquisition and reorganization costs and diversification. Paragraph 4.2 of the agreed Gulf/Consumers undertakings stipulated that Consumers was to divest itself of Arbor Living Centres or obtain approval of the Board to continue its investment or participation in Arbor before April 9, 1986. Paragraph 3.3 of those same undertakings involved pre-approval for financing of subsidiary companies not regulated by this Board.

In 1986, the Minister of Energy introduced into the Legislature Bill 142, an act to amend the Ontario Energy Board Act. This new legislation was intended to introduce rules of conduct designed to further ensure that the public interest in natural gas price, service and reliability be protected. The content of this legislation mirrored the intent of many of the previous undertakings. The legislation which used the "picket fence" approach was designed assure protection of the public interest, regardless of who controls the utility. The suggested amendments would have required among other things that non-utility investments in existence as of April 9,1986, be carried out in separate non-subsidiary corporations. Exemptions from these conditions would be done only with the approval of the Ontario Energy Board. Bill 142 would have superseded, the undertakings however it did not proceed past the second reading.

Consumers investment in Arbor Living Centres (nursing homes) was one of the diversification investments of Consumers Gas which was held through Congas, their wholly owned subsidiary In 1988, Consumers applied to the Board to continue its ownership of Arbor as well as the lending of capital to Gazifere an affiliate. Subject to certain conditions the Board approved continuance of certain levels of investment in Arbor, however further investment was not approved by the Board. The Board approved the Gazifere subsidiary financing issue. Consumers later divested itself of Arbor Living Centres.

In 1989, ICG Utilities (Ontario) Ltd. requested that the LGIC grant it certain exemptions from the undertakings given to the LGIC in 1988. The exemptions were sought in relation to a proposed investment by ICG Ontario in a cogeneration project to be built at the Boise Cascade pulp and paper mill in Fort Frances, Ontario. The project was proposed to be owned by ICG Ontario and held as a division of the utility company. The Board in its E.B.R.L.G. 33 Report recommended that the LGIC approve the request from ICG Ontario, subject to certain conditions. The recommended undertakings included, but were not limited to, a provision requiring prior approval of any non-utility investment, establishment of the project in a legally and financially separate corporate entity rather than as an operating division of the utility company by a date to be determined, and indemnity for the ratepayers from additional costs or liabilities arising from ICG's non-utility investment. The cogeneration project has since been transferred from the utility to another Westcoast company.

In 1989, Inter City Gas Corporation filed an application with the OEB with respect to the proposed change in control of ICG Canada which included the shares of ICG Ontario Inc. The Board examined the proposed change in control of ICG Ontario from Intercity to Westcoast and found that the proposed change in control to be in the public interest. The Board also found that certain minor modifications to the existing Inter-City undertakings were appropriate.

In 1990, British Gas applied to the OEB for approval to purchase 83% of the Consumers common shares held indirectly by the Reichmann family of Toronto.The British Gas acquisition also included the purchase of 17% of the Consumers stock publicly traded on the Toronto and Montreal stock exchanges.The Board found that the ownership of Consumers by British Gas would not be contrary to the public interest. The Board also found that the existing undertakings should be continued with the new owner with only minor amendments. Some additional undertakings were also recommended due to the foreign ownership and control of British Gas, including a requirement that the direct owner of Consumers be an Ontario corporation, and

protection in the event of a re-nationalization of British Gas. The government also included certain undertakings regarding energy efficiency and research and development. Following the completion of its purchase, British Gas reorganized Consumers such that most of the non-utility subsidiaries were divested and Consumers moved closer to being a pure OEB regulated utility.

In 1992, Westcoast Energy Inc. gave undertakings to the Ontario government when it acquired control of Union Energy Inc. which held all the outstanding shares of Union Gas Limited. This acquisition did not trigger section 26 of the Ontario Energy Board Act or the change of control provision in the existing undertakings given by Unicorp. The Westcoast undertakings contained provisions relating to the independence of the board of directors and auditors, the location of the head office, protection of employment levels, notice of changes of control, restrictions on affiliate transactions, the maintenance of common equity, research and development; energy efficiency, restrictions on intercorporate indebtedness, guarantees and investments, diversification, and the allocation of management, acquisition and reorganization costs.

In 1995, Westcoast implemented a shared services plan for Union and Centra to capture savings in nine functional areas, e.g. human resources, gas supply and financing. Westcoast also announced that it was considering a merger of the two companies. As well, Westcoast has created strategic business units for distribution, emerging businesses, and storage and transportation. It is continuing to change its organizational and operating plans to accommodate this structure.

In 1993, British Gas made an application to the Board for leave of the LGIC with respect to the proposed sale of 85 percent of the common shares of the Consumers to IPL Energy ("IPL"). The Board found the proposed transaction to be in the public interest, subject to IPL's agreement to certain undertakings based closely on the existing British Gas undertakings.

In a reference from the LGIC in 1994, the OEB reviewed the risk to Ontario ratepayers associated with international investment activities of Ontario Hydro International Inc. ("OHII"). The Board found that ideally ratepayer funds should not be used for international investment but given the restrictions in the Power Corporation Act, the Board found that Hydro chose the only practical means available to initially finance its international activities. The Board found that Hydro's international investments have the potential to provide ratepayer benefits in the long term, provided the investments and associated risks are prudently managed. If ratepayer benefits do not materialize the justification for using ratepayer funds disappears. To limit the risk the

Board recommended that a definite cap be placed on the amount of ratepayer funds available for OHII's use in equity investments. The Board noted that the use of a non-utility subsidiary using external financing was preferable but accepted the subsidiary approach due to restrictions on raising equity capital under the Power Corporation Act. The Board also recommended that criteria to select individual investments needed to be consolidated and clarified, and that monitoring and baselines should be implemented. The Board also recommended that limits be put on investments by project type, country and investment partners and that a practical exit strategy be developed for all new projects.

History of the Public Float

The public float in Consumers Gas common shares was initiated in September 1981 by the than parent of Consumers, Hiram Walker Resources Ltd ("HWR"). The objective was to obtain additional equity for Consumers, rather than direct investment by the parent Hiram Walker Limited.

During the E.B.R.L.G. 28 hearing while reviewing the takeover of Union Gas by Unicorp, the Board considered the issue of the benefits and desirability of a public float in Union Gas' common shares. One of the parties testifying on the issue was Consumers Gas. Consumers' witness, R. Martin then President of Consumers, testified that the public float had three major benefits: it is an additional source of common equity, it provides greater flexibility as an alternative financing avenue, and it provides a proxy to the market efficiency for the OEB. He also cited the existence of minority shareholders as an encouragement to management to increase efficiency and profits (E.B.R.L.G. 28, *Report of the Board* Vol. II, p. 61). Several other parties also testified as to the desirability of a public float in Union's shares. However, the Board rejected the idea of requiring Unicorp to create a public float because of the fact that it had already acquired all of the shares and it would incur costs in re-establishing the float. The Board in rejecting the proposal to require a float also considered the fact that the existing public float was not in Union's shares, but in the shares of the holding company.

During the E.B.R.L.G. 30 hearing reviewing the acquisition of HRW by Gulf Canada the new parent indicated that it was in favour of maintaining the public float that was currently in the market place of about 17 percent. Gulf also testified that it had no intention or desire to decrease the float. However, it did resist the concept of an undertaking requiring it to maintain the float.

The Board found that the public float served several purposes. First it increased the independence of Consumers from the parent due to the existence of minority shareholders. Second the float provides market data with respect to how individual investors perceive the risks and performance of Consumers. Finally, the Board considered the float as advantageous because it provides Consumers with an alternative route to raise capital through the equity markets. The Board determined that given Gulf did not intend to reduce the float, an undertaking to retain a 15 percent float, as recommended by Board Staff would not cause difficulties for Gulf. Following the hearing, the LGIC required Gulf and Consumers, to sign undertakings including a requirement that the public float be maintained at a minimum of 15 percent.

In 1990, British Gas plc offer to Gulf Canada for Consumers included a significant premium over the trading price, and required it to also make the offer to minority shareholders because of securities legislation. Given the premium in the offer it was expected to be accepted by all shareholders and therefore Consumers would become a wholly owned subsidiary of British Gas. In the E.B.R.L.G. 35 hearing regarding the takeover, the issue of the need to re-establish a public float was considered by the Board.

Much of the evidence in the hearing dealt with the issue of the desirability of a public float in Consumers shares, and public offerings of Consumers' shares. British Gas offered to undertake to re-establish a float within ten years conditional upon it not incurring any economic loss in doing so. The Board reviewed all the previous reasons it had relied on in E.B.R.L.G. 30 in making its recommendation that a 15 percent float be maintained as one of the undertakings. The Board also noted several additional reasons in support of re-establishing the public float. One of the reasons involved the potential for employees of Consumers to participate in the ownership of the Company, especially given that the Board considered the current and future employees as one of the affected public interests. The Board also stated the view that a public float in Consumers was of interest to potential investors because of its relative low risk and that Canadian investors had become accustomed to being able to invest in Consumers. The Board therefore recommended that the LGIC require as one of its conditions of approval, the 15 percent public float be re-established within two years. The LGIC accepted this recommendation and British Gas accepted the undertaking as part of the conditions of its purchase of Consumers. In 1992 British Gas made a secondary offering of 15 percent of the common shares.

In 1994, IPL Energy ("IPL") made an unsolicited offer for British Gas' stake in Consumers. Again this was an indirect takeover, but British Gas pursuant to the undertakings made an

application to the Board. IPL did not contest the continuance of the float undertaking and in fact included it in its draft undertakings filed as evidence in the hearing. While there was discussion of the potential synergies between Consumers and IPL, as well as some potential for new businesses, there was no discussion of buying up the public float. In its E.B.O. 179 Report to the LGIC, the Board recommended that the undertaking requiring a 15 percent public float be continued and cited many of the same reasons as had been discussed in previous hearings.

In order to ensure that all participants are in possession of the full set of undertakings for each of the LDCs a copy of the existing undertakings for Consumers, Centra and Union, without the amendments for the York water project is enclosed with this letter. Board Staff hope that this information is helpful to the parties and the Board in their consultation on this matter. If you have any questions regarding the above please contact the undersigned at (416) 440-7628.

Yours truly,



Brian L. Hewson
Senior Project Manager
Technical Operations

Enclosure
cc: All Participants

Ontario

Executive Council
Conseil des ministres

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

Sur la recommendation du soussigné, le lieutenant-gouverneur, sur l'avis et avec le consentement du Conseil des ministres, décrète ce qui suit:

Enbridge

In consideration of British Gas plc and The Consumers' Gas Company Ltd. providing an Undertaking to the Lieutenant Governor in Council dated June 16, 1994, and IPL Energy Inc. and The Consumers' Gas Company Ltd. providing an Undertaking to the Lieutenant Governor in Council dated June 21, 1994, British Gas plc, British Gas Overseas Holdings Ltd., British Gas International Holdings B.V, British Gas Finance (Canada) Limited, British Gas Holdings (Canada) Limited and The Consumers' Gas Company Ltd. are relieved of their obligations pursuant to their Undertaking dated December 13, 1990, and leave is hereby given to British Gas plc, British Gas Overseas Holdings Ltd. and British Gas Netherlands Holdings B.V. to sell the common and preference shares of British Gas Finance (Canada) Limited to IPL Energy Inc..

Recommended _____
Minister of Environment and Energy

Concurred _____
Chair of Cabinet

Approved & Ordered JUN 23 1994
Date

_____
Lieutenant Governor

O.C./Décret 1606/94

UNDERTAKINGS OF BRITISH GAS PLC

TO: The Lieutenant Governor in Council for the Province of Ontario

WHEREAS British Gas plc ("British Gas") indirectly owned approximately 85 per cent of the outstanding common shares of the Consumers' Gas Company Ltd. ("Consumers Gas");

AND WHEREAS British Gas entered into a written agreement dated November 19, 1993 with Interprovincial Pipeline System Inc. (now IPL Energy Inc.) ("IPL") for the sale to IPL of British Gas' interest in Consumers Gas;

AND WHEREAS British Gas has applied to the Lieutenant Governor in Council for leave in respect of the sale to IPL pursuant in Article 1.5 of the Undertakings (the "1990 Undertakings") given to the Lieutenant Governor in Council by British Gas on December 13, 1990;

AND WHEREAS British Gas has also applied to be relieved from the 1990 Undertakings;

AND WHEREAS the Ontario Energy Board held a public hearing with respect to the application by British Gas and has submitted a report with respect thereto to the Lieutenant Governor in Council;

NOW THEREFORE in consideration of the Lieutenant Governor in Council granting leave to permit the sale to IPL of British Gas' indirect interest in Consumers Gas and relieving British Gas, British Gas Overseas Holdings Ltd., British Gas International Holdings B.V., British Gas Finance (Canada) Limited, British Gas Holdings (Canada) Limited, and The Consumers' Gas Company Ltd. of any and all obligations under the 1990 Undertakings British Gas agrees to be bound to the following Undertakings. In addition to the $9.9 million British Gas has already spent or committed on research and technology as a result of the 1990 Undertakings:

1.1 British Gas will spend or cause its affiliates to spend $10.0 million by December 31, 2000 in respect of research, development and demonstration activities in Ontario related to the efficient and environmentally friendly use of gas and in respect of the promotion of the commercial application and exploitation of such research and development. Consumers Gas shall co-ordinate, monitor and select such research, development, demonstration and promotion activities after reviewing those proposed activities with an advisory group comprised of a representative of each of the Ministry of Environment & Energy, Ministry of Economic Development and Trade, Gas Technology Canada and CANMET, provided further that British Gas shall make available to Consumers Gas such advice and assistance as Consumers Gas may reasonably request for the purpose of the research, development, demonstration and promotion activities contemplated in this Article.

1.2 The cumulative cost of any such advice and assistance provided from time to time by British Gas to Consumers Gas in accordance with Article 1.1, the administrative costs incurred by Consumers Gas in accordance with Article 1.1 and the administrative costs incurred by the Advisory Committee set out in Article 1.1 shall be deducted from the outstanding balance of British Gas' financial commitments under Article 1.1; provided that:

(i) the costs attributed to British Gas and the advisory committee shall be limited to British Gas' and the Advisory Committee members' out-of-pocket expenses and shall not include any charge in respect of over-head; and

(ii) the total of all costs under (i) above shall not exceed 10 per cent of the funds spent from time to time in accordance with Article 1.1. and British Gas and the Advisory Committee shall not be entitled to any credit or reimbursement for costs over that figure.

1.3 Consumers Gas, in consultation with the Advisory Committee shall submit annually to the Minister of Environment and Energy: a) a report prepared by its auditors detailing the degree to which the financial commitments in Article 1.1 have been fulfilled; and b) a report describing Consumers Gas' plans, and Undertakings regarding the financial commitment defined in Article 1.1.

At the request of the Minister of Environment & Energy, British Gas will provide to the Minister or Consumers Gas or its auditors any information in the power, possession or control of British Gas that the Minister may reasonably require related to compliance with these Undertakings.

1.4 Any and all commitments and obligations of British Gas and Consumers Gas pursuant to these Undertakings shall expire as of the earlier of:

(i) the date of which the sum of $10.0 million has been spent or committed in accordance with Article 1.1.; and

(ii) December 31, 2000, provided that British Gas shall remain obligated to pay all amounts committed for expenditure by such date.

1.5 The parties hereto agree to be bound by these Undertakings. These Undertakings are terms and conditions of the leave granted by the Lieutenant Governor in Council. Any proceeding or proceedings against British Gas to enforce these Undertakings may be brought and enforced in the courts of the Province of

Ontario and British Gas, its affiliates and associates hereby submit to the jurisdiction of the courts of the Province of Ontario in respect of any such proceeding or proceedings.

DATED this 16th day of June, 1994

BRITISH GAS PLC

Per:

THE CONSUMERS' GAS COMPANY LTD.

per:

Ontario Energy Board

Commission de l'énergie de l'Ontario

Ontario

EB-2008-0304

IN THE MATTER OF the *Ontario Energy Board Act 1998*, S.O. 1998. c. 15, (Schedule B);

AND IN THE MATTER OF an Application by Westcoast Energy Inc. and Union Gas Limited for leave pursuant to section 43(2) of the *Ontario Energy Board Act, 1998* (the "Act") for the transfer of a controlling interest in Union Gas Limited to a limited partnership;

AND IN THE MATTER OF an Application by Westcoast Energy Inc. and Union Gas Limited pursuant to section 21(4) of the Act for the Board to dispose of this application without a hearing.

DECISION AND ORDER

On September 15, 2008 Westcoast Energy Inc. ("Westcoast") and Union Gas Limited ("Union") filed an application pursuant to section 43(2) of the *Ontario Energy Board Act, 1998* requesting leave of the Board to transfer a controlling interest in Union from Westcoast to a limited partnership to be organized under the laws of Ontario.

On October 15, 2008, the Board granted intervenor status to four parties, the School Energy Coalition ("SEC"), the City of Kitchener, the Consumers Council of Canada ("CCC") and the Canadian Manufacturers and Exporters Association ("CME"). On November 6th, the Board was advised that the CCC would be taking no position on the matter. On the same day, the Board received a letter from the Industrial Gas Users Association ("IGUA") providing comments pursuant to Rule 24. IGUA is not an intervenor.

For the reasons set out below, the Board approves this application subject to certain conditions.

The Transaction

This application is brought pursuant to Section 43(2) of the *Ontario Energy Board Act*, which provides as follows:

> 43. (2) No person, without first obtaining an order from the Board granting leave, shall,
>
> (a) acquire such number of voting securities of a gas transmitter, gas distributor or storage company that together with voting securities already held by such person and one or more affiliates or associates of that person, will in the aggregate exceed 20 per cent of the voting securities of a gas transmitter, gas distributor or storage company; or
>
> (b) acquire control of any corporation that holds, directly or indirectly, more than 20 per cent of the voting securities of a gas transmitter, gas distributor or storage company if such voting securities constitute a significant asset of that corporation. 1998, c. 15, Sched. B, Section 43 (2).

Three steps in the proposed transaction are relevant to this Decision. The first concerns the direct ownership of Union. Union is currently 100% owned by Westcoast. Westcoast in turn is owned by a U.S. corporation, Spectra Energy Corporation, a U.S. corporation based in Houston. The existing structure is set out in Appendix "A".

The applicants propose to transfer all of the voting shares of Union to a limited partnership to be organized under the laws of Ontario. All of the voting shares of the general partner of the limited partnership would be owned by Westcoast. Westcoast will own 99.999% of the limited partnership units and the wholly owned general partner will own the remaining 00.001% of the limited partnership units as indicated in Appendix "B".

The second element of the transaction involves Union Gas Limited (UGL), the Ontario corporation, becoming Union Gas Company (UGC), a Nova Scotia unlimited liability company incorporated under the *Nova Scotia Companies Act.* A corporation continued in Nova Scotia and converted to a ULC retains all of the rights and obligations it had prior to the continuance. For Canadian tax purposes, the ULC is the same as any other business corporation and is subject to tax on all of its taxable income. In other words, the Canadian tax status of Union will not change. However, there are significant implications for U.S. tax purposes. The tax liability of the U.S. parent is discussed further in these reasons.

The third element of the transaction is the redemption of the existing preferred shares in Union. Union currently has approximately 4,200,000 preferred shares valued at $110 million held by unrelated parties. Once Union becomes an unlimited liability company, the shareholders on a windup become liable for all the obligations of the company. The existing preferred shareholders, of course, did not contemplate unlimited liability. Accordingly, the existing preferred shares must be redeemed and replaced by an equivalent amount of unrelated third party debt.

Under the terms of one of the series of preferred shares, Union has a redemption option only once every five years. The next redemption option date is January 1, 2009. Notice of the proposed redemption must be given 30 days prior to the redemption date. This is the reason that Union asks that this application be dealt with on an expedited basis.

Rationale for the Transaction

The driving force behind this transaction is the significant tax savings to Spectra, the U.S. parent. When a U.S. corporation receives dividends from a foreign subsidiary, that corporation is subject to U.S. tax laws and the repatriated earnings are considered to be earnings and profit for U.S. tax purposes. Under the current ownership structure, Union's earnings and profit as determined under

the U.S. tax rules are deemed to move to Westcoast at the time that Union pays the dividend to Westcoast. Inserting a limited partnership between Westcoast and Union provides Spectra with more control over when Union's earnings and profit are moved to Westcoast and up the chain to the U.S. parent, Spectra.

Under the new ownership structure, Union's earnings and profit will be accounted for first by the limited partnership and only taken into account by Westcoast when the limited partnership makes the distribution to Westcoast. Control over the timing of the limited partnership's distribution allows Spectra to utilize tax losses which offset the tax liability. These tax savings are estimated to amount to $50 million[1]. They relate to a loss carried forward resulting from the premium over book value Duke (now Spectra) paid for goodwill when Duke acquired Westcoast in March, 2002.

Impact of the Transaction

Union maintains that the transaction will have no adverse impact on Union, Union's customers, or Union's costs, revenues, rights, obligations, liabilities, management, operations or governance. The evidence supports that conclusion.

It is clear that Union's Canadian tax status will not change. It is also evident that Union's management, Board of Directors and ultimate ownership will not change. Union's head office will remain in Chatham and the company will continue to be operated from there.

There was some discussion in these proceedings whether the obligations of Union Gas Company ("UGC") as a Nova Scotia ULC would be less than those of Union Gas Limited ("UGL") the Ontario Corporation. As counsel for Union points out, Union is being continued as a ULC under Nova Scotia laws and the Nova Scotia Statutes regarding corporate obligations mirror those in Ontario[2].

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[1] Exhibit C.2, pg. 2

[2] See Section 181 of the *Business Corporation Act* (Ontario) and Section 133 of the *Companies Act*

Nor does the continuation have any impact on the Board's jurisdiction. That jurisdiction flows from Section 36 of the *Ontario Energy Board Act*, which grants the Board jurisdiction over gas transmitters and distributors in Ontario. The fact that Union becomes a Nova Scotia unlimited liability company does not reduce the jurisdiction of this Board regarding any of Union's Ontario activities.

There are however, three concerns voiced by the intervenors. The first is whether the undertakings by Union Gas Limited and Westcoast Energy Inc. given to the Lieutenant Governor in Council on December 9, 1998 remain in force. The second is whether the cost of this reorganization and this proceeding should be borne by the ratepayers. The third is whether the cost reductions resulting from this reorganization should be passed on to ratepayers and if so, when. Each of these issues is considered below.

The Undertakings and the Order in Council dated December 9, 1998

On December 9, 1998 Union Gas Limited and West Coast Energy Inc. entered into undertakings with the Lieutenant Governor in Counsel attached as Appendix "C" [3]. The most important of the undertakings is paragraph 3.0 which concerns the maintenance of common equity. That undertaking provides that Union will maintain a level of equity at a level established by the Board. If the equity falls below that level, it must be restored to meet the required level within 90 days. At present, under the Board's most recent Decision, Union is required to maintain its common equity ratio at 36%.

(Nova Scotia)

3 (Exhibit K:1.2). These undertakings date back to undertakings of May 13, 1988 which followed the acquisition of Union by Unicorp Canada Corporation and a Report of the Board on that matter required by an Order in Council issued in 1985. In the Matter of a Reference Respecting Unicorp Canada Corporation, [See EBRLG 28, August 2, 1985]. These undertakings were replaced by undertakings dated November 27, 1992 (approved and accepted by the Lieutenant Governor in Council on December 16, 1992) when Westcoast Energy Inc. acquired control of Union Gas from Unicorp Canada Corporation. The 1992 undertakings were essentially reaffirmed by the December 9, 1998 undertakings which became necessary with passage of the *Energy Competition Act, 1998* on October 10, 1998.

The current signatories include Union and Westcoast. As indicated, Union Gas Limited, the Ontario corporation, will cease to exist and will become Union Gas Company, a ULC under Nova Scotia law. These undertakings, as S.3.1 indicates, apply to Union and Westcoast and its "affiliates". SEC argues that the limited partnership Union intends to create would not be an affiliate because it is not a corporation. The undertakings in S.1.2 define an affiliate as having the same meaning as it does in the *Business Corporations Act,* R.S.O. 1990, Chapter B.16. SEC argues that the *Business Corporations Act* defines an affiliate as a corporation. Accordingly, in their view, it would not (and cannot) include the proposed limited partnership.

In response to an SEC interrogatory[4], Union confirmed that Union and Westcoast intend to abide by the terms of the undertakings, the Affiliate Relations Code and all regulations by which the Board regulates affiliates of regulated utilities. Union states that "the Limited Partnership and the General Partner are wholly owned subsidiaries of Westcoast and thus would be affiliates of Union Gas and would therefore be subject to any requirement of the Board".

SEC asks the Board to make it a condition of approving this transaction that the proposed limited partnership and the Nova Scotia ULC, Union Gas Company, sign the undertakings. Union responds that the Board has no authority because the undertakings are an agreement between Union and the Lieutenant Governor in Council. The Board is not a party. Moreover, Union says that regardless of any condition the Board might direct, the Board has no way of knowing whether the Lieutenant Governor in Council will agree to that condition.

While it is unlikely that the Lieutenant Governor in Council would not agree, Union is technically correct. Moreover, even if steps were taken by the Lieutenant

[4] Exhibit D.1

Governor in Council to add UGC or the partnership to the undertakings, that might take time and the deadline for this transaction might pass.

In the circumstances, the Board asked Westcoast and Union to confirm that they regard the Ontario limited partnership and the general partner as affiliates of Westcoast that will comply with undertakings in the same fashion as Union Gas Limited. It is significant in this regard that Westcoast will control UGC, just as it controlled UGL in the past. The Board accepts that the undertakings provided by Union and Westcoast (attached to this Decision as Appendix "D") are sufficient evidence that the general partner and the limited partnership will be bound by the undertakings.

The Costs of the Transaction

The second issue relates to whether any of the costs of this transaction will be borne by the ratepayers. Union has agreed that all costs of the transaction will be paid by Westcoast not Union and will not be borne by ratepayers.

The Reduction in Revenue Requirement

An essential element of this transaction is that the preferred shares will be replaced by debt. Because the cost of the debt is less than the cost of preferred shares, there is an annual reduction in the revenue requirement of approximately $1.3 million.

The parties agree that this amount should be reflected in the reduction of rates. However, they question the timing. Union takes the position that this should occur on the rebasing at 2012. The intervenors state that it should take place on January 1, 2009.

Union's rationale for the 2012 date is that the company entered into a five year Incentive Rate Plan beginning January 1, 2008. This is a five year plan which provides that no adjustments are to be made unless there are unusual

circumstances. Union says the $1.3 million reduction does not constitute an unusual factor or Z factor.

The intervenors respond that if Union had disclosed this transaction in a timely fashion, the cost reductions would have become part of the negotiations and settlement that led to the Board's Decision approving the five year Incentive Rate Plan.

It is important to put the timing of the two events in context.

On May 11, 2007, Union applied under section 36 of the *Ontario Energy Board Act* for an Order approving a multi-year Incentive Rate Plan to determine their rates effective January 1, 2008. This was a unique and important proceeding. Prior to this application, the rates for a period of almost 40 years, were generally set on an annual basis. Rates under this new application will apply for a five year period set by a formula largely determined by the cost of inflation minus a productivity improvement factor.

On August 31, 2007 the Board scheduled a settlement conference which subsequently took place between December 6th and December 17th. On January 2, 2008 Union filed a Settlement Agreement which was approved by the Board on January 17, 2008. [5]

On August 30, 2007, the day before the Board issued the Order scheduling the Settlement Conference in the incentive rate proceeding, Mr. Hebert, a tax planning specialist with Union, delivered to Spectra a five page memorandum entitled "UGL Conversion Step Plans"[6]. The Memorandum identified the transaction at issue here, including the steps by which Union would redeem the

[5] EB-2007-0606, January 17, 2008
[6] Exhibit D.7

existing preference shares held by Third Parties for approximately $110 million, plus a redemption premium[7].

The Board of Directors of Union Gas did not approve the plan formally until a year later on September 5, 2008. Union filed this Application 10 days later.

Union and Spectra first began considering the tax plan in early 2007[8]. That consideration resulted in the memorandum of August 30, 2007. During the period in which Union and Spectra were considering this tax plan, there were extensive negotiations with intervenors regarding the Incentive Rate Plan.

The intervenors say that Union had a duty to disclose the likelihood that Union would reorganize its corporate structure to reduce taxes paid by the parent which in turn would reduce Union's cost of operations.

Union's response is two-fold. First, Union says the amount was not material. Second, Union says that as of August, 2007 no decision had been made to proceed. And even if a decision had been made to proceed it wasn't clear as to what the consequences would be in terms of Union's operating costs.

In my view, these arguments are not persuasive. Nor do I find that the evidence supports them. The first point is that $1.3 million per year is material, particularly when you consider that over the length of a five-year IRM Plan, it amounts to over $5 million.

Secondly, as of August of 2007, Union had identified a tax plan and determined that the restructuring could save the parent company at least $50 million in taxes. The evidence of Union witnesses is that the amount was determined[9]. It wasn't

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[7] Exhibit D.7, p. 4
[8] Transcript , p. 8, line 18
[9] Transcript p.7, line 11

hypothetical. It was real because that was the amount of loss carry forward available for this purpose.

Nor was this a complicated or controversial tax planning step. It was well known and understood. In an SEC interrogatory, Union was asked to "produce a copy of each tax or corporate planning letter, opinion, tax ruling or reorganization memorandum that in whole or part formed the basis for the internal reorganization proposed in the application". Union responded as follows:

> "There are no opinions or tax rulings available. The reorganization being proposed for Union is common tax planning that has been employed in respect of many of Westcoast's Canadian affiliates." [10]

The tax implications were well understood and the amount of the loss carried forward was clear, as was the minimum amount of tax savings.

Union responds that even if a decision had been made to proceed, there was no decision as to the timing. But why would Union delay? The tax benefits were real and non-controversial. Moreover, tax carry forwards have a limited life. They can be lost in whole or in part if there was delay.

Most importantly, the reorganization was dependant on the redemption of the preference shares. There was a deadline for that redemption. That deadline was January 1, 2009 and notification 30 days before was required. Failing to meet that deadline would mean that Union could not implement this reorganization until 2014 and Spectra would be denied the tax reduction until then.

In the circumstances, it is reasonable to conclude that in the August, 2007 timeframe there was a real prospect that Union would be reorganized to secure these tax savings on behalf of the U.S. parent. The evidence also suggests that

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[10] Exhibit D.7

Union would proceed with the restructuring in the first year of the Incentive Rate Program which is, in fact, exactly what happened.

A public utility in Ontario with a monopoly franchise is not a garden variety corporation. It has special responsibilities which form part of what the courts have described as the "regulatory compact". One aspect of that regulatory compact is an obligation to disclose material facts on a timely basis. As stated recently by Mr. Justice Lederman in the case of *Toronto Hydro-Electric System Limited v. Ontario Energy Board* [2008] OJ No 3904(QL), para 78.

> "At the heart of a regulator's rate-making authority lies the "regulatory compact" which involves balancing the interests of investors and consumers. In this regard, there is an important distinction between private corporations and publicly regulated corporations. With respect to the latter, in order to achieve the "regulatory compact", it is not unusual to have constraints imposed on utilities that may place some restrictions on the board of directors. That is so because the directors of utility companies have an obligation not only to the company, but to the public at large."

Failure to disclose has at least two unfortunate consequences. First, it can only result in less than optimum Board decisions. Second, it adds to the time and cost of proceedings. Neither of these are in the public interest.

A publicly regulated corporation is under a general duty to disclose all relevant information relating to Board proceedings it is engaged in unless the information is privileged or not under its control. In so doing, a utility should err on the side of inclusion. Furthermore, the utility bears the burden of establishing that there is no reasonable possibility that withholding the information would impair a fair outcome in the proceeding. This onus would not apply where the non-disclosure is justified by the law of privilege but no privilege is claimed here.

It should be understood that this obligation is a corporate responsibility. Mr. Penny and Mr. Packer were both involved with the incentive rate

proceeding. Both are involved in this case. They say that they had no knowledge of the proposed re-organization. I accept that. Both gentlemen have been involved extensively in proceedings before this Board in the past decade and are highly regarded. But I do not accept that the Union organization lacked the relevant knowledge. And they had an obligation to instruct counsel.

Nor can there be any question that the relevant information was within the control of Union. The memorandum of August 30, 2007 was prepared by Dennis Hebert, the General Manager of Canadian taxes with Union Gas. He held positions relating to taxation services with Union Gas since August of 2002 and was involved in investigating the tax consequences of this reorganization since early 2007.

There is also an element of fairness involved here. How can the Board penalize intervenors and the ratepayers they represent because they were late raising an issue where the Utility failed to advise them of essential information in a timely fashion.

Nor can it be said, as Mr. Penny suggests, that this tax plan was "just a gleam in somebody's eye". It was much more than that. It is not believable that a sophisticated organization such as Spectra/Union/Westcoast would leave $50 million on the table. In all likelihood once they completed the tax analysis in August of 2007 (which in their own words was "common tax planning for many of Westcoast Canadian affiliates") the organization would move forward in a timely fashion given the deadline for redemption of the preference shares.

In the result, the Board approves the application subject to three conditions:

1. The costs of the entire transaction, including the hearing costs, will be for the account of Union shareholders and not passed on to the ratepayers;

2. Union and Westcoast will file with the Board a letter confirming that the general partner and the limited partner will be considered affiliates for the purpose of undertakings contained in the Order of Council dated December 9, 1998;

3. Union's rates will be reduced effective January 1, 2009 to reflect the cost reduction of $1.3 million per year resulting from this reorganization.

Mr. Ryder on behalf of the City of Kitchener argued that Union's failure to disclose should be sanctioned by the Board, by way of a cost penalty. He suggested that the costs should be borne by the shareholder, not the ratepayer. I agree. The three intervenors participating in this hearing will be entitled to reasonably incurred costs with costs to be paid by the shareholders of Union.

DATED at Toronto, November 19, 2008.

Ontario Energy Board

Gordon Kaiser
Vice-Chair and Presiding Member

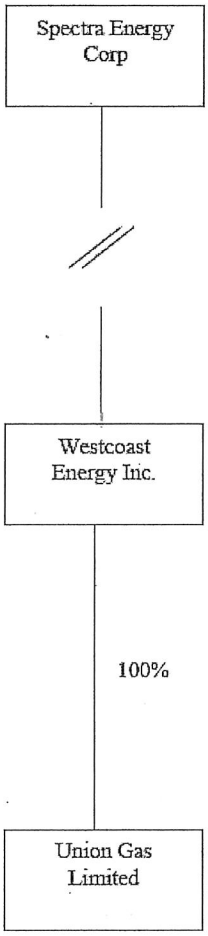
Appendix "A"

To Decision and Order

Dated: November 19, 2008

Current Organization Structure Chart

Attachment 2 **Current Structure**



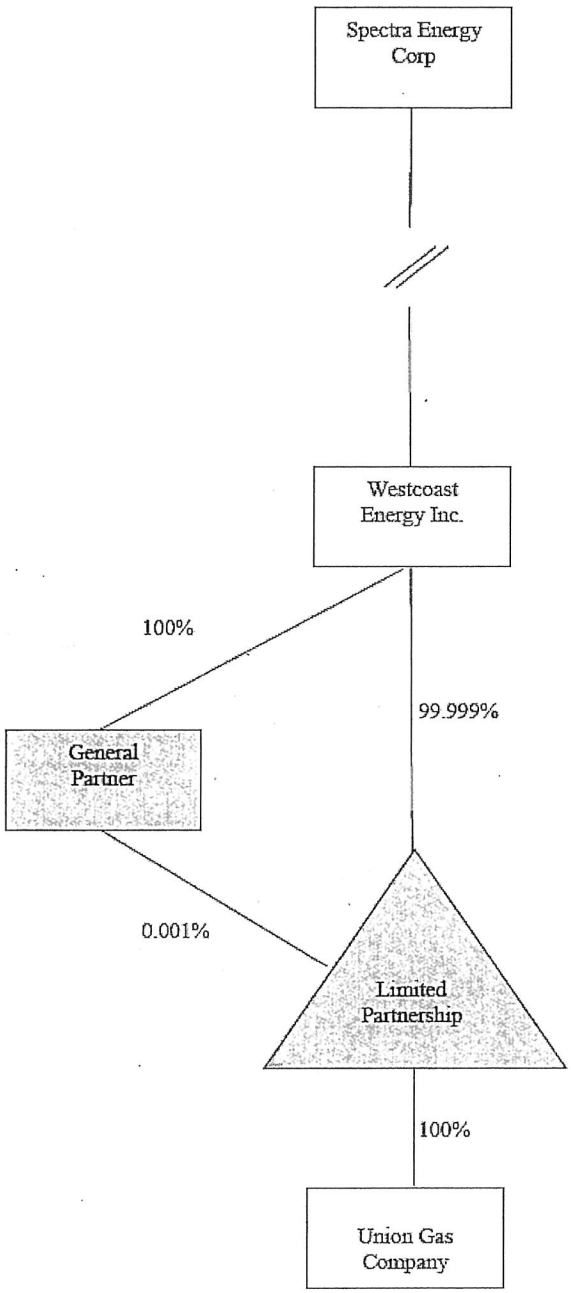
Appendix "B"

To Decision and Order

Dated: November 19, 2008

Proposed Organization Structure Chart

Attachment 3 **Final Structure**



Appendix "C"

To Decision and Order

Dated: November 19, 2008

Order in Council dated December 9, 1998, CC 2865/98

Ontario
Executive Council
Conseil des ministres

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

Sur la recommandation du soussigné, le lieutenant-gouverneur, sur l'avis et avec le consentement du Conseil des ministres, décrète ce qui suit :

WHEREAS Westcoast Energy Inc., 1001142 Ontario Inc., Union Energy Inc., Union Gas Limited, and Union Shield Resources Ltd. provided Undertakings dated the 27th day of November, 1992 to the Lieutenant Governor in Council and these Undertakings were referred to in Order in Council No. 3639/92;

AND WHEREAS Enbridge Inc. (previously IPL Energy Inc.) and The Consumers' Gas Company Ltd. provided Undertakings dated the 21st day of June, 1994 to the Lieutenant Governor in Council and these Undertakings were referred to in Order in Council No. 1606/94;

AND WHEREAS, with the receipt of Royal Assent for the *Energy Competition Act, 1998* on the 30th day of October, 1998, it is considered expedient to approve new Undertakings provided by Union Gas Limited, Centra Gas Utilities Inc., Centra Gas Holdings Inc., Westcoast Gas Inc., Westcoast Gas Holdings Inc. and Westcoast Energy Inc. and by The Consumers' Gas Company Ltd., Enbridge Consumers Energy Inc., 311594 Alberta Ltd., Enbridge Pipelines (NW) Inc. and Enbridge Inc.(the "New Undertakings");

NOW THEREFORE the New Undertakings, attached hereto, are accepted and approved.

Recommended _____ Concurred _____
Minister of Energy, Science & Technology — Chair of Cabinet

Approved & Ordered DEC 9 - 1998
Date

_____
Lieutenant Governor

O.C./Décret 2865/98

Ontario Energy Board
FILE No. EB-2008-0304
EXHIBIT No. K.1.2
DATE MAY 7/2008
/99

UNDERTAKINGS OF UNION GAS LIMITED,

CENTRA GAS UTILITIES INC., CENTRA GAS HOLDINGS INC.,

WESTCOAST GAS INC., WESTCOAST GAS HOLDINGS INC.,

WESTCOAST ENERGY INC.

TO: Her Honour The Lieutenant Governor in Council for the Province of Ontario

WHEREAS Centra Gas Utilities Inc. holds all the issued and outstanding common shares of Union Gas Limited ("Union");

AND WHEREAS Centra Gas Holdings Inc. holds all the issued and outstanding common shares of Centra Gas Utilities Inc.;

AND WHEREAS Westcoast Gas Inc. holds all the issued and outstanding common shares of Centra Gas Holdings Inc.;

AND WHEREAS Westcoast Gas Holdings Inc. holds all the issued and outstanding common shares of Westcoast Gas Inc.;

AND WHEREAS Westcoast Energy Inc. holds all the issued and outstanding common shares of Westcoast Gas Holdings Inc. ("Westcoast");

the above named corporations do hereby agree to the following undertakings:

1.0 **Definitions**

In these undertakings,

1.1 "Act" means the *Ontario Energy Board Act, 1998*;

1.2 "**affiliate**" has the same meaning as it does in the *Business Corporations Act*;

1.3 "**Board**" means the Ontario Energy Board;

1.4 "**business activity**" has the same meaning as it does under the Act or a regulation made under the Act; and

1.5 "**electronic hearing**", "**oral hearing**" and "**written hearing**" have the same meaning as they do under the *Statutory Powers Procedure Act*.

2.0 **Restriction on Business Activities**

2.1 Union shall not, except through an affiliate or affiliates, carry on any business activity other than the transmission, distribution or storage of gas, without the prior approval of the Board.

3.0 **Maintenance of common equity**

3.1 Where the level of equity in Union falls below the level which the Board has determined to be appropriate in a proceeding under the Act or a predecessor Act, Union shall raise or Westcoast and its affiliates shall provide within 90 days, or such longer period as the Board may specify, sufficient additional equity capital to restore the level of equity in Union to the appropriate level.

3.2 Any additional equity capital provided to Union by Westcoast or its affiliates sha provided on terms no less favourable to Union than Union could obtain directly i capital markets.

4.0 Head Office

4.1 The head office of Union shall remain in the Municipality of Chatham-Kent.

5.0 Prior Undertakings

5.1 These undertakings supersede, replace and are in substitution for all prior underta Union, Westcoast and their affiliates.

6.0 Dispensation

6.1 The Board may dispense, in whole or in part, with future compliance by any of th signatories hereto with any obligation contained in an undertaking.

7.0 Hearing

7.1 In determining whether to grant an approval under these undertakings or a dispens under Article 6.1, the Board may proceed without a hearing or by way of an oral, or electronic hearing.

8.0 Monitoring

8.1 At the request of the Board, Union, Westcoast and their affiliates will provide to th Board any information the Board may require related to compliance with these undertakings.

9.0 Enforcement

9.1 The parties hereto acknowledge that there has been consideration exchanged for the receipt and giving of the undertakings and agree to be bound by these undertakings.

9.2 Any proceeding or proceedings to enforce these undertakings may be brought and enforced in the courts of the Province of Ontario and Westcoast, Union and their affiliates hereby submit to the jurisdiction of the courts of the Province of Ontario in respect of any such proceeding.

9.3 For the purpose of service of any document commencing a proceeding in accordance with Article 9.2, it is agreed that Union is the agent of Westcoast and its affiliates and that personal service of documents on Union will be sufficient to constitute personal service on Westcoast and its affiliates.

10.0 Release from undertakings

10.1 Westcoast, Union and their affiliates are released from these undertakings on the day that Westcoast no longer holds, either directly or through its affiliates, more than 50 per cent of the voting securities of Union or on the day that Union sells its gas transmission and gas distribution systems.

11.0 Effective Date

11.1 These undertakings become effective on March 31, 1999.

5

DATED this 7th day of December, 1998.

UNION GAS LIMITED

by _____

CENTRA GAS UTILITIES INC.

by _____

CENTRA GAS HOLDINGS INC.

by _____

WESTCOAST GAS INC.

by _____

WESTCOAST GAS HOLDINGS INC.

by _____

WESTCOAST ENERGY INC.

by _____

Appendix "D"

To Decision and Order

Dated: November 19, 2008

Letters by Union Gas Limited and Westcoast Energy Inc. acknowledging Limited Partnership as an Affiliate



uniongas
A Spectra Energy Company

November 12, 2008

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

Re: EB-2008-0304

The Ontario Energy Board has asked Union Gas Limited ("Union") to provide certain assurances in connection with the Application in EB-2008-0304 (Transcript, November 7, 2008, p.108, lines 21-25).

Union confirms by this letter that the general partner and limited partnership to be formed to hold Union's voting shares, as described in the Application, will be considered "affiliates" for the purpose of Undertakings given by Union to the Lieutenant Governor in Counsel dated December 7, 1998 and accepted by Order In Council December 9, 1998.

Yours truly,

M. Richard Birmingham
Vice President, Finance and Regulatory Affairs

Spectra Energy Transmission
P.O. Box 11162
Suite 1100, 1055 West Georgia Street
Vancouver, BC V6E 3R5

November 11, 2008

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, ON
M4P 1E4

Dear Ms. Walli:

Re: EB-2008-0304

The Ontario Energy Board has asked Westcoast Energy Inc. ("WEI") to provide certain assurances in connection with the Application in EB-2008-0304 (Transcript, November 7, 2008, p.108, lines 21-25).

WEI confirms by this letter that the general partner and limited partnership to be formed to hold Union's voting shares, as described in the Application, will be considered "affiliates" for the purpose of Undertakings given by WEI to the Lieutenant Governor in Counsel dated December 7, 1998 and accepted by Order In Council December 9, 1998.

Yours truly,

WESTCOAST ENERGY INC.,
a Spectra Energy Company

Bruce E. Pydee,
Vice President, Regulatory Affairs
and General Counsel

Reys

Trigger ⇒ Funding Shortfall Rebate

- Funding shortfall wks triggers funding rebate → IESO sale of RA / IA

- IESO deferred S. 23
  - define - retro to May 1/17.
- tracked in S. 24 VA

→ S. 25 → Recovery of VA

→ OEB to set limits of recovery of IESO deferred.
- not before

S. 26 - Transfer of RA (Piece of pie)

STATUTORY AMENDMENTS

The following is preliminary and is based on our current understanding of the proposed structure and objectives. For example, we have assumed that the structure will not entail the insertion of a new Holdco between OPG and the Province. As these aspects are refined, some of the suggested amendments described below may not be needed and other aspects that we are not aware of

may need to be considered. Accordingly, these suggested amendments are provided for discussion purposes and are subject to change. We would welcome the opportunity to work with OPG and the Ministry on refining the scope and substance of required legislative and regulatory amendments.

A. Amendments to Implement Structure

Certain *Electricity Act, 1998* amendments would be needed to

implement the anticipated structure (which we understand, as noted above, would not include a Holdco), as follows:

- **Section 53.1(1):** Amend to permit owning and operating generation facilities through subsidiaries (not only directly through OPG). In addition, amend to permit OPG to administer, manage, loan moneys to and have a beneficial interest in, if applicable, Financing Trust.

- **Section 53.2:** Amend to permit the Minister to acquire, hold, dispose of or otherwise deal with securities or debt obligations of, or any other interest in, OPG or any subsidiaries. This is to accommodate possible variations to the financing structure that may be desirable over time.

- **Section 53.■ (new):** New statutory section to permit the Minister to enter into

arrangements relating to an exercise of powers under 53.2.

- **Section 53.■ (new)**: New statutory section providing that creditors of Financing Trust have no recourse to the assets of OPG or any of its subsidiaries (other than Financing Trust, if applicable). In addition, consideration should be given as to whether the Act should be amended so that the

Financing Trust cannot be wound up or liquidated.

B. Miscellaneous Corporate Items to Address

- **OPG Articles:** Amend the OPG's articles to remove the private company restrictions.

- **MOA with Province:** Consider whether any amendments to OPG's MOA with the Province are required to contemplate the Financing Trust.

C. Amendments Under Electricity Act to Implement GA Smoothing

Based on our understanding that the global adjustment smoothing mechanism is intended to benefit residential and small business customers only and that the Minister will be responsible for determining how much global adjustment smoothing is to be applied in a given month, if any, amendments to the *Electricity Act, 1998* and Ontario

Regulation 429/04 (Adjustments Under Section 25.33 of the Act) would be needed to implement the mechanism, as follows:

(i) Electricity Act:

- **Section ■ (New):** Establish a new power for the Minister to make directives to the IESO in relation to the global adjustment smoothing mechanism and, particularly, for purposes of establishing global adjustment smoothing

amounts from time to time (expected to be monthly). To the extent possible, the directive power should be drafted so as to limit the ability for a future Minister to require the IESO to do anything that would materially and adversely affect the Financing Trust or its lenders. **[NTD: While our understanding is that the Minister would direct this, we note from other materials we have seen that OPG may**

instead be recommending a formula approach. It is not clear what the formula would look like, where it would be set out or how it would be applied and by whom]

- **Paragraph 25.33(1):** This section says that IESO shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of market participants reflect amounts

paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require IESO to ensure that, over time, payments by prescribed classes of market participants also reflect amounts paid to Financing Trust. **[NTD: Not certain this is needed if only to benefit residential and small business consumers, who are not market participants.**

May be needed in reference to payments from distributors and retailers]

- **Paragraph 25.33(2):** This section says that distributors and retailers shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of consumers reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a

procurement contract. Add new subsection (c) so as to require distributors and retailers to ensure that, over time, payments by prescribed classes of consumers also reflect amounts paid to Financing Trust.

- **Note**: As described below, the regulation will need to include new requirements for the IESO to record the global adjustment smoothing amounts in one or more variance accounts and to use

those amounts to offset amounts otherwise recorded in the variance accounts under Section 25.33(3) of the Act. For context, we note:

- Section 25.33(3) says that adjustments under (1) or (2) relating to electricity consumed by consumers whose rates are determined by the OEB under s. 79.16 of the OEB Act (i.e. RPP Customers) shall instead be made in accordance with the regulations to one or

more variance accounts established and maintained by the IESO.

- Section 25.33(4) says IESO, distributors and retailers shall make and receive such payments, set-offs and credits as may be required or permitted by the regulations with respect to consumers described in (3), i.e. RPP Customers.

- Section 25.33(5) says that IESO shall establish and maintain such variance accounts as may be needed to record all amounts payable or receivable by it under 25.33.

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

- **Section 1(1):** Consider adding definitions for

"Financing Trust" and "global adjustment smoothing amount" or such other terms as may be preferred.

- **Section 1.2(1) (New):** Add section providing that, for the purposes of this Regulation, the global adjustment smoothing amount for a month is the amount determined by the IESO in accordance with a directive from the Minister under section ■ of the Electricity Act in respect of the month.

[NTD: See above note re use of Minister directives]

- **Section 1.2(2) (New):** Consider adding a section providing that the IESO shall publish the global adjustment smoothing amount for a month by no later than the 10th business day of the following month [to align with general publication requirements for global adjustment under s. 1.1(2)].

- **Section 10(1):** Amend formula for calculating Class B GA rate by subtracting the global adjustment smoothing amount for a month from "M", which is the total amount of the global adjustment for the month. The global adjustment smoothing amount could be designated as "X", such that the formula would be (M-X-N)/(P-Q). Define "X" as the global adjustment smoothing amount for the month as determined by the IESO in accordance with the

Minister's directive under section ■ of the Electricity Act for the month. **[NTD: See above note re use of Minister directives]**

- **Section 10.1 (New):** Add new section to deal with adjustments under subsection 25.33(3) of the Act, i.e. in respect of RPP consumers. This section should require the IESO to establish, within the variance account(s) it maintains pursuant to subsection 25.33(3) of the

Act, one or more subaccounts in which it shall record the global adjustment smoothing amounts applicable to the classes of consumers described in subsection 25.33(3) of the Act. This section must also specify that the IESO shall apply the amounts recorded in the subaccounts against the balances in the variance accounts for purposes of section 79.16(3) of the OEB Act.

- **Note:** This is a key aspect because, when the OEB determines RPP rates, it must take into account the balances in the variance accounts established by the IESO under s. 25.33 of the Electricity Act and make adjustments with a view to eliminating the balances within 12 months. This proposed new section 10.1 causes the IESO to reduce (in the near term) the variance account balances by the global adjustment

smoothing amounts, as provided by Financing Trust, thereby enabling the OEB to determine RPP rates that, despite being lower for RPP consumers in the near term, still eliminate the relevant variance account balances within 12 months.

- **Paragraph 11(2)2.ii:** Amend the formula for calculating the allocation of global adjustment for a month to a licensed distributor that is

a market participant by subtracting the global adjustment smoothing amount for a month from “M”, which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as "X", such that the formula would be [(M-X-N) x (R+S-T)]/(P-Q). Define “X” as suggested under section 10(1).

- **Paragraph 11(2)3:** Amend the formula for calculating the allocation of global

adjustment for a month to each Class B market participant by subtracting the global adjustment smoothing amount for a month from "M", which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as "X", such that the formula would be [(M-X-N) x U]/(P-Q). Define "X" as suggested under section 10(1).

- **Paragraph 16(7)4:** Consider amending the description of

"Global Adjustment" that is required to be included on certain invoices so as to inform consumers that their portion of the global adjustment for the month (i) may have been reduced by the application of a global adjustment smoothing amount from the Financing Trust, or (ii) may include amounts payable to the Financing Trust in respect of global adjustment smoothing amounts previously applied.

- **Section 20(1):** This section establishes an obligation for the Ontario Electricity Financial Corporation and every licensed distributor that is a market participant to give the IESO such information as the IESO may require for the purposes of the Regulation in the form specified by the IESO and before the expiry of the period specified by the IESO. Consider amending to extend this obligation to the Financing Trust.

- **Section 20(6):** This section provides that on request by the OEB, the IESO, a licensed distributor, an embedded generator, a retailer or the OEFC shall give the OEB such information relating to this Regulation as the OEB may require, in the form and within the period specified by the OEB. Consider amending to extend this obligation to the Financing Trust.

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

Amendments to the *Ontario Energy Board Act*, including amendments to O. Reg. 95/05 (Classes of Consumers and Determination of Rates) and the introduction of a new regulation, would be needed to implement a cost recovery process for the Financing Trust in relation to the global adjustment smoothing mechanism, potentially with

limited OEB oversight, as follows:

(i) Ontario Energy Board Act:

- **Section 78(3.3):** This provision establishes an obligation for the OEB, when determining rates for the retailing of electricity, to take into account balances in variance accounts established under section 25.33 of the Electricity Act and to make adjustments "with a view to

eliminating those balances within 12 months or such shorter time periods as the Minister may direct."
Consider whether any amendments are needed, and confirm this works with the framework being proposed.

- **Section 78.7 (New):** We understand that the Province may want the OEB to have an oversight role. One possible approach would be to establish a new statutory

section establishing that the IESO shall make payments to the Financing Trust with respect to the internal administrative costs incurred by the Financing Trust in connection with the purchase and management of the Regulatory Asset and the Financing Trust. Such payments by the IESO would need to be made in accordance with the order of the OEB then in effect, which orders shall be made by the

OEB in accordance with rules prescribed under a new regulation.

- The new regulation would need to be clear that the OEB does not have jurisdiction to consider the principal amount or any interest, financing costs, third party fees or expenses. Rather, OEB's role would be limited to considering the internal administrative costs of the

Financing Trust and ensuring the Financing Trust receives an appropriate fee for its services, all of which would be recovered by the Financing Trust from the IESO, which would collect those amounts in the global adjustment. Note that, if this approach is accepted, the IESO and distributors and retailers would need the authority to collect such amounts as

part of the GA and IESO would need the authority to pay such amounts to the Financing Trust. As such, additional amendments would be needed under O. Reg. 429/04.

- **Note:** Section 79.16 of the OEB Act does not require changes, but the significance of this provision should be understood.

- Section 79.16 gives the OEB responsibility for determining electricity commodity prices for eligible consumers. Eligibility is determined under Reg. 95/05 (Classes of Consumers and Determination of Rates), which is also known as the Regulated Price Plan (RPP) Regulation.

- Section 4(2) of the RPP Regulation defines RPP-

eligible consumers as low volume consumers (i.e. those who annually use less than 150,000 kWh or such other amount as prescribed), consumers with demand of 50 kW or less, residential consumers that have accounts with distributors, consumers who annually use 150,000 to 250,000 kW of electricity, and consumers who have accounts with

distributors if in the farming business.

- Paragraph 6(1)3 of the RPP Regulation provides that "In determining the rates (for RPP-eligible consumers), the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration adjustments required under section 25.33 of the *Electricity Act,*

1998 and shall ensure that the rates reflect those costs."

- The Ontario Energy Board has developed a Regulated Price Plan Manual (revised February 16, 2016) to describe the processes and methodologies it uses for determining electricity commodity prices that are charged to RPP consumers pursuant to Section 79.16

of the OEB Act and paragraph 6(1)3 of the RPP Regulation.

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

- **Paragraph 6(1)3:** Amend so as to require the Board, when forecasting the cost of electricity to be consumed by the consumers to whom the rates apply, to take into consideration not only the

adjustments required under section 25.33 of the Electricity Act but also the application or prior application of global adjustment smoothing amounts determined by the IESO in accordance with Minister directives under section ■ of the Electricity Act, and to ensure that the RPP rates reflect those amounts. **[NTD: See above note re use of Minister directives]**

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

- If the OEB is to be given the role of reviewing and approving the recovery of OPG's internal administrative costs for the Financing Trust under the potential section 78.7 (see above), then this regulation should describe the process and criteria pursuant through which the OEB would determine the amounts that the IESO would be required to collect through

the global adjustment, in accordance with section 25.33 of the Electricity Act, and pay to the Financing Trust in respect of the provision of global adjustment smoothing amounts. This part of the regulation should establish:

- any reporting requirements from the Financing Trust and/or the IESO to the OEB in connection with the global

adjustment smoothing mechanism;

- the frequency of the OEB making determinations under this part of the regulation;

- the process through which the OEB shall make these determinations, which should be a streamlined administrative process rather than a public hearing process or, if

a hearing is needed, then the scope of the proceeding should be clearly and narrowly constrained so as to deter intervenor involvement, lengthy proceedings and reduce/eliminate risk to recovery by Financing Trust;

- the basis for the OEB's determinations as to the payments that shall be made to the Financing

Trust, which should specify that:

- the Financing Trust shall recover its prudently incurred internal administrative costs on a forecast basis each year;

- the Financing Trust shall receive an appropriate fee each year (with some guidance as to what

would be appropriate); and

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

and retailers) to collect these amounts through the global adjustment.

CONFIDENTIAL

GOV2016.146

Blakes Article 10/11

2- MS

Hydro Rates Act, 2017

Intergenerational Fairness in Article 11 – previously Article 10)

(Working document – Blakes

Protection and guarantee of scheme

Prohibition

_. (1) The persons and entities listed in subsection (2) shall not do anything that would,

(a) hinder the charging or collection of transition charges;

(b) reduce the amount of transition charges; or

(c) adversely affect the regulatory asset.

OLC Note (MS): I'm anticipating that clauses (a) to (c) will need more work, either to ensure anything missed is

covered or to better fit with the rest of the draft as it evolves. In particular, I wonder if clause (b) is too categorical. Won't it ever be possible that transition charges are reduced under the scheme being put into place? I had raised a question about that in my earlier comments. Somehow this subsection should exclude what is allowable for these persons and entities to do under the scheme.

Persons and entities covered

(2) The persons and entities referred to in subsection (1) are the following:

1. The Government of Ontario.

2. The Lieutenant Governor in Council.

3. The Minister or any other member of the Executive Council.

Clarification with respect to legislation

(3) For greater certainty, the things prohibited under subsection (1) include the introduction of a government bill and the making or approving of a regulation under this or any other Act.

OLC Note (MS): As discussed in our conference call on April 12, you'll need to consult with CLB. Also as discussed, I don't think the part of the above

relating to the introduction of a government bill would be legally effective.

Compensation for contraventions

(4) The Government of Ontario shall pay compensation to a person for losses suffered as a result of any contravention of subsection (1).

OLC Note (MS): The above seems to be a bit vague as to what the compensation would

be (i.e. how much) but perhaps this is okay in this context.
OLC Note (MS): This is not at all my bailiwick, but I understand a significant challenge is how the amounts being financed will be handled, accounting wise, for the government. So of course you'll make sure that clear statements, like the above, putting the government on the hook are okay from that standpoint.

Deemed contract and undertaking

(5) The Government of Ontario is deemed to have entered into a contract with the regulatory asset owner under which the Government of Ontario undertakes,

(a) to use its best efforts to ensure that subsection (1) is not contravened; and

(b) if subsection (1) is contravened, to pay the compensation required under subsection (4).

IESO obligations

(6) If the IESO becomes incapable of carrying out its obligations under this Act, for any reason including because it is dissolved or restructured or because it becomes insolvent, the Government of Ontario shall use its best efforts to ensure that those obligations are carried out

by the Government of Ontario or another appropriate entity.

OLC Note (MS): A few things about the above:

- "becomes incapable" is from Article 11(3). But it might be unclear exactly what constitutes incapability (as opposed to just plain non-payment). I might have suggested that the "trigger" for this provision not be incapability but rather non-fulfilment of obligations.

(i.e. the "if" part would be something like "If the IESO fails to carry out its obligations …")

- I included "use its best efforts" because I thought that some of what would be needed would be (or might be) the passage of a bill, which is not within the power of the Government of Ontario to do. (Because bills are passed by Legislature.) An alternative might be to use "shall ensure" though I

expect that legally that would amount to the same thing.

OLC Note (MS): I've left out anything relating to Article 11(5) which would provide that no financing entity can be wound up. That isn't dealt with yet in Tara's draft. I think I'd want to understand a bit better what these are, legally, before drafting anything.

OLC Note (MS): I've left out anything relating to Article 11(6). Your response to my question about this (my April 11 question when this was still Article 10(3)) explained this a bit but I note that the disclaimers are not yet developed (and the ones you've suggested look misleading given the rest of your instructions). I'm hoping Article 11(6) is detail that doesn't need to be included in the bill. If something is needed,

we should probably discuss this because I'm not sure who the requirements re disclaimers are aimed against and what the situations are for when the disclaimers would be required.

For convenience, here is the relevant article (April 6 document):

Article 10 – Undertaking of the Lieutenant Governor in Council

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – The Lieutenant Governor in Council may not in any way take or permit any action to reduce, impair,

postpone or terminate the obligation of Ratepayers to pay Transition Charges or impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, either directly or indirectly. The Lieutenant Governor in Council undertakes that the amount of Transition Charges determined hereunder shall not be subject in any way to reduction, impairment,

postponement or termination as a result of any action taken or failure by the Lieutenant Governor in Council.

(2) Undertaking and Agreement – The Lieutenant Governor in Council undertakes to and agrees with the Regulatory Asset Owner, including any Absolute Assignee from time to time, and any Pledgee from time to time, that the Lieutenant

Governor in Council will not in any way take or permit any action that limits, alters or impairs the value of the Regulatory Asset or, except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, collected and remitted for the benefit of the Regulatory Asset Owner, including any

Absolute Assignee from time to time, and any Pledgee from time to time.

(3) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Lieutenant Governor in Council, including in marketing materials and other documentation authorized for use by the Administrative in connection with any

Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

And here is the revised Article (version 9 – April 10)

Article 11 – Undertaking of the Lieutenant Governor in Council[1]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – The [Lieutenant Governor in Council] shall not in any way take or permit any action to reduce, impair,

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

postpone or terminate the obligation of Retail Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any

legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by the Lieutenant Governor in Council, including through the introduction of any bill or the passing of any

legislation or regulation having such effect.

(2) Undertaking and Agreement – The [Lieutenant Governor in Council] shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in

determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

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

and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) Successor IESO – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, Successor IESO shall be established to perform such obligations.

(4) Compensation for Failure – Absolute Assignees shall be compensated for any losses suffered by them as a result of any failure by the

Lieutenant Governor in Council to comply with its undertakings and agreements in this Article 11.[2]

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

[2] Requested by Torys. For discussion.

(6) References to the Undertaking and Agreement – Any non-confidential reference to the Undertaking of the Lieutenant Governor in Council, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that

[*Add conditions to protect the Province*].

ONTARIO POWER GENERATION

February 27, 2017

Mr. Serge Imbrogno
Deputy Minister,
Ministry of Energy
4th Floor, Hearst Block
900 Bay Street
Toronto, Ontario
M7A 2E1

Dear Deputy:

Below is a summary of OPG's preliminary views on the implementation of the Province's proposed Global Adjustment Smoothing Account and financing structure. These views are contingent on the proposed terms and conditions that were sent to the Ministry of Energy on February 21, 2017.

Understanding that the finalization of the legal terms, the Trust indentures, financing structure and other detailed terms will take several months and will involve collaboration between legal counsel, input from capital markets, parties involved and other stakeholders, this letter is intended to provide the guideline and framework which could form the foundation of the plan.

Please do not hesitate to contact me if you have any questions regarding this summary.

Sincerely,

Mr. Ken Hartwick
Chief Financial Officer and Senior Vice President, Finance
Ontario Power Generation
W: 416-592-6985
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:

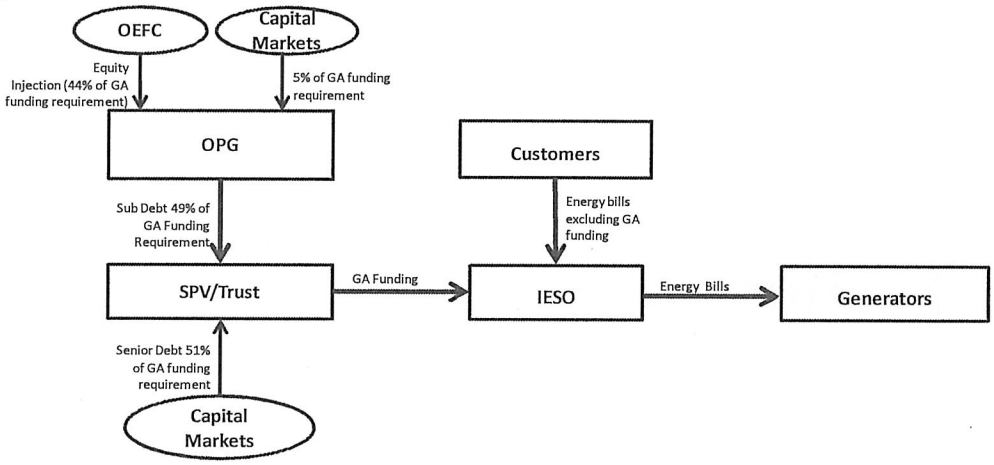
- restrict the risk to OPG;

- maximize the cost-effectiveness of the Trust or the Special Purpose Vehicle ("SPV") financing vehicle; and
- allow for consolidation into OPG financial statements.

The success of this structure is dependent on achieving a number of objectives which are reviewed in the following sections:

A. Ability to Recognize an Asset and Record Revenue
B. Ability to Consolidate the SPV into OPG
C. Ability to Finance
D. External Assessment
E. Risk Summary

All of the percentages shown in the graphic below are indicative and will be highly dependent on the legislation that the Province will enact:



Process:

The IESO will effectively sell the 'right to collect' deferred future revenue from ratepayers (GA Recovery Right asset) to the SPV in return for cash proceeds. In order for the SPV to purchase this asset the SPV will obtain the financing from two key sources: 51% directly from capital markets and 49% as subordinated debt from OPG. OPG will obtain 44% of this financing as an equity injection from the Province and 5% from capital markets.

A. Ability to Recognize an Asset and Record Revenue

Accounting Requirements under International Financial Reporting Standards (IFRS)

1) It is our understanding that the IESO and KPMG have concluded that the sale of this 'right to collect' future revenue (or regulatory asset) is not a financing transaction and will not be recorded as a financial liability. Based on that conclusion, the right to collect will be accounted for as an intangible asset in the SPV.

2) In order to the SPV to record this right as an intangible asset, the right must meet the following conditions:
   - The intangible asset must be separable and arise from a contractual or legal right (i.e. mandated by the Legislation and SPV Indenture Agreement).
   - The SPV must have the control and power to obtain future economic benefits from the intangible asset.
   - The SPV must be able to demonstrate that the intangible asset is purchased at fair value.

3) In order for the SPV to recognize appropriate revenue to offset any ongoing costs, the Legislation must require interest, carrying and administrative costs to be paid to the SPV on a monthly basis. This may result in additional amounts to be deferred to achieve the desired customer impact. Payment of revenue to the SPV is also important to service the interest expenses of the debt.

B. Ability to Consolidate the SPV into OPG under IFRS

OPG 'Control' of the SPV - Accounting Requirements

1) In order to meet the accounting definition of 'control', accounting guidance must be considered. There are no bright lines to determine whether OPG has exposure, or rights, to variable returns from its involvement with the SPV, or whether it has the ability to affect the returns of the SPV through its power over the SPV. Rather, all facts and circumstances are considered when assessing whether an entity has control over another entity. Based on the relevant accounting guidance under IFRS, OPG has proposed terms necessary to demonstrate that OPG has control over the SPV. OPG's external auditors, Ernst & Young, has provided their concurrence that based on the information provided to them to date that the following conditions should permit consolidation of the SPV by OPG.

Directive:

1. The SPV must be undertaken by OPG as a business initiative on its merits. A Shareholder Directive is to be limited to direct OPG to investigate the option of establishing a SPV vehicle to administer, finance and operate the Global Adjustment plan. The control, risk and rewards of that SPV will determine its consolidation into OPG as a business enterprise.

SPV:

2. The SPV should not operate in a predetermined way such that OPG does not have decision-making authority over the SPV's ongoing activities after its formation (i.e. should not operate on 'autopilot').
3. OPG must have the ability to appoint and remove the Trustee (or Board of Trustees), with no veto right by the Province. No party shall have the ability to remove OPG from its role and authority in the SPV.
4. The Province cannot have the right to veto OPG's decisions about the relevant activities of the SPV. OPG must have the power over the relevant activities of the SPV and be compensated. The relevant activities of the SPV include (but are not limited to) the evaluation and decisions on financing alternatives, duration, and the strategy to minimize financing costs. OPG must have the power to establish operating and capital budgets of the SPV.
5. OPG must have the power to determine or change operating and financing policies of the SPV, which will affect the variability of risks and returns.
6. The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following:
    - The SPV
    - Any of OPG's investments in the most subordinated debt of the Trust
7. OPG must own greater than 50% of the most subordinated debt and targeted to be no less than 5%[1] of the total debt of the SPV. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources. A quantitative analysis should be performed at a later date to corroborate the appropriateness of the 5% threshold to support that the 5% subordinated debt investment is sufficient to absorb most of the expected variability in the SPV.
8. OPG must have the ability to earn variable returns by exercising its authority, which shall be accomplished as follows:

[1] While the rest of the letter refers to a 10% investment in the most junior subordinated debt with OPG owning 5%, it should be noted that OPG should own more than 50% of the most subordinate debt. For simplicity, the degree to which OPG's ownership beyond 50% is not shown in this letter.

a. The cash flow from the restructured asset shall include interest determined based on a relevant benchmark that is appropriate relative to the restructured asset, plus an appropriate margin consistent with the relevant market and other risks
b. OPG shall have the authority to determine the financing strategy, which will vary the financing costs with the objective of enabling the SPV to achieve a more favourable return compared to the return from the restructured asset
c. The SPV shall establish classes of liabilities (senior, subordinated and the most subordinated). The classes would allow the SPV to delineate financing of lower risk investment and investment that would bear higher residual risk. The delineation would limit OPG's self-funded investment to a reasonable level in order to allow OPG to remain a self-sustaining entity.
d. OPG shall, through its ownership of the most subordinated liability, be able to capture and retain the pricing difference between cost of financing and benchmark for interest on the restructured asset, or any residual risk of restructured asset. The targeted return of the subordinated liability should be reflective of the underlying risks and compensate holders for active management that would be required.
e. OPG should participate in the detailed design of the above and the SPV documentation to ensure that it has substantive power and variability, which will allow OPG's Board of Directors to evaluate the opportunity as a business initiative instead of through a shareholder directive.

Nothwithstanding the above, under certain Defined Forced Majeure for emergency events (e.g. unlikely credit market event or disruption where it is not possible to borrow from the market at a reasonable rate), the OEFC may provide bridge financing beyond the designated percentage for a defined period. The relevant terms should ensure that this temporary measure does not detract from the rights of OPG to direct all of the relevant activities of the SPV. Additionally, OPG should not be protected from risk of loss by the OEFC with respect to its subordinated investment, nor should it lose its right to derive the residual returns should such bridge financing be required.

Legislation

9. The Legislation must require interest, carrying and administrative costs to be paid to the SPV on a monthly basis, so that the SPV is able to recognize appropriate revenue to offset any ongoing costs.
10. The Legislation must dictate the manner in which the restructured asset would be determined, collected, and the period of collection, so that the determination of the restructured asset will not be subject to the Province's decisions on an ongoing basis, but determined based on a formula. Alternatively, the Legislation may allow for an adjustment to the pre-determined deferral formula based on specific parameters that would limit the adjustment to the restructured asset. Adjustments beyond the specific parameters would require approval by the Board of Trustees.
11. The Legislation must be written to avoid legal or constitutional challenges and be irrevocable to reduce the cost of borrowing and with a specific formula which determines the deferral amount. As irrevocability would be difficult under Canadian law one mitigation would be to provide a Provincial guarantee which only applies with cancellation or amendment of the legislation.
12. The spirit of the above terms should be reflected in the SPV Indenture Agreement as well as Legislation, wherever possible.

2) The Trust is expected to be financed as follows:
   - 51% senior secured debt from external markets
   - 39% senior subordinated debt from OPG (via Province equity injection into OPG)

- 10% junior subordinated debt from OPG (5% from external markets and 5% from Province equity injection into OPG).

When assessing control, an investor shall consider the nature of its relationship with other parties and whether those parties are acting on the investor's behalf (i.e. they are 'de facto agents'). If OPG is assessed to be a 'de facto agent' of the Province, it will compromise the ability for OPG to consolidate the Trust. The split above is to meet the following conditions to ensure that OPG is not considered a 'de facto agent' of the Province:

- The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following:
  - The Trust
  - Any of OPG's investments in the most subordinated debt of the Trust
- OPG must own greater than 50% of the most subordinated debt and targeted to own no less than 5% of the total debt of the Trust. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources.

3) The Province will need to conclude on whether OPG still meets the definition of a Government Business Enterprise as defined under Public Sector Accounting Board standards in order to obtain the preferred consolidation treatment after the transaction. We also recommend that the Province to undertake the analysis deemed necessary to confirm the accounting treatment in its consolidated Public Accounts, including if the recognition of the intangible asset would result in an offsetting liability in the Public Accounts.

C. Ability to Finance

Property Right or Right to Collect
Legislative Requirements for Financing
The GA Recovery Right must be structured to encompass the following elements:

- Right to recover from and bill Ontario electricity customers for (1) the principal amount of GA that is being deferred, (2) all interest and other financing costs incurred in respect of the deferral of the GA, (3) all fees, expenses and other administrative costs associated with such financing;
- Repayment/amortization schedule as agreed by the IESO and any purchaser of such GA Recovery Right (or pursuant to a pre-defined schedule/formula that covers all of the purchaser's principal, interest and ongoing financing costs on a monthly basis);
- Repayment/amortization schedule must include a true up mechanism to ensure all costs associated with the deferral can be recovered from customers;
- IESO may dispose of the GA Recovery Right, provided that any such disposition shall be a true sale and absolute transfer to the purchaser of the IESO's right, title and interest in and to the GA Recovery Right;
- Purchaser will have the right to require the IESO (or any successor) to collect the principal amount of GA Recovery Right, together with interest, financing and administration costs, on the agreed repayment/amortization schedule;
- Right must be irrevocable and, if amended by future governments, debt holders have the right of action against the government to recover the amount outstanding including interest, fees, expenses and any damages resulting from the amendment;
- GA Recovery Right will not be subject to any set-off, counterclaim or other defence by the IESO or any successor or affiliated entity; and
- Make certain amendments to the Electricity Act to allow OPG to implement the SPV financing structure (e.g. allowing OPG to create subsidiaries and holding companies, and to have a beneficial interest in the SPV, etc). This would provide flexibility to accommodate possible variations to the financing structure that may be desirable over time.

Detailed legislative requirements are specified in the attachments as follows:

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.

Attachment 1

LEGISLATIVE REQUIREMENTS TO ALLOW DEFERRAL OF GLOBAL ADJUSTMENT AMOUNTS TO BE FINANCEABLE

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

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

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

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

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

1. The IESO will be empowered to create an asset (the "**Regulatory Asset**") consisting of all right, title and interest in and to:

   (a) right to recover from and bill Ontario electricity ratepayers for:

   (i) the principal amount of GA that is being deferred for collection;
   (ii) all interest and other financing costs incurred in respect of the deferral of the GA (whether through senior debt raised in the public markets or subordinated debt raised from OPG or others); and
   (iii) (subject to the comments in paragraph 5 below in respect of OPG's internal administrative costs only) all fees, expenses and other administrative costs associated with such financing, including up-front and ongoing financing costs and any indemnity payments;

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.

Attachment 2

STATUTORY AMENDMENTS

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

A. Amendments to Implement Structure

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

- **Section 53.1(1):** Amend to permit owning and operating generation facilities through subsidiaries (not only directly through OPG). In addition, amend to permit OPG to administer, manage, loan moneys to and have a beneficial interest in, if applicable, Financing Trust.

- **Section 53.2:** Amend to permit the Minister to acquire, hold, dispose of or otherwise deal with securities or debt obligations of, or any other interest in, OPG or any subsidiaries. This is to accommodate possible variations to the financing structure that may be desirable over time.

- **Section 53.■ (new):** New statutory section to permit the Minister to enter into arrangements relating to an exercise of powers under 53.2.

- **Section 53.■ (new)**: New statutory section providing that creditors of Financing Trust have no recourse to the assets of OPG or any of its subsidiaries (other than Financing Trust, if applicable). In addition, consideration should be given as to whether the Act should be amended so that the Financing Trust cannot be wound up or liquidated.

B. Miscellaneous Corporate Items to Address

- **OPG Articles:** Amend the OPG's articles to remove the private company restrictions.

- **MOA with Province:** Consider whether any amendments to OPG's MOA with the Province are required to contemplate the Financing Trust.

C. Amendments Under Electricity Act to Implement GA Smoothing

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

(i) Electricity Act:

- **Section ■ (New):** Establish a new power for the Minister to make directives to the IESO in relation to the global adjustment smoothing mechanism and, particularly, for purposes of establishing global adjustment smoothing amounts from time to time (expected to be monthly). To the extent possible, the directive power should be drafted so as to limit the ability for a future Minister to require the IESO to do anything that would materially and adversely affect the Financing Trust or its lenders. **[NTD: While our understanding is that the Minister would direct this, we note from other materials we have seen that OPG may instead be recommending a formula approach. It is not clear what the formula would look like, where it would be set out or how it would be applied and by whom]**

- **Paragraph 25.33(1):** This section says that IESO shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of market participants reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require IESO to ensure that, over time, payments by prescribed classes of market participants also reflect amounts paid to Financing Trust. **[NTD: Not certain this is needed if only to benefit residential and small business consumers, who are not market participants. May be needed in reference to payments from distributors and retailers]**

- **Paragraph 25.33(2):** This section says that distributors and retailers shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of consumers reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require distributors and retailers to ensure that, over time, payments by prescribed classes of consumers also reflect amounts paid to Financing Trust.

- Note: As described below, the regulation will need to include new requirements for the IESO to record the global adjustment smoothing amounts in one or more variance accounts and to use those amounts to offset amounts otherwise recorded in the variance accounts under Section 25.33(3) of the Act. For context, we note:

    - Section 25.33(3) says that adjustments under (1) or (2) relating to electricity consumed by consumers whose rates are determined by

the OEB under s. 79.16 of the OEB Act (i.e. RPP Customers) shall instead be made in accordance with the regulations to one or more variance accounts established and maintained by the IESO.

- Section 25.33(4) says IESO, distributors and retailers shall make and receive such payments, set-offs and credits as may be required or permitted by the regulations with respect to consumers described in (3), i.e. RPP Customers.

- Section 25.33(5) says that IESO shall establish and maintain such variance accounts as may be needed to record all amounts payable or receivable by it under 25.33.

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

- **Section 1(1):** Consider adding definitions for "Financing Trust" and "global adjustment smoothing amount" or such other terms as may be preferred.

- **Section 1.2(1) (New):** Add section providing that, for the purposes of this Regulation, the global adjustment smoothing amount for a month is the amount determined by the IESO in accordance with a directive from the Minister under section ■ of the Electricity Act in respect of the month. **[NTD: See above note re use of Minister directives]**

- **Section 1.2(2) (New):** Consider adding a section providing that the IESO shall publish the global adjustment smoothing amount for a month by no later than the 10th business day of the following month [to align with general publication requirements for global adjustment under s. 1.1(2)].

- **Section 10(1):** Amend formula for calculating Class B GA rate by subtracting the global adjustment smoothing amount for a month from "M", which is the total amount of the global adjustment for the month. The global adjustment smoothing amount could be designated as "X", such that the formula would be (M-X-N)/(P-Q). Define "X" as the global adjustment smoothing amount for the month as determined by the IESO in accordance with the Minister's directive under section ■ of the Electricity Act for the month. **[NTD: See above note re use of Minister directives]**

- **Section 10.1 (New):** Add new section to deal with adjustments under subsection 25.33(3) of the Act, i.e. in respect of RPP consumers. This section should require the IESO to establish, within the variance account(s) it maintains pursuant to subsection 25.33(3) of the Act, one or more subaccounts in which it shall record the global adjustment smoothing amounts applicable to the classes of consumers described in subsection 25.33(3) of the Act. This section must also specify that the IESO shall apply the amounts recorded in the subaccounts against the balances in the variance accounts for purposes of section 79.16(3) of the OEB Act.

- **Note:** This is a key aspect because, when the OEB determines RPP rates, it must take into account the balances in the variance accounts established by the IESO under s. 25.33 of the Electricity Act and make adjustments with a view to eliminating the balances within 12 months. This proposed new section 10.1 causes the IESO to reduce (in the near term) the variance account balances by the global adjustment smoothing amounts, as provided by Financing Trust, thereby enabling the OEB to determine RPP rates that, despite being lower for RPP consumers in the near term, still eliminate the relevant variance account balances within 12 months.

- **Paragraph 11(2)2.ii:** Amend the formula for calculating the allocation of global adjustment for a month to a licensed distributor that is a market participant by subtracting the global adjustment smoothing amount for a month from "M", which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as "X", such that the formula would be [(M-X-N) x (R+S-T)]/(P-Q). Define "X" as suggested under section 10(1).

- **Paragraph 11(2)3:** Amend the formula for calculating the allocation of global adjustment for a month to each Class B market participant by subtracting the global adjustment smoothing amount for a month from "M", which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as "X", such that the formula would be [(M-X-N) x U]/(P-Q). Define "X" as suggested under section 10(1).

- **Paragraph 16(7)4:** Consider amending the description of "Global Adjustment" that is required to be included on certain invoices so as to inform consumers that their portion of the global adjustment for the month (i) may have been reduced by the application of a global adjustment smoothing amount from the Financing Trust, or (ii) may include amounts payable to the Financing Trust in respect of global adjustment smoothing amounts previously applied.

- **Section 20(1):** This section establishes an obligation for the Ontario Electricity Financial Corporation and every licensed distributor that is a market participant to give the IESO such information as the IESO may require for the purposes of the Regulation in the form specified by the IESO and before the expiry of the period specified by the IESO. Consider amending to extend this obligation to the Financing Trust.

- **Section 20(6):** This section provides that on request by the OEB, the IESO, a licensed distributor, an embedded generator, a retailer or the OEFC shall give the OEB such information relating to this Regulation as the OEB may require, in the form and within the period specified by the OEB. Consider amending to extend this obligation to the Financing Trust.

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

Amendments to the *Ontario Energy Board Act*, including amendments to O. Reg. 95/05 (Classes of Consumers and Determination of Rates) and the introduction of a new regulation, would be needed to implement a cost recovery process for the Financing Trust in relation to the global adjustment smoothing mechanism, potentially with limited OEB oversight, as follows:

(i) Ontario Energy Board Act:

- **Section 78(3.3):** This provision establishes an obligation for the OEB, when determining rates for the retailing of electricity, to take into account balances in variance accounts established under section 25.33 of the Electricity Act and to make adjustments "with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct." Consider whether any amendments are needed, and confirm this works with the framework being proposed.

- **Section 78.7 (New):** We understand that the Province may want the OEB to have an oversight role. One possible approach would be to establish a new statutory section establishing that the IESO shall make payments to the Financing Trust with respect to the internal administrative costs incurred by the Financing Trust in connection with the purchase and management of the Regulatory Asset and the Financing Trust. Such payments by the IESO would need to be made in accordance with the order of the OEB then in effect, which orders shall be made by the OEB in accordance with rules prescribed under a new regulation.

    - The new regulation would need to be clear that the OEB does not have jurisdiction to consider the principal amount or any interest, financing costs, third party fees or expenses. Rather, OEB's role would be limited to considering the internal administrative costs of the Financing Trust and ensuring the Financing Trust receives an appropriate fee for its services, all of which would be recovered by the Financing Trust from the IESO, which would collect those amounts in the global adjustment. Note that, if this approach is accepted, the IESO and distributors and retailers would need the authority to collect such amounts as part of the GA and IESO would need the authority to pay such amounts to the Financing Trust. As such, additional amendments would be needed under O. Reg. 429/04.

- **Note:** Section 79.16 of the OEB Act does not require changes, but the significance of this provision should be understood.

    - Section 79.16 gives the OEB responsibility for determining electricity commodity prices for eligible consumers. Eligibility is determined under Reg. 95/05 (Classes of Consumers and Determination of Rates), which is also known as the Regulated Price Plan (RPP) Regulation.
    - Section 4(2) of the RPP Regulation defines RPP-eligible consumers as low volume consumers (i.e. those who annually use less than 150,000 kWh

or such other amount as prescribed), consumers with demand of 50 kW or less, residential consumers that have accounts with distributors, consumers who annually use 150,000 to 250,000 kW of electricity, and consumers who have accounts with distributors if in the farming business.

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

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

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

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

- If the OEB is to be given the role of reviewing and approving the recovery of OPG's internal administrative costs for the Financing Trust under the potential section 78.7 (see above), then this regulation should describe the process and criteria pursuant through which the OEB would determine the amounts that the IESO would be required to collect through the global adjustment, in accordance with section 25.33 of the Electricity Act, and pay to the Financing Trust in respect of the provision of global adjustment smoothing amounts. This part of the regulation should establish:

    - any reporting requirements from the Financing Trust and/or the IESO to the OEB in connection with the global adjustment smoothing mechanism;
    - the frequency of the OEB making determinations under this part of the regulation;
    - the process through which the OEB shall make these determinations, which should be a streamlined administrative process rather than a public hearing process or, if a hearing is needed, then the scope of the proceeding should be clearly and narrowly constrained so as to deter intervenor involvement, lengthy proceedings and reduce/eliminate risk to recovery by Financing Trust;

- the basis for the OEB's determinations as to the payments that shall be made to the Financing Trust, which should specify that:
  - the Financing Trust shall recover its prudently incurred internal administrative costs on a forecast basis each year;
  - the Financing Trust shall receive an appropriate fee each year (with some guidance as to what would be appropriate); and
  - the approved payment amounts shall be collected by the IESO through the global adjustment and paid to the Financing Trust in accordance with the order of the OEB then in effect. Note that O. Reg. 429/04 would likely need amendments to permit IESO (and distributors and retailers) to collect these amounts through the global adjustment.

ONTARIO POWER GENERATION

February 27, 2017

Mr. Serge Imbrogno
Deputy Minister,
Ministry of Energy
4th Floor, Hearst Block
900 Bay Street
Toronto, Ontario
M7A 2E1

Dear Deputy:

Below is a summary of OPG's preliminary views on the implementation of the Province's proposed Global Adjustment Smoothing Account and financing structure. These views are contingent on the proposed terms and conditions that were sent to the Ministry of Energy on February 21, 2017.

Understanding that the finalization of the legal terms, the Trust indentures, financing structure and other detailed terms will take several months and will involve collaboration between legal counsel, input from capital markets, parties involved and other stakeholders, this letter is intended to provide the guideline and framework which could form the foundation of the plan.

Please do not hesitate to contact me if you have any questions regarding this summary.

Sincerely,

Mr. Ken Hartwick
Chief Financial Officer and Senior Vice President, Finance
Ontario Power Generation
W: 416-592-6985
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:

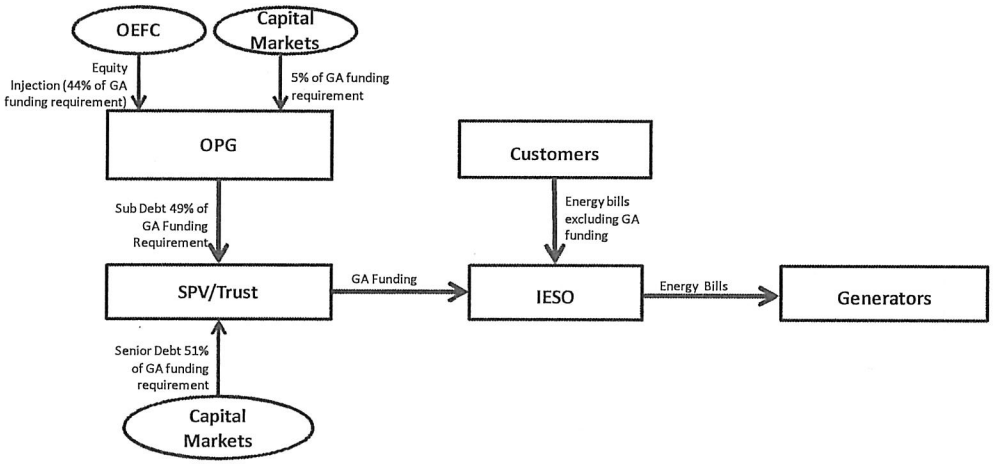
- restrict the risk to OPG;

- maximize the cost-effectiveness of the Trust or the Special Purpose Vehicle ("SPV") financing vehicle; and
- allow for consolidation into OPG financial statements.

The success of this structure is dependent on achieving a number of objectives which are reviewed in the following sections:

A. Ability to Recognize an Asset and Record Revenue
B. Ability to Consolidate the SPV into OPG
C. Ability to Finance
D. External Assessment
E. Risk Summary

All of the percentages shown in the graphic below are indicative and will be highly dependent on the legislation that the Province will enact:



Process:

The IESO will effectively sell the 'right to collect' deferred future revenue from ratepayers (GA Recovery Right asset) to the SPV in return for cash proceeds. In order for the SPV to purchase this asset the SPV will obtain the financing from two key sources: 51% directly from capital markets and 49% as subordinated debt from OPG. OPG will obtain 44% of this financing as an equity injection from the Province and 5% from capital markets.

A. Ability to Recognize an Asset and Record Revenue

Accounting Requirements under International Financial Reporting Standards (IFRS)

1) It is our understanding that the IESO and KPMG have concluded that the sale of this 'right to collect' future revenue (or regulatory asset) is not a financing transaction and will not be recorded as a financial liability. Based on that conclusion, the right to collect will be accounted for as an intangible asset in the SPV.

2) In order to the SPV to record this right as an intangible asset, the right must meet the following conditions:
   - The intangible asset must be separable and arise from a contractual or legal right (i.e. mandated by the Legislation and SPV Indenture Agreement).
   - The SPV must have the control and power to obtain future economic benefits from the intangible asset.
   - The SPV must be able to demonstrate that the intangible asset is purchased at fair value.

3) In order for the SPV to recognize appropriate revenue to offset any ongoing costs, the Legislation must require interest, carrying and administrative costs to be paid to the SPV on a monthly basis. This may result in additional amounts to be deferred to achieve the desired customer impact. Payment of revenue to the SPV is also important to service the interest expenses of the debt.

B. Ability to Consolidate the SPV into OPG under IFRS

OPG 'Control' of the SPV - Accounting Requirements

1) In order to meet the accounting definition of 'control', accounting guidance must be considered. There are no bright lines to determine whether OPG has exposure, or rights, to variable returns from its involvement with the SPV, or whether it has the ability to affect the returns of the SPV through its power over the SPV. Rather, all facts and circumstances are considered when assessing whether an entity has control over another entity. Based on the relevant accounting guidance under IFRS, OPG has proposed terms necessary to demonstrate that OPG has control over the SPV. OPG's external auditors, Ernst & Young, has provided their concurrence that based on the information provided to them to date that the following conditions should permit consolidation of the SPV by OPG.

Directive:

1. The SPV must be undertaken by OPG as a business initiative on its merits. A Shareholder Directive is to be limited to direct OPG to investigate the option of establishing a SPV vehicle to administer, finance and operate the Global Adjustment plan. The control, risk and rewards of that SPV will determine its consolidation into OPG as a business enterprise.

SPV:

2. The SPV should not operate in a predetermined way such that OPG does not have decision-making authority over the SPV's ongoing activities after its formation (i.e. should not operate on 'autopilot').
3. OPG must have the ability to appoint and remove the Trustee (or Board of Trustees), with no veto right by the Province. No party shall have the ability to remove OPG from its role and authority in the SPV.
4. The Province cannot have the right to veto OPG's decisions about the relevant activities of the SPV. OPG must have the power over the relevant activities of the SPV and be compensated. The relevant activities of the SPV include (but are not limited to) the evaluation and decisions on financing alternatives, duration, and the strategy to minimize financing costs. OPG must have the power to establish operating and capital budgets of the SPV.
5. OPG must have the power to determine or change operating and financing policies of the SPV, which will affect the variability of risks and returns.
6. The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following:
    - The SPV
    - Any of OPG's investments in the most subordinated debt of the Trust
7. OPG must own greater than 50% of the most subordinated debt and targeted to be no less than 5%[1] of the total debt of the SPV. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources. A quantitative analysis should be performed at a later date to corroborate the appropriateness of the 5% threshold to support that the 5% subordinated debt investment is sufficient to absorb most of the expected variability in the SPV.
8. OPG must have the ability to earn variable returns by exercising its authority, which shall be accomplished as follows:

[1] While the rest of the letter refers to a 10% investment in the most junior subordinated debt with OPG owning 5%, it should be noted that OPG should own more than 50% of the most subordinate debt. For simplicity, the degree to which OPG's ownership beyond 50% is not shown in this letter.

a. The cash flow from the restructured asset shall include interest determined based on a relevant benchmark that is appropriate relative to the restructured asset, plus an appropriate margin consistent with the relevant market and other risks
b. OPG shall have the authority to determine the financing strategy, which will vary the financing costs with the objective of enabling the SPV to achieve a more favourable return compared to the return from the restructured asset
c. The SPV shall establish classes of liabilities (senior, subordinated and the most subordinated). The classes would allow the SPV to delineate financing of lower risk investment and investment that would bear higher residual risk. The delineation would limit OPG's self-funded investment to a reasonable level in order to allow OPG to remain a self-sustaining entity.
d. OPG shall, through its ownership of the most subordinated liability, be able to capture and retain the pricing difference between cost of financing and benchmark for interest on the restructured asset, or any residual risk of restructured asset. The targeted return of the subordinated liability should be reflective of the underlying risks and compensate holders for active management that would be required.
e. OPG should participate in the detailed design of the above and the SPV documentation to ensure that it has substantive power and variability, which will allow OPG's Board of Directors to evaluate the opportunity as a business initiative instead of through a shareholder directive.

Nothwithstanding the above, under certain Defined Forced Majeure for emergency events (e.g. unlikely credit market event or disruption where it is not possible to borrow from the market at a reasonable rate), the OEFC may provide bridge financing beyond the designated percentage for a defined period. The relevant terms should ensure that this temporary measure does not detract from the rights of OPG to direct all of the relevant activities of the SPV. Additionally, OPG should not be protected from risk of loss by the OEFC with respect to its subordinated investment, nor should it lose its right to derive the residual returns should such bridge financing be required.

Legislation

9. The Legislation must require interest, carrying and administrative costs to be paid to the SPV on a monthly basis, so that the SPV is able to recognize appropriate revenue to offset any ongoing costs.
10. The Legislation must dictate the manner in which the restructured asset would be determined, collected, and the period of collection, so that the determination of the restructured asset will not be subject to the Province's decisions on an ongoing basis, but determined based on a formula. Alternatively, the Legislation may allow for an adjustment to the pre-determined deferral formula based on specific parameters that would limit the adjustment to the restructured asset. Adjustments beyond the specific parameters would require approval by the Board of Trustees.
11. The Legislation must be written to avoid legal or constitutional challenges and be irrevocable to reduce the cost of borrowing and with a specific formula which determines the deferral amount. As irrevocability would be difficult under Canadian law one mitigation would be to provide a Provincial guarantee which only applies with cancellation or amendment of the legislation.
12. The spirit of the above terms should be reflected in the SPV Indenture Agreement as well as Legislation, wherever possible.

2) The Trust is expected to be financed as follows:
   - 51% senior secured debt from external markets
   - 39% senior subordinated debt from OPG (via Province equity injection into OPG)

- 10% junior subordinated debt from OPG (5% from external markets and 5% from Province equity injection into OPG).

When assessing control, an investor shall consider the nature of its relationship with other parties and whether those parties are acting on the investor's behalf (i.e. they are 'de facto agents'). If OPG is assessed to be a 'de facto agent' of the Province, it will compromise the ability for OPG to consolidate the Trust. The split above is to meet the following conditions to ensure that OPG is not considered a 'de facto agent' of the Province:

- The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following:
  - The Trust
  - Any of OPG's investments in the most subordinated debt of the Trust
- OPG must own greater than 50% of the most subordinated debt and targeted to own no less than 5% of the total debt of the Trust. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources.

3) The Province will need to conclude on whether OPG still meets the definition of a Government Business Enterprise as defined under Public Sector Accounting Board standards in order to obtain the preferred consolidation treatment after the transaction. We also recommend that the Province to undertake the analysis deemed necessary to confirm the accounting treatment in its consolidated Public Accounts, including if the recognition of the intangible asset would result in an offsetting liability in the Public Accounts.

C. Ability to Finance

Property Right or Right to Collect
Legislative Requirements for Financing
The GA Recovery Right must be structured to encompass the following elements:

- Right to recover from and bill Ontario electricity customers for (1) the principal amount of GA that is being deferred, (2) all interest and other financing costs incurred in respect of the deferral of the GA, (3) all fees, expenses and other administrative costs associated with such financing;
- Repayment/amortization schedule as agreed by the IESO and any purchaser of such GA Recovery Right (or pursuant to a pre-defined schedule/formula that covers all of the purchaser's principal, interest and ongoing financing costs on a monthly basis);
- Repayment/amortization schedule must include a true up mechanism to ensure all costs associated with the deferral can be recovered from customers;
- IESO may dispose of the GA Recovery Right, provided that any such disposition shall be a true sale and absolute transfer to the purchaser of the IESO's right, title and interest in and to the GA Recovery Right;
- Purchaser will have the right to require the IESO (or any successor) to collect the principal amount of GA Recovery Right, together with interest, financing and administration costs, on the agreed repayment/amortization schedule;
- Right must be irrevocable and, if amended by future governments, debt holders have the right of action against the government to recover the amount outstanding including interest, fees, expenses and any damages resulting from the amendment;
- GA Recovery Right will not be subject to any set-off, counterclaim or other defence by the IESO or any successor or affiliated entity; and
- Make certain amendments to the Electricity Act to allow OPG to implement the SPV financing structure (e.g. allowing OPG to create subsidiaries and holding companies, and to have a beneficial interest in the SPV, etc). This would provide flexibility to accommodate possible variations to the financing structure that may be desirable over time.

Detailed legislative requirements are specified in the attachments as follows:

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.

Attachment 1

LEGISLATIVE REQUIREMENTS TO ALLOW DEFERRAL OF GLOBAL ADJUSTMENT AMOUNTS TO BE FINANCEABLE

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

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

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

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

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

1. The IESO will be empowered to create an asset (the "**Regulatory Asset**") consisting of all right, title and interest in and to:

   (a) right to recover from and bill Ontario electricity ratepayers for:

   (i) the principal amount of GA that is being deferred for collection;
   (ii) all interest and other financing costs incurred in respect of the deferral of the GA (whether through senior debt raised in the public markets or subordinated debt raised from OPG or others); and
   (iii) (subject to the comments in paragraph 5 below in respect of OPG's internal administrative costs only) all fees, expenses and other administrative costs associated with such financing, including up-front and ongoing financing costs and any indemnity payments;

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.

Attachment 2

STATUTORY AMENDMENTS

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

A. Amendments to Implement Structure

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

- **Section 53.1(1):** Amend to permit owning and operating generation facilities through subsidiaries (not only directly through OPG). In addition, amend to permit OPG to administer, manage, loan moneys to and have a beneficial interest in, if applicable, Financing Trust.

- **Section 53.2:** Amend to permit the Minister to acquire, hold, dispose of or otherwise deal with securities or debt obligations of, or any other interest in, OPG or any subsidiaries. This is to accommodate possible variations to the financing structure that may be desirable over time.

- **Section 53.■ (new):** New statutory section to permit the Minister to enter into arrangements relating to an exercise of powers under 53.2.

- **Section 53.■ (new)**: New statutory section providing that creditors of Financing Trust have no recourse to the assets of OPG or any of its subsidiaries (other than Financing Trust, if applicable). In addition, consideration should be given as to whether the Act should be amended so that the Financing Trust cannot be wound up or liquidated.

B. Miscellaneous Corporate Items to Address

- **OPG Articles:** Amend the OPG's articles to remove the private company restrictions.

- **MOA with Province:** Consider whether any amendments to OPG's MOA with the Province are required to contemplate the Financing Trust.

C. Amendments Under Electricity Act to Implement GA Smoothing

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

(i) Electricity Act:

- **Section ■ (New):** Establish a new power for the Minister to make directives to the IESO in relation to the global adjustment smoothing mechanism and, particularly, for purposes of establishing global adjustment smoothing amounts from time to time (expected to be monthly). To the extent possible, the directive power should be drafted so as to limit the ability for a future Minister to require the IESO to do anything that would materially and adversely affect the Financing Trust or its lenders. **[NTD: While our understanding is that the Minister would direct this, we note from other materials we have seen that OPG may instead be recommending a formula approach. It is not clear what the formula would look like, where it would be set out or how it would be applied and by whom]**

- **Paragraph 25.33(1):** This section says that IESO shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of market participants reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require IESO to ensure that, over time, payments by prescribed classes of market participants also reflect amounts paid to Financing Trust. **[NTD: Not certain this is needed if only to benefit residential and small business consumers, who are not market participants. May be needed in reference to payments from distributors and retailers]**

- **Paragraph 25.33(2):** This section says that distributors and retailers shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of consumers reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require distributors and retailers to ensure that, over time, payments by prescribed classes of consumers also reflect amounts paid to Financing Trust.

- Note: As described below, the regulation will need to include new requirements for the IESO to record the global adjustment smoothing amounts in one or more variance accounts and to use those amounts to offset amounts otherwise recorded in the variance accounts under Section 25.33(3) of the Act. For context, we note:

    - Section 25.33(3) says that adjustments under (1) or (2) relating to electricity consumed by consumers whose rates are determined by

the OEB under s. 79.16 of the OEB Act (i.e. RPP Customers) shall instead be made in accordance with the regulations to one or more variance accounts established and maintained by the IESO.

- Section 25.33(4) says IESO, distributors and retailers shall make and receive such payments, set-offs and credits as may be required or permitted by the regulations with respect to consumers described in (3), i.e. RPP Customers.

- Section 25.33(5) says that IESO shall establish and maintain such variance accounts as may be needed to record all amounts payable or receivable by it under 25.33.

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

- **Section 1(1):** Consider adding definitions for "Financing Trust" and "global adjustment smoothing amount" or such other terms as may be preferred.

- **Section 1.2(1) (New):** Add section providing that, for the purposes of this Regulation, the global adjustment smoothing amount for a month is the amount determined by the IESO in accordance with a directive from the Minister under section ■ of the Electricity Act in respect of the month. **[NTD: See above note re use of Minister directives]**

- **Section 1.2(2) (New):** Consider adding a section providing that the IESO shall publish the global adjustment smoothing amount for a month by no later than the 10th business day of the following month [to align with general publication requirements for global adjustment under s. 1.1(2)].

- **Section 10(1):** Amend formula for calculating Class B GA rate by subtracting the global adjustment smoothing amount for a month from "M", which is the total amount of the global adjustment for the month. The global adjustment smoothing amount could be designated as "X", such that the formula would be (M-X-N)/(P-Q). Define "X" as the global adjustment smoothing amount for the month as determined by the IESO in accordance with the Minister's directive under section ■ of the Electricity Act for the month. **[NTD: See above note re use of Minister directives]**

- **Section 10.1 (New):** Add new section to deal with adjustments under subsection 25.33(3) of the Act, i.e. in respect of RPP consumers. This section should require the IESO to establish, within the variance account(s) it maintains pursuant to subsection 25.33(3) of the Act, one or more subaccounts in which it shall record the global adjustment smoothing amounts applicable to the classes of consumers described in subsection 25.33(3) of the Act. This section must also specify that the IESO shall apply the amounts recorded in the subaccounts against the balances in the variance accounts for purposes of section 79.16(3) of the OEB Act.

- **Note:** This is a key aspect because, when the OEB determines RPP rates, it must take into account the balances in the variance accounts established by the IESO under s. 25.33 of the Electricity Act and make adjustments with a view to eliminating the balances within 12 months. This proposed new section 10.1 causes the IESO to reduce (in the near term) the variance account balances by the global adjustment smoothing amounts, as provided by Financing Trust, thereby enabling the OEB to determine RPP rates that, despite being lower for RPP consumers in the near term, still eliminate the relevant variance account balances within 12 months.

- **Paragraph 11(2)2.ii:** Amend the formula for calculating the allocation of global adjustment for a month to a licensed distributor that is a market participant by subtracting the global adjustment smoothing amount for a month from "M", which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as "X", such that the formula would be [(M-X-N) x (R+S-T)]/(P-Q). Define "X" as suggested under section 10(1).

- **Paragraph 11(2)3:** Amend the formula for calculating the allocation of global adjustment for a month to each Class B market participant by subtracting the global adjustment smoothing amount for a month from "M", which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as "X", such that the formula would be [(M-X-N) x U]/(P-Q). Define "X" as suggested under section 10(1).

- **Paragraph 16(7)4:** Consider amending the description of "Global Adjustment" that is required to be included on certain invoices so as to inform consumers that their portion of the global adjustment for the month (i) may have been reduced by the application of a global adjustment smoothing amount from the Financing Trust, or (ii) may include amounts payable to the Financing Trust in respect of global adjustment smoothing amounts previously applied.

- **Section 20(1):** This section establishes an obligation for the Ontario Electricity Financial Corporation and every licensed distributor that is a market participant to give the IESO such information as the IESO may require for the purposes of the Regulation in the form specified by the IESO and before the expiry of the period specified by the IESO. Consider amending to extend this obligation to the Financing Trust.

- **Section 20(6):** This section provides that on request by the OEB, the IESO, a licensed distributor, an embedded generator, a retailer or the OEFC shall give the OEB such information relating to this Regulation as the OEB may require, in the form and within the period specified by the OEB. Consider amending to extend this obligation to the Financing Trust.

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

Amendments to the *Ontario Energy Board Act*, including amendments to O. Reg. 95/05 (Classes of Consumers and Determination of Rates) and the introduction of a new regulation, would be needed to implement a cost recovery process for the Financing Trust in relation to the global adjustment smoothing mechanism, potentially with limited OEB oversight, as follows:

(i) Ontario Energy Board Act:

- **Section 78(3.3):** This provision establishes an obligation for the OEB, when determining rates for the retailing of electricity, to take into account balances in variance accounts established under section 25.33 of the Electricity Act and to make adjustments "with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct." Consider whether any amendments are needed, and confirm this works with the framework being proposed.

- **Section 78.7 (New):** We understand that the Province may want the OEB to have an oversight role. One possible approach would be to establish a new statutory section establishing that the IESO shall make payments to the Financing Trust with respect to the internal administrative costs incurred by the Financing Trust in connection with the purchase and management of the Regulatory Asset and the Financing Trust. Such payments by the IESO would need to be made in accordance with the order of the OEB then in effect, which orders shall be made by the OEB in accordance with rules prescribed under a new regulation.

    - The new regulation would need to be clear that the OEB does not have jurisdiction to consider the principal amount or any interest, financing costs, third party fees or expenses. Rather, OEB's role would be limited to considering the internal administrative costs of the Financing Trust and ensuring the Financing Trust receives an appropriate fee for its services, all of which would be recovered by the Financing Trust from the IESO, which would collect those amounts in the global adjustment. Note that, if this approach is accepted, the IESO and distributors and retailers would need the authority to collect such amounts as part of the GA and IESO would need the authority to pay such amounts to the Financing Trust. As such, additional amendments would be needed under O. Reg. 429/04.

- **Note:** Section 79.16 of the OEB Act does not require changes, but the significance of this provision should be understood.

    - Section 79.16 gives the OEB responsibility for determining electricity commodity prices for eligible consumers. Eligibility is determined under Reg. 95/05 (Classes of Consumers and Determination of Rates), which is also known as the Regulated Price Plan (RPP) Regulation.
    - Section 4(2) of the RPP Regulation defines RPP-eligible consumers as low volume consumers (i.e. those who annually use less than 150,000 kWh

or such other amount as prescribed), consumers with demand of 50 kW or less, residential consumers that have accounts with distributors, consumers who annually use 150,000 to 250,000 kW of electricity, and consumers who have accounts with distributors if in the farming business.

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

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

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

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

- If the OEB is to be given the role of reviewing and approving the recovery of OPG's internal administrative costs for the Financing Trust under the potential section 78.7 (see above), then this regulation should describe the process and criteria pursuant through which the OEB would determine the amounts that the IESO would be required to collect through the global adjustment, in accordance with section 25.33 of the Electricity Act, and pay to the Financing Trust in respect of the provision of global adjustment smoothing amounts. This part of the regulation should establish:

    - any reporting requirements from the Financing Trust and/or the IESO to the OEB in connection with the global adjustment smoothing mechanism;
    - the frequency of the OEB making determinations under this part of the regulation;
    - the process through which the OEB shall make these determinations, which should be a streamlined administrative process rather than a public hearing process or, if a hearing is needed, then the scope of the proceeding should be clearly and narrowly constrained so as to deter intervenor involvement, lengthy proceedings and reduce/eliminate risk to recovery by Financing Trust;

- the basis for the OEB's determinations as to the payments that shall be made to the Financing Trust, which should specify that:
  - the Financing Trust shall recover its prudently incurred internal administrative costs on a forecast basis each year;
  - the Financing Trust shall receive an appropriate fee each year (with some guidance as to what would be appropriate); and
  - the approved payment amounts shall be collected by the IESO through the global adjustment and paid to the Financing Trust in accordance with the order of the OEB then in effect. Note that O. Reg. 429/04 would likely need amendments to permit IESO (and distributors and retailers) to collect these amounts through the global adjustment.

ONTARIO POWER GENERATION

February 27, 2017

Mr. Serge Imbrogno
Deputy Minister,
Ministry of Energy
4th Floor, Hearst Block
900 Bay Street
Toronto, Ontario
M7A 2E1

Dear Deputy:

Below is a summary of OPG's preliminary views on the implementation of the Province's proposed Global Adjustment Smoothing Account and financing structure. These views are contingent on the proposed terms and conditions that were sent to the Ministry of Energy on February 21, 2017.

Understanding that the finalization of the legal terms, the Trust indentures, financing structure and other detailed terms will take several months and will involve collaboration between legal counsel, input from capital markets, parties involved and other stakeholders, this letter is intended to provide the guideline and framework which could form the foundation of the plan.

Please do not hesitate to contact me if you have any questions regarding this summary.

Sincerely,

Mr. Ken Hartwick
Chief Financial Officer and Senior Vice President, Finance
Ontario Power Generation
W: 416-592-6985
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:

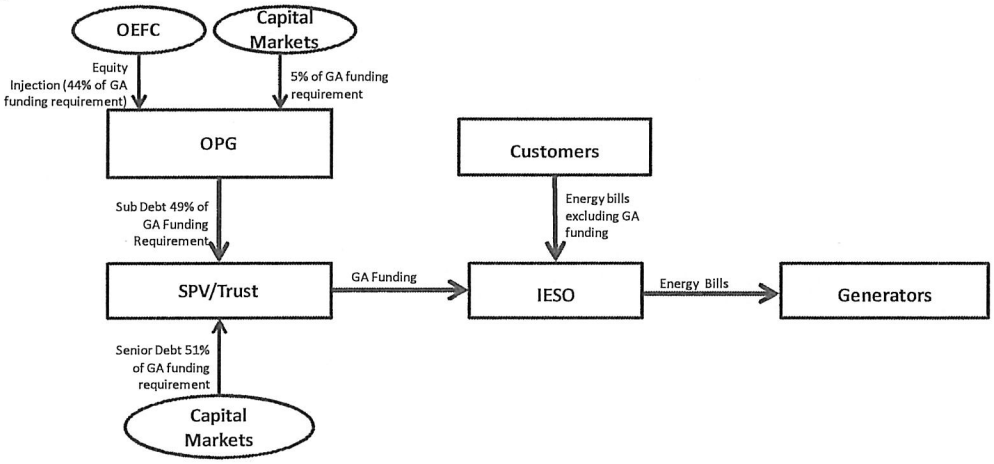
- restrict the risk to OPG;

- maximize the cost-effectiveness of the Trust or the Special Purpose Vehicle ("SPV") financing vehicle; and
- allow for consolidation into OPG financial statements.

The success of this structure is dependent on achieving a number of objectives which are reviewed in the following sections:

A. Ability to Recognize an Asset and Record Revenue
B. Ability to Consolidate the SPV into OPG
C. Ability to Finance
D. External Assessment
E. Risk Summary

All of the percentages shown in the graphic below are indicative and will be highly dependent on the legislation that the Province will enact:



Process:

The IESO will effectively sell the 'right to collect' deferred future revenue from ratepayers (GA Recovery Right asset) to the SPV in return for cash proceeds. In order for the SPV to purchase this asset the SPV will obtain the financing from two key sources: 51% directly from capital markets and 49% as subordinated debt from OPG. OPG will obtain 44% of this financing as an equity injection from the Province and 5% from capital markets.

A. Ability to Recognize an Asset and Record Revenue

Accounting Requirements under International Financial Reporting Standards (IFRS)

1) It is our understanding that the IESO and KPMG have concluded that the sale of this 'right to collect' future revenue (or regulatory asset) is not a financing transaction and will not be recorded as a financial liability. Based on that conclusion, the right to collect will be accounted for as an intangible asset in the SPV.

2) In order to the SPV to record this right as an intangible asset, the right must meet the following conditions:
   - The intangible asset must be separable and arise from a contractual or legal right (i.e. mandated by the Legislation and SPV Indenture Agreement).
   - The SPV must have the control and power to obtain future economic benefits from the intangible asset.
   - The SPV must be able to demonstrate that the intangible asset is purchased at fair value.

3) In order for the SPV to recognize appropriate revenue to offset any ongoing costs, the Legislation must require interest, carrying and administrative costs to be paid to the SPV on a monthly basis. This may result in additional amounts to be deferred to achieve the desired customer impact. Payment of revenue to the SPV is also important to service the interest expenses of the debt.

B. Ability to Consolidate the SPV into OPG under IFRS

OPG 'Control' of the SPV - Accounting Requirements

1) In order to meet the accounting definition of 'control', accounting guidance must be considered. There are no bright lines to determine whether OPG has exposure, or rights, to variable returns from its involvement with the SPV, or whether it has the ability to affect the returns of the SPV through its power over the SPV. Rather, all facts and circumstances are considered when assessing whether an entity has control over another entity. Based on the relevant accounting guidance under IFRS, OPG has proposed terms necessary to demonstrate that OPG has control over the SPV. OPG's external auditors, Ernst & Young, has provided their concurrence that based on the information provided to them to date that the following conditions should permit consolidation of the SPV by OPG.

Directive:

1. The SPV must be undertaken by OPG as a business initiative on its merits. A Shareholder Directive is to be limited to direct OPG to investigate the option of establishing a SPV vehicle to administer, finance and operate the Global Adjustment plan. The control, risk and rewards of that SPV will determine its consolidation into OPG as a business enterprise.

SPV:

2. The SPV should not operate in a predetermined way such that OPG does not have decision-making authority over the SPV's ongoing activities after its formation (i.e. should not operate on 'autopilot').
3. OPG must have the ability to appoint and remove the Trustee (or Board of Trustees), with no veto right by the Province. No party shall have the ability to remove OPG from its role and authority in the SPV.
4. The Province cannot have the right to veto OPG's decisions about the relevant activities of the SPV. OPG must have the power over the relevant activities of the SPV and be compensated. The relevant activities of the SPV include (but are not limited to) the evaluation and decisions on financing alternatives, duration, and the strategy to minimize financing costs. OPG must have the power to establish operating and capital budgets of the SPV.
5. OPG must have the power to determine or change operating and financing policies of the SPV, which will affect the variability of risks and returns.
6. The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following:
    - The SPV
    - Any of OPG's investments in the most subordinated debt of the Trust
7. OPG must own greater than 50% of the most subordinated debt and targeted to be no less than 5%[1] of the total debt of the SPV. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources. A quantitative analysis should be performed at a later date to corroborate the appropriateness of the 5% threshold to support that the 5% subordinated debt investment is sufficient to absorb most of the expected variability in the SPV.
8. OPG must have the ability to earn variable returns by exercising its authority, which shall be accomplished as follows:

[1] While the rest of the letter refers to a 10% investment in the most junior subordinated debt with OPG owning 5%, it should be noted that OPG should own more than 50% of the most subordinate debt. For simplicity, the degree to which OPG's ownership beyond 50% is not shown in this letter.

a. The cash flow from the restructured asset shall include interest determined based on a relevant benchmark that is appropriate relative to the restructured asset, plus an appropriate margin consistent with the relevant market and other risks
b. OPG shall have the authority to determine the financing strategy, which will vary the financing costs with the objective of enabling the SPV to achieve a more favourable return compared to the return from the restructured asset
c. The SPV shall establish classes of liabilities (senior, subordinated and the most subordinated). The classes would allow the SPV to delineate financing of lower risk investment and investment that would bear higher residual risk. The delineation would limit OPG's self-funded investment to a reasonable level in order to allow OPG to remain a self-sustaining entity.
d. OPG shall, through its ownership of the most subordinated liability, be able to capture and retain the pricing difference between cost of financing and benchmark for interest on the restructured asset, or any residual risk of restructured asset. The targeted return of the subordinated liability should be reflective of the underlying risks and compensate holders for active management that would be required.
e. OPG should participate in the detailed design of the above and the SPV documentation to ensure that it has substantive power and variability, which will allow OPG's Board of Directors to evaluate the opportunity as a business initiative instead of through a shareholder directive.

Nothwithstanding the above, under certain Defined Forced Majeure for emergency events (e.g. unlikely credit market event or disruption where it is not possible to borrow from the market at a reasonable rate), the OEFC may provide bridge financing beyond the designated percentage for a defined period. The relevant terms should ensure that this temporary measure does not detract from the rights of OPG to direct all of the relevant activities of the SPV. Additionally, OPG should not be protected from risk of loss by the OEFC with respect to its subordinated investment, nor should it lose its right to derive the residual returns should such bridge financing be required.

Legislation

9. The Legislation must require interest, carrying and administrative costs to be paid to the SPV on a monthly basis, so that the SPV is able to recognize appropriate revenue to offset any ongoing costs.
10. The Legislation must dictate the manner in which the restructured asset would be determined, collected, and the period of collection, so that the determination of the restructured asset will not be subject to the Province's decisions on an ongoing basis, but determined based on a formula. Alternatively, the Legislation may allow for an adjustment to the pre-determined deferral formula based on specific parameters that would limit the adjustment to the restructured asset. Adjustments beyond the specific parameters would require approval by the Board of Trustees.
11. The Legislation must be written to avoid legal or constitutional challenges and be irrevocable to reduce the cost of borrowing and with a specific formula which determines the deferral amount. As irrevocability would be difficult under Canadian law one mitigation would be to provide a Provincial guarantee which only applies with cancellation or amendment of the legislation.
12. The spirit of the above terms should be reflected in the SPV Indenture Agreement as well as Legislation, wherever possible.

2) The Trust is expected to be financed as follows:
   - 51% senior secured debt from external markets
   - 39% senior subordinated debt from OPG (via Province equity injection into OPG)

- 10% junior subordinated debt from OPG (5% from external markets and 5% from Province equity injection into OPG).

When assessing control, an investor shall consider the nature of its relationship with other parties and whether those parties are acting on the investor's behalf (i.e. they are 'de facto agents'). If OPG is assessed to be a 'de facto agent' of the Province, it will compromise the ability for OPG to consolidate the Trust. The split above is to meet the following conditions to ensure that OPG is not considered a 'de facto agent' of the Province:

- The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following:
  - The Trust
  - Any of OPG's investments in the most subordinated debt of the Trust
- OPG must own greater than 50% of the most subordinated debt and targeted to own no less than 5% of the total debt of the Trust. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources.

3) The Province will need to conclude on whether OPG still meets the definition of a Government Business Enterprise as defined under Public Sector Accounting Board standards in order to obtain the preferred consolidation treatment after the transaction. We also recommend that the Province to undertake the analysis deemed necessary to confirm the accounting treatment in its consolidated Public Accounts, including if the recognition of the intangible asset would result in an offsetting liability in the Public Accounts.

C. Ability to Finance

Property Right or Right to Collect
Legislative Requirements for Financing
The GA Recovery Right must be structured to encompass the following elements:

- Right to recover from and bill Ontario electricity customers for (1) the principal amount of GA that is being deferred, (2) all interest and other financing costs incurred in respect of the deferral of the GA, (3) all fees, expenses and other administrative costs associated with such financing;
- Repayment/amortization schedule as agreed by the IESO and any purchaser of such GA Recovery Right (or pursuant to a pre-defined schedule/formula that covers all of the purchaser's principal, interest and ongoing financing costs on a monthly basis);
- Repayment/amortization schedule must include a true up mechanism to ensure all costs associated with the deferral can be recovered from customers;
- IESO may dispose of the GA Recovery Right, provided that any such disposition shall be a true sale and absolute transfer to the purchaser of the IESO's right, title and interest in and to the GA Recovery Right;
- Purchaser will have the right to require the IESO (or any successor) to collect the principal amount of GA Recovery Right, together with interest, financing and administration costs, on the agreed repayment/amortization schedule;
- Right must be irrevocable and, if amended by future governments, debt holders have the right of action against the government to recover the amount outstanding including interest, fees, expenses and any damages resulting from the amendment;
- GA Recovery Right will not be subject to any set-off, counterclaim or other defence by the IESO or any successor or affiliated entity; and
- Make certain amendments to the Electricity Act to allow OPG to implement the SPV financing structure (e.g. allowing OPG to create subsidiaries and holding companies, and to have a beneficial interest in the SPV, etc). This would provide flexibility to accommodate possible variations to the financing structure that may be desirable over time.

Detailed legislative requirements are specified in the attachments as follows:

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.

Attachment 1

LEGISLATIVE REQUIREMENTS TO ALLOW DEFERRAL OF GLOBAL ADJUSTMENT AMOUNTS TO BE FINANCEABLE

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

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

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

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

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

1. The IESO will be empowered to create an asset (the "**Regulatory Asset**") consisting of all right, title and interest in and to:

   (a) right to recover from and bill Ontario electricity ratepayers for:

   (i) the principal amount of GA that is being deferred for collection;
   (ii) all interest and other financing costs incurred in respect of the deferral of the GA (whether through senior debt raised in the public markets or subordinated debt raised from OPG or others); and
   (iii) (subject to the comments in paragraph 5 below in respect of OPG's internal administrative costs only) all fees, expenses and other administrative costs associated with such financing, including up-front and ongoing financing costs and any indemnity payments;

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:

    - 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) x (R+S-T)]/(P-Q). Define "X" as suggested under section 10(1).

- **Paragraph 11(2)3:** Amend the formula for calculating the allocation of global adjustment for a month to each Class B market participant by subtracting the global adjustment smoothing amount for a month from "M", which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as "X", such that the formula would be [(M-X-N) x U]/(P-Q). Define "X" as suggested under section 10(1).

- **Paragraph 16(7)4:** Consider amending the description of "Global Adjustment" that is required to be included on certain invoices so as to inform consumers that their portion of the global adjustment for the month (i) may have been reduced by the application of a global adjustment smoothing amount from the Financing Trust, or (ii) may include amounts payable to the Financing Trust in respect of global adjustment smoothing amounts previously applied.

- **Section 20(1):** This section establishes an obligation for the Ontario Electricity Financial Corporation and every licensed distributor that is a market participant to give the IESO such information as the IESO may require for the purposes of the Regulation in the form specified by the IESO and before the expiry of the period specified by the IESO. Consider amending to extend this obligation to the Financing Trust.

- **Section 20(6):** This section provides that on request by the OEB, the IESO, a licensed distributor, an embedded generator, a retailer or the OEFC shall give the OEB such information relating to this Regulation as the OEB may require, in the form and within the period specified by the OEB. Consider amending to extend this obligation to the Financing Trust.

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

Amendments to the *Ontario Energy Board Act*, including amendments to O. Reg. 95/05 (Classes of Consumers and Determination of Rates) and the introduction of a new regulation, would be needed to implement a cost recovery process for the Financing Trust in relation to the global adjustment smoothing mechanism, potentially with limited OEB oversight, as follows:

(i) Ontario Energy Board Act:

- **Section 78(3.3):** This provision establishes an obligation for the OEB, when determining rates for the retailing of electricity, to take into account balances in variance accounts established under section 25.33 of the Electricity Act and to make adjustments "with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct." Consider whether any amendments are needed, and confirm this works with the framework being proposed.

- **Section 78.7 (New):** We understand that the Province may want the OEB to have an oversight role. One possible approach would be to establish a new statutory section establishing that the IESO shall make payments to the Financing Trust with respect to the internal administrative costs incurred by the Financing Trust in connection with the purchase and management of the Regulatory Asset and the Financing Trust. Such payments by the IESO would need to be made in accordance with the order of the OEB then in effect, which orders shall be made by the OEB in accordance with rules prescribed under a new regulation.

    - The new regulation would need to be clear that the OEB does not have jurisdiction to consider the principal amount or any interest, financing costs, third party fees or expenses. Rather, OEB's role would be limited to considering the internal administrative costs of the Financing Trust and ensuring the Financing Trust receives an appropriate fee for its services, all of which would be recovered by the Financing Trust from the IESO, which would collect those amounts in the global adjustment. Note that, if this approach is accepted, the IESO and distributors and retailers would need the authority to collect such amounts as part of the GA and IESO would need the authority to pay such amounts to the Financing Trust. As such, additional amendments would be needed under O. Reg. 429/04.

- **Note:** Section 79.16 of the OEB Act does not require changes, but the significance of this provision should be understood.

    - Section 79.16 gives the OEB responsibility for determining electricity commodity prices for eligible consumers. Eligibility is determined under Reg. 95/05 (Classes of Consumers and Determination of Rates), which is also known as the Regulated Price Plan (RPP) Regulation.
    - Section 4(2) of the RPP Regulation defines RPP-eligible consumers as low volume consumers (i.e. those who annually use less than 150,000 kWh

or such other amount as prescribed), consumers with demand of 50 kW or less, residential consumers that have accounts with distributors, consumers who annually use 150,000 to 250,000 kW of electricity, and consumers who have accounts with distributors if in the farming business.

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

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

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

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

- If the OEB is to be given the role of reviewing and approving the recovery of OPG's internal administrative costs for the Financing Trust under the potential section 78.7 (see above), then this regulation should describe the process and criteria pursuant through which the OEB would determine the amounts that the IESO would be required to collect through the global adjustment, in accordance with section 25.33 of the Electricity Act, and pay to the Financing Trust in respect of the provision of global adjustment smoothing amounts. This part of the regulation should establish:

  - any reporting requirements from the Financing Trust and/or the IESO to the OEB in connection with the global adjustment smoothing mechanism;
  - the frequency of the OEB making determinations under this part of the regulation;
  - the process through which the OEB shall make these determinations, which should be a streamlined administrative process rather than a public hearing process or, if a hearing is needed, then the scope of the proceeding should be clearly and narrowly constrained so as to deter intervenor involvement, lengthy proceedings and reduce/eliminate risk to recovery by Financing Trust;

- the basis for the OEB's determinations as to the payments that shall be made to the Financing Trust, which should specify that:
  - the Financing Trust shall recover its prudently incurred internal administrative costs on a forecast basis each year;
  - the Financing Trust shall receive an appropriate fee each year (with some guidance as to what would be appropriate); and
  - the approved payment amounts shall be collected by the IESO through the global adjustment and paid to the Financing Trust in accordance with the order of the OEB then in effect. Note that O. Reg. 429/04 would likely need amendments to permit IESO (and distributors and retailers) to collect these amounts through the global adjustment.

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Intergenerational Fairness in Hydro Rates Act, 2017

[OLC Notes re this draft:
- all numbering of provisions will need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)

- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*
- Consider references to "an investment asset" vs. "the investment asset" and "an investment asset owner" vs. "the investment asset owner" -- do we want to only use "the" and provide an interpretive provision that clarifies that we are talking about all owners collectively and all assets collectively? Check whether we ever need to refer to "an" investment asset owner as an individual owner.]

Preamble

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

The Government of Ontario has established a regulatory and contractual framework related to the generation and sale of electricity to ensure significant investment in

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

decarbonizing and modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom.[2]

Given the long-term benefits that future generations of Ontarians will receive from many of these investments, it is appropriate and fair to raise money in respect of these generating sites and facilities[3] in a manner that allocates the costs of these investments fairly among present and future consumers.

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

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

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PART I
GENERAL

Interpretation
Definitions

1. (1) In this Act,

"clean energy adjustment" means the amount determined under section 11x; ("French")

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

(a) fostering the growth of and investment in renewable energy projects and cleaner energy sources and technologies, including alternative energy sources,

(b) removing barriers to and promoting opportunities for

renewable energy projects and cleaner energy sources and technologies and clean energy, and

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

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

"fair adjustment" means the determination of the rate payable

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

for electricity in accordance with Part II; ("French")

[OLC Note: Need to consider this def'n a bit more, depending on how Part II drafting lands.]

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

"Financial Services Manager" means Ontario Power Generation Inc. or such other person or entity as may be appointed as the Financial

Services Manager by the Minister under section 12.1; ("French")

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

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner under section x; ("French")

"holiday" means New Year's Day, Family Day, Good Friday,

Christmas Day, Boxing Day, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day and, if any of those days falls on a Saturday or Sunday, the weekday next following that day that is not one of those days; ("jour férié")

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

"IESO funding shortfall" means, in respect of a reference period, the

amount determined under section X for the reference period; ("French")

"investment asset" means all or part of the regulatory asset that is deemed to be an investment asset under section x; ("French")

[OLC Note: As noted above, need to determine whether we need to refer to one investment asset or multiple investment assets and define accordingly. Consider how in some places we refer to the investment asset owner's "interest" in the investment asset….]

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

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

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

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

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

"reference period" means,

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

[OLC Note: Is clause (a) still correct -- or is the first reference period now the full 12 months (i.e. ending on April 30, 2018?)].

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of

the owner of an investment asset by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

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

"regulatory asset" means the regulatory asset established under section X; ("French")

[OLC Note: If I'm understanding correctly, the previous definition was wrong because the regulatory asset itself will not undergo a conceptual "decrease" in size when part of it is

sold… rather the right of recovery will just be for a smaller amount of money. So I think the desire is for the definition to just state what I've included above. Please confirm.]

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account

and meets the criteria set out in subsection (2); or

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

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

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

"weekday" means any Monday, Tuesday, Wednesday, Thursday or

Friday that is not a holiday. ("jour de semaine")

Specified consumers

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

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

2. The person annually uses not more than 250,000 kilowatt

ɔurs of electricity, or such other amount as may be prescribed.

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

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

   i. a dwelling,

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

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

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

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

Invoice amount

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

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

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

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

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

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

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the

IESO, such amounts as may be prescribed. ("French")

Same, exclusions

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

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

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

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

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

ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider.

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

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

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

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

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

Effect of invalidity, etc.[5]

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

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation

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

that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

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

(a) to ensure that the costs of the clean energy initiative are fairly distributed among specified customers over time;

(b) to recognize the long-term benefits of the clean energy

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

initiative that accrue over time and will continue to benefit present and future electricity consumers in the Province;

(c) to promote the use of clean energy sources and technologies, including low carbon, alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario;

(d) to promote economic efficiency and sustainability in the generation, transmission,

distribution and sale of electricity;

(e) to facilitate the maintenance of a financially viable electricity industry, including by raising money in respect of sites and facilities in the Province for the generation of electrical energy and the production therefrom;[7] and

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

[7] FLS - as per the note in the Preamble on this language, please see 92A (4) of the *Constitution Act, 1867.*

Crown bound

3. This Act binds the Crown.

Protection and guarantee of scheme

Prohibition

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

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

(b) except as expressly permitted by this Act, reduce the amount

the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

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

Copy of

Agreements for compensation

(3) The Minister may enter into agreements for the purposes of guaranteeing that compensation will be paid to an investment asset owner for losses suffered as a result of,

(a) a contravention of subsection (1);

(b) a change in law that would adversely affect the rights under this Act of an investment asset owner;

(c) approval by the Lieutenant Governor in Council of a Fair Allocation Plan, or an

amendment to a Fair Allocation Plan, that fails to recognize the principles set out in section x; or

(d) a final determination by a court of final jurisdiction rendering invalid or ineffective all or any of the provisions of this Act.[8]

Electricity vendors, obligations

(5) If an electricity vendor fails to carry out its obligations under this Act for any reason, including because the electricity vendor is dissolved or restructured or because it becomes insolvent, the

[8] Note to translator: See s. 9 of the Public Authorities Protection Act.

Government of Ontario shall, within a reasonable amount of time, carry out those obligations or ensure they are carried out by another appropriate entity.

[ENE LSB NTD: Need to consider whether this ss. (5) should apply in the case of USMPs. As a practical matter, it would probably make more sense to impose the backstop obligation on the specified consumer who engages the USMP.]

PART II
FAIR ADJUSTMENT

Specified consumers, rates for May 1, 2017 to April 30, 2018

Definition

6. (1) In this section,

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

"average baseline rate" means the average rate that would be payable effective May 1, 2017 by the class

of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Ontario Energy Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit

sub-meter provider providing unit sub-metering for the specified consumer; ("French")

Rate determination

(2) Subject to subsection (3), the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive a monthly invoice amount that is 25 per cent less than the average baseline invoice amount.

Sub-meter customers

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

Fair adjustments, starting May 1, 2018

7. The Lieutenant Governor in Council may make regulations prescribing the rate for electricity payable by specified consumers and sub-meter customers for any

prescribed periods occurring after April 30, 2018.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

9x. (1) Subject to subsection (1.1), upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the owner of the investment asset, in accordance with such terms of

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

[OLC Note - ENE LSB to confirm that unit sub-metering does not need to be addressed here.]

Limitation

(1.1) No clean energy adjustment shall be collected from a specified consumer before May 1, 2022.

[OLC Note: We say the same thing in different ways in several places -- consider whether this needs to be repeated or if it could all be said just

once and achieve the desired effect. See 12x (1.1) and 22 (1.1) para. 2.]

Same

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

(a) whether the clean energy adjustment is inconsistent with the Fair Allocation Plan applicable at the time when the payment is due; and

(b) whether the clean energy adjustment relates to funding obligations that were incurred in

a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

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

Same

(5) The indebtedness mentioned in subsection (4) is a single and

separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

10x. (1) Any clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of indebtedness created by the adjustment and is irrevocable

upon invoicing the consumer and may not be set off or by passed.

Exception

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

Determination of clean energy adjustment

11x. (1) The Ontario Energy Board shall apply the method set out in Schedule 1 to determine the amount of the clean energy adjustment payable on a monthly basis by each electricity vendor on

behalf of the electricity vendor's specified consumers.

[OLC Note: We don't have to keep the contents of Schedule 1 separated out as a schedule. I just wanted to separate it out for now so that we could get some clarity around the steps occurring outside of the calculations, and putting it in a schedule helps with that. If you would prefer to insert it here, I can do so in a subsequent draft.]

True up amount

(2) The Ontario Energy Board may, in accordance with the regulations, adjust the amount

determined under Schedule 1 from time to time to address the any difference between the amount of the clean energy adjustment payable in respect of the reference period and the amount of the clean energy adjustment collected as of the date of the determination.

[OLC Note: I had assumed that we didn't need to list the details of true-up calculation because this would all be handled in the regulations. If there are particular elements that you want to set out in the Act itself, let me know and I can work them in. (I see a list of possible items on page 20 of the instructions sent late

evening of April 13th but I assumed these details would all appear in the regulations.) Also not sure if those instructions are still current as they also say that the true up "shall" be applied in respect of each reference period whereas I believe the latest instructions are for this to be an optional, discretionary exercise to be engaged in as the OEB considers appropriate.

Please also confirm -- is it the OEB that should be doing the calculations in subs. (1) and (2) or should I be changing this to the FSM?]

Communication to electricity vendors

(4) The Ontario Energy Board shall communicate to each electricity vendor information relating to the clean energy adjustment to be allocated by the electricity vendor to each specified consumer in respect of a reference period.

[OLC Note: Just to confirm, the OEB sends this communication but then the IESO is the one that actually invoices the electricity vendor? ENE LSB to confirm roles here.]

IESO to invoice electricity vendors

12x. (2) The IESO shall issue an invoice to each electricity vendor for the clean energy adjustment in accordance with the regulations. [OLC Note - ENE LSB to confirm whether IESO issues invoices to licenced retailers.]

IESO to collect

(3) The IESO shall, as an agent of the investment asset owner, make reasonably diligent efforts to collect the clean energy adjustment from electricity vendors.

Collection account

(3.1) The IESO shall establish an account in which to record its collection of the following:
[OLC note - Compare to s. 15x -- should the accounts be for "record of collection" or should the accounts be a place for IESO to "deposit and receive" amounts? Should be consistent?]

1. Amounts remitted from accounts established under section 15x.

2. Payments made by specified consumers directly to the IESO

as electricity vendor, in respect of clean energy adjustment.

Deposit

(4) The IESO shall promptly deposit all amounts received in respect of the clean energy adjustment into the account established under subsection (3.1).

Same, held in trust

(2) The amounts collected are deemed to be held in trust for the investment asset owner.

IESO to remit

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

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable Fair Allocation Plan, the IESO [may? Shall?] collect the difference from specified consumers.

Electricity vendor to apply rate

13x. (1) Each electricity vendor shall, in accordance with the codes and orders of the Ontario Energy Board, determine the proportionate share of the clean energy adjustment payable on a monthly basis by each of its specified consumers.

Electricity vendor to invoice specified consumers

(2) The electricity vendor shall issue an invoice to each specified consumer for the applicable amount of the clean energy adjustment in accordance with the regulations.

Electricity vendor to collect

(3) Each electricity vendor shall, as an agent of the IESO, make reasonably diligent efforts to collect clean energy adjustments from specified consumers.

Pro rating of payments

14x. (1) This section applies if,

(a) an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices; and

(b) the amount paid is less than the total amount payable.

Same

(2) The electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices.

Deposit

(3) The electricity vendor shall deposit the portion of the payment allocated to the clean energy adjustment into the account established under X.

Electricity vendor, account

15x. (1) Each electricity vendor shall establish and maintain an account into which the electricity vendor deposits or receives only the following:

1. Payments by specified consumers in respect of the clean energy adjustment.

2. Portions of payments by specified consumers that are allocated to the clean energy adjustment under subsection 14x (2).

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

Held in trust

(2) The amounts required to be deposited or received into the account are deemed to be held in trust for the investment asset owner.

Remittance to IESO

(5) The electricity vendor shall remit amounts received in respect of the clean energy adjustment to the IESO for the benefit of the

investment asset owner in accordance with the regulations.

PART IV
FAIR ALLOCATION PLAN AND FINANCING PLAN

MINISTER TO PREPARE FAIR ALLOCATION PLAN

Minister to prepare plan

8. (1) In order to fairly measure and allocate amounts described in section 8.0.1 for a reference period among specified consumers for the purposes of this Act, the Minister shall prepare and provide to the Lieutenant Governor in Council a

written plan entitled the Fair Allocation Plan.

Amendments to the plan

(2) Subject to the approval of the Lieutenant Governor in Council, the Minister may amend the Fair Allocation Plan from time to time, as the Minister considers appropriate, having regard to the requirements of this Act.

Effective date

(3) The Fair Allocation Plan or an amendment to the plan takes effect on the day that the plan or the amendment, as the case may be, is

approved by the Lieutenant Governor in Council.

Publication

(4) The Minister shall ensure that the Fair Allocation Plan and any amendments to the plan are made available to the public in a manner that the Minister considers appropriate.

Amounts to be allocated

8.0.1 The amounts referred to in subsection 8 (1) are, in relation to a reference period,

(a) the costs incurred by the IESO previously or expected to be incurred by the IESO during the reference period and after the reference period in relation to,

(i) payments made or expected to be made under section 78.1 of the *Ontario Energy Board Act, 1998*, other than payments made under contracts with Bruce Power L.P or Bruce Power A. L.P. or their successors or assigns, and

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

(b) such other costs, benefits or amounts as may be prescribed, in respect of the clean energy initiative, made or received before the reference period or expected to be incurred during or after the reference period. ("French")

Principles

8.1 In preparing the Fair Allocation Plan or any amendments to the plan,

the Minister shall have regard to the following principles:

1. Costs of the clean energy initiative should be allocated among specified consumers during the period beginning on the day this Act comes into force and ending on April 30, 2047 or such later day as may be prescribed.

2. The allocation of the costs among specified consumers should be proportionate to the benefits of the clean energy

initiative to those specified consumers over time.

3. During a reference period, no specified consumer should bear an unreasonably disproportionate share of the costs.

4. To the extent that specified consumers have borne an unreasonably disproportionate share of the costs over periods that occurred before the coming into force of this Act, the allocation should provide for a fair adjustment for those specified consumers.

5. The allocation of costs among specified consumers over future reference periods should include reasonable assumptions about the time value of money, the rate of inflation, electricity consumption and the composition of specified consumers as a class of individuals.

[OLC note: I don't think the underlined phrase appears anywhere else - what is this supposed to be conveying?]

Implementation

8.2 The IESO shall ensure that the IESO funding shortfall during a reference period does not exceed the maximum amount set out for the reference period in the Fair Allocation Plan.

FINANCIAL SERVICES MANAGER TO PREPARE FINANCING PLAN

Ontario Power Generation Inc. appointed as Financial Services Manager

8.3 Subject to section 12.1, Ontario Power Generation Inc. is appointed

as the Financial Services Manager for the purposes of this Act.

Financial Services Manager to prepare plan

11. (1) The Financial Services Manager shall prepare and provide to the Minister a plan entitled the Financing Plan for the purpose of ensuring that decisions made under this Act are cost effective and consistent with the Fair Allocation Plan.

Consistency with Fair Allocation Plan

(2) The Financing Plan in effect at any given time shall be consistent with the applicable Fair Allocation Plan.

Amendments to approved plan

(3) The Financial Services Manager may propose amendments to the Financing Plan at any time.

[OLC note - still need to deem Financial Plan to be third party confidential information for the purposes of s. 17 of FIPPA? (Sorry I missed this in the previous version.]

Implementation of Financing Plan

11.1 The Financial Services Manager shall implement the Financing Plan.

Contents of plan

12. (1) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following:

1. The allocation of costs of the clean energy initiative among specified consumers over reference periods, as described in the Fair Allocation Plan.

2. The estimated IESO funding shortfall for each reference period.

3. The funding obligations incurred as part of the consideration for the sale of the regulatory asset.

4. The need for the clean energy adjustment payable by a specified consumer to be proportionate to the benefit that the specified consumer receives from the clean energy initiative.

5. Reasonable compensation for the Financial Services Manager on

terms that balance market terms and conditions with the interests of specified consumers.

6. Such other matters as may be prescribed.

Limitation

(1.1) The Financing Plan shall not provide for the collection of the clean energy adjustment by specified consumers before May 1, 2022. [OLC Note: As noted above, consider the fact that this is repetitive of 9x (1.1) and 22 (1.1) para. 2.]

Special purpose financing entities

(2) The Financing Plan may provide for the Financial Services Manager to,

(a) if the Financial Services Manager is Ontario Power Generation Inc., establish one or more special purpose financing entities under subsection 53.1 (1.2) of the *Electricity Act, 1998*, that may incur funding obligations; or

(b) if the Financial Services Manager is appointed under section 12.1, establish one or more special purpose financing entities under

subsection (3) that may incur funding obligations.

[OLC note: Above drafting is awkward and needs work but let me know if something like this might work.]

Same

(3) If the Financial Services Manager is appointed under section 12.1, it may create one or more special purpose entities in order to more efficiently conduct its activities under this Act.

Prohibition

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

Funding obligations unaffected by amendment to Fair Allocation Plan

(4) No change to a funding obligation shall result from an amendment to the Fair Allocation Plan or Financing Plan that is made after the funding obligation has been incurred.

[OLC Note: I think that subs. (4) above perhaps belongs in Part V, rather than here.]

[OLC Note: Consider Article 8 (9) entitled "incurrences are binding" -- I believe we have already stated in the Part dealing with the regulatory

asset that the rights are enforceable etc. even if charges have been imposed in a manner that does not follow the Financing Plan. Is more drafting required? Please advise.]

Termination of appointment

12.1 (1) The Minister may [by what means? Written order?] terminate an appointment as Financial Services Manager under section 8.3 or subsection (2) if,

(a) the Minister has advised the appointee that the Financing Plan is not consistent with the Fair Allocation Plan;

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

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

Replacement

(2) Upon terminating an appointment under subsection (1), the Minister may, in accordance with the regulations, appoint a new person

or entity as the Financial Services Manager.

PART V
THE REGULATORY ASSET [AND INVESTMENT ASSET]

Regulatory asset established

22. (1) The IESO has property rights and interests, which together constitute a regulatory asset, in the recovery of the IESO funding shortfall.

[OLC Note to draft - Is it sufficient to say "*property rights and interests in the recovery of the IESO funding shortfall*"? Does that convey the

right to enforce other parties' obligations that would allow for the shortfall to be recovered by the IESO?]

Limitation

(1.1) The right to recover the IESO funding shortfall under subsection (1) is subject to the following limits:

1. The amount of the IESO funding shortfall recovered in respect of a reference period may not exceed the amount determined in the Fair Allocation Plan for the reference period, minus the amount of the clean energy

adjustment for the reference period.

[OLC Note: Will want to link up the language in para. 1 above with the language relating to this in provision above that authorizes the IESO to collect this amount (where some of the R.A. has not been sold) - s. 12x (6).]

[OLC Note: You mentioned that you are still working on para. 1 - concern re the need for an obligation to pay this amount.]

2. No part of the IESO funding shortfall shall be collected from

specified consumers before May 1, 2022.

[OLC Note: As noted above - consider repetition here vs. s. 9x (1.1) and 12 (1.1)]

Same

(2) The establishment of the regulatory asset is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

Recording of IESO funding shortfall in books

22.1 (1) Subject to the approval by order of the Ontario Energy Board,

the IESO shall record the IESO funding shortfall from time to time in its books, including adjustments resulting from any transfer of the regulatory asset.

Order

(2) The Ontario Energy Board may, in accordance with the regulations, by order specify how the IESO funding shortfall must be recorded.

Recording in books determinative

(3) A recording in its books is determinative of the amount of IESO funding shortfall at the time of the recording.

No hearing

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

No appeals, etc.

(5) No appeal lies from the order of the Ontario Energy Board.

Judicial review

(6) The *Judicial Review Procedures Act* does not apply to an order made under this section.

[OLC Note: I haven't checked to see if this subsection is used elsewhere

but is this trying to say "no judicial review allowed"? Or are you trying to say "don't apply the procedures in the JRPA when you're doing a JR of the order". Of course we can't actually oust the courts so I'm just not sure what this is meant to do beyond subs. (5) above which takes care of no statutory appeal.]

IESO funding shortfall

22.2 (1) The IESO shall determine the IESO funding shortfall for each month in a reference period by calculating the difference between the following amounts:

1. The sum of all invoice amounts issued to specified consumers for the month.

2. The sum of all invoice amounts that would have been issued to specified consumers for the month if paragraphs 1 and 2 of section 7.2 did not apply.

[OLC Note: The value of any consideration received as part of a transfer should be reflected in this section -- see below para. 2 of subs. 23 (2) which says the payment should cause a reduction in the shortfall.]

Same

(2) The determination under subsection (1) shall be made based on the amount of electricity actually used by specified consumers during the reference period.

Transfer of regulatory asset

23. (1) The IESO may transfer the regulatory asset in accordance with the Financing Plan.

Consideration

(2) The IESO may receive consideration for the transfer of the regulatory asset, subject to the following rules:

1. The prospective investment asset owner shall pay to the IESO an amount equal to all or part of the IESO funding shortfall.

2. Upon receipt of the payment, the IESO shall record the payment as a reduction of the IESO funding shortfall in its books.

3. Upon receipt of the payment, the IESO shall have no continuing right or interest in, or maintain any right to recover all or any part of the transferred regulatory asset.

Investment asset

Regulatory asset deemed to be investment asset upon transfer

23.1 Upon transfer of the regulatory asset or a portion of the regulatory asset, the regulatory asset or portion is deemed to be an investment asset and is vested in the investment asset owner.

Same

(2) An investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

[OLC Note: For the moment I have more or less just cut and pasted the language you proposed in instructions received on April 14th. If we have time, we should revisit the language.]

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

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are

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

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

4. The right to enforce the duties and obligations under this Act of each electricity vendor to

impose, attribute, charge, bill and invoice the clean energy adjustment.

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

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

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

commingled with other revenue, collections, claims, payments, money and proceeds.

Same

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

No set off, etc.

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

(a) by a consumer, an electricity vendor, an agent of the

investment asset owner or an owner of distribution system assets in the Province;

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

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

Transfer of investment asset

24. The investment asset owner may transfer all or a portion of its rights and interests in an investment asset to any other investment asset

owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

[OLC Note: What is meant by "any other investment asset owner"? Do you mean to say anyone who already has the status of "investment asset owner" by virtue of the fact that the IESO has transferred a portion of the initial R.A. to that person previously?]

Validity of transfer

25. (1) A transfer of a regulatory asset or an investment asset under this Act that is expressed to be a sale

or an absolute assignment is a valid and enforceable sale and absolute assignment of the regulatory asset or investment asset, as the case may be, and confers upon the owner of the investment asset acquired a valid property right and interest in, to and under the applicable investment asset in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer

of IESO's right to recover the IESO funding shortfall or an investment asset owner's right, title and interest in, to and under an investment asset, as applicable (or relevant portion thereof), and not merely as a pledge thereof, and upon such absolute transfer the transferor shall retain no right, title or interest in regulatory asset or the investment asset (or relevant portion thereof) subject to the transfer, including all rights to recover the IESO funding shortfall or the investment asset arising after such transfer.

[OLC Note: I have reproduced the requested language for now but I

don't understand what subs. (2) is saying that is different from subs. (1).]

Deemed perfection, etc.

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

Priority of transfer, assignment, etc.

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

Administration of investment asset

26. (1) The Financial Services Manager may administer an investment asset on behalf of the investment asset owner.

[OLC note: Consider location of this section with other roles of FSM above.]

Same

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

1. Providing information to the Ontario Energy Board in respect of the funding obligation and the determination of the clean energy adjustment in accordance with section 11x.

2. Providing information to electricity vendors in respect of their obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

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

Investment asset owner may grant pledge

27. (1) The owner of an investment asset may grant a pledge

to or in favour of a person in, to and over all or a specified portion of its right, title and interest in, to and under the investment asset in connection with any funding obligation.

Types of pledge

(2) A pledge may be a lien, mortgage, charge, right of set-off or security interest.

Validity

(3) The pledge may be made to secure a funding obligation and when granted shall be valid and enforceable in accordance with its

terms and shall be effective to confer upon the person to whom the pledge is granted a valid security interest in, to and in respect of the investment asset in accordance with the terms of the pledge.

[OLC Note: You asked for a additional content relating to the PPSA, which I have not had time to review in any detail. Please review all subsections that contain the (x) below and advise what is needed. It seems to me that some of this content was already covered by some of the numbered subsections in this draft. Also please advise as to the

updated language based on most recent drafting.]

Perfection and priority of pledges

(x) For purposes of the *Personal Property Security Act*, the regulatory asset shall be intangible personal property and any pledge made by the owner of an investment asset in respect of a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Same

(x) All provisions of the *Personal Property Security Act* shall apply to the regulatory asset on the basis that it is intangible personal property, except to the extent otherwise provided in this section.

Same

(x) All proceeds of a related [Investment Interest?] that are subject to the pledge that are received by the owner of the investment asset shall immediately be subject to the pledge, and the security interest in the proceeds shall

be perfected pursuant to the *Personal Property Security Act.*

Same

(x) A pledge perfected under the *Personal Property Security Act* shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the [Investment Interest?] subject to the pledge unless the pledgee has otherwise agreed in writing.

Same

(x) A pledgee shall have a perfected security interest in a related [Investment Interest?], including the owner of the investment asset's rights and interests in and to [the clean energy adjustment?] or other related proceeds in respect of the [Investment Interest?] and that are deposited in any [which account?] or other account of any [Electricity Distributor, IESO, Alternative Servicer or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds].

Proceeds

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

[OLC Note: Isn't the above subs. (8) already covered by the general section in our "Miscellaneous" part that deals with "no further acts or approvals required"? (Article 12 (3) of Blakes doc.]

Perfection

(9) The pledge shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment asset subject to the Pledge, subject to the written consent of the person to whom the pledge has been granted.

Same

(10) The person to whom the pledge has been granted shall have a perfected security interest in

revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

Collective action required

28. If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset

owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms.

[OLC Note: It seems that successors may need to be addressed here. Also Pledgees have not yet been addressed in this draft.]

Exercise of rights

29. The rights of the investment asset owner to collect and enforce its

rights and interests in, to and in respect of the investment asset shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

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

electricity vendor with respect to invoicing or collection.

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

Not Crown agent

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

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

Sequestration

35.2 (1) A court in the Province may, upon application by an investment asset owner [or pledgee?], order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner [or pledgee] by any person or entity authorized to collect the clean energy adjustment, defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

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

Same

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

Choice of law

37.1 The law governing, as applicable, the validity,

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

Conflict

38. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection

or priority of any transfer or PLEDGE,

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

No further approvals, etc.

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

the establishment of the Fair Allocation Plan.

Immunity

97x. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

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

References in marketing materials and offering documents

98x. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or

undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[9]

99x. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

[9] FLS - see s. 51 of the Electricity Act, 1998

Regulations

100x. The Lieutenant Governor in Council may make regulations,

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

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

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

PART VII[10] AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

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

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the [Fair Hydro Act];

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

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

(q.1) to enter into agreements or arrangements with for the purposes of the FHA;

(q.2) to engage in activities related to making payments to and receiving payments as contemplated under the FHA and to engage in related settlement activities;

(q.3) to engage in activities related to the creation, transfer and administration of the regulatory asset created under the FHA, which activities may include,

[OLC Note: Why is "creation" listed above? Isn't that fully accomplished through the statute?]

(i) incurring liabilities in relation to the regulatory asset

(ii) transferring the regulatory asset for consideration;

(q.4) acting as a recovery agent under the FHA;

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

Same, [FHA]

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include the following, in addition to any other objects, relating to the FHA:

[OLC Note: I'm wondering if the proposed structure of setting out FHA objects as "in addition to" the general objects of the OPG will sufficiently communicate the idea that both sets of objects are to be carried out concurrently by the OPG.]

1. Exercising the powers and rights and performing the duties and obligations assigned to it under that Act.

2. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by that Act subject to the right of reimbursement from amounts available to the financing entity.

3. Preparing reports on behalf of the financing entity.

4. Enforcing the rights of the financing entity.

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

6. Exercising the powers and performing the duties of the Financial Services Manager under that Act.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose

entities in order to more efficiently conduct its activities or achieve its objects.

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

Exception

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

functions as the Financial Services Manager under [new Act].

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

Exception

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

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

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

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

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

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

[OLC Note - still need to draft new subs. 70 (2.1) - instructions on pp. 8-9 of Rider instructions rec'd April 14th]

PART VII
COMMENCEMENT AND SHORT TITLE

Commencement

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

Short title

104x. The short title of this Act is the *[TBD], 2017*.

SCHEDULE 1
METHOD FOR DETERMINING AMOUNT OF CLEAN ENERGY ADJUSTMENT FOR REFERENCE PERIOD

1. The amount of the clean energy adjustment for a reference period shall be determined by calculating the sum of the following:

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

[OLC Note: Para. 1 is the definition of "repayment" from the Blakes doc. However, that definition include bracketed text that says: (*including making Finance Reserve Deposits).* I don't understand this because (1) Finance Reserve Deposit is listed as a separate line item in the definition of "finance amount" (see para. 4 below). In order to avoid duplication, can we exclude "finance reserve deposits" from para. 1?]

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

determined under section 2 to this Schedule.

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

[OLC Note: Para. 3 is the definition of "redemption amount" from the Blakes doc.]

[OLC Note: What is meant by "make-whole" -- need some assistance in order to translate this term accurately. Do you have any examples of bilingual legislation where this term has been used?]

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

5. The sum of any other amounts payable by owners of investment assets for the reference period that were incurred or committed to directly or indirectly in

connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

[OLC Note: Para. 5 is based on the definition of "additional funding charges".]

Funding costs

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

1. Calculate the aggregate of all interest and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of owners of investment assets during the reference period in respect of all funding obligations, including the following:

i. Standby commitment fees or charges paid to any lender.

ii. Credit enhancement fees or charges paid to any credit enhancer.

iii. Liquidity fees or charges paid to any liquidity provider.

iv. Payments, including termination payments, made under derivatives.

v. Deposits made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a funding obligation.

2. Calculate the aggregate of all amounts received by or on behalf of the owners of investment assets during the reference period in respect of a funding obligation, including reimbursement of any amounts referred to in subparagraphs 1 i to v.

[OLC Note: Para. 2 is the definition of "finance receipts" in the Blakes doc.]

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

Finance reserve balance

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

[OLC Note: This section is a modification of the definitions provided in the Blakes document for "Finance Reserve Deposits" and "Finance Reserve Withdrawals". The proposed definition of "FR deposit" involved a subtraction of the "FR withdrawal" so the term 'deposit' was not really descriptive of a pure deposit but rather the balance.]

1. Calculate the sum of all amounts deposited [to what account?] during the reference period in order to pre-fund, collateralize, over-collateralize or establish

reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn from the account during the reference period from deposits previously made [e.g. during a previous reference period?] as described in paragraph 1.

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

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Blakes Article 10/11
2- MS

Intergenerational Fairness in Hydro Rates Act, 2017 (Working document – Blakes Article 11 – previously Article 10)

Protection and guarantee of scheme

Prohibition

_. (1) The persons and entities listed in subsection (2) shall not do anything that would,

(a) hinder, impair, delay or prejudice the charging or collection of transition charges;

(b) except as expressly permitted by this Act, reduce the amount or priority of transition charges; or

(c) adversely affect the regulatory asset.

OLC Note (MS): I'm anticipating that clauses (a) to (c) will need more work, either to

ensure anything missed is covered or to better fit with the rest of the draft as it evolves. In particular, I wonder if clause (b) is too categorical. [NTD: Others [people to whom the Regulatory Asset is sold] will be able to change the transition charge from time to time to recoup the price at which they bought the Regulatory Asset. The categorical limitation on the government is appropriate –the idea is that once we know what we owe for the purchase/sale of the regulatory asset, we can't

change that] Won't it ever be possible that transition charges are reduced under the scheme being put into place? [NTD: yes, that's right. The point here is to limit who can do so.] I had raised a question about that in my earlier comments. Somehow this subsection should exclude what is allowable for these persons and entities to do under the scheme.

Persons and entities covered

(2) The persons and entities referred to in subsection (1) are the following:

Her Majesty the Queen in right of Ontario

1. The Government of Ontario.

2. The Lieutenant Governor in Council.

3. The Minister or any other member of the Executive Council.

A public entity under the control of the Minister – NTD: trying to make sure that the Minister can't do indirectly what he can't do directly, by using the OEB, OPG or IESO.

Clarification with respect to legislation

(3) For greater certainty, the things prohibited under subsection (1) include the ~~introduction of a government bill and~~ the making or approving of a regulation under this or ~~any other~~ Act.

OLC Note (MS): As discussed in our conference call on April 12, you'll need to consult with CLB. Also as discussed, I don't think the part of the above relating to the introduction of a government bill would be legally effective.[NTD: We agree. Please consider proposed scope]

Compensation for contraventions

(4) The ~~Government of Ontario~~Minister may enter into agreements for the purposes of

guaranteeing ~~shall~~ ~~pay~~ compensation to a person for losses suffered as a result of a change in law, a final determination by a court of competent jurisdiction that this Act is ultra vires of the legislature or any contravention of subsection (1).

OLC Note (MS): The above seems to be a bit vague as to what the compensation would be (i.e. how much) but perhaps this is okay in this context. NTD: we need to scope "losses" – the general sense is for principal,

interest and sunk costs. We will be under pressure to go further to include more. Will need to consult CLOC.

OLC Note (MS): This is not at all my bailiwick, but I understand a significant challenge is how the amounts being financed will be handled, accounting wise, for the government. So of course you'll make sure that clear statements, like the above, putting the government on the hook are okay from that standpoint. [

Thank you. Accountants will need to see this and opine]

Deemed contract and undertaking

(5) The Government of Ontario is deemed to have entered into a contract with the regulatory asset owner under which the Government of Ontario undertakes,

(a) to ~~use its best efforts to~~ ensure that subsection (1) is not contravened; and

(b) if subsection (1) is contravened, to pay the compensation required under subsection (4).

IESO obligations

(6) If the IESO becomes incapable of carrying out its obligations under this Act, for any reason including because it is dissolved or restructured or because it becomes insolvent, the Government of Ontario shall ~~use its best efforts to ensure that~~carry out those obligations or appoint

~~are carried out by the Government of Ontario or~~ another appropriate entity to carry out those obligations.

OLC Note (MS): A few things about the above:

- "becomes incapable" is from Article 11(3). But it might be unclear exactly what constitutes incapability (as opposed to just plain non-payment). I might have suggested that the "trigger" for this provision not be incapability but rather non-

fulfilment of obligations. (i.e. the "if" part would be something like "If the IESO fails to carry out its obligations …") NTD: Agree. Would prefer something like: IESO defaults on its obligations or fails to meet.

- I included "use its best efforts" because I thought that some of what would be needed would be (or might be) the passage of a bill, which is not within the power of the Government of Ontario to do. (Because bills are passed by

Legislature.) An alternative might be to use "shall ensure" though I expect that legally that would amount to the same thing. NTD: We would prefer to focus on the action, rather than the standard.

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OLC Note (MS): I've left out anything relating to Article 11(6). Your response to my question about this (my April 11 question when this was still Article 10(3)) explained this a bit but I note that the disclaimers are not yet developed (and the ones

you've suggested look misleading given the rest of your instructions). I'm hoping Article 11(6) is detail that doesn't need to be included in the bill. If something is needed, we should probably discuss this because I'm not sure who the requirements re disclaimers are aimed against and what the situations are for when the disclaimers would be required.NTD: this provision is intended to allow underwriters to broadcast, when they go to sell the debt that we are taking on,

that they have the Province's undertaking (because people may not bother to look at this statute, if it passes), but we are trying to ensure that underwriters don't overstate the commitment or suggest that the Province is guaranteeing the obligations.

For convenience, here is the relevant article (April 6 document):

Article 10 – Undertaking of the Lieutenant Governor in Council

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – The Lieutenant Governor in Council may not in any way take or permit any action to reduce, impair, postpone or

terminate the obligation of Ratepayers to pay Transition Charges or impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, either directly or indirectly. The Lieutenant Governor in Council undertakes that the amount of Transition Charges determined hereunder shall not be subject in any way to reduction, impairment, postponement or

termination as a result of any action taken or failure by the Lieutenant Governor in Council.

(2) Undertaking and Agreement – The Lieutenant Governor in Council undertakes to and agrees with the Regulatory Asset Owner, including any Absolute Assignee from time to time, and any Pledgee from time to time, that the Lieutenant Governor in Council will

not in any way take or permit any action that limits, alters or impairs the value of the Regulatory Asset or, except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, collected and remitted for the benefit of the Regulatory Asset Owner, including any Absolute Assignee from time to time, and any

Pledgee from time to time.

(3) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Lieutenant Governor in Council, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add*

conditions to protect the Province].

And here is the revised Article (version 9 – April 10)

Article 11 – Undertaking of the Lieutenant Governor in Council[1]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – The [Lieutenant Governor in Council] shall not in any way take or permit any action to reduce, impair,

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

postpone or terminate the obligation of Retail Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The

amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by the Lieutenant Governor in Council, including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) Undertaking and Agreement – The

[Lieutenant Governor in Council] shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and

remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an

Absolute Assignee or Pledgee thereunder,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, Successor IESO shall be

established to perform such obligations.

(4) Compensation for Failure – Absolute Assignees shall be compensated for any losses suffered by them as a result of any failure by the Lieutenant Governor in Council to comply with its undertakings and agreements in this Article 11.[2]

[2] Requested by Torys. For discussion.

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

(6) References to the Undertaking and Agreement – Any non-confidential reference to the Undertaking of the Lieutenant Governor in Council, including in

marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

~~can be amended in the same way as any other provision of the bill may be amended.]~~

The Government of Ontario ~~has invested~~made significant investments, beginning in 2005, in decarbonizing and modernizing the Province's electricity infrastructure and in activities related to conservation, demand management and load management of electricity. Electricity costs have increased for consumers as a result of ~~this investment~~these investments.

Given the long-term benefits that future generations of Ontarians will receive from ~~this Government's investment~~these investments, it is appropriate to allocate the related costs ~~of this investment~~ fairly among present and future consumers.

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

~~[OLC Note: The Table of Contents is included to assist you in reviewing~~

"clean energy benefits" means, ~~in respect of a reference period~~, the value of the benefits
~~Expected~~ determined to be derived by the specified consumers of thea reference period
as a result of the clean energy initiative pursuant to Section 8(1), including as a result
of past, present and expected future incurrences of clean energy costs~~, as specified in or determined in accordance with the Fair Allocation Plan~~;

"clean energy costs" means, ~~in respect of a reference period,~~ the value of the costs allocated to the specified consumers of a reference period as a result of the clean energy initiative pursuant to Section 8(1), including as a result of past, present and expected costs incurred in respect of:

(a) the estimated past, present and future costs to incurred by the IESO ~~during the reference period~~: *NTD: Section numbers not updated.*

(i) under section [78.1] of the Ontario Energy Board Act, 1998 , other than
payments made under contracts with Bruce Power L.P or Bruce Power A. L.P.
or their successors or assigns, and

(ii) payments made or expected to be made under section [78.5] of the Ontario
Energy Board Act, 1998; and

(b) such other estimated costs as may be prescribed in respect of the clean energy initiative ("French");

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Blakes Article 10/11

2- MS

Intergenerational Fairness in Hydro Rates Act, 2017

(Working document – Blakes Article 11 – previously Article 10)

Protection and guarantee of scheme

Prohibition

_. (1) The persons and entities listed in subsection (2) shall not do anything that would,

(a) hinder, impair, delay or prejudice the charging or

collection of transition charges;

(b) reduce the amount or priority of transition charges; or

(c) adversely affect the regulatory asset.

OLC Note (MS): I'm anticipating that clauses (a) to (c) will need more work, either to ensure anything missed is covered or to better fit with the rest of the draft as it evolves. In particular, I wonder if clause (b)

is too categorical. [NTD: Others [people to whom the Regulatory Asset is sold] will be able to change the transition charge from time to time to recoup the price at which they bought the Regulatory Asset. The categorical limitation on the government is appropriate –the idea is that once we know what we owe for the purchase/sale of the regulatory asset, we can't change that] Won't it ever be possible that transition charges are reduced under the scheme being put into place? [NTD: yes,

that's right. The point here is to limit who can do so.] I had raised a question about that in my earlier comments. Somehow this subsection should exclude what is allowable for these persons and entities to do under the scheme. / We answered in ~ Exception + accept as expressly by the Act

Persons and entities covered

(2) The persons and entities referred to in subsection (1) are the following:

Her Majesty the Queen in right of Ontario

1. The Government of Ontario.

2. The Lieutenant Governor in Council.

3. The Minister or any other member of the Executive Council.

A public entity under the control of the Minister – NTD: trying to make sure that the Minister can't do indirectly what he can't do directly, by using the OEB, OPG or IESO.

Clarification with respect to legislation

(3) For greater certainty, the things prohibited under subsection (1) include the ~~introduction of a government bill and~~ the making or approving of a regulation under this or ~~any other~~ Act.

OLC Note (MS): As discussed in our conference call on April 12, you'll need to consult with CLB. Also as discussed, I don't think the part of the above relating to the introduction of a

government bill would be legally effective.[NTD: We agree. Please consider proposed scope]

Compensation for contraventions

(4) The ~~Government of Ontario~~Minister may enter into agreements for the purposes of guaranteeing ~~shall pay~~ compensation to a person for losses suffered as a result of a change in law, a final determination by a court of competent jurisdiction that this Act is ultra vires of the

legislature or any contravention of subsection (1).

OLC Note (MS): The above seems to be a bit vague as to what the compensation would be (i.e. how much) but perhaps this is okay in this context. NTD: we need to scope "losses" – the general sense is for principal, interest and sunk costs. We will be under pressure to go further to include more. Will need to consult CLOC.

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challenge is how the amounts being financed will be handled, accounting wise, for the government. So of course you'll make sure that clear statements, like the above, putting the government on the hook are okay from that standpoint. [Thank you. Accountants will need to see this and opine]

Deemed contract and undertaking

(5) The Government of Ontario is deemed to have

entered into a contract with the regulatory asset owner under which the Government of Ontario undertakes,

(a) to use its best efforts to ensure that subsection (1) is not contravened; and

(b) if subsection (1) is contravened, to pay the compensation required under subsection (4).

IESO obligations

(6) If the IESO becomes incapable of carrying out its obligations under this Act, for any reason including because it is dissolved or restructured or because it becomes insolvent, the Government of Ontario shall ~~use its best efforts to ensure that~~carry out those obligations or appoint ~~are carried out by the Government of Ontario or~~ another appropriate entity to carry out those obligations.

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- "becomes incapable" is from Article 11(3). But it might be unclear exactly what constitutes incapability (as opposed to just plain non-payment). I might have suggested that the "trigger" for this provision not be incapability but rather non-fulfilment of obligations. (i.e. the "if" part would be something like "If the IESO fails to carry out its obligations …") NTD: Agree.

Would prefer something like: IESO defaults on its obligations or fails to meet.

- I included "use its best efforts" because I thought that some of what would be needed would be (or might be) the passage of a bill, which is not within the power of the Government of Ontario to do. (Because bills are passed by Legislature.) An alternative might be to use "shall ensure" though I expect that legally that would amount to the same thing. NTD: We would prefer

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We have to deal with the debt first.

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statement about the undertaking in a prospectus or marketing materials.

For convenience, here is the relevant article (April 6 document):

Article 10 – Undertaking of the Lieutenant Governor in Council

(1) **No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections** – The Lieutenant Governor in Council may not in any way take or permit any action to reduce, impair, postpone or

terminate the obligation of Ratepayers to pay Transition Charges or impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, either directly or indirectly. The Lieutenant Governor in Council undertakes that the amount of Transition Charges determined hereunder shall not be subject in any way to reduction, impairment, postponement or

termination as a result of any action taken or failure by the Lieutenant Governor in Council.

(2) Undertaking and Agreement – The Lieutenant Governor in Council undertakes to and agrees with the Regulatory Asset Owner, including any Absolute Assignee from time to time, and any Pledgee from time to time, that the Lieutenant Governor in Council will

not in any way take or permit any action that limits, alters or impairs the value of the Regulatory Asset or, except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, collected and remitted for the benefit of the Regulatory Asset Owner, including any Absolute Assignee from time to time, and any

Pledgee from time to time.

(3) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Lieutenant Governor in Council, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add*

conditions to protect the Province].

And here is the revised Article (version 9 – April 10)

Article 11 – Undertaking of the Lieutenant Governor in Council[1]

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

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or payout the entire debt including any make-wholes.

impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction,

impairment, postponement or termination as a result of any action taken or failure by the Lieutenant Governor in Council, including through the introduction of any bill or the passing of any legislation or regulation having such effect.

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limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder,

in each case including through the introduction of

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(3) Successor IESO – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, Successor IESO shall be established to perform such obligations.

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compensated for any losses suffered by them as a result of any failure by the Lieutenant Governor in Council to comply with its undertakings and agreements in this Article 11.[2]

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one year after all of its Funding Obligations are repaid.

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Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

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Intergenerational Fairness in Hydro Rates Act, 2017

[OLC Notes re this draft:
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- Need to address "True-Up Amount"
- consequential amendments not addressed.

Preamble

The Government of Ontario made significant investments, beginning in 2005, in decarbonizing and modernizing the Province's electricity infrastructure and in activities related to conservation, demand management and load management of electricity. Electricity costs have increased for consumers as a result of these investments.

Given the long-term benefits that future generations of Ontarians will receive from these investments, it is appropriate to allocate the related costs fairly among present and future consumers.

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

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PART I
GENERAL

Definitions

1. (1) In this Act,

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner in

Fair Hydro Plan

IESO Issues

1. We have received advice from KPMG that it is critical to the ability of IESO to book a regulatory asset (which in turn is critical to the overall transaction) that the statutory language ensures that IESO has an effective right of recovery in respect of any IESO Funding Shortfall not

transferred to the SPV. The IESO proposes that s 25.33 of the EA/O Reg 430/04 be amended, as necessary, to provide for the IESO to record the IESO Funding Shortfall amount in a variance account and to provide for the OEB to eliminate and dispose of the variance account balance as part of the RPP adjustment process under the OEB

Act , with such necessary OEB accounting order.

2. As currently defined, the definition of the term "IESO Funding Shortfall" references an amount and not an IESO right of recovery. There needs to be a defined term or concept referencing the IESO right of recovery in respect of the shortfall, since that is what we are

selling. This right of recovery needs to be divisible since it may be transferred in part and from time to time. As used in the context of a sale by us (which is how it is mostly used) the defined term should reference the concept and not the amount. The amount is relevant to the trust as

purchaser, since it drives the right of recovery.

3. Amend definition of "Disposition" and "Disposition Documents" so as to eliminate circularity. As the terms are currently defined, they only operate if there is in fact an effective disposition. Torys have agreed to provide revised

draft language. In addition, since the asset has been bifurcated, the IESO should not be referred to as disposing of the Regulatory Asset. In effect, the IESO disposes of its rights in respect of the Funding Shortfall and the Trust acquires the Regulatory Asset.

4. Provide that any sale (or other transfer or Disposition) by IESO to the financing trust is without recourse to IESO and provide that all collection obligations are on a reasonable efforts, or consistent efforts, basis only.

(a) Section 5(1) is to be amended to eliminate "shall collect".

(b) Section 5(3) to be amended to eliminate obligation to remit on an invoiced rather than collections basis.

(c) Section 5(4) to be amended to eliminate "shall collect".

(d) In Section 5(2), the defined term "Transition Charge Collections" is misused since it references collections by an Absolute Assignee.

5. Redefine relationship between IESO as servicer and the electricity distributors as sub-servicers. While the

electricity distributors can be sub-servicers of IESO as servicer, IESO can assume no responsibility for their performance obligations. Again, we are advised that this is critical from an accounting perspective.

6. Clarify or delete the concept of "Deemed Collections". In our view,

there should be no Deemed Collections expect in the narrow case where a collecting party has benefitted from a set-off. This again goes to whether there is a full risk transfer and is important to the accounting analysis.

7. IESO does not support daily remittances and daily remittances are not

consistent with the operation of the system. At the very least, this should be left open to be addressed in the commercial documents.

8. Consider manner of calculation of "Repayments" in relation to the "Finance Amount". As drafted, principal repayments owed in a Reference Period drive the

Finance Amount and therefore the Period Transition Charges. Repayments are defined as net of payments made by applying the proceeds of a Refinancing. Estimates should be calculated on the basis of anticipated Refinancings and therefore should be expressed some basis on which Repayments are anticipated. As well, a

refinancing effected subsequent to the Relevant Period should factor into the True-Up.

9. The terms "Alternative Servicer" and "Alternative Collection Agent" are used inconsistently. The Alternative Servicer stands in the place of IESO and should have not responsibility for invoicing or collecting

from customers (see Sections 4(1), 4(4) and 5(2)). The "Alternative Collection Agent "should be used as the person who acts in place of the electricity distributors (see Section 5(2)). It may also be appropriate to better distinguish bills sent by IESO to electricity distributors from invoices

sent be electricity to retail customers.

10. Partial payments by retail customers to electricity distributors should be allocated to Transition Charges on a ratable basis, and once allocated shall be segregated. We propose that electricity distributors continue as at present to pay on a billed basis, but that an adjustment be

made subsequently in their favour out of the Transition Charges Account on account of uncollected Transition Charges. IESO would then remit the net amount. This allows maximum usage of the existing system while still passing the credit risk to the Trust. Uncollected amounts should roll into the True Up. In any

event, all of this should be left for the regs.

11. Making the prudential security provided by the electricity distributors available to secure Transition Charge remittance obligations would require a significant review of documents, an assessment of the amount of the security and possible revisions of existing

documents. Given the True Up we do not regard this as a necessary element. In any event it should not be provided for in the legislation and if actually required should be addressed in the regs or in the commercial documents.

12. Provide legislative basis for provision of commercial undertakings of the sort provided for in

NTDs set out in Article 6. Undertakings of this sort should be negotiated concurrently with financial close and should not be provided for in the legislation.

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Intergenerational Fairness in Hydro Rates Act, 2017

[OLC Notes re this draft:
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- Need to address "True-Up Amount"
- consequential amendments not addressed.

Preamble

~~[OLC Note: You mentioned that you may want to include a Preamble and a Purpose clause in the Bill for constitutional law purposes and that you are seeking the advice of Constitutional law experts. Please note that the wording of both the preamble and the purpose clause should be carefully considered as they may be relied upon to interpret the Bill and may have unintended consequences. Please also note that there is some uncertainty about whether a Preamble may be amended by motion after Second Reading of the Bill, whereas the purpose clause~~

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SCHEDULE 1
ONTARIO FAIR HYDRO PLAN ACT, 2017
EXPLANATORY NOTE

The Schedule enacts the *Ontario Fair Hydro Plan Act, 2017*. The Act establishes a framework under which the costs and benefits associated with the "clean energy initiative" are to be allocated among present and future consumers of electricity. The "clean

energy initiative" is defined in Part I as consisting of the policies of the Government of Ontario related to such matters as eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies.

Under Part II, the Ontario Energy Board is required to determine reduced electricity rates and to determine other adjustments to be made for certain classes of consumers in respect of specified periods of time. For example, for the class of consumers referred to as

"regulated rate consumers", the electricity rates payable for the period beginning on July 1, 2017 and ending on April 30, 2018 are the rates, as determined by the Board, that would achieve a 25 per cent reduction in certain costs for a hypothetical member of the class who meets prescribed criteria. Details regarding the determinations are prescribed by regulations.

Part III requires certain electricity consumers to pay an amount in respect of the "clean energy adjustment". The clean energy adjustment is determined by the

Financial Services Manager in accordance with rules set out in the Act and the regulations. (Section 18 of the Act appoints Ontario Power Generation Inc. as the Financial Services Manager.) Part III also specifies the roles and responsibilities of electricity vendors and the Independent Electricity System Operator ("IESO") with respect to the collection and remittance of amounts in respect of the clean energy adjustment.

Part IV requires the Minister of Energy to calculate a "fair allocation amount" by taking specified steps in

accordance with principles and assumptions set out in the Act. For example, the Act provides that the purpose of calculating the fair allocation amount is to measure and allocate the estimated clean energy costs and estimated clean energy benefits fairly among certain consumers. Part IV also requires the Financial Services Manager to prepare a written plan entitled the "Financing Plan", which is to be used to evaluate whether potential funding obligations should be incurred. Principles and limitations regarding the preparation and

implementation of the plan are provided.

Part V requires the IESO to determine the "IESO deferral" in accordance with the regulations and to establish and maintain a variance account in which it records the IESO deferral each month. A "regulatory asset" is created under section 25; the IESO has the right to recover the balance recorded in the variance account from certain consumers. The IESO is authorized to transfer a specified portion of the regulatory asset to a financing entity; this transfer results in the creation of the

investment asset and the acquisition by the transferee of a corresponding "investment interest". Various rules respecting the validity and priority of such a transfer are set out.

In Part VI, rules in respect of the "investment asset" are provided. Section 29 provides that the investment asset constitutes a current and irrevocable property right and interest, consisting collectively of various specified rights and interests of investment interest owners. Rules respecting the validity and priority of such a transfer and the granting of a

security interest by an investment interest owner are included.

Part VII deals with various miscellaneous matters, including regulation-making authority of the Lieutenant Governor in Council.

The *Electricity Act, 1998* and the *Ontario Energy Board Act, 1999* are amended to address various matters relating to the enactment of the new Act. For example, the objects of the IESO and Ontario Power Generation Inc. are expanded to address powers and duties under the new Act.

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Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting

opportunities for renewable and clean energy projects. These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

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

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

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

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

PART I
GENERAL

Interpretation
Definitions

1. (1) In this Act,

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

"clean energy adjustment" means the amount determined under section 15 and payable by specified consumers; ("ajustement pour l'énergie propre")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("avantages de l'énergie propre")

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

(a) the amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts or amounts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

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

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

(c) such other costs or estimated costs as may be prescribed; ("coûts de l'énergie propre")

"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; ("initiative pour l'énergie propre")

"electricity vendor" means,

(a) a licensed distributor,

(b) a licensed retailer,

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

(d) such other person as may be prescribed; ("vendeur d'électricité")

"fair allocation amount" means an amount calculated under section 20; ("French")

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

"Financial Services Manager" means the Financial Services Manager appointed under section 18; ("gestionnaire des services financiers")

"financing entity" means an entity established or caused to be established by the Financial Services Manager as described in subsection 22 (2); ("entité de financement")

"Financing Plan" means a plan prepared under section 21; ("plan de financement")

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

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

"IESO" means the Independent Electricity System Operator

continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO deferral" means the amount determined under section 23; ("French")

"investment asset" means the rights and interests described in section 29; ("actif d'investissement")

"investment interest" means,

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

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

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("propriétaire de l'actif d'investissement")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to

own or operate a distribution system within the meaning of that Act; ("distributeur titulaire d'un permis")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("détaillant titulaire d'un permis")

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

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

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

"reference period" means,

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

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

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("période de référence")

"refinancing" means, subject to the regulations, the incurrence of debt in connection with a redemption, repayment or repurchase of a

funding obligation; ("refinancement")

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

"regulatory asset" means the right and interest established under section 25; ("actif réglementaire")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2), or

(b) such other person as may be prescribed; ("consommateur déterminé")

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

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

"unit sub-metering" has the same meaning as in the *Energy*

Consumer Protection Act, 2010; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

"variance account" means the variance account established by the IESO under subsection 24 (1). ("French")

Specified consumer

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

1. The person has a demand for electricity of not more than 50 kilowatts, or such other amount as may be prescribed.

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

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

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

i. a dwelling,

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

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

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

of the *Co-operative Corporations Act*.

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

Transfer of regulatory asset

(3) In this Act, a reference to the transfer of a specified portion of the regulatory asset is a reference to the following, as provided for in subsection 26 (3):

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

2. The adjustment of the regulatory asset.

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

Effect of invalidity

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

of its powers to every provision contained in this Act.

Same, funding obligation

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

Purposes

3. The purposes of this Act are,

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

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

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

Crown bound

4. This Act binds the Crown.

Protection and assurances

Prohibition

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

Agreements

(2) The Minister and the Minister of Finance may together, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of the IESO or electricity vendors under this Act or related transactions.

Guarantee, indemnification

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

(a) authorize the Minister and the Minister of Finance, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity;

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

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

PART II
FAIR ADJUSTMENT

Definitions

6. In this Part,

"regulated rate consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer would, if the consumer were not subject to this Act, be invoiced the rates determined by the Board under clause 79.16 (1) (b) of the

Ontario Energy Board Act, 1998. ("French")

Regulated rate consumers, first adjustments

7. (1) Despite any order under subsection 78 (3.1) of the *Ontario Energy Board Act, 1998* and despite section 79.16 of that Act, the electricity rates payable by regulated rate consumers for the period beginning on July 1, 2017 and ending on April 30, 2018 are the rates, as determined by the Board, that would result in a hypothetical regulated rate consumer who meets the prescribed criteria being charged

an invoice amount that is 25 per cent less than the invoice amount that would have been charged to that consumer under the comparison rates described in subsection (2).

Comparison rates

(2) The comparison rates are the rates that would have been effective May 1, 2017 if they had been determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, without taking into account any forecasted impact of any other provisions of this Act.

Invoice amounts

(3) The types of amounts to be included or excluded in each invoice amount mentioned in subsection (1) are the types of amounts specified in the regulations.

Other specified consumers, first adjustments

8. (1) For the period beginning on July 1, 2017 and ending on April 30, 2018, the adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998* shall, with respect to specified consumers who are not regulated rate consumers, be

further adjusted by electricity vendors in accordance with the determinations of the Board under subsection (2).

Board to make determinations

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

Same, regulations

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

Determinations by Board

9. The Board shall make the determinations mentioned in sections 7 and 8 no later than 15 business days after the day this section receives Royal Assent and, regardless of whether the Board makes the determinations before or after July 1, 2017, the determinations shall be effective as of July 1, 2017.

Implementation by electricity vendors

10. (1) As soon as possible after the Board makes determinations under section 9, each electricity

vendor shall, in respect of electricity used on or after July 1, 2017, ensure that its invoices reflect the determinations of the Board.

Same

(2) The electricity vendor shall ensure that, if any of its customers who are specified consumers have been invoiced in a manner that does not reflect the determinations of the Board under section 9, the specified consumer receives the difference between the amounts shown on the invoice and the amounts reflecting the Board's determinations, provided as a lump sum credit on the first

invoice issued after the electricity vendor has adapted its invoices or by such other means as may be prescribed.

Subsequent adjustments

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

(a) electricity rates for regulated rate consumers; or

(b) adjustments to be applied by electricity vendors to the adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998* in respect of prescribed classes of specified consumers who are not regulated rate consumers.

Limitation

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

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

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

3. Such other matters as may be prescribed.

Sub-metering

12. (1) This section applies if a specified consumer provides to another person electricity in respect of which a determination of the Board referred to in section 9 or 11 applies.

Same

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

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

13. (1) Upon receipt of an invoice from an electricity vendor that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor as agent of the investment interest owners.

Same

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

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan, including in a manner that failed to provide for the reasonable alignment of the estimated finance amount with the fair allocation amount.

Terms

(3) The payment shall be made in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the

extent of each owner's respective interest in the investment asset.

Same

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

Unit sub-metering

(6) A specified consumer who provides electricity through unit sub-metering may collect amounts in

respect of the clean energy adjustment payable under this section in accordance with the regulations.

Irrevocability of amount

14. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or bypassed.

Exception

(2) Subsection (1) does not apply to the extent that the invoice reflects a clerical, typographical or calculation-related error.

Determination of clean energy adjustment

Financial Services Manager to determine

15. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by taking the following steps:

1. Calculate the sum of the following:

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

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

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

Regulations re true up amount

(2) The Lieutenant Governor in Council shall, in making regulations

with respect to the determination of the true up amount, have regard to the following principles:

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

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

    i. differences between the estimated and actual finance

amount for the applicable reference period,

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

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

Financial Services Manager to notify Board

(3) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment in respect of a reference period and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(4) Without changing the clean energy adjustment, the Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover

the clean energy adjustment in respect of the reference period.

IESO to receive amounts

16. (1) The IESO shall, as agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the market rules made under section 32 of the *Electricity Act, 1998* or the regulations.

Account

(2) All of the following amounts received by the IESO shall, until

paid to or for the benefit of the investment interest owners in accordance with subsection (4), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection (1).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 13 (1).

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

Same, held in trust

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

IESO to remit

(4) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the amounts referred to in subsection (1), to or for the benefit of the investment interest

owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

17. (1) Each electricity vendor shall issue an invoice to each of its customers who is a specified consumer for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 15 (4) and in accordance with the regulations.

Electricity vendor to report

(2) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its customers who are specified consumers in respect of the clean energy adjustment, the amount collected and such other information as may be prescribed.

Electricity vendor to collect

(3) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from

specified consumers in accordance with the regulations.

Pro rating of payments

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

Held in trust

(5) Payments received by an electricity vendor from or on behalf of specified consumers in respect of the clean energy adjustment and all proceeds of the payments shall, until paid to or for the benefit of the investment interest owners in accordance with subsection (6), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(6) Each electricity vendor shall remit amounts in respect of the clean energy adjustment to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

18. Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Duties and powers

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

Same

(2) The administration of the investment asset may include providing information to the IESO in respect of obligations under Part III and such other activities as may be prescribed.

Fees

(3) Subject to any prescribed limitations, the Financial Services Manager may establish and charge fees in relation to such matters as may be prescribed in accordance with the regulations, which regulations may provide for the ability to recover costs and expenditures and to earn a return.

Same, Board approval

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

FAIR ALLOCATION AMOUNT

Minister to calculate fair allocation amount

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

1. Determine the estimated clean energy costs and estimated clean energy benefits allocated to

specified consumers in respect of the reference period.

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

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

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

Principles

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

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

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

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

4. Such other principles as may be prescribed.

Assumptions

(3) In calculating the fair allocation amount, the Minister shall make such assumptions as the Minister

considers to be reasonable regarding the following:

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

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

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

4. Such other assumptions as may be prescribed.

Minister to provide amount to Financial Services Manager

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

Recalculation

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

Same

(6) No change under subsection (5) shall affect any clean energy adjustment that has already been determined under section 15 or any funding obligations that have already been incurred before the change.

Information

(7) The Minister, the IESO, the Financial Services Manager, the Board and electricity vendors shall provide such information as may be prescribed in accordance with the regulations for the purposes of

facilitating a change to a calculation of the fair allocation amount.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

21. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring and financing an investment asset in accordance with

this Act or for the purposes of a refinancing.

Plan to be provided to Minister

(2) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

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

1. Funding obligations should be incurred such that, along with any funding obligations already

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

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable,

cost effective and that reflects prevailing market terms and conditions.

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

4. Such other principles as may be prescribed.

Limitation

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

energy adjustment in respect of the reference period unless,

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

(b) if the Board has made a determination under Part II in respect of the reference period, the funding obligations incurred would not result in amounts payable in respect of the clean energy adjustment during the reference period in an amount

that exceeds the limit determined in accordance with the regulations.

Other reports

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

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Incurrence of funding obligations

22. (1) The Financial Services Manager shall ensure that funding obligations incurred for the purposes of this Act are incurred in a manner

that is consistent with the applicable Financing Plan.

Financing entities

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

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario

Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and to provide for the reasonable alignment of the estimated finance

amount with the fair allocation amount.

Same

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

PART V
THE REGULATORY ASSET

IESO deferral

23. (1) The IESO deferral for each month, commencing May 1, 2017,

shall be determined by the IESO in accordance with the regulations.

Same, retrospective amounts

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

Electricity vendors to provide information

(3) Electricity vendors shall provide to the IESO such information as the IESO may reasonably request for the purposes

of determining the IESO deferral under subsection (1) and such further information as may be prescribed.

Same

(4) The IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

24. (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

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

Rights of investment interest owner

(3) No change made by the IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 26, affect the

rights acquired by the investment interest owner under the transfer.

Regulatory asset established

25. (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the

IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Transfer of regulatory asset

26. (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.

Validity of transfer

27. (1) A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.

Same

(2) Without limiting subsection (1), any transfer agreement that states an intention of the parties for the IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest

shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of the IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.

Deemed perfection, etc.

(3) At the time a transfer of the regulatory asset is made under section 26, 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

Investment asset established

28. (1) The transfer of a specified portion of the regulatory asset under section 26 creates an investment

asset or, if it is not the first transfer, adds to the investment asset.

Same

(2) Upon transfer of a specified portion of the regulatory asset under section 26 to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim.

Investment asset, irrevocable rights and interests

29. (1) The investment asset constitutes a current and irrevocable property right and interest consisting,

collectively, of the following rights and interests of investment interest owners:

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

2. The right to receive, collect and recover the clean energy adjustment that is imposed, invoiced and recoverable under

this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors, the IESO and other prescribed parties.

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

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

invoice for the clean energy adjustment.

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

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest, including any rights to receive funding rebates.

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

Not affected by failure to impose etc. clean energy adjustment

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

No set off, etc.

(3) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, the IESO, an agent of the investment interest owners or an owner in the Province of a

distribution system within the meaning of the *Electricity Act, 1998*;

(b) in connection with any default of a person mentioned in clause (a); or

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

Exercise of rights

(4) The rights of the investment interest owners to collect and enforce their rights and interests in, to and in respect of the investment asset against a specified consumer shall be

exercised in accordance with Part III of this Act.

Collective action required

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

investment interest owners as a collective in accordance with its terms.

Transfer of investment interest

30. An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

31. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute

transfer of the investment interest and confers upon the transferee a valid property right and interest in, to and under the applicable investment interest acquired in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and

upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

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

Priority of transfer, assignment, etc.

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

Investment interest owner may grant security interest

32. (1) An investment interest owner may grant a security interest over all or a specified portion of its

right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

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

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that

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

Proceeds

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

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation

of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

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

revenues or other proceeds with other funds.

Notice required

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

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VII
MISCELLANEOUS

Appointment of agent, invoicing or collection

33. (1) 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.

Same, not Crown agent

(2) For greater certainty, a person appointed under this section is not an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Board's authority

34. (1) Each electricity vendor, the IESO and the Financial Services Manager shall maintain such accounts and provide such information to the Board as the Board may require for the purposes of carrying out its responsibilities under this Act, in the form and manner and within the time required by the Board.

No hearing required

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

Sequestration

35. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the

investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

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

Choice of law

36. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to a transfer under this Act or the creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section 5 shall be the laws of the Province.

Conflict

37. The provisions of this Act and the regulations apply despite any provision of any other Act regarding

the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

38. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Liability

39. (1) No action or other civil proceeding shall be commenced

against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this Act, the regulations under this Act or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty.

Same

(2) Nothing in subsection (1) shall be read as limiting the effect of subsection 19 (1) of the *Electricity*

Act, 1998 or subsection 11 (1) of the *Ontario Energy Board Act, 1998*.

Same

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

References in marketing materials and offering documents

40. No person shall include, in marketing materials or offering

documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5 unless the prescribed requirements, if any, are satisfied.

Regulations

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

1. Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations

or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

3. Governing the incurrence of debt for the purposes of the definition of "refinancing" in subsection 1 (1).

4. Governing the inclusion of information under this Act on or with invoices, which may include requiring notice to be provided

by electricity vendors to specified consumers and other prescribed persons regarding the adjustments, including providing for different requirements in different circumstances and for different classes of specified consumers.

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

invoices and the form of any notice to be provided to the specified consumer under this Act.

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

7. Providing for a right of compensation for investment interest owners affected by a breach under section 29 and the manner in which such a right may be enforced under this Act.

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

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

Limitation

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

of the clean energy adjustment or impairing or postponing the invoicing, collection, remittance or recovery of the clean energy adjustment.

PART VIII
AMENDMENTS TO OTHER ACTS

Electricity Act, 1998

42. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clause:

(q.1) to exercise the powers and rights and to perform the duties

and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

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

(ii) engaging in activities related to making payments to and receiving payments as

contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities,

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

(A) incurring liabilities in relation to the regulatory asset,

(B) transferring the regulatory asset under section 26 for consideration, and

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

(2) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

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

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

(c) such amounts as may be prescribed that are paid or incurred by the IESO in relation

to the *Ontario Fair Hydro Plan Act, 2017*.

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

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

(6) Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

(1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services on behalf of financing entities, subject to the right to be

paid by the financing entities for those services.

Subsidiaries, etc.

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

Deemed assets, non-subsidiary

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act, if

a financing entity is not a subsidiary of Ontario Power Generation Inc.,

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

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

Deemed assets, subsidiary

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

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

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its other subsidiaries shall

not form part of the assets and liabilities of that financing entity.

Definition, financing entity

(1.5) For the purposes of this section,

"financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017.*

Ontario Energy Board Act, 1998

43. (1) Subsection 70 (2.1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

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

(2) Section 70 of the Act is amended by adding the following subsection:

Deemed condition of licences, unit sub-meter provider, *Ontario Fair Hydro Plan Act, 2017*

(2.4) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Fair Hydro*

Plan Act, 2017 and the regulations made under it.

(3) Section 78.1 of the Act is amended by adding the following subsections:

Same, limitation re Ontario Power Generation Inc.

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

Same

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

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

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

(4) Subsection 79.16 (3) of the Act is repealed.

PART IX
COMMENCEMENT AND SHORT TITLE

Commencement

44. This Schedule comes into force on the day the *Fair Hydro Act, 2017* receives Royal Assent.

Short title

45. The short title of the Act set out in this Schedule is the *Ontario Fair Hydro Plan Act, 2017*.

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Ontario

Date : June 5, 2017

Re : ENE
Proposed regulation under the Electricity Act, 1998
Amending - O. Reg. 280/14
IESO: ELIGIBLE INVESTMENTS AND BORROWING
reg2017.0295.e03

This proposed regulation has been sealed under the authority of the Registrar of Regulations.

REGISTRAR OF REGULATIONS

Ontario

Executive Council
Conseil exécutif

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

Sur la recommandation de la personne soussignée, la lieutenante-gouverneure, sur l'avis et avec le consentement du Conseil exécutif, décrète ce qui suit :

the appended Regulation be made under the

Electricity Act, 1998.

Recommended _____
Minister of Energy

Concurred _____
Chair of Cabinet

Approved and Ordered _____
Date

_____
Lieutenant Governor

R.O.C./Décret (R)

Date : June 5, 2017

Re : ENE
Proposed regulation under the Electricity Act, 1998
Amending - O. Reg. 280/14
IESO: ELIGIBLE INVESTMENTS AND BORROWING
Reg2017.0295.e03.

This appended regulation has been sealed under the authority of the Registrar of Regulations.



Authority Verified
Compétence vérifiée _____

Recommended by the Management Board of Cabinet on
Recommandé par le Conseil de gestion du gouvernement le _____

Please print name
Nom en lettres moulées s.v.p. _____

Secretary
Secrétaire _____

Telephone
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Registrar of Regulations

REG2017.0295.e
3-TK

ONTARIO REGULATION

made under the

ELECTRICITY ACT, 1998

Amending O. Reg. 280/14

(IESO: ELIGIBLE INVESTMENTS AND BORROWING)

1. Subsection 3 (2) of Ontario Regulation 280/14 is amended by adding the following paragraph:

5. To provide such funds as may be required for the purposes of the *Ontario Fair Hydro Plan Act, 2017*, including borrowing,

   i. to fund IESO deferrals under section 23 of that Act, and

   ii. to fund the activities in which the IESO is authorized or required to engage under that Act.

Commencement

2. This Regulation comes into force on the later of July 1, 2017 and the day it is filed.

ONTARIO REGULATION

made under the

ONTARIO FAIR HYDRO PLAN ACT, 2017

FAIR ADJUSTMENT UNDER PART II OF THE ACT

Definitions

1. In this Regulation,

"billing period" means a period of time in respect of which an invoice for electricity is issued by an electricity vendor , a specified consumer or a unit sub-meter provider providing unit sub-

metering for a specified consumer;

"Toronto Hydro" means Toronto Hydro-Electric System Limited.

Hypothetical regulated rate consumer

2. For the purposes of subsection 7 (1) of the Act, a hypothetical regulated rate consumer meets the following criteria:

[OLC Note: Section 7 of the Act refers to "a hypothetical regulated rate consumer who meets the prescribed criteria" so we need to

prescribe criteria under this section.]

1. The consumer purchases electricity directly from Toronto Hydro.

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.

[OLC Note: To help me understand how the various terminology is meant to operate, does para. 3 above mean that the "billing period" is one month?]

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

5. The consumer is not a rate-assisted consumer within the meaning of section 79.2 of the *Ontario Energy Board Act, 1998*.

6. The consumer uses 750 kilowatt hours of electricity in each billing period.

7. The consumer's time-of-use consumption profile in each billing period is described as follows:

i. 65 per cent of the consumer's usage occurs during off-peak periods associated with the regulated price referred to as $RPEM_{OFF}$ in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board.

ii. 17 per cent of the consumer's usage occurs during mid-peak periods associated with the regulated price referred to as

$RPEM_{MID}$ in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board.

iii. 18 per cent of the consumer's usage occurs during on-peak periods associated with the regulated price referred to as $RPEM_{ON}$ in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board.

Regulated rate consumers, first fair adjustment under s. 7 of the Act

3. (1) The Board shall apply the following methodology for the purposes of section 7 of the Act:

1. Subject to subsections (2) and (3), determine the total invoice amount, consisting of the following types of amounts, that would be invoiced in respect of a billing period to a hypothetical regulated rate

consumer who meets the criteria set out in section 2:

i. The commodity price of the electricity under the comparison rates described in subsection 7 (3) of the Act.

ii. The rates and charges as of May 1, 2017 as set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998,* except for the rates

and charges related to any rural or remote rate protection compensation required under subsection 79 (4) of the *Ontario Energy Board Act, 1998* or any compensation required under subsection 79.2 (10) of that Act.

iii. The rates and charges as of April 30, 2017 as set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act,*

1998, related to any rural or remote rate protection compensation required under subsection 79 (4) of the *Ontario Energy Board Act, 1998* or any compensation required under subsection 79.2 (10) of that Act.

iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii.

2. Subject to subsections (2) and (3), determine the rates that, when applied as the commodity price of the electricity in subparagraph 1 i would result in the hypothetical regulated rate consumer who meets the criteria set out in section 2 being invoiced a total invoice amount in respect of a billing period, consisting of the following types of amounts, that is 25 per cent less than the total invoice amount determined under paragraph 1:

i. The commodity price of the electricity.

ii. The rates and charges as of May 1, 2017 as set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998,* except for the rates and charges related to any rural or remote rate protection compensation required under subsection 79

(4) of the *Ontario Energy Board Act, 1998.*

iii. The rates and charges as of July 1, 2017 as set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*, related to any rural or remote rate protection compensation required under subsection 79 (4) of the *Ontario Energy Board Act, 1998.*

iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii.

(2) The following types of amounts shall be excluded from the total invoice amount determined under paragraph 1 or 2 of subsection (1).

1. The balance of any amounts carried forward from previous

invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

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

    i. A fixed monthly service charge payable by a

generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

ii. A charge labelled as a "specific service charge" or "retail service charge".

(3) For the purposes of determining the total invoice amount mentioned in paragraph 1 of subsection (1), the Board shall not take into account any financial assistance under the *Ontario*

Rebate for Electricity Consumers Act, 2016 but the Board shall do so for the purposes of determining the total invoice amount mentioned in paragraph 2 of subsection (1).

Other specified consumers, first fair adjustment under s. 8 of the Act

4. (1) For the purposes of section 8 of the Act, the Board shall determine a dollar per megawatt hour amount that represents the difference between the following:

1. The comparison rates mentioned in subparagraph 1 i of subsection 3 (1).

2. The rates determined by the Board under paragraph 2 of subsection 3 (1).

(2) The adjustment to be applied by electricity vendors in respect of each billing period with respect to specified consumers who are not regulated rate consumers shall be determined as follows:

1. The electricity vendor shall multiply the dollar per megawatt hour amount determined by the Board under subsection (1) by the total volume of electricity consumed by the specified consumer during the billing period.

2. The electricity vendor shall deduct the amount determined under paragraph 1 from the amount otherwise payable by the specified consumer in respect of the billing period relating to adjustments made

under section 25.33 of the *Electricity Act, 1998*.

(3) For the purposes of paragraph 1 of subsection (2), the total amount of electricity consumed by a specified consumer in a billing period shall be,

(a) in the case of a specified consumer that is a market participant as defined in the *Electricity Act, 1998*, the net volume of electricity withdrawn from the IESO-controlled grid by the specified consumer

during the billing period, as determined in accordance with the market rules made under section 32 of the *Electricity Act, 1998*; and

(b) in any other case, the volume of electricity distributed to the specified consumer during the billing period by the electricity vendor, adjusted for losses as required by the Retail Settlement Code issued by the Board under the *Ontario Energy Board Act, 1998*.

(4) For greater certainty, if the amount determined under paragraph 2 of subsection (2) in respect of a billing period is a negative amount, that amount shall be a credit for the specified consumer for that billing period.

Subsequent adjustments, regulated rate consumers, cl. 11 (1) (a) of the Act

5. (1) For the purpose of determining the electricity rates payable by regulated rate consumers for the period beginning

on May 1, 2018 and ending on April 30, 2019, the Board shall,

(a) if the rate of inflation is a negative amount, maintain electricity rates for regulated rate consumers at the rates determined under paragraph 2 of subsection 3 (1); or

[ENE LSB Note: Is this in keeping with the policy intention? Maintaining rates as per July 1, 2017 if the rate of inflation is negative is more than likely to result in bills rising (and, of

course, by more than the rate of inflation). If Toronto Hydro's distribution rates rise by 5% (and, say, 2% on the bill as a consequence) when inflation is negative or zero, the bill would rise by more than the rate of inflation. Please confirm.]

(b) in any other case, the Board shall determine electricity rates for regulated rate consumers in accordance with subsections (2) and (4).

(2) For the purposes of clause (1) (b), the rates must, when applied as the commodity price of the electricity, result in a hypothetical rate regulated consumer described in section 2 being invoiced a total invoice amount in respect of a billing period, consisting of the following types of amounts but excluding the types of amounts referred to in subsection (3), that is higher than the total invoice amount referred to in paragraph 2 of subsection 3 (1) by the rate of inflation:

1. The commodity price of the electricity.

2. The rates and charges as of May 1, 2018 as set out in the applicable rate order issued by the Board under subsection 78(3) of the *Ontario Energy Board Act, 1998*.

3. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts

mentioned in paragraphs 1 and 2.

(3) The types of amounts to be excluded for the purposes of subsection (2) are the types of amounts referred to in subsection 3 (2).

(4) For the purposes of subsection (1) , the Board shall, when determining the total invoice amount referred to in paragraph 2 of subsection 3 (1), take into account any financial assistance

under the *Ontario Rebate for Energy Consumers Act, 2016.*
[OLC Note: I've suggested slightly different wording than "first total invoice amount" because I don't think that term is sufficiently clear as a drafting matter. I have also included your note immediately below, as per your request.]
[ENE LSB Note: The reference to the "first total invoice amount" is intended to refer to the May 2018 invoice that has the attributes set out in paragraphs 1 to 3 of subsection (1). If there is a better way of referring to it, we are open

to suggestions. The difficulty is that there are two "total invoice amounts" referred to in subsection (1), and we are trying to identify to which one subsection (4) relates.]

(5) In this section,

"Ontario Consumer Price Index" means, for a 12-month period, the Consumer Price Index for Ontario (All-Items) as reported monthly by Statistics Canada under the authority of the *Statistics Act* (Canada), averaged over the 12-month period;

"rate of inflation" means the percentage change between, [ENE LSB Note: Does this work with a comment Tim made regarding CPI being computed for ten, versus twelve, months? Does this align with OEB RPP rate-setting processes and timing?]

(a) the value of the Ontario Consumer Price Index for the 12-month period immediately preceding the 12-month period described in clause (b), and

(b) the vaolue of the Ontario Consumer Price Index for the 12-month period ending on the last day of the most current month for which the Ontario Consumer Price Index is reported by Statistics Canada as of the time the Board applies the methodology mentioned in subsection (1).

Subsequent adjustments, other specified consumers, cl. 11 (1) (b) of the Act

6. (1) For the purpose of determining adjustments to be

applied in respect of specified consumers who are not regulated rate consumers for the period beginning on May 1, 2018 and ending on April 30, 2019, the Board shall determine a dollar per megawatt hour amount that represents the difference between the following:

1. The rates mentioned in subsection (4).

2. The rates determined by the Board under subsection 5 (1).

(2) The adjustment to be applied by electricity vendors in respect of each billing period for the period beginning on May 1, 2018 and ending on April 30, 2019 with respect to specified consumers who are not regulated rate consumers shall be determined as follows:

1. The electricity vendor shall multiply the dollar per megawatt hour amount determined by the Board under subsection (1) by the total amount of the electricity consumed by the specified

consumer during the billing period.

2. The electricity vendor shall deduct the amount determined under paragraph 1 from the amount otherwise payable by the specified consumer in respect of a billing period in respect of the adjustments made under section 25.33 of the *Electricity Act, 1998*.

(3) For the purposes of paragraph 1 of subsection (2), the total amount of the electricity consumed

by a specified consumer in a billing period shall be,

(a) in the case of a specified consumer that is a market participant as defined in the *Electricity Act, 1998*, the net volume of electricity withdrawn from the IESO-controlled grid by the specified consumer during the billing period, as determined in accordance with the market rules made under section 32 of the *Electricity Act, 1998*; or

(b) in any other case, the volume of electricity distributed to the specified consumer during the billing period by the electricity vendor, adjusted for losses as required by the Retail Settlement Code issued by the Board under the *Ontario Energy Board Act, 1998.*

(4) The rates referred to in paragraph 1 of subsection (1) are the rates that would have been effective May 1, 2018 if they had been determined by the Board using the method prescribed by

regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, without taking into account any forecasted impact of any provision of the Act.

(5) If the amount determined under paragraph 2 of subsection (2) in respect of a billing period is a negative amount, that amount shall be given as a credit to the specified consumer in respect of that billing period.

(6) In determining the rates mentioned in subsection (4), the

Board shall take into account any financial assistance under the *Ontario Rebate for Electricity Consumers Act, 2016.*
[ENE LSB note: If this provision is required, the OEB believes that it needs to be that the OEB <u>will</u> take ORECA into account.]

Sub-metering

7. For the purposes of subsection 12 (2) of the Act, the amount payable for the electricity by the person who is liable to pay the invoice shall, in respect of each billing period, reflect the person's

proportionate share of any determination of the Board under section 9 or 11 of the Act that applies to the invoice for electricity payable by the specified consumer.

Commencement

8. This Regulation comes into force on the day it is filed.

Timing for retailers due to do the true up.

OEB comments

PART II

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

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A PROPOSAL TO CREATE REGULATION

made under the

ONTARIO FAIR HYDRO PLAN ACT, 2017

FAIR ADJUSTMENT UNDER PART II OF THE ACT

Definitions

1. In this Regulation,

"billing period" means a period of time in respect of which an invoice for electricity is issued by an electricity vendor , a specified consumer or a unit sub-meter

provider providing unit sub-metering for a specified consumer;

"Toronto Hydro" means Toronto Hydro-Electric System Limited.

Hypothetical regulated rate consumer

2. For the purposes of subsection 7 (1) of the Act, a hypothetical regulated rate consumer meets the following criteria:

[OLC Note: Section 7 of the Act refers to "a hypothetical regulated rate consumer who meets the

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prescribed criteria" so we need to prescribe criteria under this section.]

1. The consumer purchases electricity directly from Toronto Hydro.

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.

[OLC Note: To help me understand how the various terminology is meant to operate, does para. 3 above mean that the "billing period" is one month?]

***[OEB Note to Draft:** Yes, for the hypothetical consumer this means that the consumer's billing period covers a month.]*

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

5. The consumer is not a rate-assisted consumer within the meaning of section 79.2 of the *Ontario Energy Board Act, 1998*.

6. The consumer uses 750 kilowatt hours of electricity in each billing period.

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7. The consumer's time-of-use consumption profile in each billing period is described as follows: *[**OEB Note to Draft:** We have noted the addition of the word "described". Not quite sure why that is necessary, since the profile is as set out below. Contrast with other paragraphs that don't refer to "describe". As long as the addition of the word "describe" doesn't change the meaning (i.e., that the consumer's TOU profile is as*

set out in (i) to (iii)), then we are OK with that.]

i. 65 per cent of the consumer's usage occurs during off-peak periods associated with the regulated price referred to as $RPEM_{OFF}$ in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board.

ii. 17 per cent of the consumer's usage occurs

during mid-peak periods associated with the regulated price referred to as $RPEM_{MID}$ in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board.

iii. 18 per cent of the consumer's usage occurs during on-peak periods associated with the regulated price referred to as $RPEM_{ON}$ in section 3.4 of the "Standard Supply Service

Code for Electricity Distributors" issued by the Board.

Regulated rate consumers, first fair adjustment under s. 7 of the Act

3. (1) The Board shall apply the following methodology for the purposes of section 7 of the Act:

1. Subject to subsections (2) and (3), determine the total invoice amount, consisting of the following types of amounts, that would be invoiced in

respect of a billing period to a hypothetical regulated rate consumer who meets the criteria set out in section 2:

i. The commodity price of the electricity under the comparison rates described in subsection 7 (3) of the Act.

ii. The rates and charges as of May 1, 2017 as set out in the applicable rate order issued by the Board under subsection 78 (3) of the

Ontario Energy Board Act, 1998, except for the rates and charges related to any rural or remote rate protection compensation required under subsection 79 (4) of the *Ontario Energy Board Act, 1998* or any compensation required under subsection 79.2 (10) of that Act.

iii. The rates and charges as of April 30, 2017 as set out in the applicable rate order issued by the Board under

subsection 78 (3) of the *Ontario Energy Board Act, 1998,* related to any rural or remote rate protection compensation required under subsection 79 (4) of the *Ontario Energy Board Act, 1998* or any compensation required under subsection 79.2 (10) of that Act.

iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect

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of the amounts mentioned in subparagraphs i, ii and iii.

2. Subject to subsections (2) and (3), determine the rates that, ~~when applied~~ for the purposes of ~~as the commodity price of the electricity in~~ subparagraph ~~1~~ i would result in the hypothetical regulated rate consumer who meets the criteria set out in section 2 being invoiced a total invoice amount in respect of a billing period, consisting of the following types of amounts,

that is 25 per cent less than the total invoice amount determined under paragraph 1:

*[**OEB Note to Draft**: (1) The "rates" that we are determining – in essence solving for under section 7 of the Act – are those that pertain to the commodity price in subparagraph i below and not those that pertain to the commodity price in subparagraph 1i above. The commodity price in subparagraph 1i above is the commodity price under the*

"comparison rates". (2) On further reflection, we are not sure that "when applied as" the commodity price works as well as we originally thought. The idea should be that the commodity price is the price under the rates that we are determining under this paragraph (in the same way that the idea is expressed in 3(1)1i)). Not convinced that "when applied to" works either. So we have tried something else, but are

certainly open to further suggestions.]

i. The commodity price of the electricity.

ii. The rates and charges as of May 1, 2017 as set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998,* except for the rates and charges related to any rural or remote rate protection compensation

required under subsection 79 (4) of the *Ontario Energy Board Act, 1998*.

iii. The rates and charges as of July 1, 2017 as set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*, related to any rural or remote rate protection compensation required under subsection 79 (4) of the *Ontario Energy Board Act, 1998*.

iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii.

(2) The following types of amounts shall be excluded from the total invoice amount determined under paragraph 1 or 2 of subsection (1).

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1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the consumption~~use~~ of electricity.
[OEB Note to Draft: *In our last set of comments, we noted that ORECA refers to "consumption" and not "use". We note that you have retained "use" here, and would ask for confirmation as to whether you*

intend for this to be interpreted in a manner different than we would interpret ORECA? If so, we would require greater clarity on that point.]

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

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Ontario Energy Board Act, 1998 and classified as "microFIT".

ii. A charge labelled as a "specific service charge" or "retail service charge".

(3) For the purposes of determining the total invoice amount mentioned in paragraph 1 of subsection (1), the Board shall not take into account any financial assistance under the *Ontario Rebate for Electricity Consumers Act, 2016* but the Board shall do so

for the purposes of determining the total invoice amount mentioned in paragraph 2 of subsection (1).

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Other specified consumers, first fair adjustment under s. 8 of the Act

*[**OEB Note to Draft:** We raised some questions about whether this section is entirely compatible/workable in all respects with O. Reg. 429/04. No changes have been proposed to this section relative to our proposed draft (where we noted but did not attempt to resolve) this question, and are wondering whether you are satisfied on that point or whether it remains outstanding.]*

4. (1) For the purposes of section 8 of the Act, the Board shall determine a dollar per megawatt hour amount that represents the difference between the following:

1. The comparison rates mentioned in subparagraph 1 i of subsection 3 (1).

2. The rates determined by the Board under paragraph 2 of subsection 3 (1).

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(2) The adjustment to be applied by electricity vendors in respect of each billing period with respect to specified consumers who are not regulated rate consumers shall be determined as follows:

1. The electricity vendor shall multiply the dollar per megawatt hour amount determined by the Board under subsection (1) by the total volume of electricity consumed by the specified consumer during the billing period.

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2. The electricity vendor shall deduct the amount determined under paragraph 1 from the amount otherwise payable by the specified consumer in respect of the billing period relating to adjustments made under section 25.33 of the *Electricity Act, 1998*.

(3) For the purposes of paragraph 1 of subsection (2), the total volume ~~amount~~ of electricity consumed by a specified consumer in a billing period shall be, ***[OEB Note to Draft:*** *Change for*

consistency with the change that you made to paragraph 1 of subsection (2)]

(a) in the case of a specified consumer that is a market participant as defined in the *Electricity Act, 1998*, the net volume of electricity withdrawn from the IESO-controlled grid by the specified consumer during the billing period, as determined in accordance with the market rules made under section 32 of the *Electricity Act, 1998*; and

(b) in any other case, the volume of electricity distributed to the specified consumer during the billing period by the electricity vendor, adjusted for losses as required by the Retail Settlement Code issued by the Board under the *Ontario Energy Board Act, 1998* and Ontario Regulation 429/04.

(4) For greater certainty, if the amount determined under paragraph 2 of subsection (2) in respect of a billing period is a

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negative amount, that amount shall be a credit for the specified consumer for that billing period.

Subsequent adjustments, regulated rate consumers, cl. 11 (1) (a) of the Act

5. (1) For the purpose of determining the electricity rates payable by regulated rate consumers for the period beginning on May 1, 2018 and ending on April 30, 2019, the Board shall,

(a) if the rate of inflation is a negative amount, maintain

electricity rates for regulated rate consumers at the rates determined under paragraph 2 of subsection 3 (1); or

[ENE LSB Note: Is this in keeping with the policy intention? Maintaining rates as per July 1, 2017 if the rate of inflation is negative is more than likely to result in bills rising (and, of course, by more than the rate of inflation). If Toronto Hydro's distribution rates rise by 5% (and, say, 2% on the bill as a consequence) when inflation is

negative or zero, the bill would rise by more than the rate of inflation. Please confirm.] ***[OEB Note to Draft:*** *We assume that this Note, which reflects one of our comments, has been left here as the matter is still under consideration by the Ministry.]*

(b) in any other case, ~~the Board shall~~ determine electricity rates for regulated rate consumers in accordance with subsections (2) and (4). ***[OEB Note to Draft:*** *Because you added "the Board shall" to the opening*

paragraph, we assume that the words "the Board shall" should be omitted from here]

(2) For the purposes of clause (1) (b), the rates must, when applied for the purposes ~~as the commodity price~~ of ~~the electricity~~paragraph 1, result in a hypothetical rate regulated consumer described in section 2 being invoiced a total invoice amount in respect of a billing period, consisting of the following types of amounts but excluding the types of amounts referred to in subsection (3), that is

higher than the total invoice amount referred to in paragraph 2 of subsection 3 (1) by the rate of inflation: *[**OEB Note to Draft:***
***(1)** The "rates" that we are determining – in essence solving for under section 11(1)(a) of the Act – are those that pertain to paragraph 1 below, and we believe that this is clearer if we re-introduce the reference to "paragraph 1". This is also symmetrical with the approach used in paragraph 2 of subsection 3(1). **(2)** As per note (2) in paragraph 2 of 3(1) above, on*

further reflection we are not sure that "when applied as" the commodity price works as well as we originally thought. The idea should be that the commodity price is the price under the rates that we are determining under this paragraph (in the same way that the idea is expressed in 3(1)1i)). Not convinced that "when applied to" works either. So we have tried something else, but are certainly open to further suggestions.]

1. The commodity price of the electricity.

2. The rates and charges as of May 1, 2018 as set out in the applicable rate order issued by the Board under subsection 78(3) of the *Ontario Energy Board Act, 1998*.

3. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in paragraphs 1 and 2.

(3) The types of amounts to be excluded for the purposes of subsection (2) are the types of amounts referred to in subsection 3 (2).

(4) For the purposes of subsection (~~1~~2) , the Board shall, when determining the total invoice amount comprised of the amounts referred to in paragraphs 1 to 3 ~~2~~ of subsection (2)~~3 (1)~~, take into account any financial assistance under the *Ontario Rebate for Energy Consumers Act, 2016.*

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[OLC Note: I've suggested slightly different wording than "first total invoice amount" because I don't think that term is sufficiently clear as a drafting matter. I have also included your note immediately below, as per your request.]

*[**OEB Note to Draft:** The total invoice amount that is being referred to in this subsection is the first one mentioned in subsection (2) (i.e., the one with the rates that are being determined by the OEB as the commodity price in 1 and that includes the other*

amounts/attributes in 2 and 3 of subsection (2). It is not the total invoice amount referred to in paragraph 2 of subsection 3(1), for which an OREC rule is already provided in subsection 3(3). We have tried something else here given the concern about referring to the "first total invoice amount"].

[ENE LSB Note: The reference to the "first total invoice amount" is intended to refer to the May 2018 invoice that has the attributes set out in paragraphs 1 to 3 of subsection (1). If there is a better

way of referring to it, we are open to suggestions. The difficulty is that there are two "total invoice amounts" referred to in subsection (1), and we are trying to identify to which one subsection (4) relates.]

(5) In this section,

"Ontario Consumer Price Index" means, for a 12-month period, the Consumer Price Index for Ontario (All-Items) as reported monthly by Statistics Canada under the authority of the *Statistics Act*

(Canada), averaged over the 12-month period;

"rate of inflation" means the percentage change between,
[ENE LSB Note: Does this work with a comment Tim made regarding CPI being computed for ten, versus twelve, months? Does this align with OEB RPP rate-setting processes and timing?]

[OEB Note to Draft: *We assume that the first sentence of this Note, which reflects one of our comments, has been left here as the matter is still under consideration*

*by the Ministry. **(2)** In terms of whether this aligns with the OEB RPP rate-setting processes and timing, there is a danger that new Ontario CPI data could be issued very close to when we are set to release RPP prices (typically in mid-April for May 1). Because this section only applies to prices that are set for one year rather than applying to multiple years, there will be greater certainty if we specify the data set to be used. Based on how the definition of "rate of inflation" is structured, the simplest way to accomplish this is*

to add a date to (b), which is what we have done below although the alternative could be to specify dates in both (a) and (b). We have chosen February as we start to do RPP calculations in early March.]

(a) the value of the Ontario Consumer Price Index for the 12-month period immediately preceding the 12-month period described in clause (b), and

(b) the va~~o~~lue of the Ontario Consumer Price Index for the 12-month period ending on the

last day of February, 2018~~the most current month for which the Ontario Consumer Price Index is reported by Statistics Canada as of the time the Board applies the methodology mentioned in subsection (1)~~.

Subsequent adjustments, other specified consumers, cl. 11 (1) (b) of the Act

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*[**OEB Note to Draft:** Same note as for section 4: We raised some questions about whether this section is entirely compatible/workable in all respects with O. Reg. 429/04. No changes have been proposed to this section relative to our proposed draft (where we noted but did not attempt to resolve) this question, and are wondering whether you are satisfied on that point or whether it remains outstanding.]*

6. (1) For the purpose of determining adjustments to be

applied in respect of specified consumers who are not regulated rate consumers for the period beginning on May 1, 2018 and ending on April 30, 2019, the Board shall determine a dollar per megawatt hour amount that represents the difference between the following:

1. The rates mentioned in subsection (4).

2. The rates determined by the Board under subsection 5 (1).

(2) The adjustment to be applied by electricity vendors in respect of each billing period for the period beginning on May 1, 2018 and ending on April 30, 2019 with respect to specified consumers who are not regulated rate consumers shall be determined as follows: *[OEB Note to Draft: Changes to paragraph 1 and to subsection (3) below for consistency with subsections 4(2) and 4(3)]*

1. The electricity vendor shall multiply the dollar per megawatt hour amount

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determined by the Board under subsection (1) by the total volume ~~amount~~ of ~~the~~ electricity consumed by the specified consumer during the billing period.

2. The electricity vendor shall deduct the amount determined under paragraph 1 from the amount otherwise payable by the specified consumer in respect of a billing period in respect of the adjustments made under section 25.33 of the *Electricity Act, 1998*.

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(3) For the purposes of paragraph 1 of subsection (2), the total volume ~~amount~~ of ~~the~~ electricity consumed by a specified consumer in a billing period shall be,

(a) in the case of a specified consumer that is a market participant as defined in the *Electricity Act, 1998*, the net volume of electricity withdrawn from the IESO-controlled grid by the specified consumer during the billing period, as determined in accordance with

the market rules made under section 32 of the *Electricity Act, 1998*; or

(b) in any other case, the volume of electricity distributed to the specified consumer during the billing period by the electricity vendor, adjusted for losses as required by the Retail Settlement Code issued by the Board under the *Ontario Energy Board Act, 1998* and Ontario Regulation 429/04.

(4) The rates referred to in paragraph 1 of subsection (1) are the rates that would have been effective May 1, 2018 if they had been determined by the Board using the method prescribed by regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, without taking into account any forecasted impact of any provision of the Act.

(5) If the amount determined under paragraph 2 of subsection (2) in respect of a billing period is a negative amount, that amount shall

be given as a credit to the specified consumer in respect of that billing period.

(6) In determining the rates mentioned in subsection (4), the Board shall take into account any financial assistance under the *Ontario Rebate for Electricity Consumers Act, 2016.*
[ENE LSB note: If this provision is required, the OEB believes that it needs to be that the OEB will take ORECA into account.] ***[OEB Note to Draft:*** *We flagged this as a question in our last set of*

comments. Not sure whether the Ministry has a view as to whether this subsection is needed, but we have come to the view that it is not.]

Sub-metering

7. For the purposes of subsection 12 (2) of the Act, the amount payable for the electricity by the person who is liable to pay the invoice shall, in respect of each billing period, reflect the person's proportionate share of any determination of the Board under

section 9 or 11 of the Act that applies to the invoice for electricity payable by the specified consumer.

Commencement

8. This Regulation would come into force on the day it is filed.

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- definito "refinancing"

ONTARIO REGULATION

made under the

ELECTRICITY ACT, 1998

GENERAL

DEFINITIONS

Funding obligation

1xx. (1) For the purposes of the definition of "funding obligation" in subsection 1 (1) of the Act, a payment obligation is a funding obligation if it arises in relation to the performance of duties under this Act by the Financial Services Manager, including a payment

→ financing entity is the contractual party to incur the

obligation in respect of any of the following types of amounts:
[OLC Note: Have I correctly described the relationship between the payment obligation and the amounts listed below? Trying to track the language of the definition of "funding obligation". Do all of the amounts below "arise in relation to the performance of duties under this Act by the FSM?]

Amounts

1. ~~Moneys~~ borrowed.

[OLC Note: Is there a specific reason for using the term

"moneys" in para. 1 instead of "amounts"?]

2. Amounts raised by acceptance under an acceptance credit facility.

3. Amounts raised pursuant to any note purchase facility or the issuance of bonds, notes, debentures, certificates of beneficial interest, certificates of ownership, loan stock or any similar instrument.

[OLC Note: Please confirm reference to "note purchase

facility" is well understood by the persons who are subject to this provision.]

4. Amounts raised pursuant to any issue of securities which are expressed to be redeemable either at a fixed date or at the option of the holder at any time before the final maturity date.

5. Amounts of any liability in respect of any advance or deferred purchase agreement if one of the primary reasons for

entering into the agreement is to raise finance.

[OLC Note: Is there a term used in the Act that means the same thing as "to raise finance"? "Financing"?]

[OLC Note: Is the determination of the primary vs secondary reasons for entering into the agreement something that is sufficiently easy to determine?]

6. Amounts raised by the sale or discount of receivables on arm's length terms.

[OLC Note: Do we need more precision in order to understand the underlined term above? Arm's length between whom?]

7. Amounts raised under any other transaction, including any forward sale or purchase agreement or sale and leaseback transaction, having the commercial effect of a borrowing; and

[OLC Note: Is the underlined phrase all meant to refer to one type of transaction? Or are we referring to various transactions

(e.g. (1) forward sale or purchase agreement; (2) sale and leaseback transaction.]

8. Amounts payable under interest rate swaps or cross-currency swaps, including any bonds or loans incurred by a financing entity to finance collateral obligations under the swap.

(2) The amounts referred to in paragraph 5 of subsection (1) do not include any trade liabilities payable in the ordinary course of

business of [the Financial Services Manager?].

CLEAN ENERGY ADJUSTMENT

Specified consumers, unit sub-meter providers, s. 13 (6) of the Act

2xx. For the purposes of subsection 13 (6) of the Act, amounts in respect of the clean energy adjustment ~~may be~~ are to be collected by the specified consumer as follows:

[OLC Note: Interesting that subs. 13 (6) says the specified consumer

"may collect" rather than "shall collect". Was that an error?]

1. If an invoice for electricity is issued to a person by the specified consumer,

    i. the specified consumer may collect from the person the amount of the clean energy adjustment shown on the invoice, and

    ii. the specified consumer may, immediately upon receiving the amount from the person,

provide the amount to the electricity vendor on behalf of the person.

2. If an invoice for electricity is issued to a person by a unit sub-meter provider providing unit sub-metering for a specified consumer,

    i. the unit sub-meter provider may collect from the person the amount of the clean energy adjustment shown on the invoice and provide the

amount collected to the specified consumer, and

ii. the specified consumer may, immediately upon receiving the amount from the unit sub-meter provider, provide the amount to the electricity vendor on behalf of the person.

Finance amount

3xx. The finance amount in respect of a reference period shall be determined as follows:

1. Calculate the sum of the following amounts that are payable [by financing entities?] in respect of the reference period:

   i. Repayment amounts.

   ii. Funding costs.

   iii. Redemption amounts.

   iv. Finance reserve deposits.

   v. Capital reserve deposits.

vi. Expenses.

vii. Tax liabilities.

[OLC Note: Are the above terms sufficiently clear? More description/definition required to achieve desired outcomes? I don't know what some of these terms are referring to so I'm concerned that this may leave too much room for interpretation.] – See Toy's definitions Jackson & debentures

2. Calculate the sum of the following amounts [that are owed to the financing entities in

respect of the reference period?]:

i. Capital reserve withdrawals.

ii. Finance reserve withdrawals.

iii. Recovery amounts.

iv. Refinancing amounts.

v. Tax refunds.

[OLC Note: Same comments as above re specificity.]

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

Determining clean energy adjustment, true-up amount

4xx. (1) For the purposes of the definition of "true-up amount" in subsection 1 (1) of the Act, the true-up amount is determined in respect of a reference period as follows:

$$T = (A - B) + C$$

Where,

T = the true-up amount in respect of the reference period,

A = the finance amount in respect of all reference periods preceding the reference period,

B = the clean energy adjustment collected during all reference periods preceding the reference period [and any part of the reference period?],

[OLC Note: Why is the phrase in square brackets included in B but not in A? And what is this supposed to be referring to… is it

meant to account for a situation where the CEA is only being determined part way through the reference period? Should it only refer to a part of the reference period that is in the past?]

C = [any?] amounts resulting from historical and reasonably foreseeable differences between amounts invoiced and amounts collected in respect of the reference period due to various factors, including those mentioned in subparagraph 2 ii of subsection 15 (2) of the Act.

[OLC Note: Just to confirm, "C" is only about the current reference period, not preceding reference periods?]

(2) In calculating the clean energy adjustment collected during all reference periods preceding the reference period, the Financial Services Manager shall have regard to amounts due and payable that were not collected and any amounts in respect of which an overpayment was made.

(3) Without limiting the generality of subsection (2), the amounts referred to in that subsection include amounts resulting from a default of,

(a) an electricity vendor; or

(b) the IESO, whether in its capacity as an electricity vendor or its activities as agent or otherwise under section 16 or 25 of the Act.

(4) For the purposes of determining the clean energy

adjustment in respect of each month in a reference period, the Financial Services Manager may calculate or determine the following:

[OLC Note: In general, I don't understand what this subsection is meant to accomplish and I don't understand what is being described in paras. 1 and 2 below.]

1. *Quarterly true-up amounts and the setting of the clean energy adjustments after the scheduled final payment date for a funding obligation.*

2. *Monthly true-up amounts and the setting of clean energy adjustments if the Financial Services Manager reasonably forecasts that expected collections of the clean energy adjustments will be* ***[are determined to be?]*** *insufficient to pay the estimated finance amount for the next reference period, any arrears or the need to replenish any draws upon the capital or reserve accounts of the financing entity.*

(5) If the following circumstances apply, the Financial Services Manager shall [re-determine?] the true-up amount [in respect of a reference period?] and notify the Board of its new determination for the purpose of adjusting the clean energy adjustment:

1. The Financial Services Manager reasonably forecasts that expected collections of the clean energy adjustment will be insufficient to pay the estimated finance amount for the next reference period.

2. The Financial Services Manager reasonable forecasts that there is a need to replenish any draws upon the capital or the reserve sub-accounts.

[OLC Note: What is being referred to in the underlined phrase above -- I think more explanation is required.]

(6) If the Financial Services Manager determines that an error in the calculation of the clean energy adjustment in respect of a month or any other error relating to the clean

energy adjustment requires correction, the correction shall be reflected in the calculation of the true-up amount in respect of the following reference period.

Notification to Board, etc.

5xx. (1) Before the final scheduled payment date in respect of a funding obligation, the Financial Services Manager shall notify the Board of the clean energy adjustment in respect of a reference period and the true-up amount in respect of the reference period,

[OLC Note: I don't think it's necessary to say the CEA must be "inclusive of the true-up amount" because the rule in subs. 15 (1) of the Act requires the true up amount to be taken into account as part of the steps for determining the CEA. If I am misunderstanding what you want to achieve, please let me know.]

[OLC Note: What is the underlined phrase referring to, both in subs. (1) and (2)? Aren't there going to be multiple funding obligations? Would there be multiple dates? How does one know what the scheduled final payment date is? Is it set out in an agreement? What if the agreement is amended?]

(a) on or before April 1, if the reference period begins on May 1; and

(b) on or before October 1, if the reference period begins on November 1.

(2) After the scheduled final payment date for a funding obligation, the Financial Services Manager shall, in addition to complying with the requirement set out in subsection (1), update its most recent determination of the clean energy adjustment and notify the Board the updated determination on or before June 1 and December 1 in each calendar year.

(3) Subsections (1) and (2) cease to apply once the following amounts have been paid in full:

1. Funding obligations.

2. The clean energy adjustment.

3 Arrears [what arrears?].

Board to determine rates, subs. 15 (4) of Act

6xx. (1) The Board shall, no later than 15 days after the day that the Financial Services Manager

notifies the Board of the clean energy adjustment in respect of a reference period under section 5xx [or a re-determination - TBC], [evaluate the mathematical accuracy of the Financial Services Manager's determination of the clean energy adjustment and] determine the rates at which specified consumers are to be invoiced in respect of the reference period, expressed as a dollar per kWh amount, by dividing the clean energy adjustment by the forecasted electricity demand of

specified consumers in respect of the reference period.
[OLC Note: Why is the underlined phrase included? What if the Board determines that it is inaccurate? The Act doesn't give the Board any oversight role in respect of the determination. And in fact your instructions state that "the Board shall accept the CEA" provided by the FSM. (I don't think we actually need to say the latter point because 15 (4) of the Act already specifies that the Board cannot change the CEA.]

(2) For the purposes of subsection (1), the forecasted electricity demand of specified consumers in respect of the reference period is the forecasted demand as provided to the Board by the IESO.

[OLC Note: Need to check Act for authority to impose the following obligation on IESO, and then consider where to put this requirement (perhaps bundle with other information-sharing requirements imposed on IESO?) Also should IESO be providing a

forecast 2 times a year in order to forecast for each reference period?

(2.1) The IESO shall provide the forecasted demand referred to in subsection (1) on or before October 1 in each year.]

(3) If notice of a determination is provided as described in clause 5xx (1), the rate shall be determined on or before the first day of the reference period in respect of which the notice was provided.

(4) If notice of a re-determination is provided as described in

subsection 5xx (2), the rate shall be determined on or before the first day of the month following the month in which the notice was provided.

[OLC Note: Does the Board need to do anything else after it determines the rates? What if it receives notice of a re-determination but there has been no change in the CEA? Does the Board need to do anything?]

IESO to receive, remit amounts, s. 16 of the Act

7xx. (1) The IESO shall ensure that amounts received in respect of the clean energy adjustment under subsection 16 (1) of the Act are identifiable as such.

[OLC Note: Given what is already required under section 16, not sure that the above is necessary (what would the IESO have to do, beyond depositing the amounts in a separate account, to make sure that the amounts are "identifiable" as CEA amounts?)

Also, I didn't include "and delivered… without set-off… to a separate account" because I believe this is already covered by 16 (2) of the Act which requires prompt deposit into an account established for the purposes of receiving those amounts. Also instructions said that the IESO shall do this on a monthly basis but I don't think that aligns with subs 16 (2) of the Act which requires "prompt" deposit.]

(2) For the purposes of subsection 16 (4) of the Act, the IESO shall remit the amounts by depositing

them into such accounts as may be specified by one or more financing entities.

[OLC Note: What if financing entities provide conflicting instructions? Would it be the FEs or the FSM who gives this direction to the IESO?] – FSM rules.

Electricity vendors to invoice, collect, s. 17 of the Act

8xx. (1) Each electricity vendor shall ensure that invoices issued to a specified consumers include a separate line item for the portion of

the invoices that is in respect of the clean energy adjustment.

(2) Each electricity vendor shall ensure that amounts collected from specified consumers in respect of the clean energy adjustment <u>are identified as such and segregated from any other amounts collected from consumers</u>.

[OLC Note: Does "segregated from any other amounts" effectively mean "shall be deposited into an account established for the purposes of receiving those amounts"? If so,

we should be consistent with this language which is used in s. 16 of the Act with respect to IESO.]

– I deposited in sep accounts.

(3) Each electricity vendor shall maintain separate records with respect to amounts invoiced to customers in respect of clean energy adjustments and shall make the records available, upon request, to the IESO, the Financial Services Manager, financing entities and investment interest owners.

FAIR ALLOCATION AMOUNT

Calculation of fair allocation amount

9xx. For the purposes of subsection 20 (3) of the Act, the Minister shall have regard to the following matters:

[instructions required]

(2) For the purposes of subsection 20 (5) of the Act,
[instructions required… I don't understand the following instructions:

the methodology for calculating [recalculating?] shall be as follows:

- *commodity prices;*
- *interest rates/inflation;*
- *population; consumption;*
- *useful life of assets; etc.*

FINANCIAL SERVICES MANAGER

Fees, subs. 19 (3) of the Act

10xx. (1) For the purposes of subsection 19 (3) of the Act, fees may be established and charged [to financing entities] in relation the recovery of amounts in respect of the following matters:

1. The costs of services provided by the Financial Services Manager, which may include services related to planning, financing, negotiation and execution of agreements, front office services and administrative services.

2. The costs of doing anything that the Financial Services Manager is required or permitted to do under the Act.

(2) The fees mentioned in subsection (1) may provide for a rate of return, calculated on the following basis: [further instructions required - not sure what is meant by the variable and fixed components]

[OLC Note:You included the following instruction but I'm not sure how this would be authorized… need to consider further: *Fees determined under (1) ….are payable by specified consumers through the Clean Energy Adjustment.*]

Board approval of fees, subs. 19 (4) of the Act

11xx. (1) The Financial Services Manager shall submit proposed fees no later than August 31, 2017. [OLC Note: there were some conflicting instructions regarding the timing for submitting the fees… please clarify.]

(2) The Financial Services Manager may at any time submit proposed amendments to its fees to the Board.

(3) If the Financial Services Manager submits proposed amendments, the proposed amendments shall be submitted no later than 90 days before the Financial Services Manager intends for the fees to be charged.

(4) The Board may approve the proposed fees or proposed amendments by order or may refer the proposal back to the Financial Services Manager for further consideration with the Board's recommendations.

(5) In reviewing the Financial Services Manager's proposed fees or amendments, the Board shall not take into consideration the remuneration and benefits of staff of the Financial Services Manager. [OLC Note: I don't understand the rationale for subs. (3). Wouldn't the remuneration and benefits of staff be part of the costs of the services provided by the FSM?]

(6) For greater certainty, any applicable fees approved by the Board under [the OEBA?] remain

in effect until such time as the Board orders otherwise.
[OLC Note: This means that the OEBA fees could remain payable even though fees are ordered payable under this Act. Is that what you want as an outcome?]

FINANCING PLAN

Financing plan, principles and assumptions prescribed under subs. 21 (3) of the Act

12xx. (1) The Financial Services Manager shall make reasonable assumptions regarding the

following matters in preparing the Financing Plan:
[OLC Note: I have assumed that the following list of items are intended to be prescribed matters under para. 3 of subs. 21 (3) of the Act. Please confirm or else adjust the language as necessary.]

1. The IESO deferral for future months.

2. Future transfers of specified portions of the regulatory asset.

3. The maturities of funding obligations.

4. The future availability of refinancings, redemption opportunities and liquidity terms and conditions.

[OLC Note: Is para. 4 meant to refer to "the availability of (1) refinancings; (2) redemption opportunities and (3) liquidity terms/conditions?" Or is "availability of" only meant to qualify refinancings?]

5. The future availability of currency and interest rate hedging facilities for the purposes of mitigating any differences between the estimated finance amount becoming due and payable during any reference period and the fair allocation amount determined in respect of the reference period.

[OLC Note: What are "hedging facilities"? Is this a term that is commonly understood by the people who will be reading this? Are the words "currency" and

"interest rate" meant to qualify "hedging facilities"?]

6. Interest rates and financing costs related to interest rates.

7. Future availability of capital markets in which funding obligations may be incurred.

8. Fees charged by the Financial Services Manager.

(2) In addition to the principles set out in subsection 21 (3) of the Act, the Financial Services

Manager shall have regard to the following principles in preparing the Financing Plan:

1. The Financing Plan should address measures to be taken to mitigate any risk that specified consumers may bear risks related to the differences in currency exchange rates.

2. The Financing Plan should address the potential need for refinancing in the event that maturities do not initially

coincide with future fair allocation amounts..

[OLC Note: Can you please clarify the underlined?]

3. The Financing Plan should include cost minimization strategies regarding the pricing of funding obligations and the incurrence of related costs.

4. The Financing Plan should set out measures to realign costs and finance amounts as a result of any change in the calculation of a fair allocation amount.

[OLC Note: I am not sure how the content of Schedule 1 included in your instructions is meant to fit in with the above principles/assumptions. I think there may be some overlap. At any rate, please instruct on how you'd like to have that content incorporated.]

(3) The Financial Services Manager shall, no later than 90 days following the end of each fiscal year, submit to the Minister a report with respect to its affairs

during the fiscal year, signed by the [xx] of the Financial Services Manager.

(4) Despite subsection (3), for the fiscal year commencing in 2017, the Financial Services Manager shall submit the report by such time as may be specified by the Minister.

MISCELLANEOUS

Investment asset, s. 29

13xx. The prescribed accounts referred to in paragraph 3 of

subsection 29 (1) of the Act are as follows:

1. Any account opened in the name of the IESO or an electricity vendor into which amounts in respect of the clean energy adjustments are deposited.

2. Any accounts opened in the name of a financing entity by the Financial Services Manager.

Appointment of agent, invoicing or collection

14xx. For the purposes of subsection 33 (1) of the Act, the appointment may occur if the electricity vendor is unable or unwilling to perform its obligations under the Act, including if the electricity vendor becomes insolvent, bankrupt or enters into receivership.

[OLC Note: I don't recall discussing wind up during the drafting of the bill… can you

please point me to the reg authority for the following rule?
Financing entity, wind up,

xx. No financing entity may be voluntarily wound-up, liquidated or dissolved until one year after all of its funding obligations have been paid, unless the Minister approves otherwise.

Disclosure in marketing materials, offering documents, etc.

15xx. For the purposes of section 40 of the Act, a person may include

the references in marketing materials or offering documents if,

(a) the inclusion is required by applicable law or is necessary for the purposes of any financing of funding obligations [under the Act?], including any requests for disclosure by rating agencies; [and? or?]

(b) the Minister has been given written notice of the proposed inclusion of the references and

has been given a reasonable opportunity to comment.

Commencement

x. This Regulation comes into force on the day it is filed.

NAVIGANT

Report on Refinancing the Global Adjustment

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1. OVERVIEW

Navigant Consulting, Inc. was retained by the Ontario Ministry of Energy to evaluate the extent to which clean energy costs are incurred over the same period as clean energy benefits, and assess alternative financing methodologies to better align these costs. Navigant focused on the costs and benefits of procuring natural gas, wind, and solar generation, as well as costs associated with conservation and the early retirement of Ontario's coal assets. Ontario ratepayers currently pay for the costs of its gas, wind, and solar generators over the life of power purchase agreements (PPAs), which generally run for twenty years. Provincial ratepayers also pay for conservation procurement as costs are incurred, and over the period of 2009-2014 paid for the early shutdown of provincial coal plants on an accelerated schedule. The benefits associated with these clean energy generation assets are tied to (i) when they produce power, and/or (ii) when they are available to produce power. Similarly, the benefits associated with conservation and the early retirement of coal generation are tied to the avoided generation and the avoided emissions from coal generation, respectively. These benefits occur over the entire life of the generation and conservation assets (and the expected remaining life of retired coal assets). Navigant addressed three primary questions with the goal of aligning these clean energy benefits and costs:

1) What is the technical feasibility of extending clean energy investment beyond the twenty-year contract life, with prudent maintenance and repowering expenditure?
2) What are the costs of extending the lifetime of these assets, which would be borne by ratepayers after the end of their contract life?
3) What is the fair allocation amount incurred by Regulated Rate-eligible customers in each period if clean energy costs were aligned with clean energy benefits?

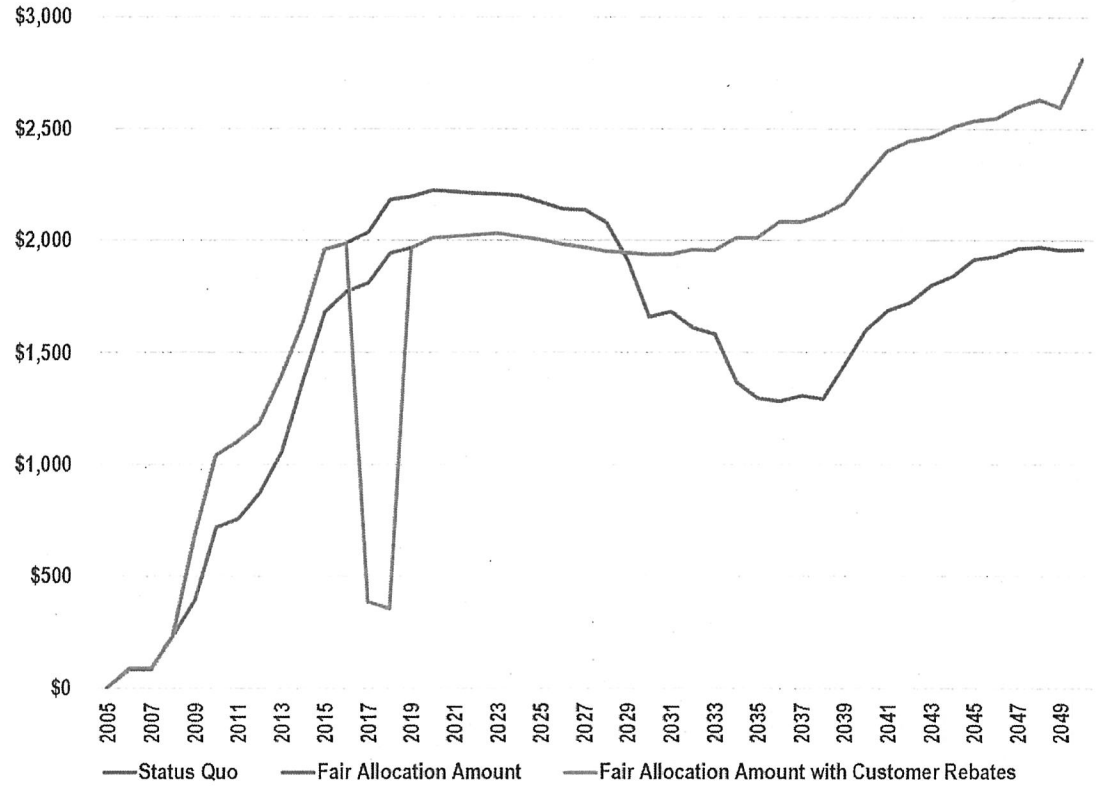
Navigant addressed the first question to determine the period over which clean energy costs can be fairly allocated. Through a combination of interviews, literature review, and consultation of Navigant databases it was determined that Ontario's gas generating facilities can generally last for forty years with prudent maintenance and capital expenditure, and that its wind and solar facilities can generally last for fifty years with one full repowering. Navigant also determined that the remaining life of the coal facilities absent the early shutdown was approximately fifteen years, based on a review of similar regions, and that the estimated benefits from conservation expenditure accrue over a fifteen-year period.

Navigant addressed the second question to determine the additional costs that would be borne by Ontario ratepayers if the lifetime extension measures identified by the first question were undertaken. Determining these costs is important to ensure that the full costs associated with the increased life cycle of the clean energy assets are allocated over the life of the assets. These costs were principally broken into repowering costs and fixed operating costs, and were estimated for the Ontario natural gas, wind, and solar fleet.

Navigant calculated three scenarios for paying the Regulated Rate Customer portion of the contract payments for gas, wind, solar, conservation, and coal retirements (Modeled Asset Classes)[1], as can be seen in Figure 1-1.

[1] Not all expenditures under the Global Adjustment are included in Figure 1-1 or the analysis, which most notably exclude nuclear expenditures and expenditures attributable to customers other than customers eligible for the Regulated Rate program.

Figure 1-1 Annual Eligible Customers Payments for Modeled Asset Classes by Scenario



Source: Navigant Analysis

The blue line represents a status quo case, where contracted assets are paid off over their twenty-year lifetimes, after which ratepayers incur fixed O&M costs as they occur and pay for repowering under new amortized contracts. The green line represents a calculated Fair Allocation Amount, where payment is allocated proportionally to the period when the assets (i) produce power, (ii) are able to produce power, (iii) displace the production of power, or (iv) result in reduced emissions as appropriate. The orange line represents a case where costs are incurred over the period of 2005-2016, and a rebate in the form of a reduction in the Ontario Global Adjustment (GA) is issued in 2017 and 2018 to refund the approximately $2.816 billion (2017 NPV) difference between the costs as incurred by Regulated Rate Customers and the Fair Allocation Amount for the Modeled Asset Classes. All refinanced contracts in calculating both the Fair Allocation Amount and the Status Quo are structured to end in 2050, thus all three lines in Figure 1-1 have an identical NPV from 2005-2050.

2. TECHNICAL FEASIBILITY OF LIFETIME EXTENSION FOR CLEAN ENERGY ASSETS

This section outlines the assumptions and research underlying the feasibility of achieving the modeled lifetimes for the clean energy analysis. It is broken into three subsections, exploring (1) standard practice and experience when planning and designing clean energy assets, (2) the state of the Ontario fleet, and (3) leasing, regulatory, and contract issues associated with lifetime extension. Each of these subsections is further divided between gas, wind, and solar assets. The expected lifetimes were formulated using a combination of interviews, literature review, and consulting publicly available and Navigant proprietary databases.

Overall, no significant leasing, regulatory, or contract issues were identified which would limit lifetime extension. Navigant ultimately identified a useful life of forty years for the gas units (with partial repowering in some cases), and a useful life of twenty-five years for solar and wind units (with another twenty-five years possible after full repowering), after investigating the design and component failure rates and replacement costs for these asset classes.

2.1 Planning and Design Experience

2.1.1 Gas

Power stations utilizing natural gas are most frequently developed assuming a twenty-year life of the plant design, which is often dictated by the terms of commercial contracts. The actual plant life, however, can exceed forty years if the operator follows prudent operations and maintenance (O&M) practices and the recommend repair and replacement intervals for combustion turbine (CT) hot section components and balance of plant equipment.

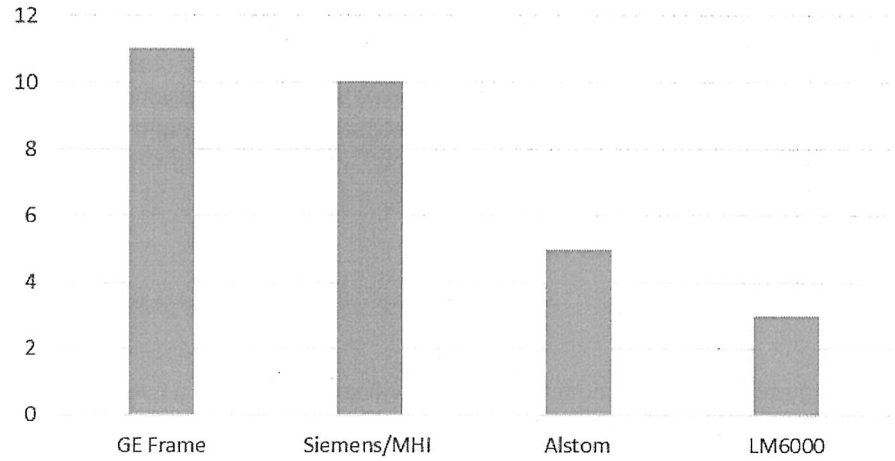
Over the longer term, while an existing plant can continue operations over this life span, advances in technology (such as improved heat rates) may make the plant's energy offers uncompetitive and limit operations to a few peaking hours a year.

Most recently constructed natural gas power stations in Ontario (and throughout North America) utilize CTs as the prime mover, either in simple cycle or combined cycle configuration. In simple cycle configuration, the combustion turbine directly drives a generator, requiring relatively fewer pieces of equipment, which lowers the cost per kilowatt (kW) of capacity. In combined cycle (CC) configuration, the exhaust heat from the CT is recovered in a heat recovery steam generator (HRSG) which produces steam to drive a steam turbine generator. This maximizes efficiency of the energy conversion of natural gas to electricity, but at a higher installed capacity cost than simple cycle configuration. In addition, some plants in Ontario were designed for co-generation (cogen), where a percentage of the steam produced in the CC application is delivered to another company, the steam host, to be utilized in the company's non-electric processes.

The three types of units discussed above, simple cycle, combined cycle and co-generation, have different design parameters. The simple cycle units are fast-starting units that are designed for peaking applications to either stabilize the electrical grid with ancillary services, or to provide energy to the grid during times of high demand. Simple cycle units are typically designed for a low number of starts, less than fifty per year and are generally operated by a small operations staff.

There are 29 combustion turbines at the 16 gas-fired power stations in Ontario. Twenty-six of these are heavy frame type units and three are aero derivative units. The frame turbines include the Frame 7 series manufactured by General Electric (GE), the 501F/G series manufactured by Siemens/Mitsubishi Heavy Industries (MHI), and the GT11 series manufactured by Alstom. The three aero derivative turbines are all versions of the LM6000 turbine manufactured by GE. The distribution of Ontario's gas-fired combustion turbine manufacturers is shown in Figure 2-1 below.

Figure 2-1 Ontario Combustion Turbines by Manufacturer



Source: SNL, ABB Energy Velocity, and Navigant Analysis

The major maintenance and CT parts purchases are covered under long-term service agreements or contractual service agreements with the original equipment manufacturer. These agreements are very specific and require that the CTs be stopped and maintenance be conducted at the required intervals specified by the manufactures.

Combined cycle units were initially envisioned in the early 1990's as baseload power stations, however over time they changed to mid-merit units that assume load when renewable generation drops off and during periods of high demand. Though slower to start than simple cycle units, combined cycle units can still be brought online quickly to provide larger amounts of energy to the grid than simple cycle units. Given the mid-merit dispatch of these units, combined cycle units are typically designed to start between 150-250 times per year.

Co-generation units are highly efficient and either deliver part of the steam from the HRSG to a steam host, or in the case of combined heat and power (CHP) units, use the steam to generate hot water or cold water for various heating and/or cooling applications. Co-generation units are typically designed for baseload operations (less than 10 starts per year) to serve the steam host, and can meet the steam demand while fluctuating the amount of power generated.

Over the last 15 years the rate of gas-fired power station development has increased due to lower natural gas prices, environmental regulations (including CO_2 reduction mandates), and the increasing value of

flexibility for renewable generation firming. With the growing penetration of renewable energy sources in the Ontario market we have also observed that natural gas stations have shifted from principally being dispatched during the day time to cover peak loads to being principally dispatched to firm renewable energy and maintain reliability during periods when wind and solar power plants drop off.

As units reach the end of their power sales contracts (usually 20 years), they have many lifetime extension options available. As mentioned, CTs can operate for 40 years if proper O&M practices have been followed. Most CTs have a major inspection that is required on the turbine rotors at either 200,000 factored fired hours/equivalent base hours or 5000 factored starts. The rotor is pulled, disassembled and inspected to determine if there has been damage to the turbine wheels; when this is complete the rotors are reassembled and can be certified for another 100,000 hours of operations. Given the dispatch regime of units analyzed, most the units did not reach this milestone during the initial 20-year term, and some units did not require it over the forty-year operating life. The HRSGs can also be operated for more than 20 years with proper repairs and replacement of components in the heat affected zones, the super-heater sections, and high flow rate areas such as the economizer. Steam turbines and generators also have expected lives of at least 40 years if the proper maintenance and inspections are conducted at the recommended intervals.

2.1.2 Wind

Until the past few years, wind plants were generally planned to be in operation for 20 years. Recently, many wind project developers have increased the planning life to 25 or even 30 years. This increase in planned life of wind plants is reflective of reliability improvements in key components such as gearboxes, and that repairs and replacements to components can extend longevity of a wind plant.

However, lifetimes of individual components within a wind plant vary widely. The towers are mostly steel and last 50 to 100 years. The foundations and cables have similar long lifetimes. The gearboxes generally last 5 to 7 years and therefore are replaced twice on average over a 20-year plant lifetime. Lastly, blades generally last 10 to 12 years and therefore are replaced once on average over a 20-year plant lifetime.

Further, the accuracy of wind plant generation forecasts has improved over time. In the early years of the industry, plants consistently underperformed compared to forecasts of availability, reliability, and cost. More recently, cost and reliability forecasts have become more accurate due to technology advancements in manufacturing and operation of wind turbine components as well as the wealth of industry experience that is now available for forecasting purposes.

Most wind plants have decommissioning plans in place, as required either by lenders or leaseholder agreements. These plans generally call for complete removal of the equipment and reclamation of the land for a suitable use. However, most owners expect that the wind turbines will be either be refurbished (replaced with similar components) or fully repowered (replaced with larger components) at least once prior to the ultimate removal of equipment.

2.1.3 Solar

Solar plants are most commonly planned to be in operation for 20 years. Contracts usually take the form of a solar land lease or power purchase agreement (PPA), where the fixed monthly fee or power price is determined based on the amount of electricity the plant is expected to produce for 20 years after

installation. Solar facilities in Ontario that are 10 MW or above in size have 20-year contracts through either the renewable energy standard offer program (RESOP), feed-in-tariff (FIT) or large renewable procurement (LRP) programs. Twenty-year contract terms are typical in the US and other markets although some can be for less than 20 years.

Several public and private tools have become available to forecast generation through the lifetime of solar contracts over the past ten years. Performance of solar facilities relies on key inputs such as system capacity, configuration (fixed tilt vs. single-axis or dual-axis tracker technology) and location. These forecasting models also account for losses due to shading and snow, as well as DC/AC losses. Over time, these models have become more sophisticated and accurate resulting in generation experience being consistent with planning assumptions.

As photovoltaic (PV) module technology progresses, the technical lifetime of panels has increased from 20 to 25 years, and even 30 years for more advanced models. The lifetime of other components has improved at a slower rate. Ground-mount racking is typically constructed of galvanized steel and aluminum with a 20-year warranty from the manufacturer. Standard warranties for inverters are typically 10 years (an increase from the historical 5 years) with extended options available at extra cost. The technical lifetime for system wiring is typically 12 years. Therefore, inverters and wiring are replaced at least once on average over a 20-year lifetime.

For most existing solar contracts in Ontario, the current plan is to dismantle and liquidate after the 20-year contract term. However, with longer technical lifetimes due to technology improvements, some investors may choose to continue to operate the system as a merchant, and sell power into the market for years 21 through 30 at the local price of power.

Decommissioning usually doesn't include equipment reuse, as the second set of inverters and wiring would be near end of life and panel technology is advancing quickly enough that it would likely not be reused either.

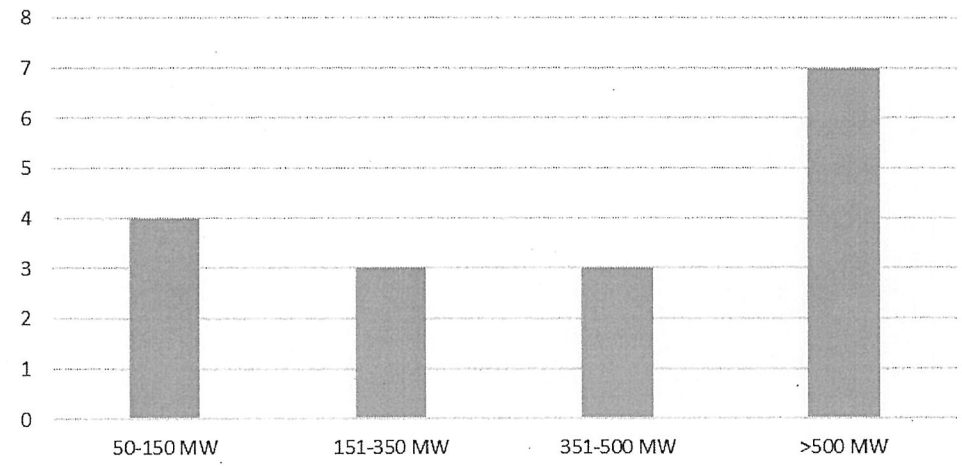
2.2 State of the Contracted Generator Fleet

2.2.1 Current State of Operating Fleet

2.2.1.1 Gas

A total of 17 natural gas-fired power plants located in Ontario were evaluated with a total installed capacity of 7,291 MW. Of these, 13 plants were considered in this lifetime extension analysis. Most plants were combined cycle but some were also co-generation or simple cycle. The plants had installed capacities ranging from 73 MW to 1005 MW, with the average installed capacity being 456 MW. The distribution of the natural gas-fired power plants can be seen in Figure 2-2 below.

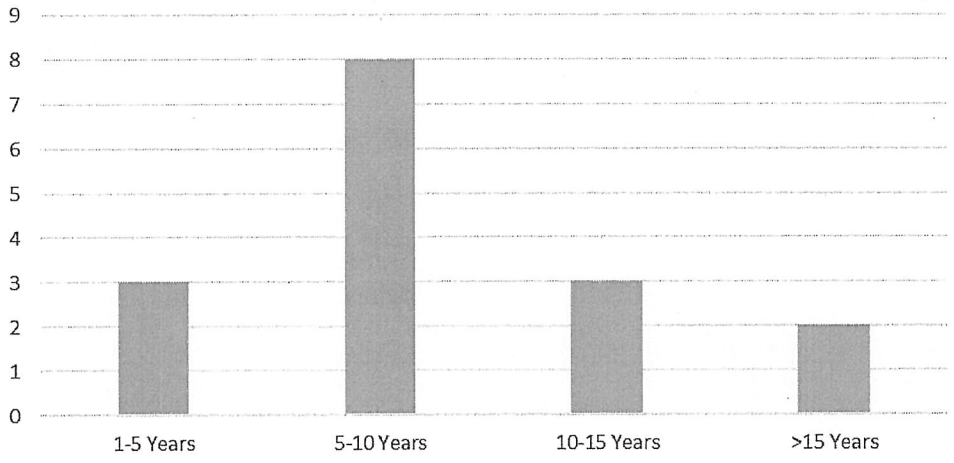
Figure 2-2 Size Distribution of Gas-Fired Generating Stations in Ontario



Source: Navigant Analysis

The average age of the gas-fired plants was 9 years, with the oldest being the Cardinal Power Plant which is 23 years old and the newest being the Napanee Generating Station which is under construction with a milestone commercial operation date of December 2018. Most plants have been in service for under 10 years, as shown in Figure 2-3 below.

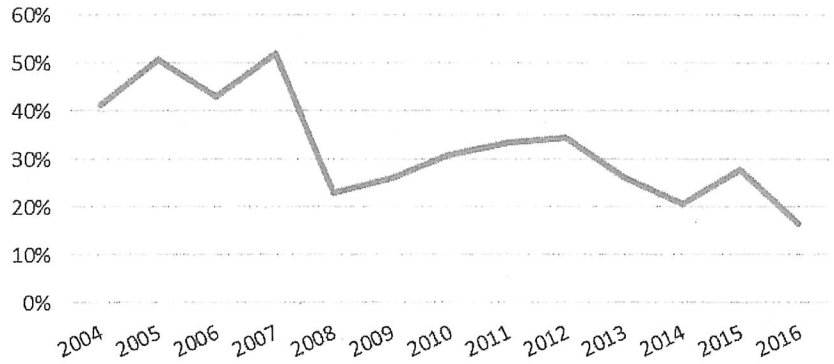
Figure 2-3 Age Distribution of Gas-Fired Generating Stations in Ontario



Source: Navigant Analysis

The net capacity factors for the different type of gas-fired power plants have shown a downward trend in general. Combined cycle units showed a peak capacity factor in 2007, when there were only two units in commercial operation, of 52%. As more units came online after 2008 the net capacity factor dropped to the mid 20% range and rose through 2012 to 34%. Since 2012 however, the net capacity factor has shown a downward trend as demonstrated in Figure 2-4. below

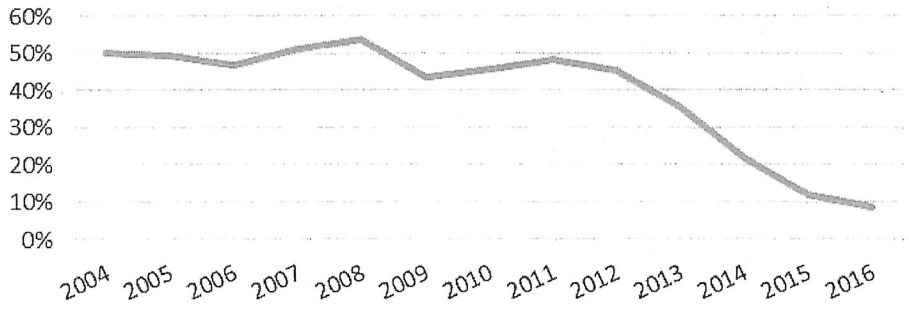
Figure 2-4 CCGT Annual Net Capacity Factor (Ontario)



Source: ABB Energy Velocity

Cogeneration units have also shown a similar trend in capacity factors. From 2004 through 2012, the capacity factor was almost flat at around 50%; however, since 2012, the net capacity factor has shown a steep decline to 9% in 2016 as shown in Figure 2-5 below.

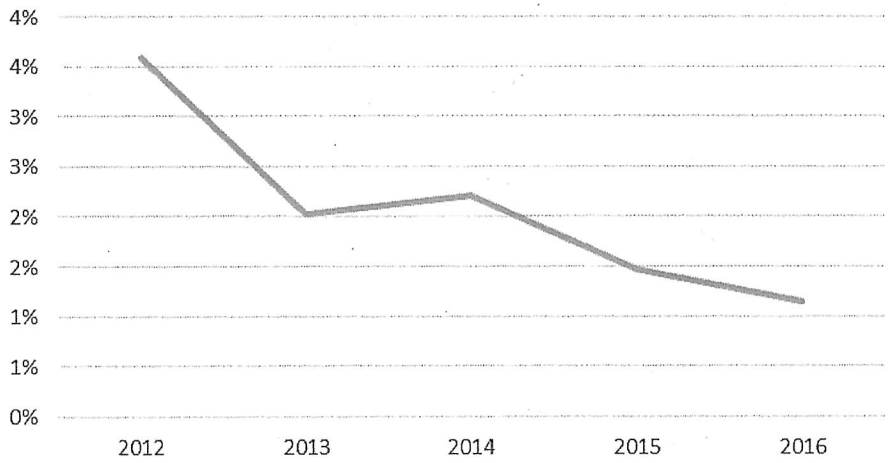
Figure 2-5 Co-Generation Annual Net Capacity Factor (Ontario)



Source: ABB Energy Velocity

The single simple cycle power station, York Energy Centre, which came on line in 2012 has shown a steady downward trend from 4% in 2012 to 1% in 2016 as demonstrated in Figure 2-6.

Figure 2-6 Simple Cycle Net Capacity Factor (Ontario)



Source: ABB Energy Velocity

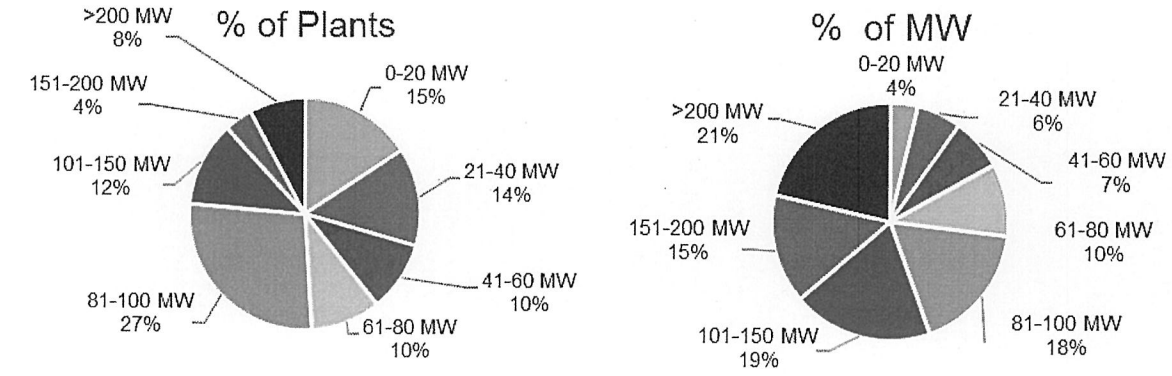
Given the relatively low utilization of the Ontario gas fleet as measured by capacity factor, starts, and hours of operation, Navigant estimates that the plants have a dependable life of forty years, with some plants requiring a major rotor replacement and others not requiring such replacement over the forty-year life. Given the lifetime of the plants, this results in some plants retiring in the 2040s and others in the 2050s after the end of the analysis scope.

2.2.1.2 Wind

The following is a profile of the wind fleet in Ontario as of year-end 2016:

- Number of Plants and MW. There were 64 wind plants in operation in Ontario with a total capacity of 5,077 MW. The plants consisted of 2,280 wind turbine generators (WTGs) with an average capacity of 2.2 MW per WTG.
- Size Distribution. As shown on the left side of Figure 2-7 below, the most common wind plant size in Ontario is 81-100 MW, with 27% of wind plants, followed by the 21-40 MW segment with 14% of wind plants. On a MW capacity basis, the right side of Figure 2-7 below shows that the >200 MW is the largest segment with 21% of total MW, followed by the 101-150 MW segment with 19% of total MW.

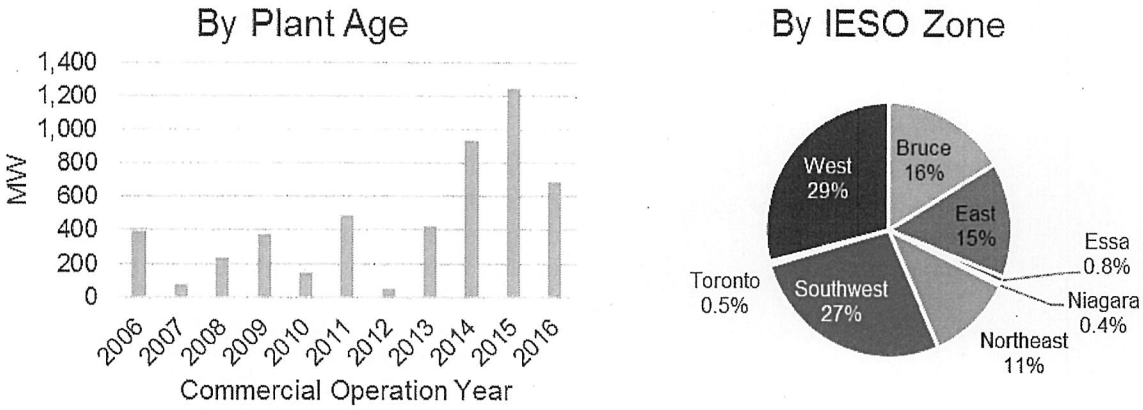
Figure 2-7 Distribution of Wind Plants



Source: Navigant Analysis

- Age Distribution. As shown on the left side of Figure 2-8 below, the most common commercial operation year is 2015, when 1,250 MW of capacity was installed. 15 plants with 557 WTGs were started up in Ontario in 2015.
- Location. As shown on the right side of Figure 2-8 below, the West and Southwest zones (as defined by Ontario's Independent Electricity System Operator) had the most wind power capacity, with 29% and 27% of installations, respectively.

Figure 2-8 Age and Location of Wind Plants (Ontario)

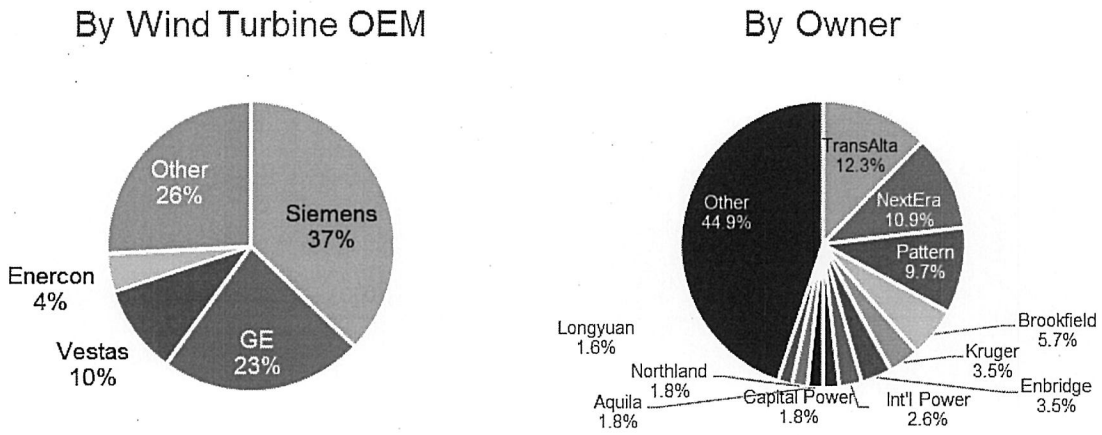


Source: Navigant Analysis

- Wind Turbine OEM Market Share. As shown on the left side of Figure 2-9 below, the WTG market in Ontario is relatively concentrated, with 74% of the market controlled by the top 4 suppliers: Siemens (37%), GE (23%), Vestas (10%), and Enercon (4%).
- Wind Plant Owner Market Share. As shown on the right side of Figure 2-9 below, the wind plant ownership market in Ontario is relatively dispersed, with only 53% of the market controlled by the

top 10 owners. The leading owners are TransAlta Utilities (12%), NextEra Energy (11%), and Pattern Energy (10%).

Figure 2-9 Turbine OEMs and Owners of Wind Plants (Ontario)

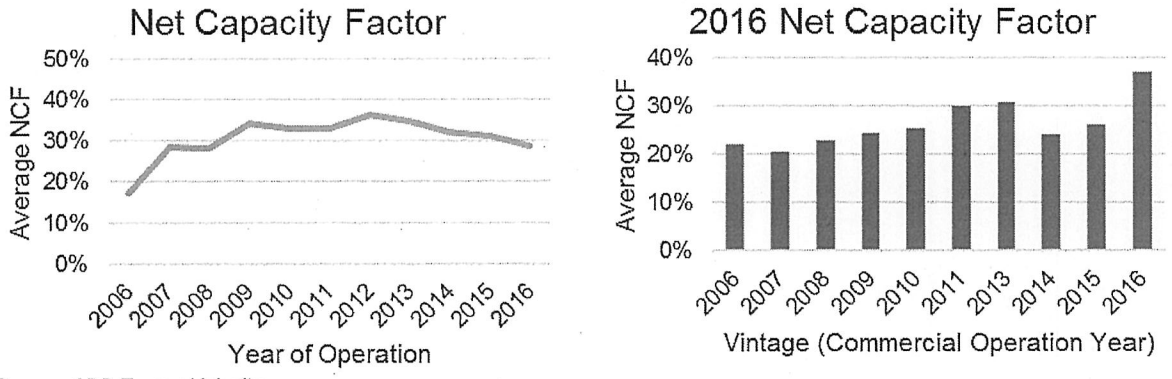


Source: SNL, ABB Energy Velocity, Navigant Analysis

- Net Capacity Factor. As shown on the left side of Figure 2-10 below, the average net capacity factor (NCF) for wind plants in Ontario was 29% in 2016. This value is slightly lower than the 2012 peak of 36% but considerably higher than the 2006 average of 17%. The slight reduciton since 2012 may be due to lower winds, increased curtailment due to transmission constraints, or the impact of a few smaller plants with lower NCFs starting up in 2014.

  The right side of Figure 2-10 below shows average 2016 NCFs for wind plants in Ontario by vintage (commercial operation year). The trend is generally upwards, meaning that newer wind plants generally have higher NCFs compared to their older counterparts. The average 2016 NCF for plants that started up in 2016 was 37%, considerably higher than any other vintage.

Figure 2-10 Net Capacity Factor of Wind Plants (Ontario)



Source: ABB Energy Velocity

- Contract Status. As shown in Table 2-1 below, 70 wind plants with a total capacity of 5,656 MW were reported as having power contracts in place or under development. 4,403 MW or 80% of these plants have contracts that were reported as being in commercial operation. All reported contracts have a duration of 20 years.

Table 2-1 Wind Power Contracts

Contract Status	Plants	WTGs	MW
Commercial Operation	56	2,119	4,403
Notice to Proceed	2	9	20
Pre-Notice to Proceed	5	112	753
Under Development	7	40	500
Total	**70**	**2,280**	**5,656**

- Plant Condition and O&M Practices. Wind plants in North America typically have WTG warranties in place for the first 2 to 5 years of operation. During the warranty period O&M is typically performed by the WTG vendor. When O&M is performed by an operator other than the OEM, the operator will follow the OEM's maintenance practices as required to maintain the warranty. Most wind plants are therefore usually in excellent condition for the first 2 to 5 years of operation regardless of the operator. Two-thirds of the Ontario fleet have been in operation 5 years or less, so the average Ontario wind plant is generally in very good condition.

Given the age and expected life of Ontario's wind fleet, the wind plants are expected to begin exiting their current twenty-year contracts in the mid to late 2020s and repowering in the early to mid-2030s (more information on repowering assumptions is available in section 3.1.2.2).

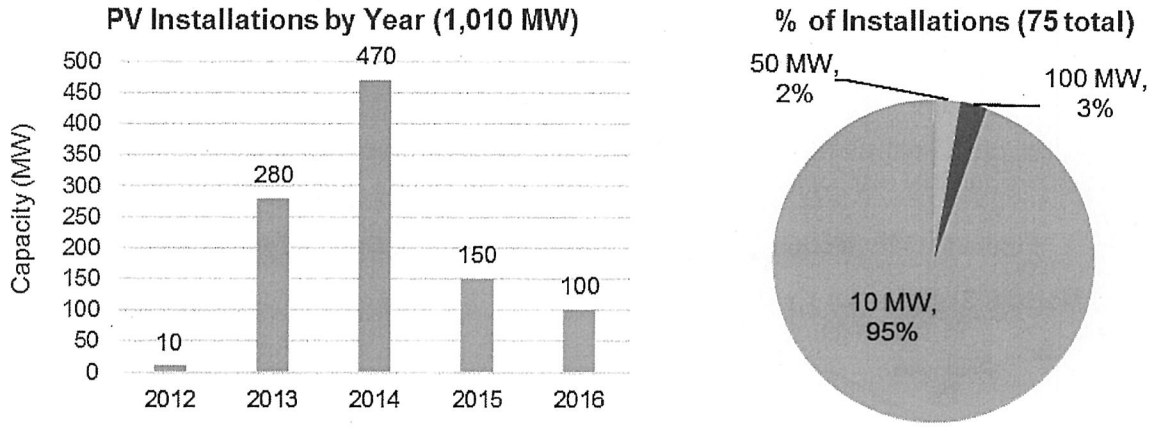
2.2.1.3 Solar

Ontario has a large amount of solar capacity below 10 MW, but Navigant's lifetime extension analysis for solar plants was based on systems 10 MW or greater.

The following is a profile of the solar fleet in Ontario as of year-end 2016 (of systems 10 MW or greater):

- Number of Plants and MW. There was a total of 75 solar ground-mounted systems (10 MW or greater) in operation in Ontario with a total capacity of 1,010 MW at the end of 2016.
- Age Distribution. The left side of Figure 2-11 below shows the introduction of solar capacity over time starting in 2012. The year 2014 saw the highest capacity and number of installations. The average age of the fleet is 3.3 years.
- Size Distribution. As shown in the right side of Figure 2-11 below, the most common PV system size in Ontario is 10 MW which is the cap for projects except for the Samsung projects which are 100 MWs in size, and some of the LRP projects. 2012 and 2013 saw only 10 MW installations. In 2014-2016, two 50 MW and one 100 MW system were introduced by Samsung.

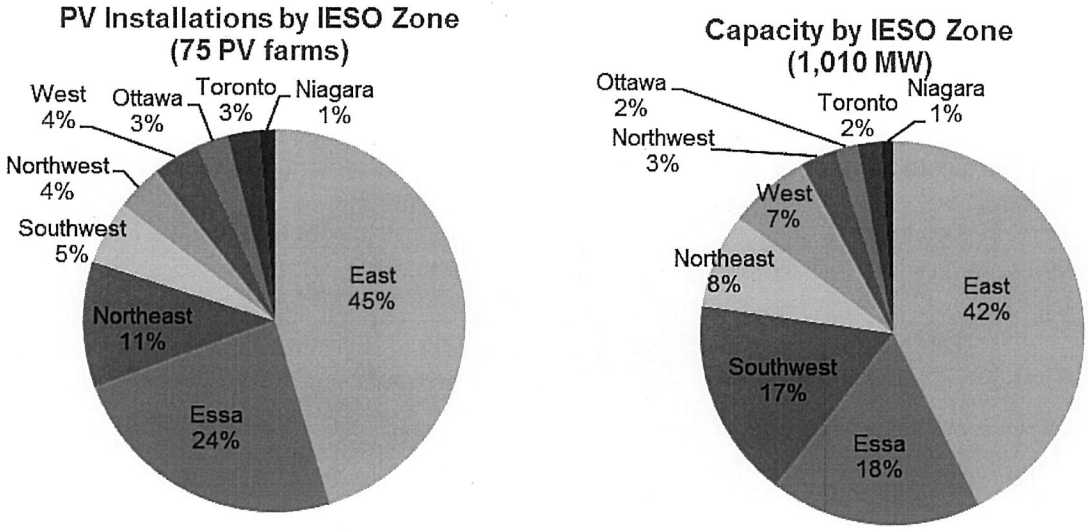
Figure 2-11 Age and Size Distribution of Ontario PV Systems 10 MW or greater



Source: Navigant Analysis

- Location. The number of installations are presented on the left side of **Error! Reference source not found.** below, and the total capacity on the right distributed across the IESO zones. As shown in the **Error! Reference source not found.** below, 45% of the operating PV systems in Ontario are in the East zone, which hosts 42% of the installed capacity. This large share is driven by available land, available transmission capacity and proximity to the load centers. Only 5% of operating PV systems are in the Southwest zone, but that represents 17% of the installed capacity due to larger system sizes in that region.

Figure 2-12 Location of Ontario PV Systems



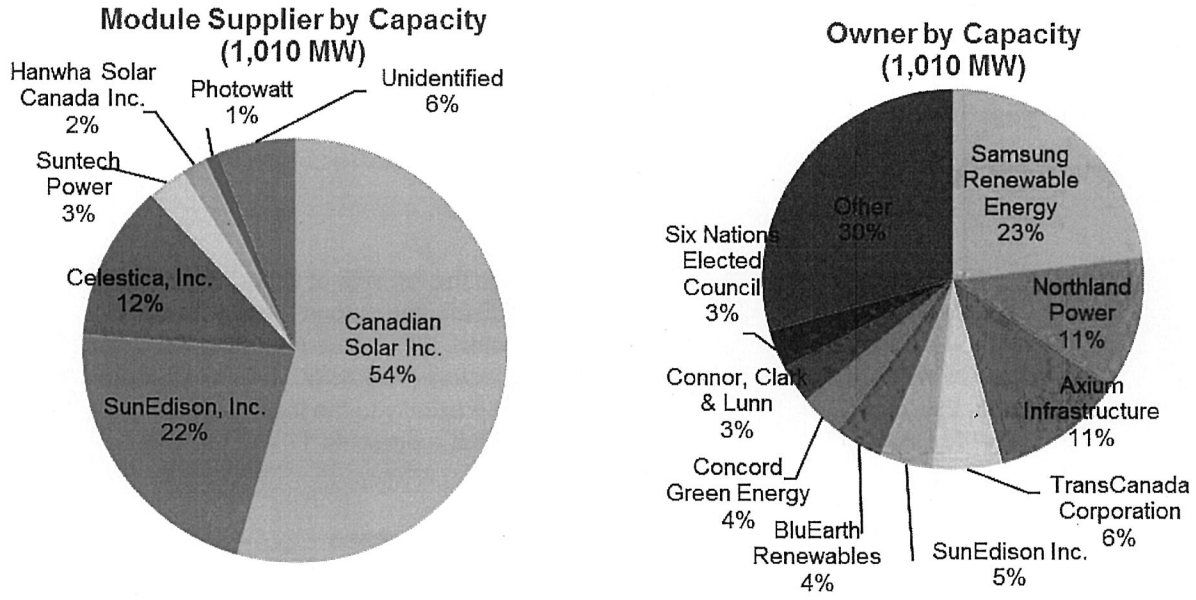
Source: Navigant Analysis

- PV Module Supplier Market Share. As shown on the left side of Figure 2-13 below, the module market in Ontario is relatively concentrated, with 54% of the market controlled by the top supplier,

Canadian Solar. 22% percent of the market has SunEdison panels (SunEdison filed for bankruptcy protection in the US in April 2016 and the company's Canadian unit filed for bankruptcy in October 2016). Other suppliers include Celestica (which is shutting down their solar manufacturing division in 2017), Suntech Power, Hanwha and Photowatt.

- PV System Owner Market Share. The right side of Figure 2-13 below shows the 10 owners with the highest PV operating capacity in Ontario. Samsung owns the largest portion of the operating fleet at 23%. Northland Power and Axium Infrastructure own the second and third largest in terms of capacity respectively.

Figure 2-13 PV Module Supplier OEMs and Owners of Ontario PV Systems



Source: SNL, ABB Energy Velocity, Navigant Analysis

- Capacity Factor. The average capacity factor of the operating solar fleet in Ontario according to data from the IESO is 16.3% (based on MW-AC). The relatively high capacity factor in the past 3 years is due to a higher overbuild ratio (on the range of 20% to 40%, the latter in more recent years), driven by the drop in panel prices. The capacity factor for new PV installations can be increased via higher DC-AC oversizing or introduction of axis tracker technology. The degredation rate of all systems is approximately 0.5% per year.

Table 2-2 Average Capacity Factor of Ontario's Operating PV Fleet

Year	Capacity Factor (based on MW-AC)
2014	15.4%
2015	17.4%
2016	16.0%
Average	**16.3%**

Source: IESO

- System Condition. As most operating systems are under 10 years old, the condition of the key components has not experienced much degradation, if any at all. Contracts typically include an O&M and lifecycle budget intended to maintain high performance conditions.
- O&M Practices. Preventative and reactive maintenance for ground-mounted PV systems usually includes panel cleaning, snow removal, lawn mowing and periodic verification of wiring and support integrity. O&M prices are only projected to increase with escalation in labor and other material costs. Inverter replacement requires additional O&M usually offered by the inverter manufacturer. Standard warranties are 5-10 years, with options to purchase extended warranties upfront (e.g., 20-year extended warranty).

  Some companies that provide O&M services for utility-scale PV systems in Ontario include SMA, First Solar, Inc., SunEdison, NextEra Energy Canada ULC, SunPower, Canadian Solar, Inc., Enfinity, Northland Power, Inc., and EDF Renewable Energy, Inc.

Given the age of Ontario's solar fleet, most plants will not begin rolling off their twenty-year contracts until the early-to-mid-2030s, and most repowering will not occur until the mid-to-late 2030s. More information on repowering assumptions can be found in section 3.1.2.3.

2.2.2 Component Failure Rates and Operating Life

2.2.2.1 Gas

The generation performance and failure rate data of gas-fired plants is not publicly available and is generally held confidential by plant owners. It is reasonable to assume that performance and failure rates for Ontario plants will be like those of plants in Navigant's Generation Knowledge Services (GKS) data base. The GKS data base contains a broad and growing user and unit mix and currently has over 2,400 generating units representing over 527 GW of capacity, of which over 135 GW consists of combustion turbines and combined cycle units.

The following metrics were used in evaluating the Equivalent Availability Factor (EAF) and Equivalent Forced Outage Rate (EFOR), which are reasonable estimates of the performance of Ontario's gas fleet:

$$EAF = \left(\frac{AH - (EUNDH + ESDH)}{PH} \right) \times 100$$

EAF = Equivalent Availability Factor
AH = Available Hours
EUNDH = Equivalent Unit Derated Hours
ESDH = Equivalent Seasonal Derated Hours
PH = Period Hours

$$EFOR = \left(\frac{FOH + EFDH}{SH + FOH + ERSFDH} \right) \times 100$$

EFOR = Equivalent Forced Outage Rate
FOH = Forced Outage Hours
EFDH = Equivalent Forced Derated Hours
SH = Service Hours
FOH = Forced Outage Hours
ERSFDH = Equivalent Reserve Shutdown Forced Derated Hours

Based on the operating data for the Ontario gas-fired fleet, a peer group was developed that would be representative of the Ontario units, which was combined cycle units that were between 150 and 1000 MW with a NCF of between 10 to 40%. From that database, the media averages for units were as listed in Table 2-3 below.

Table 2-3 NCF, EAF and EFOR for Ontario Wind Fleet

	NCF	EAF	EFOR
Median	26.16%	83.94%	4.11%

The largest contributor to the EFOR rate was the steam turbine, which caused 11,688 forced outage hours, followed by the combustion turbines with 6,243 hours and the balance of plant (BOP) with 4291 hours. The combustion turbines and BOP contributed to a larger number of events, however (these tended to be of shorter duration than steam turbine events). This is demonstrated in Table 2-4 below.

Table 2-4 Breakdown of EFOR for Ontario Gas Fleet

Component	Total Hours	Percentage	Total Number of Events	Percentage
Boiler	758	3%	74	9%
Steam Generator	11,688	47%	142	17%
Generator	944	4%	53	6%
Balance of Plant	4,291	17%	194	23%
Combustion Turbine	6,243	25%	284	33%
Other	1,179	5%	110	13%

The highest number of steam turbine forced outage hours were due to events on the low-pressure turbine at 5,742 hours and the high-pressure turbine at 1,197 hours. This is due to the time required for system cooldown and to remove and reinstall casings. The control system had the largest number of events (49) but only contributed to a few forced outage hours (256), as control system issues are normally very fast to resolve. A summary of the causes of forced outages due to the steam turbine is provided in Table 2-5.

Table 2-5 Breakdown of EFOR for Ontario Steam Turbines

Steam Turbine	Total Hours	Percentage	Total Number of Events	Percentage
High Pressure Turbine	1,197	16.93%	10	7.63%
Low Pressure Turbine	5.742	81.24%	21	16.03%
Valves	50	0.71%	24	18.32%
Lube Oil	8	0.11%	8	6.11%
Controls	256	3.63%	49	37.40%
Miscellaneous (Steam Turbine)	1,012	14.31%	29	22.14

The combustion turbine outages were driven by issues with the fuel and combustion system (2,634 hours over 120 events), as demonstrated in Table 2-6 below. This was principally due to dry low NOx combustion system issues and component failures.

Table 2-6 Breakdown of EFOR for Ontario Combustion Turbines

Combustion Turbine Component	Total Hours	Percentage	Total Number of Events	Percentage
Inlet Air System and Compressors	1,907	31%	27	11%
Fuel, Ignition and Combustion System	2,634	42%	120	49%
Turbine	426	7%	12	5%
Exhaust System	65	1%	16	7%
Auxiliary	152	25	1	0%
Miscellaneous (Gas Turbine)	1,019	16%	69	28%

Balance of plant issues contributed to 17% of the total outage hours. The largest number were caused by issues with the electrical system (2,068 hours over 55 events). Issues with the condensate system and feed water systems were also important as shown in Table 2-7 below.

Table 2-7 Breakdown of Balance of Plant EFOR for Ontario Gas Fleet

Balance of Plant	Hours	Percentage	Events	Percentage

Condensing System	418	10%	29	15%
Circulating Water System	43	1%	5	3%
Condensate System	953	22%	18	9%
Feedwater System	554	13%	45	23%
Electrical	2,068	48%	55	28%
Auxiliary System	171	4%	21	11%
Miscellaneous (Balance of Plant)	84	2%	21	11%

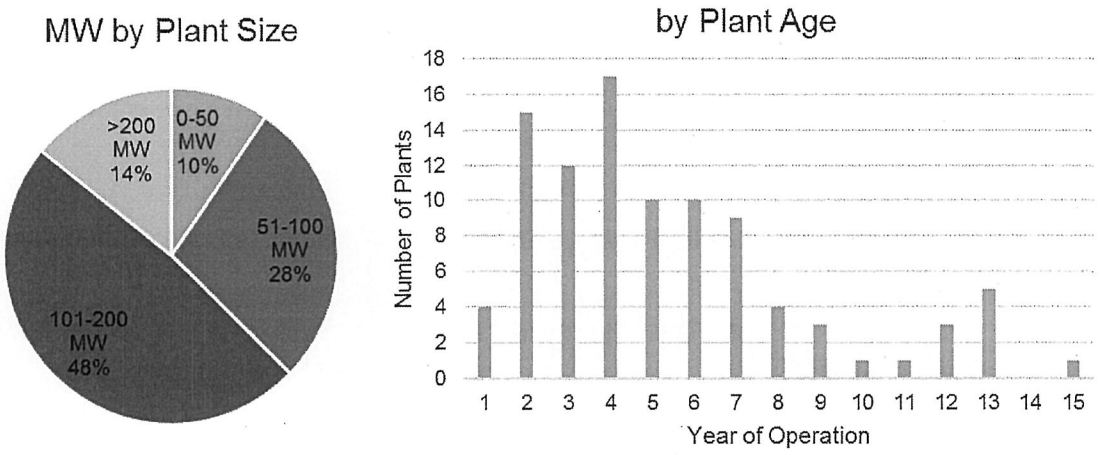
The heat recovery boilers and generators only accounted for a total of 7% of all outage hours with the generator accounting for 944 outage hours and the boiler accounted for 758 hours. The largest driver on the heat recovery boiler was tube leaks, while the generator was driven by a combination of cooling system and exciter issues.

While component failure rates increase with the age and use of natural gas plants, and heat rate degradation will tend to make the plants less completive in energy markets over time, plants following the proper maintenance and replacement regimes as outlined in section 2.1.1 should be able to continue operating over their forty-year expected life with acceptable outage rates.

2.2.2.2 Wind

Wind plant performance and failure rate data is not publicly available and is generally held confidential by plant owners. However, it is reasonable to assume that Ontario wind plants will have performance and failure rates similar to those of wind plants in Navigant's Generation Knowledge Service (GKS) wind database. The GKS wind database includes data from approximately 8 GW of capacity from a variety of turbine models, plant sizes, ages, and O&M contract types. 95% of the MW capacity is in North America. **Error! Reference source not found.** shows the database distribution by plant size and age, which is similar to the size and age distribution of Ontario's wind fleet.

Figure 2-14 Plant Size and Age Distribution in GKS Wind Database



Source: Navigant GKS Wind Database

The following are median values of selected performance metrics in the GKS wind database, which are reasonable estimates of performance of the Ontario wind fleet:

- Availability. The most common measure of availability used in the wind industry is equipment equivalent availability factor (EEAF). EEAF does not penalize the plant for hours when there is no wind. Median EEAF = 95.6%.

$$EEAF = \frac{[PDTH - (FTH + MTH + PTH)]}{PDTH} \times 100$$

  - PDTH = Period Turbine-Hours = (total hours in the period) *(number of turbines)
  - FTH = Forced Turbine-Hours = (forced outage hours per turbine) *(number of turbines)
  - MTH = Maintenance Turbine-Hours = (maintenance outage hours per turbine) *(number of turbines)
  - PTH = Planned Turbine-Hours = (planned outage hours per turbine) *(number of turbines)

- Forced Outage Rate. The most common measure of forced outage rate used in the wind industry is equipment equivalent forced outage rate (EEFOR). Median EEFOR = 2.7%.

$$EEFOR = \frac{FTH}{(CTH + FTH + RUTH)} \times 100$$

  - CTH = Contact Turbine-Hours
  - RUTH = Resource Unavailable Turbine-Hours

- Major Failures. Navigant defines major failures as events which either (a) require a crane to repair or replace a system or (b) require the replacement of a major component within a system, resulting in a cost greater than 5% of the installed cost of the turbine. Table 2-8 below is a summary of average major failure rates in the GKS wind database, both for the most recent benchmark year (2015) and the cumulative rate for the life of the plant. Also, shown in the far-right column of Table 2-8 below are industry average failure rates as reported in a 2013 United States National Renewable Energy Laboratory (NREL) study.[2]
    - 2015 Major Failure Rate = (# of Major Failures in 2015) / (# units)
    - Cumulative Major Failure Rate = (# of Major Failures through 2015) / (# units) / (years since COD)

Table 2-8 Major Failure Rates by System

System	2015 Major Failure Rate	Cumulative Major Failure Rate	Industry Average Failure Rate
Blade	0.2%	0.5%	0.67%
Gearbox	1.1%	1.3%	5.0%
Generator	2.1%	2.1%	3.5%
Main Bearing	0.6%	0.5%	2.0%
Generator Bearing	0.3%	0.4%	n/a
Transformer	0.1%	0.04%	n/a

While component failure rates do increase with age, the plants continue to maintain acceptable operating profiles over the course of their identified useful life (albeit with capacity factor degradation and O&M escalation). Beyond the identified useful life, the plants would see accelerated component failures which eventually make continued operation untenable (see section 3.1.1.2).

2.2.2.3 Solar

The operating life of PV systems is usually monitored by the system owner. In the solar industry, the rate at which the system is fully functioning (and available to generate power) expressed as a function of the total time considered, is referred to as the availability rate. For solar, the availability rate is relatively high, approximately 98% to 99%[3] based on the information that we have reviewed, compared to other technologies. This is because components are connected in strings, meaning that should something fail, only a single string or portion of the system will experience an outage, while the rest of the system continues to generate power. It is unlikely for all to fail at once.

- Panels most often experience an outage or failure due to coverage (snow, soiling, or other shading) or a wiring fault. However, the way panels are connected electrically, when one stops generating power, the others continue.

[2] NREL, Lantz, E., Operations Expenditures: Historical Trends and Continuing Challenges, 2013

[3] DBRS reported that the independent engineer for the 100 MW (AC) Kingston Solar project assumed inverter availability of 99%.

- Inverters for utility-scale systems are usually 1 MW. For a 10 MW system, the typical design is ten (10) 1 MW inverters. This means that if an inverter fails, only one-tenth of the system would power down. Inverters typically last 10-12 years, but it is possible that an outage can occur sooner than that.
- Racking systems are typically tested and rated to handle expected snow and wind loads plus a factor of safety. Therefore, the warranty from the manufacturer covers damage from these occurrences. Should the structural integrity of the racking system be compromised, it is again likely that only the module(s) related to one string would need to be taken offline to repair, not the whole PV system.
- Wiring is required to be protected up to codes and standards to limit the potential for damages.

Overall, over the modeled twenty-five-year life, it is unlikely that the component failure rates would cause an unacceptable operating profile for the solar fleet.

2.3 Leasing, Regulatory, and Contract Issues

2.3.1 Leasing Structure

When constructing a gas-fired power station it is typical for the owner to purchase the land that is used for the site. All the gas-fired plant owners that Navigant could interview owned the site land; therefore, no leasing issues were identified for extending the life of gas-fired plants.

The terms of land leases for wind plants vary. The minimum length is 20 years, but up to 50 year leases are not unusual. In all cases, there will be an option for the plant owners to extend the lease for an additional 15 years or more. Leases are contracts between the plant owners and landowners, and they are generally written to be more favorable to the plant owners. For example, plant owners can typically construct, erect, use, install, reinstall, replace, relocate, maintain and remove equipment from time to time, without limitation. No approvals to modify or extend leases are needed by local jurisdictions, community or aboriginal partners, unless they have such approval rights due to having partial ownership in the wind plant. Typically, limited partners do not have approval rights for minor items such as lease extensions.

Most 10 MW+ solar farms are sited on farmland and have a minimum 20-year lease. Some may go as high as 50 years and/or there might be options to extend the lease. Counterparties include private landowners, First Nations, and municipalities. Leases usually have two cost components as follows: (1) a fixed component and (2) a variable component where the variable component is equal to a percentage of revenue generated from the asset (e.g., 3%). No leases require third party approvals such as local jurisdictions, community, or aboriginal partners, unless those parties are partial owners in the project.

2.3.2 Regulatory Issues

No regulatory issues were identified for lifetime extension of gas or solar plants.

For partial repowering of wind plants (replacing the drive train and rotor with similar size components), regulatory approvals would generally not be required. The noise profile of the new turbine will generally

be less (quieter) than the original turbine and therefore would not need to be remodeled. The rotor diameter will typically be the same as the original, so a revised permit for increased tip height generally will not be needed. One wind plant owner reported having a permit from the municipality that includes a road allowance for the distribution lines. The city can impose reasonable conditions but cannot deny an extension of the permit.

Regulatory approvals would likely be required for full repowering of wind plants (replacing the turbines with larger components). Existing building and operating permits would generally not cover the significant construction work and changes in plant configuration that is associated with full repowering. However, repowering could offer the possibility for expedited permitting because development is occurring at a previously permitted site and these sites have a much longer track record of historical environmental data. Existing plants also tend to have increased local familiarity, which might also facilitate the permitting process. On the other hand, if endangered species are found to be in the proximity or other environmental damage has occurred, permitting would likely be more complex and drawn out, or local siting requirements may become more stringent over time.

3. COST OF LIFETIME EXTENSION AND REPOWERING

This section outlines the costs of lifetime extension that would be borne by ratepayers. Calculation of these costs is essential to calculating the annual Fair Allocation Amount, to ensure that all costs are spread over the extended lifetime of the generating units. After considering the various options available, Navigant included full repowering of the wind and solar fleet and partial repowering as needed for the gas fleet in the status quo and Fair Allocation Amount scenarios as the most cost-effective repowering options.

3.1 Repowering and Extension Options

3.1.1 Life Cycle of Plants under normal O&M schedule with minimal investment

3.1.1.1 Gas

As discussed previously, a combustion turbine power plant can operate for at least 40 years if the owner follows prudent operating practices and recommended outage schedules for the combustion turbine, generator, steam turbine and heat recovery boiler. In general, the O&M for gas-fired plants will increase with the escalation terms within the service contracts for the associated equipment.

Combustion turbine outages are driven by the hot section and combustion components. Manufactures have improved this technology so outages are now not required until either 24,000 factored fired hours or 900 factored starts are reached. When the hot section components are removed, they can be repaired from two (2) to four (4) times depending on the component and the manufacture's recommendations.

Electrical generators and steam turbines are generally linked to scheduled inspection intervals of 6 years or 48,000 operating hours. Following best practices owners and operators have managed to extend those intervals to between 10-12 years or 80,000 to 96,000 operating hours.

Heat recovery steam generators with proper maintenance have operated for 15-20 years without major capex being spent. Replacement parts are most commonly needed in the heat-affected zones of the super-heaters or the high flow areas of the economizers.

Maintenance spending increases with the number of starts of a combined cycle power plant. As discussed earlier, units are now designed for 150-250 starts per year. This spending is normally associated with BOP equipment and does not materially impact the overall cost of operations.

Depending on the operating profile of the facility, reliable operations after 20 years would most likely require capital expenditures for the HRSGs, electrical generators, steam turbines and combustion turbines. If no investments are made it would be expected that the units would suffer from forced outages and decreased availability.

3.1.1.2 Wind

As previously discussed, the physical lifetime of a wind plant is generally considered to be 20 to 25 years. Historically an assumption of 20 years was used in analyses to match the financial life, but an increasing

number of plant owners are using 25 years due to technological advancements that have led to improvements in plant reliability and longevity.

If a wind plant were to continue to be operated beyond the physical lifetime without significant investment, O&M costs would increase at an accelerated rate and availability would drop at an accelerated rate. Ultimately the plant owners will decide that operating the plant has less value than another option. Options considered include full repowering, partial repowering, and decommissioning, which are discussed in Section 3.2.

3.1.1.3 Solar

As previously discussed, the physical lifetime of a ground-mounted PV system is 20 to 25 years. The modules and racking typically come with 10-year product warranty (defects in materials and workmanship) and a 25-year performance warranty. Inverters typically have a 10-year product warranty and last 10-12 years. Wiring typically lasts 10-12 years. Therefore, inverters and wiring would need to be replaced at least once on average over a 20-year lifetime.

If a PV system were to continue to be operated beyond the physical lifetime without significant investment, O&M costs would remain the same, only increasing with inflation and the price of any material costs involved in maintenance. Replacement of inverters and wiring are separate from general O&M and would require minimal investment. Inverters do typically fail after year 10 so most installers opt into an extended warranty where available, which is an upfront cost at the time of installation. With the standard warranty the cost of the inverter would just be incurred later, at the time of the replacement.

PV modules, and therefore, systems, are projected to degrade by 0.5% each year, which is usually how the capacity factor and system performance is forecasted at the time of installation. The capacity factor of the system can be determined based on the number of years since the components were replaced. If a PV system operated beyond the typical 20-year term, the capacity factor of year 21 would be that much lower than if a whole new system were installed in its place.

3.1.2 Cost of Repowering for lifetime extension

3.1.2.1 Gas

As discussed above the limiting factor on the combustion turbine would be the turbine rotor that requires a major inspection and potential replacement of turbine wheel at 200,000 factored hours or 5,000 factored starts. The rotor must be removed and sent to a qualified repair shop for disassembly, inspection and repair and/or replacement of the rotor disks. In addition, there would likely be requirements for replacement of super-heater or economizer sections of the HRSGs.

The costs for the turbine life extension would be in the range of CAD$16.2M for the inspection and repair/replacement of hot section components. The other work required on the heat recovery steam generators would be in the range of CAD$4.05M.

The balance of plant equipment would normally be covered during the routine maintenance at the facility. This would include the rebuilding or replacement of pumps, including the boiler feed pumps, and the repair and replacement of motors. It would also include the replacement of any catalysts that are required for emissions control.

Steam turbines and electrical generators should be able to operate for the life of the plant with routine inspections and maintenance, assuming there are no incidents with the equipment.

Long-term equipment replacement costs were modeled in fixed O&M for the purposes of calculating the Fair Allocation Amount, with rotor replacement modeled as a partial repowering.

3.1.2.2 Wind

Wind plant owners face the following options when a plant reaches the end of its physical lifetime:

- *Full repowering*, which is defined as the complete dismantling and replacement of turbine equipment, including the tower and foundation. With full repowering, some of the existing project infrastructure (e.g., roads, buildings, and interconnection equipment) is assumed to be utilized in the new project. There is also the potential to offset repowering costs by recycling or selling the older equipment.
- *Partial repowering*, which is defined as installing a new similar sized drivetrain and rotor on an existing tower. Some peripheral components, such as the power convertors and electronics, may also be replaced. Partial repowering allows existing wind power projects to be updated with equipment that increases energy production, reduces machine loads, increases grid service capabilities, and improves project reliability.
- *Decommissioning*, when the plant is fully disassembled and the land is returned to its original use. The equipment is sold for reuse or scrapped.

Repowering (either full or partial) is a major undertaking that requires substantial capital investment and planning, similar to the development of a greenfield plant. The major benefits of repowering are increased plant availability, the return of O&M costs to normal levels, and an extended plant lifetime. Performance improvements associated with partial repowering are assumed to be less than under full repowering but greater than the original design of the machine.

Navigant's costs of repowering were developed from a case study of a wind plant with the following characteristics of an average wind plant in the current Ontario fleet:

- 40 Siemens 2.3 MW WTGs, with a total plant capacity of 92 MW;
- Commercial Operation Date and Year 1 of operations in 2015;

Three scenarios were considered, including decommissioning the plant after 25 years of operation, in 2040, and full or partial repowering, both occurring after 25 years, in 2040, followed by decommissioning after an additional 25 years, in 2065.

Table 3-1 is a summary of key assumptions of the case study, which were also used to calculate the Fair Allocation Amount. Capital and O&M cost assumptions are from a 2013 NREL repowering study,[4]

[4] NREL, Wind Power Project Repowering: Financial Feasibility, Decision Drivers, and Supply Chain Effects, December 2013, http://www.nrel.gov/docs/fy14osti/60535.pdf

escalated to 2017 USD at 2.5% per year and converted to CAD at a rate of 1.35 CAD = 1 USD. All O&M costs were converted to fixed O&M for modeling purposes. Fully repowered plants are assumed to have slightly lower (5%) total installed capital costs because of the ability to reuse or repurpose existing equipment. Partial repowering is estimated to result in an approximately 15% lower capital cost because of reusing existing equipment including towers and foundations. In all scenarios, it is assumed that decommissioning cost (occurring in year 26) equals the resale or scrap value of the components (i.e., net zero cost).

NCF growth assumptions are based on projections from NREL's 2016 Annual Technology Baseline report, but are benchmarked to average Ontario fleet values from IESO. Larger rotors and taller towers, along with other technological advancements, have resulted in significant increases in net capacity factors for utility-scale wind plants over the past 15 years. These advancements are expected to continue for the foreseeable future, albeit at a slower pace. NCF for this case study is assumed to be 37% for full repowering in 2040, which is a 5% improvement over the project's initial 32% NCF in 2015, reflecting the technological advancements that are expected during this 25-year period. As defined here, partial repowering was estimated to achieve about 50% of the energy production improvements associated with full repowering.

Table 3-1 Wind Repowering Case Study Key Assumptions and Results

	units	Original Plant	Full Repowering	Partial Repowering
Year 1	-	2015	2040	2040
Capital cost	2017 CAD/kW	2,844	2,291	2,049
Fixed O&M in year 1	2017 CAD/kW-year	19.04	19.04	19.04
Variable O&M in year 1	2017 CAD/MWh	9.32	9.32	9.32
O&M increase per year	Real %/year	2.0%	2.0%	2.0%
NCF in year 1	%	32%	37%	34.5%
NCF decrease per year	%/year	1.6%	1.6%	1.6%

3.1.2.3 Solar

Table 3-2 shows some of the key assumptions related to life extension of solar projects

Table 3-2 Solar Repowering Case Study Key Assumptions and Results

	units	Original Plant	Full Repowering	Partial Repowering
Year 1	-	2017	2038	
Capital cost	$/W-DC	$1.80	$0.95	
PV Module Cost	$/W-DC	$0.54	$0.24	
Fixed O&M	$/kW-DC	$27	$27	$27
O&M increase per year (Inflation)	%/year	2.5%	2.5%	2.5%
Capacity Factor (based on MW-AC)	%	16.3%	16.3%	16.3%
Capacity Factor decrease per year	%/year	0.5%	0.5%	0.5%

As mentioned in Section 3.1.1.3, to extend the life cycle of a ground-mounted PV system to 30 years, the major equipment that would need to be replaced are the inverters and the wiring. These two components have a technical lifetime of 10-12 years and so they are replaced at least once in a typical 20-year contract. The expected operating life after replacement of the inverters and wiring would be another 10-12 years.

Attention should be paid to the lifetime and replacement of the PV modules. Panel technology is improving at a much faster rate than other renewable technologies, such as wind, and other key solar components such as racking and inverters. In parallel, module prices have significantly dropped over the past 10 years and are projected to continue to decrease for the next 10 years. If modules are replaced 20 years from now, they may have a much higher efficiency and much lower costs that what exists today.

Therefore, even if the O&M price and the cost to replace inverters and wiring does not require significant CAPEX to extend the life of the PV system, the module efficiency and price at the end of the original 20-year contract may prove to be more economical. Replacing panels would extend the life of the system an additional 20-25 years, or perhaps longer based on the technical lifetime of panels at the time.

The capacity factor in Table 3-2 is constant from 2017 to 2038. While panel efficiency will continue to increase during this period, that does not impact capacity factor (it does impact power density). Capacity factor is increased by using tracker technology, but for this analysis, we assume a constant split between fixed tilt and tracker in both 2017 and 2038. By contrast, wind farms have could increase capacity factor by increasing the hub heights and reaching better wind regimes.

3.2 Leasing, Regulatory, and Other Costs

The owners of gas-fired facilities would have to renegotiate new contracts for repair and replacement of combustion turbine parts. This may result in cost savings as there have been third party entrants into the parts supply and repair markets.

Leasing, regulatory, and other development costs are low relative to the total capital expenditures associated with modern wind facilities. These costs are generally assumed to be the same as those required for a greenfield development wind project.

Because the technical lifetime of PV systems, specifically the modules, is expected to outlast a 20-year PPA, some owners expect the system to run for an additional 5-10 years beyond the PPA and original lease. However, plans to extend the land lease are typically not put in place until closer to year 20, as refinancing the lease early would result in penalties.

At the time of the installation of a PV system, there is usually a budget set aside for decommissioning. If the system were to be decommissioned later than originally intended, there would be no extra costs, and the original budget should cover decommission at year 25 or 30.

4. CALCULATION OF FAIR ALLOCATION AMOUNT

4.1 Financing Assumptions and Methodology

As discussed previously, the Fair allocation amount was calculated for the modeled asset classes assuming gas plants last for forty years (with no or partial repowering), wind and solar plants last for fifty years (with one full repowering), and conservation and coal retirement benefits accrue over fifteen years. Capacity factor degradation is assumed to reset with full repowering for wind and solar assets. The benefits associated with clean energy generation assets are tied to (i) when they produce power, and/or (ii) when they are available to produce power. Similarly, the benefits associated with conservation and the early retirement of coal generation are tied to the avoided generation and the avoided emissions from coal generation, respectively. For modeling purposes, Navigant assumed that benefits from wind and solar generation are proportional to the energy generated from these assets (which declines over time with capacity factor degradation), while benefits from gas are proportional to the availability to provide energy to the grid. This is consistent with both the key function that these respective asset classes serve in the Ontario wholesale energy market and the way in which contracts for the respective asset classes are currently structured.

The Fair Allocation Amount for the asset classes is calculated to smooth the costs incurred over the life of an asset (current contract costs, O&M, and repowering costs) proportionally to the benefits provided by the assets over that life. Going-forward costs for gas units were estimated on a plant-by-plant basis, while the assumptions for wind and solar units are shown in Table 3-1 and Table 3-2, respectively. Conservation expenditure was assumed to escalate with inflation from the 2015-2017 average. The Fair allocation amount was calculated assuming a both a 4.5% discount and borrowing rate[5], with annual inflation at 2%. The percentage of the Global Adjustment tied to ratepayers eligible for the Fair Hydro Plan was calculated to be 50%, and rate reductions in $/MWh terms were calculated assuming 59.171 TWh of eligible load. To ensure that all costs are included in the analysis period, all investments were financed so that they are paid back by the end of the expected life of the investment or 2050, whichever is earlier. Fair Allocation Amount payments for gas, wind, and solar were structured as the contracts for these assets currently are currently structured, with gas denominated in $/MW-year and solar and wind denominated in $/MWh (as discussed above, this is also proportional to how the benefits of these assets are allocated, and causes wind and solar costs to decrease with capacity factor degradation). Gas and wind costs are escalated at 20 percent of inflation, as the contracts are currently structured, while solar is not escalated. Conservation and coal retirement costs are allocated proportionally over the fifteen-year benefit life without degradation or escalation.

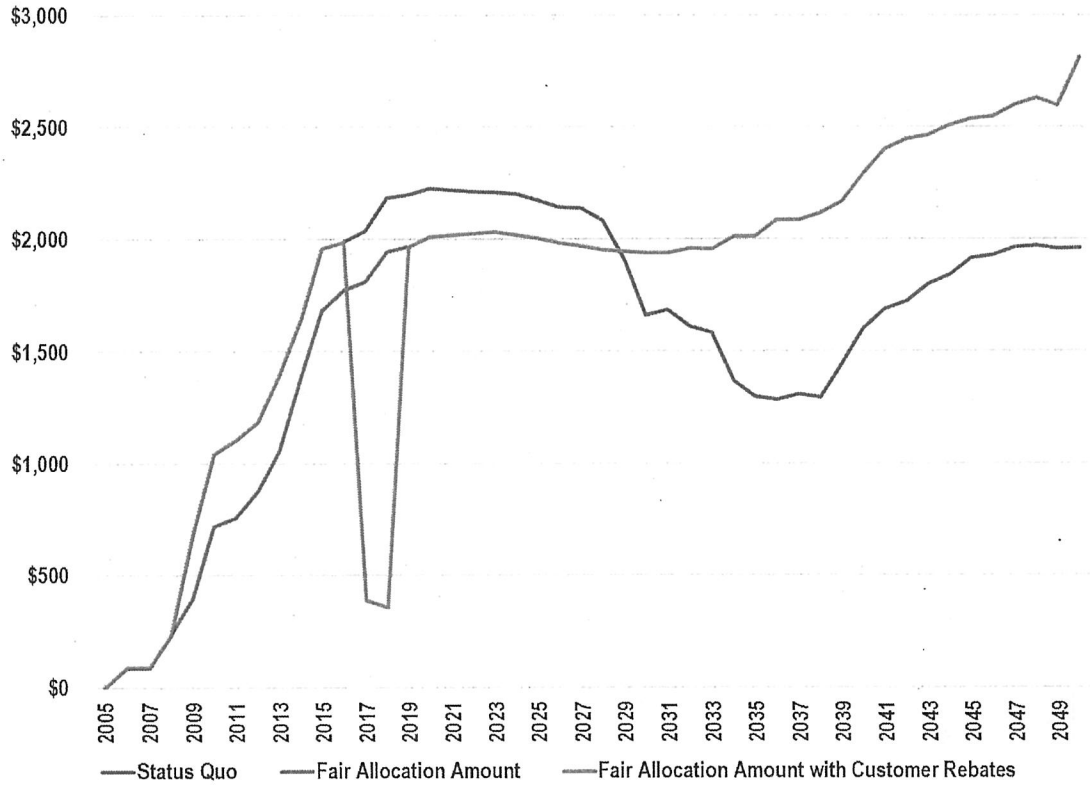
After the annual Status Quo and Fair Allocation Amount payments were calculated, the historical difference (2005-2016) between the Status Quo and Fair Allocation Amount was calculated as well. Since the Status Quo exceeds the Fair Allocation amount over this period, a schedule was calculated to provide rate relief by reducing the GA until this overpayment amount is exhausted, after which ratepayers pay the Fair Allocation amount over the remainder of the contract.

[5] The current estimated OPG cost of capital. By assuming a consistent discount rate and borrowing rate, the financing plan precludes the possibility of value being created through interest rate arbitrage, and limits benefits to those strictly tied to the useful life of the facilities in question.

4.2 Financing Plan

The annual difference between the Status Quo, the Fair Allocation Amount, and the Fair Allocation Amount with Customer Rebates of the financing plan are shown in Figure 4-1.

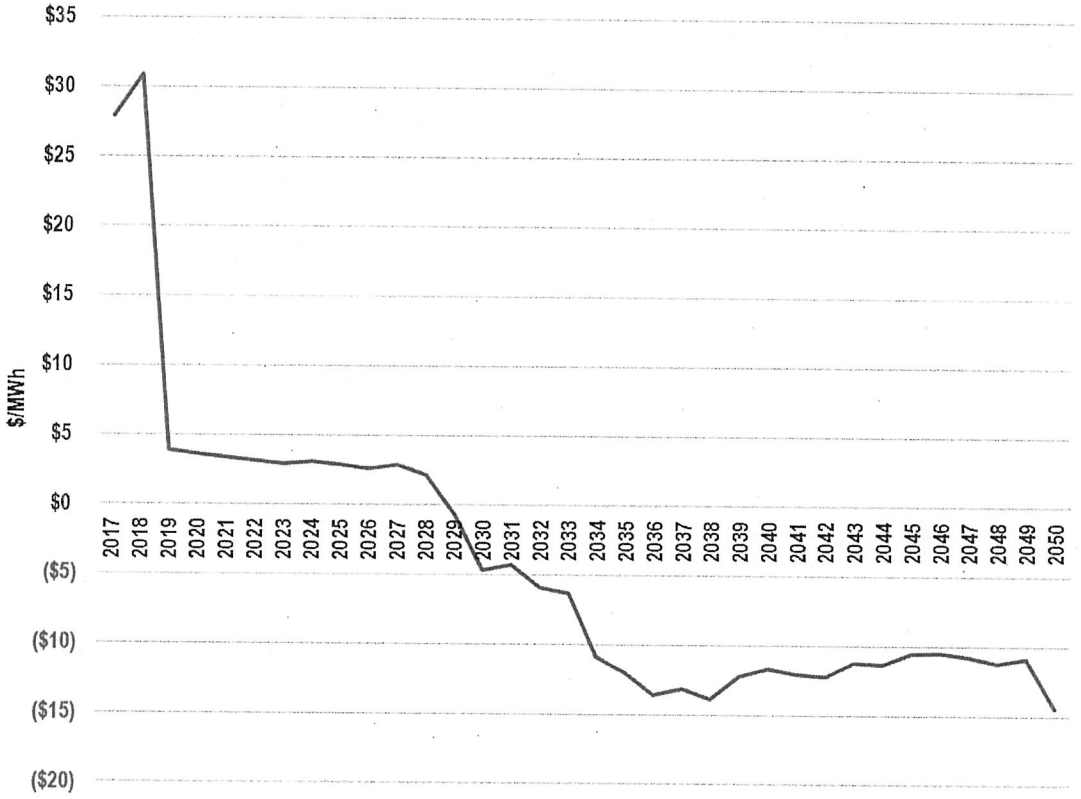
Figure 4-1 Annual Eligible Customers Payments for Modeled Asset Classes by Scenario



Source: Navigant Analysis

Overall, eligible ratepayers paid $2.377 billion more for the contracts in 2005-2016, which is equal to $2.816 billion in 2017$ with accrued interest. This quantity, combined with the difference in costs in 2017 and 2018 between the Status Quo and Fair Allocation Amounts, mean that ratepayer GA contributions can be reduced by $1.631 billion in 2017 ($27.90/MWh) and $1.826 billion in 2018 ($30.86/MWh). Over the course of 2019-2028, ratepayers can enjoy an additional savings of $1.805 billion (on average, $3.05/MWh) by paying the Fair Allocation Amount, after which rates would increase from the status quo so that costs are proportional to benefits for the contracted assets (ratepayers pay a total of $13.228 billion more with the Fair Allocation Amount than the Status Quo from 2029-2050, or on average $10.21/MWh). Annual net rate reductions from 2017-2050 are shown in Figure 4-2.

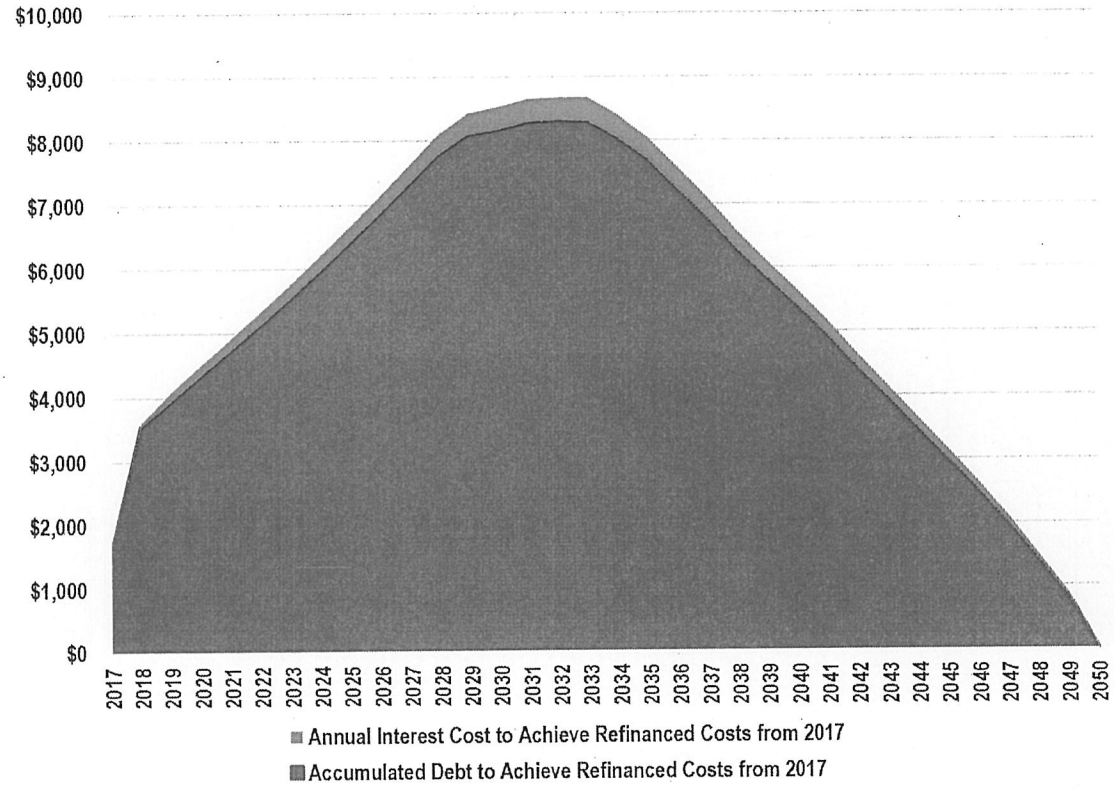
Figure 4-2 Annual Net Rate Reduction, 2017-2050



Source: Navigant Analysis

Over the life of the financing plan, the province takes on a peak accumulated debt of $8.038 billion in 2032, and pays a total of $8.006 billion in interest from 2017-2050, as can be seen in Figure 4-3. Because the discount rate is assumed to be equal to the borrowing rate, the NPV of the Status Quo, the Fair Allocation Amount, and the Fair Allocation Amount with Customer Rebates scenarios are all identical from 2005-2050, with the Status Quo equal to the Fair Allocation Amount with Customer Rebates from 2017-2050.

Figure 4-3 Accumulated Debt and Interest Under Financing Plan, 2017-2050



Source: Navigant Analysis

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CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under

the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will continue to benefit present and future electricity consumers in the Province.

The out-of-market costs of the Green Generation Initiative are currently passed through

to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment").

The Green Costs Adjustment is currently determined each month by reference to the

amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative. These amounts paid by the IESO arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with revenue certainty, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. It

has been determined that the useful lives of many of the assets developed under the Green Generation Initiative will be in excess of the respective terms of their respective procurement contracts.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs

Adjustment, based on the respective terms of the applicable procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to Regulated Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Regulated Consumers have derived and are expected to derive from the Green Generation

Initiative over time. This realignment will be based on general principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future Regulated Consumers (the "Fair Allocation Plan").

If the Fair Allocation Plan determines that the equitable allocation of the costs

associated with the Green Generation Initiative to the Regulated Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such Regulated Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in respect of such period. In this case, IESO will need to obtain

funding from another source to cover such a shortfall. If a funding obligation is incurred to cover such a shortfall during any period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay

such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on Regulated Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset

contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf of such financing entities by a financial services manager

under the Financing Plan contemplated in this Act.

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

Article 2 – Definitions

In this Act:

"Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition other than as security.

"Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals

applied to pay such amounts), which amounts shall be recorded by the Financial Services Manager whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.

"Additional Funding Charges" means, for a Reference Period the fees, charges, expenses, costs, indemnities, reimbursements and other

amounts (including any applicable tax amounts) that are or become payable by or on behalf of any Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and

whether directly or indirectly), including without limitation such amounts as may be prescribed.

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

"Assessed Past Green Transition Costs" means, in respect of a Measurement

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

"Attribution Methodology"[1] means the methodology specified in the Fair Allocation Plan for allocating the Period Finance Charges for a Reference Period to Regulated Consumers.

"Collected Amount Adjustment" means, in respect of a True-Up

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[1] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services Manager, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period and minus [(c) the amounts by which amounts remitted by Electricity Distributors pursuant to Section 5(4) exceeded the

corresponding amount of Transition Charges Actually paid by Regulated Consumers.][2]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee), each Pledgee, and the Financial Services Manager that governs the

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[2] This is intended to pick up adjustments based on actual collection experience, changes in the Regulated Consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc. The actual calculation needs work.

enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.

"Delegate" means any of the following person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities

ascribed to the "Delegate" under this Act: ●[3].

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition (or, in the case of the IESO Funding Shortfall, a release by IESO of its right to recover such amount in order to enable an Absolute Assignee to recover such amount) of (a)

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[3] Placeholder for delegation once deterermined.

IESO's right to recover all or any portion of an IESO Funding Shortfall or (b) an Investment Interest, in each case to an Absolute Assignee pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which IESO or an Absolute Assignee effects a

Disposition to an Absolute Assignee.

"Electricity Distributor" means a rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, 1998*, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or

deemed to be received by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to Servicer 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.[4]

"Electricity Invoice" means an invoice issued by an Electricity Distributor (or in its stead, by an Alternative Collection Agent), by the Servicer or by a Retailer, in each case to a Regulated Consumer that is served by the Electricity Distributor's distribution system in respect of electricity

[4] Suggestion is that LDCs remit based on estimates and then true-up, based on current arrangements for remittances by LDCs to IESO. *

charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to such Electricity Distributor's distribution system and in respect of applicable Transition Charges to be charged to the Regulated Consumer under this Act.

"Estimate" means (a) in relation to costs, expenses

or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services Manager; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to Regulated Consumers, the estimated value (in current dollars) of such benefits determined by the

Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the

Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Regulated Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Regulated Consumers from the establishment and implementation of the Green Generation Initiative

up to and including the Measurement Date.

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

"Finance Amount" means, for a Reference Period, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of any Absolute Assignee: (a) Repayments; (b) Net Funding Costs; (c)

charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to such Electricity Distributor's distribution system and in respect of applicable Transition Charges to be charged to the Regulated Consumer under this Act.

"Estimate" means (a) in relation to costs, expenses

or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services Manager; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to Regulated Consumers, the estimated value (in current dollars) of such benefits determined by the

Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the

Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Regulated Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Regulated Consumers from the establishment and implementation of the Green Generation Initiative

up to and including the Measurement Date.

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

"Finance Amount" means, for a Reference Period, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of any Absolute Assignee: (a) Repayments; (b) Net Funding Costs; (c)

Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding

Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals.

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding

Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan.

"Financial Services Manager" means OPG or, following any Replacement Event involving OPG, such other person who may be appointed as the financial services manager of the Absolute Assignees under the Financing Plan in compliance with the

requirements set out in Schedule 2.[5]

"Financing Entity" means any entity established in accordance with the Financing Plan to be an Absolute Assignee and that is managed by the Financial Services Manager.[6]

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[5] There must only be one Financial Services Manager.

[6] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax*

charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to such Electricity Distributor's distribution system and in respect of applicable Transition Charges to be charged to the Regulated Consumer under this Act.

"Estimate" means (a) in relation to costs, expenses

or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services Manager; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to Regulated Consumers, the estimated value (in current dollars) of such benefits determined by the

Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the

Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Regulated Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Regulated Consumers from the establishment and implementation of the Green Generation Initiative

up to and including the Measurement Date.

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

"Finance Amount" means, for a Reference Period, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of any Absolute Assignee: (a) Repayments; (b) Net Funding Costs; (c)

Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

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Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals.

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding

Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan.

"Financial Services Manager" means OPG or, following any Replacement Event involving OPG, such other person who may be appointed as the financial services manager of the Absolute Assignees under the Financing Plan in compliance with the

requirements set out in Schedule 2.[5]

"Financing Entity" means any entity established in accordance with the Financing Plan to be an Absolute Assignee and that is managed by the Financial Services Manager.[6]

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[5] There must only be one Financial Services Manager.

[6] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax*

"Financing Plan" means the written plan prepared by the Financial Services Manager in accordance with Article 9, as the same may be amended, amended and restated or terminated by the Financial Services Manager in accordance with Article 9 from time to time.

Act (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including each obligation to pay: principal, interest, premiums and other financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services Managers, finance entity intermediaries,

capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges) incurred by or on behalf of the Absolute Assignee under the Financing Plan, including any Refinancing of another such payment obligation incurred by or on

behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

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

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

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable

by Electricity Distributors to IESO , during the month pursuant to section • of the *Electricity Act* in respect of Regulated Consumers. **[NTD: IESO indicates that it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDCs entails payments by LDCs to the IESO and then credits/debits by the**

IESO to LDCs to reflect RPP shortfalls/overages.]

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global

Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month.To the extent reasonably necessary to give effect to this Act, or any transaction contemplated hereby, IESO shall calculate the IESO Funding Shortfall for any month taking into account information provided by the Electricity Distributors and (i) such calculation shall be

binding for all purposes; and (ii) any demonstrated inaccuracy in the calculation for any month (including any such resulting from inaccuracies in the information provided by Electricity Distributors) shall be accounted for by adjusting the IESO Funding Shortfall for a subsequent month.

"IESO Recovery" means each amount received by IESO in accordance with its

right to recover IESO Funding Shortfalls pursuant to section 25.33 of the Electricity Act and Ontario Regulation 430/04, as amended, and "IESO Recoveries" means, collectively, all such amounts received by IESO.[7]

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[7] IESO will be entitled to record the IESO Funding Shortfall amount in a variance account. The OEB will eliminate and dispose of the variance account balance as part of the RPP adjustment process under the OEB Act , with an applicable OEB accounting order. See Article 8 for corresponding adjustments based on Dispositions. These will need to be tied together.

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

undertaken by IESO or if applicable the Alternative Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO Regulatory Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, minus (b) the net proceeds received by IESO from or on behalf of each Absolute Assignee

as consideration for the Disposition of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee prior to the day, and minus (c) the IESO Recoveries received by IESO prior to the day.

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing

the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the

Finance Amounts due and payable by all Absolute Assignees in respect of the month.

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

"Net Funding Costs" means, for a Reference Period, the amount by which (a) the aggregate of

all interest, scheduled principal and other periodic finance charges accruing due and becoming payable or paid by or on behalf of any Absolute Assignee during the Reference Period in respect of its Funding Obligations, including such amounts as may be prescribed, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in

respect of the Funding Obligations referred to in (a), and such other or different amounts as may be prescribed.

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

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

together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the

Estimate of the Finance Amount (b) the True-Up Amount in respect of the applicable True-Up Period and (c) [an adjustment amount as may be prescribed to account for estimated collection shortfalls and collection delays in respect of amounts under (a) and (b).]

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or

security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to

give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) October 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulated Consumer" means consumers of electricity in the Province [as prescribed][8].

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

"Regulatory Asset" means the property rights and

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[8] To be included in the legislation once settled.

interests described in Section 6(1), which collectively is comprised of each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; and (b) for the Servicer, any bank account into which Servicer deposits or receives

Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to

exercise their individual rights of ownership in accordance with Section 6(7).

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

comprise such Investment Interest.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to Servicer or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding

Obligation, then the business day preceding each Settlement Date.

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

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

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

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

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

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners,

for the purposes set forth in Article 4.

"Settlement Date" means the [last business day of any month].

"Transition Charge" means, the amount recoverable from a Regulated Consumer in respect of a Reference Period[9], being the Period Finance Charge

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[9] Note that Transition Charges will be calculated by reference to Funding Obligations and Finance Amounts incurred under the Financing Plan. The directive will be that no payment obligations will be incurred for payment before 2022, to accommodate the "Fair Adjustment".

as allocated to such Regulated Consumer in accordance with Article 4(3) on a monthly basis. **[Note that this allocation will be based on the OEB process for determining the volumetric rate as part of the RPP process (see s. 4(2)). The OEB will determine volumetric rate based on forecast consumption, number of consumers, etc. to recover the Period Finance Charges.]**

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

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services Manager equal to (a) the Actual Finance Amount for such related True-Up Period, minus (b) the Estimate of the Finance Amount for the related True-Up Period, plus (c) the Collected Amount

Adjustment for such related True-Up Period.[10]

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[10] True-up calculation is under consideration. In this summary, a calculated true-up amount is contemplated to be included in the Period Finance Amount calculation, in order to achieve a sum certain and actionable debt. The suggestion is that the true-up mechanism be based generally on a calculation process to be described in the Regulation, which would require Transition Charges to be reviewed and adjusted semi-annually (or more frequently) to ensure the expected recovery of amounts sufficient to timely provide all payments in respect of Finance Amounts. It has been proposed that the scope of the true-up will exclude any 'leakage' at the Financing Entity Level (e.g., entity-level tax; litigation; losses) but will include shortfalls that are currently socialized through the LDC/IESO system. Note that the proposal to include a section detailing the true-up mechanism (Oslers 3(6) has not been included here since the outcome of the calculation is already built into the Period Finance Amount concept.

"True-Up Period" means, in relation to a Reference Period, the immediately preceding Reference Period.[11]

"Undertaking of Her Majesty in right of Ontario" means the undertaking of Her Majesty in right of Ontario given under Section 11(2).[12]

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[11] Timing of calculation under consideration, given that amount will need to be reflected in customer invoices.

[12] Under consideration.

Article 3 – Transition Charges

(1) Regulated Consumer Obligation to Pay a Transition Charge – Each Regulated Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such Regulated Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified

in the related Electricity Invoice.

(2) Indebtedness of Regulated Consumers – Until paid, a Transition Charge charged to a Regulated Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-

bypassable indebtedness of the Regulated Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[13] debt obligation owing by the Regulated Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or

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

indebtedness owing by the Regulated Consumer under the Electricity Invoice or otherwise.[14]

(3) No Set-Off or Reduction – A Regulated Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition

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[14] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

Charge, including any set-off against or in respect of any amount owing or becoming payable to such Regulated Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) Allocation of Regulated Consumer Payments – If an Electricity Distributor receives a payment made by or on behalf of a Regulated Consumer in respect of amounts due

and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collection.

(5) Transition Charges are Irrevocable – The Transition Charges arising under or in respect of Funding Obligations (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further

action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period regardless of whether the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, and regardless of whether the related Funding Obligation was properly incurred under the

Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(6) True-Up of Transition Charges – [See True-Up Amount].

Article 4 – Invoicing of Transition Charges

(1) Inclusion of Transition Charges in Electricity Invoices – Each Electricity

Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a Regulated Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice[15] issued

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[15] Intention is to include bills issued to eligible consumers served by unit sub-metering providers, retailers and the IESO – not just distributors and to address the inclusion of Transition Charges in the paperwork from the IESO to the LDC in a manner that is consistent with the current process of how the IESO bills LDCs.

by the Electricity Distributor or if applicable by the Alternative Servicer to the Regulated Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable Regulated Consumer.

(2) Calculation of the Period Finance Charge –

Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Manager on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. Not later than one month prior to the first day of a Reference Period, the Financial Services Manager on behalf of each Absolute

Assignee shall calculate the Period Finance Charge applicable to the Reference Period having regard to such amounts specified by the Servicer, which calculations, information and amounts shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) Basis for Attributing Transition Charges – Not later than 25 days prior to

the first day of a Reference Period, the OEB shall determine a [Fair Hydro Recovery Rate] (on a volumetric basis) on which Electricity Distributors will attribute Transition Charges to consumers under 4(4).

(4) Notice of Transition Charges – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative

Servicer of the [Fair Hydro Recovery Rate] to be applied by the Electiricy Distributor to attribute Transition Charges to each Regulated Consumer who is served by the Electricity Distributor for inclusion in the Electricity Invoices to be issued to the Regulated Consumers.

(5) Adjustments – The amount of any Transition Charge charged to a Regulated Consumer and

specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) Successors of Electricity Distributors – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4

and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **Appointment of an Alternative Servicer** – If a Replacement Event occurs

in respect of any Electricity Distributor, IESO shall perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4. Any Electricity Distributor that is replaced under this Section 4(7) 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

IESO and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit IESO or a person designated by IESO to perform such obligations and duties on behalf of the Regulatory Asset Owners.

(8) Absolute Assignees have Standing – The Absolute Assignees, acting together in accordance with

the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to Regulated Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges or to otherwise comply with this Act. Any court of the Province shall have

jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

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

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

Article 5 – Collections and Remittances

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Servicer, undertake commercially reasonable efforts to collect amounts owing by Regulated Consumers in respect of Transition Charges charged to such Regulated Consumers in Electricity

Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent, all in accordance with the Regulations. [16]

(2) **Segregation of Transition Charge Collections** – If prescribed, an Electricity Distributor or if applicable any Alternative Collection Agent shall

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[16] Note that the obligation to collect and remit the Transition Charge will be included as a deemed condition of license for electricity distributors (and retailers and unit sub-metering providers).]

promptly segregate Transition Charge Collections from other payments received by it from Regulated Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[17] Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory

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[17] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners or a Pledgee.[18]

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all

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[18] Consider whether there is a more efficient way to treat collections through the existing LDC/IESO processes. Intention is to provide scope in the Regulations.

[Transition Charge Collections received by it from Regulated Consumers] [amounts invoiced to it by the IESO on account of Transition Charges][19] in respect of the related Reference Period to or to the account of Servicer or if applicable the Alternative Collection Agent.

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[19] Dealer suggestion under consideration. Impact on LDCs and parallel commercial arrangements to be assessed.

(4) **Duty to Collect Electricity Distributor Remittances** – Servicer or if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, accept and undertake commercially reasonable efforts to collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from Regulated Consumers that pay their Electricity Invoices directly

to IESO, all in accordance with the Regulations.

(5) **Segregation of Electricity Distributor Remittances** – Servicer 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, Servicer or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners or any Pledgee.

(6) **Servicer Remittances** – On each Settlement Date[20],

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[20] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

Servicer shall remit all amounts on deposit in its Regulatory Asset Account to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and

satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO Successors** – IESO Successors shall be bound by the requirements

of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires

distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[21], then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to Regulated Consumers connected to such person's distribution

[21] This is in anticipation of a possible future restructuring of the distribution system.

system assets; (b) allocate partial payments by Regulated Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest.

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, Servicer, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and

use charges from Regulated Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5, or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim

or final order it thinks fit in this regard.

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

Distributor, Servicer, 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, Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or

successor thereof or any other entity or otherwise.[22]

(12) **Sequestration** – If any Electricity Distributor, Servicer, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any

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

required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall (i) order the

sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable and (ii) appoint a receiver to take control of the amounts sequestered.[23]

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

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

of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset[24]

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting,

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[24] It is anticipated that Investment Interests will only be sold to Financing Entities controlled by OPG. Sales will occur on a negotiated basis, and deal-specific covenants will be included in transaction documents – to supplement these arrangements.

collectively, of the following rights and interests (without duplication):

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

b. the right to impose, bill, invoice, collect and receive Transition Charges from Regulated Consumers, including the right to determine the amount of Transition

Charges in accordance with this Act;

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

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

d. the right to enforce the duties and obligations of each Electricity

Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of Servicer or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action

undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

e. the right to enforce the duties and obligations of Servicer and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances

and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in

accordance with Article 5;

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

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

Regulatory Asset Account;

h. all Related Rights; and

i. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or

commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of

Transition Charges will depend on further actions that may not have occurred. The Regulatory Asset shall continue to exist until all Funding Obligations have been paid in full.

(2) **Validity of Dispositions** – A Disposition by IESO of its right to recover all or any part of the IESO Funding Shortfall to an Absolute Assignee, or a Disposition of all or any part of an Investment Interest by

one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under IESO's right to recover the IESO Funding Shortfall or the Investment Interest, as

applicable (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as

a true sale and absolute transfer of IESO's right to recover the IESO Funding Shortfall or an Absolute Assignee's right, title and interest in, to and under an Investment Interest, as applicable (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in IESO's right to recover the

IESO Funding Shortfall or the Investment Interest (or relevant portion thereof) subject to the Disposition, including all rights to recover the IESO Funding Shortfall or under the Investment Interest arising after such Disposition.

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time

when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the IESO or transferring Regulatory Asset Owner, as applicable, and all other persons who have claims of any kind (whether in tort, contract or otherwise) against IESO or the transferring Regulatory Asset Owner, as the case may be, irrespective of whether such persons have notice of the Disposition

and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – A Pledge by an Absolute Assignee 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 related Investment Interest in accordance with the terms of the Pledge. No consent of, or notice to, any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"),

the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation shall, subject to the terms thereof, give rise to a security interest in respect of which the PPSA applies, and may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a

Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.[25] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other

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[25] Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. A Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge

Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the

basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

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

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document. In no circumstance may the specified portions of the

rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the

Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement.

Article 7 – Establishment of the Fair Allocation Plan[26]

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26 The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not

(1) Adoption of the Fair Allocation Plan – The Delegate may, by written declaration, designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or

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fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

erminated by a further written declaration made by the Delegate in compliance with [the Regulations].

(2) Principles and Parameters – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Regulated Consumers on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable,

having regard to the following principles and parameters:

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. The Fair Allocation Plan should specify the Reference Periods for the purpose of identifying applicable Regulated Consumer Groups and

allocating Future Fair Share of Green Transition Benefits among them on a relative basis over time.

3. The share of Future Fair Share of Green Transition Benefits allocable to a particular Regulated Consumer in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the

Green Generation Initiative to such Regulated Consumer over such Reference Period, other than in exceptional circumstances.

4. The share of Future Fair Share of Green Transition Benefits to be allocated to a Regulated Consumer Group and any future Regulated Consumer Group at a particular time should not

exceed the Estimated Future Green Transition Benefits, measured in respect of the Reference Periods following such particular time and to the Program End Date.

5. No future Regulated Consumer Group should be allocated an unreasonably disproportionate share of Estimated Future Green Transition Benefits. Except in exceptional

circumstances or in the case of any reallocation of an Over-Assessed Amount as contemplated in 7, below, the Future Fair Share of Green Transition Benefits to be allocated under a Fair Allocation Plan to any future Regulated Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate]*.

6. The time value of money should be reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Regulated Consumer Groups over time.

7. To the extent there has been an Over-Assessed Amount, the Fair

Allocation Plan may determine that an adjustment should fairly be made to rebate Regulated Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such Regulated Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such

Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more Regulated Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of

the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the

Legislative Implementation Date.

(3) Attribution Methodology – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Finance Charges across the Regulated Consumers. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate

to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation; provided that the Attribution Methodology shall not be used to limit the recovery of Transition Charges.

(4) Amendments of the Fair Allocation Plan – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that

such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation, (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation, and (c) not impair any Regulatory Asset, outstanding Funding

Obligations or any Transition Charges.[27]

Article 8 – The IESO Funding Shortfall

(1) Recording of IESO Funding Shortfall – Subject to 8(3), IESO will record any IESO Funding Shortfall [in its books] [in a variance account established in accordance with section 25.33 of the

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[27] It is anticipated that the terms of any rated financing will restrict further issuances pending a RAC in relation to any changes to the FAP.

Electricity Act / Ontario Regulation 430/04, as amended].

(2) Adjustments – IESO will record it [its books][its variance account] all adjustments to the IESO Regulatory Asset Amount from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset.

(3) Limitation on Additions – Subject to 8(3), IESO

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

(4) Dispositions – IESO may effect a Disposition of its right to recover all or any part of the IESO Regulatory Asset Amount to an

Absolute Assignee if (a) the Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; and (c) the Financial Services Manager confirms in writing that the Disposition complies with any restrictions or limitations specified with respect thereto in any documents evidencing the

Funding Obligations and is permitted under the Financing Plan.

(5) No Continuing Interest in any Investment Interest – IESO shall have no continuing right or interest in, or maintain any right to recover all or any part of, any IESO Regulatory Asset Amount that is subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party.

(6) IESO Recoveries – IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) of any IESO Recoveries.

Article 9 – The Financing Plan

(1) Power to Prepare, Implement and Amend the Financing Plan – The Financial Services Manager shall be authorized to

prepare, implement and amend a financing plan [for the Financing Entities] and propose the adoption of such financing plan as the Financing Plan for the purposes of this Act. [The Financial Services Manager shall have the right to withdraw its financing plan as the Financing Plan at any time if it determines that implementing the Financing Plan in such manner would not be in the

best interests of a Financing Entity.]

(2) Principles and Parameters of the Financing Plan – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions, having regard to the principles and parameters set forth in Schedule 3.

(3) OEB Approval – [Any Additional Funding Charge payable to the Financial

Services Manager in respect of services provided by the Financial Services Manager (other than third party costs) shall be subject to review and approval by the OEB.][28]

(4) Review of Financing Plan – The [OEB shall undertake an annual review of the records maintained by the Financial Services Manager for the purpose of confirming that the Funding

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[28] Under consideration.

Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan.][29]

(5) Replacement of the Financial Services Manager – If the OEB identifies deficiencies or makes recommendations in its review under Section

[29] Under consideration.

9(4), the Financial Services Manager shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services Manager under the Financing Plan. If the Financial Services Manager is unwilling or unable to reflect such recommendations in

relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services Manager. [Any replacement financial services manager must comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations.]

(6) Obligation to Apply IESO Remittances – The Financial Services Manager shall ensure that amounts transferred to it [under Article 5, as agent for and on behalf of the Absolute Assignees], or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose.

(7) Non-Recourse – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services Manager, the OEB or Her Majesty in right of Ontario, other than if and to the extent that such persons or entities are

liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount.

(8) Incurrences are Binding – Each Disposition made to or by an Absolute Assignee, all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee

under or in connection with any obligation purporting to be a Funding Obligation and each Pledge entered into by an Absolute Assignee, shall be valid and binding, including in determining the amount of related Transition Charges, notwithstanding any defect in the manner of incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan.

[Article 10 – Compliance Matters[30]

(1) Right of the [OEB] to Inspect Books and Records - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

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[30] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

(2) [OPG's Rate Settings – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Manager [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Manager; or (c)

the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][31]

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[31] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Financial Services Manager of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

Article 11 – Undertaking of the Her Majesty in right of Ontario[32]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the

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[32] Under consideration, including the dealers' request for (1) a "servicer guarantee" (2) a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes and (3) in the event of a market disruption that renders it impossible to refinance debt when required (or where financing of amounts required to service the debt is not available because of a market disruption where the Financing Entity was relying on such further issuance of debt until the recovery is set to begin to fund interest), a covenant by the Province to step in and payout the debt or to recover the debt from ratepayers as it becomes due, notwithstanding the intended Fair Adjustment.

Regulatory Asset or Collections – Her Majesty in right of Ontario shall not in any way take or permit (including by any agency or administrative body) any action to reduce, impair, postpone or terminate the obligation of Regulated Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or

IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by Her Majesty in right of Ontario (including by any

agency or administrative body), including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) Undertaking and Agreement – Her Majesty in right of Ontario shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination

of the Fair Allocation Plan if such amendment, amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder, or would not otherwise comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) Successor IESO – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, an IESO Successor shall immediately be established by Her Majesty in right of

Ontario to perform such obligations.

(4) Compensation for Failure – Absolute Assignees shall be compensated by Her Majesty in right of Ontario for any losses suffered by them as a result of any failure by Her Majesty in right of Ontario to comply with its undertakings and agreements in this Article 11.[33]

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[33] Requested by Dealers. For discussion.

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

(6) References to the Undertaking and Agreement – Any non-confidential reference to the Undertaking of the Her Majesty in right of Ontario, including in marketing

materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may

be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs;

permitted Additional Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-

making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those

persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process

considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous[34]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection,

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

priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment

or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) No further acts or approvals required - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be

taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental

contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) Effect of invalidity after the Incurrence of any Funding Obligation - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or

expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) Severability - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance

or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the

incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional

or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

(1) in respect of each Reference Period, make reference to the allocations of Future Fair Share of

Green Transition Benefits to each Reference Group contemplated by the Fair Allocation Plan;

(2) estimate IESO Funding Shortfalls for each Reference Period;

(3) consider alternative funding arrangements suitable to fund the estimated IESO Funding Shortfalls, including short term and/or long term Funding Obligations;

(4) consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(5) if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Regulated Consumers under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of

such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(6) reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical Regulated Consumer relative to his or

her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation);

(7) require the Financial Services Manager, for and on behalf of each Regulatory Asset Owner, to use [diligent efforts to manage Finance Amounts to be borne by Ratepayers];

(8) include a proposal regarding the compensation of the

Financial Services Manager that reflects market terms and conditions; and

(9) [require that the Financial Services Manager report annually to the Ministry of Energy on the operation of the Financing Plan including, in particular, with respect to the amount and terms of the Funding Obligations incurred and the sufficiency of such Funding Obligations for the purpose of funding the

estimated Funding Shortfalls in accordance with the Fair Allocation Plan.]

(10) 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 Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not

obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference

Group under the Fair Allocation Plan;

b. the basis upon which the Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations should not obligate an Absolute Assignee to repay an amount in relation to a

Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

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

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

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Financial Services Agent shall cause the applicable Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable

minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the Financial Services Agent will select counterparties under any transaction to be entered into by an Absolute

Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the Financial Services Agent will manage counterparty risk,

including by providing for maximum counterparty exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance

Reserve Deposits and Additional Funding Charges;

(11) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding Shortfalls from time to time

on a basis that is consistent with the allocations of Future Fair Share of Green Transition Benefits to applicable Reference Groups under the Fair Allocation Plan;

(12) 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;

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

(14) the timing and basis upon which Finance Reserve Deposits and

Finance Reserve Withdrawals may be made;

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

(16) 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;

(17) 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;

(18) the basis upon which any Disposition may be made or effected by an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject

matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(19) describe the requirements applicable to any special purchase entity that will purchase an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities; and

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

[NTD: E&Y will need to see the guidelines of the Fair Allocation Plan set in reference to parameters that will allow it to establish a modeling curve]

- **[Inflation period**: (between November 2017 – and April 2022) bill increases need to

be capped at inflation (assumed at 2% for modeling purposes)]

- [**Transition Period**: (May 2022- April 2027) bills increased at a consistent rate which is set so that the borrowing will not exceed the Trust's capacity, which is determined by the Finance Service Manager]
- [**Amortization Period**: (May 2027-April 2047) equitable distribution of

Finance Amount among Regulated Consumers]

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February 28, 2017

Deputy Minister Serge Imbrogno
Ontario Ministry of Energy
900 Bay Street
Hearst Block, 4th Floor
Toronto, ON M7A 2E1

Dear Deputy Imbrogno:

Attached are two documents prepared in conjunction with our KPMG advisors. The first outlines the proposed adoption by the IESO of the guidance in *ASC980 Regulated Operations* and the recognition of regulatory assets, as a more appropriate and transparent presentation in our financial statements.

The second is associated with the potential recognition and de-recognition of the regulatory assets associated with the IESO's role under the Global Adjustment Smoothing Account.

The conclusions of the second analysis are based on the structure of the account as the IESO currently understands it, and may vary depending on the final legislative materials.

We are available to address any questions you may have on these matters.

Sincerely,

Bruce B. Campbell

Attach.

Bruce B. Campbell
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White Paper - Adoption of the guidance in ASC 980 Regulated Operations

Independent Electricity System Operator ("IESO" or the "Company") is considering making changes in its accounting policies to reflect the balances of market participants within the IESO-administered markets (see separate technical analysis) and the economic impacts of rate regulation, as the changes would result in a more appropriate presentation of events or transactions in its financial statements.

Issue being considered in this document is: Can the IESO adopt the guidance in ASC 980 *Regulated Operations (US GAAP in FASB)*?

Background and Assumptions

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The IESO's legal status is a not-for-profit, non-taxable, corporation established pursuant to Part II of the *Electricity Act, 1998*. IESO is classified as an Other Governmental Organization and prepares its financial statements in accordance with Canadian public sector accounting standards (PSAB).
2. IESO is rate regulated by the OEB in accordance with the Electricity Act, 1998 and the Ontario Energy Board ("OEB") Act, 1998 but currently does not recognize the economic impacts of rate regulation in its general purpose financial statements.
3. The IESO is required to obtain approval from the OEB under s. 25(1) of the Electricity Act, 1998 for the approval of its own expenditures, revenue requirement and fees. The last rate approval was obtained on December 29, 2016[1].
4. The OEB issued a Decision and Order on March 28, 2013 that permits IESO to recover the MDMR costs (the Smart Metering Charge) (see Appendix A). *(i.e. Costs incurred in the past will be fully recovered through future rates)*
5. Furthermore, in accordance with the *Electricity Act, 1998* and the *OEB Act, 1998*, the IESO has approved variance accounts to record all amounts payable or receivable by it in connection with the amounts paid to generators, the Financial Corporation, distributors and to entities with whom the IESO has a procurement contract. (i.e. costs incurred in the past will be fully recovered through future rates)
6. The IESO would change its accounting policies to permit the recognition of the economic impacts of rate regulation as from the 2016 financial year. IESO would adopt the guidance of ASC 980 *Regulated Operations* to better reflect the economic substance of its operations and enhance the transparency and accountability of its financial reporting.

Appropriate Accounting Principle

PS2120.02, "*a change in an accounting policy may be made... if it is considered that the change would result in a more appropriate presentation of events or transactions in the financial statements of the government.*"

PS1150.05 "*When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:*

[1] http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/556699/view/Dec_Order_IESO_20161229.PDF

(a) *the primary sources of GAAP; and*

(b) *the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000.*"

PS1150.19 "*Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.*"

PS1150.08 "A public sector reporting entity consults sources other than primary sources of GAAP to assist in selecting accounting policies and disclosures only when these sources comply with paragraph PS1150.05. The public sector reporting entity evaluates sources in selecting the appropriate accounting policies and disclosures based on all of the following criteria:

(a) *The specificity of the source — A source that deals with the specific circumstances is likely to be more relevant than one from which the public sector reporting entity must analogize.*

(b) *The authority of the issuer or author — A source issued by an accounting standard setter in its own jurisdiction is likely to be more relevant than a source issued by others in the same jurisdiction.*

(c) *The continued relevance of the source — The passage of time may diminish the relevance of certain sources.*

(d) *The development process for the source — A source developed after extensive consultation and debate is likely to be more relevant than a source developed without such discipline."*

PS1150.10 "PSAB considers a source to be consistent with the concepts in paragraph PS 1150.05(b) when the guidance in that source is compatible with the (i) qualitative characteristics of financial information, (ii) the elements of financial statements, and (iii) the recognition and measurement criteria in paragraph PS 1150.05(b)."

PS1000.58 "In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles."

PS3210.03 "Assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained."

PS3210.04 "Assets have three essential characteristics:

(a) *They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows.*

(b) *The public sector entity can control the economic resource and access to the future economic benefits.*

(c) *The transaction or event giving rise to the public sector entity's control has already occurred."*

Issue: Can the IESO adopt the guidance in ASC 980 *Regulated Operations*?

In accordance with PS2120.02, the IESO can reflect the economic impacts of rate regulation only if it is considered that the change of accounting policy would result in a more appropriate presentation of events or transactions in the financial statements of the government. As mentioned in the Agenda ref. 9A of the IASB meeting of February 2017[2], rate regulated entities have long argued that, without recognizing regulatory assets and regulatory liabilities, the entity's performance is distorted by the rate regulator's intervention in the imposition of performance obligations on the entity and the timing of cash flows from the ratepayers.

[2] http://www.ifrs.org/Meetings/MeetingDocs/IASB/2017/February/AP09-Rate-regulated-Activities.pdf

The recognition of regulatory assets and liabilities would better reflect the economic substance of IESO's operations and enhance the transparency and accountability of its financial reporting. For example, during the period from 2007 to April 2013 the IESO incurred costs relating to the Smart Meter Program amounting to $90.9 million, and these costs were expensed and are included in the accumulated deficit. In the absence of applicable regulatory accounting under PSAS, the IESO was unable to recognize a regulatory asset for this charge, despite receiving a rate order to recover it over the period from May 1, 2013 to October 31, 2018. Should the IESO choose to adopt ASC 980, a regulatory asset for the Smart Metering Charge would be recognized at December 31, 2016 for an amount of approximately $21.6 million, which would represent the remaining unamortized amount that would have been reported if the asset was recognized originally in 2013.

PSAS does not address accounting concepts in a rate regulated environment. Since there is no guidance in PSAS regarding the recognition and measurement of regulatory assets and liabilities, IESO may consider other sources based upon PSAS 1150.05 in the GAAP hierarchy to determine appropriate accounting policies in a rate regulated environment.

Within AcSB, Accounting Standards for Private Enterprises (ASPE) defines a rate regulated entity but provides no guidance on regulatory assets and liabilities however requires disclosure of such balances if they are recognized. IASB has not completed their project on rate regulated activities and current standards only include a holding standard based upon what was done under previous GAAP. It will be important for the IESO to monitor the IASB's ongoing project on rate regulated activities as this may affect the recognition, measurement, presentation and disclosures of the regulatory assets and liabilities. Both FASB and GASB have guidance on accounting in a regulatory environment. IPSASB does not provide any guidance on accounting by rate regulated entities.

It is important to note that rate regulated entities in Canada that prepare their general purpose financial statements in accordance with US GAAP (e.g. Hydro One and Ontario Power Generation), ASPE (e.g. the three Fortis subsidiaries in Ontario), as well as those rate regulated entities that are eligible to elect to apply the requirements of IFRS 14 and elected to do so when they adopted IFRS (e.g. over 60 LDCs in Ontario), generally all recognize regulatory deferral and variance accounts in accordance with US GAAP accounting principles set out ASC 980 *Regulated Operations*.

Statement 62 issued by GASB in December 2010 is effective for financial statements for periods beginning after December 15, 2011. The objective of the Statement is to incorporate into the GASB's authoritative literature certain accounting and financial reporting guidance that is included in the Financial Accounting Standards Board (FASB) Statements and Interpretations issued on or before November 30, 1989, which does not conflict with or contradict GASB pronouncements. Paragraphs 476–500 may be applied to activities reported in business-type activities that have regulated operations that meet all of the three criteria in paragraph 476 as follows:

(a) The regulated business-type activity's rates for regulated services provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

(b) The regulated rates are designed to recover the specific regulated business-type activity's costs of providing the regulated services.

(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the regulated business-type activity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.

The criteria above and the guidance in paragraphs 476-500 are based on ASC 980 *Regulated Operations*.

It is also important to note that in its statement of financial position, the Ontario Electricity Financial Corporation ("OEFC"), which reports under Canadian public sector accounting standards, recognizes a net unamortized liability balance for power purchase contracts, as detailed in the summary of significant accounting policies:

"The liability for power purchase contracts was originally calculated by discounting estimated losses over the life of the contracts. Under the *Electricity Restructuring Act, 2004*, OEFC began receiving actual contract prices for power from electricity consumers, effective January 1, 2005, and no longer incurs losses on these power purchase contracts. At that time, the Ministry of Finance estimated that the bulk of the liability would be eliminated over 12 years as existing electricity contracts expire. As a result, the bulk of the liability is being amortized to revenue over that period."

Although this liability is not defined as a regulatory liability in the OEFC's financial statements, the argument can be made that it substantively meets the definition under ASC 980 of a regulatory liability, as the OEFC had no further obligation and should have reversed the liability into income. After consultation with the AG at that time, it was decided to amortize the gain over the remaining term of the contracts.

In summary

Rate regulated entities in North America reporting under US GAAP, ASPE, IFRS (entities which have elected to use IFRS 14) and GASB generally all recognize regulatory deferral and variance accounts in accordance with US GAAP accounting principles based on ASC 980 *Regulated Operations* (see Appendix B for the accounting framework used by the Canadian rate regulated entities).

Evaluation of Other Sources of GAAP

When looking to other sources of GAAP, PSAS requires the other sources of GAAP to be evaluated

1. *as to whether they are consistent with accounting policies and disclosure within PSAS,*
2. *as to whether they are consistent with the application of concepts in PS 1000 and*
3. *as to all of the following criteria:*
   - *(a) Source deals with the specific circumstance*
   - *(b) Source is issued by an accounting standard setter*
   - *(c) Source continues to be relevant*
   - *(d) Source uses a consultative process and deliberation when developing policies*

As required by PS 1150.05(b), we need to analyze whether the concepts in the other source (i.e. ASC 980) are compatible with the (i) qualitative characteristics of financial information, (ii) the elements of financial statements, and (iii) the recognition and measurement criteria in PS 1000.

(i) Qualitative Characteristics of Financial Information

FASB	**PSAS 1000**	**Evaluation**
Concepts and objectives are for both business and non-business organizations as well as governmental units (Concept #4.3 to 4.5)	Public, legislators, councilors, investors, analysts, other governments (par. 14)	FASB considers governmental units
Financial reporting should: – Be useful in making resource allocation decisions – Be useful in assessing services and ability to provide services – Be useful in assessing management stewardship and performance – Provide information about economic resources, obligations, net resources and changes in them (Concept # 4.33-.54)	Financial statements should be relevant to the needs of the users and reliable. Relevance is achieved through timeliness, predictability and accountability value. Reliable information has the following characteristics: representational faithfulness, completeness, neutrality, conservatism and verifiability. (par. 28-29)	Similar

(ii) Elements of Financial Statements

FASB	PSAS	Evaluation
Assets		
Probable future economic benefits obtained or controlled by the entity as a result of past transactions or events. (Concept #6.25-.34)	Economic resources controlled by a government as a result of past transactions or event and from which future economic benefits are expected to be obtained. (par. 35)	Essential characteristics similar
Liabilities		
Probable future sacrifices of economic benefits arising from present obligations of the entity to transfer assets or provide services in the future as a result of past transactions or events. (Concept #6.35-.43)	Present obligations to others arising from past transactions or events, the settlement of which is expected to result in the future sacrifice of economic benefits with little or no discretion to avoid settlement. (par. 44)	Essential characteristics similar
Revenues		
Inflows from delivering or producing goods, rendering services or other activities that constitute the entity's central operations. (Concept #6.78-.79)	Increases in economic resources resulting from operations, transactions and events of the accounting period. (par. 46)	Similar
Expenses		
Outflows from delivering or producing goods, rendering services or carrying out other activities that constitute the entity's central operations. (Concept # 6.80-.81)	Decreases in economic resources resulting from operations, transactions and events of the accounting period. (par. 49)	Similar

(iii) Recognition Criteria

FASB	PSAS	Evaluation
To be recognized, an item must meet the definition of an element of the financial statements, must be measurable with sufficient reliability, be relevant and be reliable. (Concept # 5.64)	Item must have an appropriate basis of measurement, a reasonable estimate can be made of the amount and if the item involves obtaining or giving up future economic benefits, it is expected those benefits will be obtained or given up. (par. 55)	Similar

(iii) Measurement Criteria

FASB	PSAS	Evaluation
Measurement basis dependent upon nature of item. Historical cost basis, replacement cost, market value. (Concept # 5.65-.70)	Primarily using historical cost basis. Replacement cost and realizable value are also used, but in limited circumstances. (par. 60)	Similar

Criteria of PS 1150.08

Criteria	Evaluation
Source deals with the specific circumstance	Yes, ASC 980 Regulated Operations
Source is issued by an accounting standard setter	Yes, FASB
Source continues to be relevant	Yes, still used by rate regulated entities
Source uses a consultative process and deliberation when developing policies	Yes, comprehensive consultative process and deliberation

Evaluation whether regulatory assets meet the definition of Assets as per Section PS3210

PS3210 defines assets as *"economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained."* (par. 03)

The analysis of the three essential characteristics as defined by PS3210.4 are analyzed in the next table.

Characteristics	Additional guidance	Comments
They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows. (par. 4(a))	The essence of assets are their future economic benefits. Assets embody future economic benefits that allow public sector entities to achieve their objectives. The future economic benefits embodied in assets involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows or to reduce cash outflows. (par. 11) The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. (par. 13)	The economic benefit embodied in the variance accounts (i.e regulatory asset) is the right to collect the incurred costs from ratepayers in order to settle the liability for the energy already consumed by the ratepayers. The electricity Act, 1998 ("EA") section 25.33(1) states: *"The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,* *a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998; and* *b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract."*
The public sector entity can control the economic resource and access to the future economic benefits. (par. 4(b))	Economic resources can arise from, but are not limited to, the following: government's own legislation (for example, taxes, fines and penalties); (par. 08(c)) A public sector entity controls the economic resource and access to the	The economic resources is the right created by the legislation that the energy costs IESO incurs will result in future cash flows. In the regulatory environments, incurring costs creates an enforceable right to set rates at a level that permits

	future economic benefits when it: a. can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows; b. can deny or regulate access to those benefits by others; and c. is exposed to the risks associated with the economic resource. (par.16)	IESO to recover those costs. The adjustment of future rates is the mechanism the OEB uses to implement the right. Currently, the EA section 25.33(5) states: *"The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section."* The legislation would be amended to permit IESO to collect specifically the deferral of the energy costs and the related interest and administrative costs.
The transaction or event giving rise to the public sector entity's control has already occurred. (par.4(c))	It is the occurrence of a past transaction or event on or before the financial statement date that distinguishes a present economic resource controlled by a public sector entity from an economic resource that may be controlled by a public sector entity in the future. (par. 25) The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities. (par. 26)	The past event giving rise to IESO's control occurs as the energy cost is incurred, as IESO has a right to collect it from the ratepayers.
Conclusion: The right to collect the deferral of the energy costs and the related interest and administrative costs meets the definition of assets.		

When concepts are in conflict with PSAS then PSAS prevails (PS 1150.12). For example, PSAS does not recognize intangible assets (PS 3150.03, .14 and PS1000.58). So if regulatory assets are considered to be intangible assets, they would not be allowed to be recognized through another source of GAAP.

It is worth noting that the economic impacts of rate regulation are not recognized under US GAAP as intangible assets as the FASB has specific guidance to deal with this type of asset. It is also worth noting that the IASB has an ongoing project on rate regulated activities and are currently developing an accounting model based on the principles of IFRS 15 *Revenue from contracts with customers* to provide a principle-based framework for recognizing regulatory assets (see Agenda Ref. 9 for the IASB meeting on February 23, 2017). Furthermore, the Summary Comment Letter Analysis related to the ED/2009/8 on Rate Regulated Activities published by the IASB in July 2009 states on page 2 of 50:

"The International Financial Reporting Interpretations Committee ("IFRIC") observed that it had previously discussed whether a regulatory asset should be recognized in the context of service concession arrangements, either as deferred costs or as an intangible asset to reflect an expectation that the entity will

recover these costs as part of the price charged in future periods. It had concluded that entities applying IFRSs should recognize only assets that qualified for recognition in accordance with the IASB's *Framework for the Preparation and Presentation of Financial Statements* and relevant accounting standards, such as IAS 11 *Construction Contracts*, IAS 18 *Revenue*, IAS 16 *Property, Plant and Equipment* and IAS 38 *Intangible Assets*."

Entities that are not eligible to elect to apply the requirements of IFRS 14 do not recognize regulatory assets because in 2009 the IFRIC determined they did not meet the criteria for recognition of an intangible asset under IAS 38.

Therefore, we can conclude that ASC 980 is NOT in conflict with PS 3150.03, .14 and PS1000.58 with respect to intangible assets.

Conclusion:
FASB is appropriate to use as "*other source of GAAP*". FASB standard ASC 980 has extensive guidance for rate regulated entities including the recognition of regulatory assets and use of rate regulated accounting by IESO would be consistent with current reporting practices of H1, OPG and OEFC.

Appendix A:

Extract from the "DECISION and ORDER issued by the OEB on March 28, 2013" available on the IFRS website

Proceeding on the Ontario Energy Board's own motion to review the options for and ultimately determine the appropriate allocation and recovery of the Smart Metering Charge pursuant to section 19 of the Ontario Energy Board Act, 1998.

THE BOARD ORDERS THAT:

Effective May 1, 2013, the Smart Metering Entity charge to be levied and collected by the Smart Metering Entity from all Distributors identified in the Board's annual Yearbook of Electricity Distributors shall be $0.788 per month for each Residential and General Service <50kW customers for each distributor. The Smart Metering Entity charge shall be in effect from May 1, 2013 to October 31, 2018. The number of Residential and General Service <50kW customers to which the Smart Metering Entity charge will be applied to shall be in accordance with the methodology set forth in the Settlement Agreement attached as Appendix A.

http://www.ontarioenergyboard.ca/oeb/_Documents/EB-2012-0100/dec_order_IESO-SME_20130328.pdf

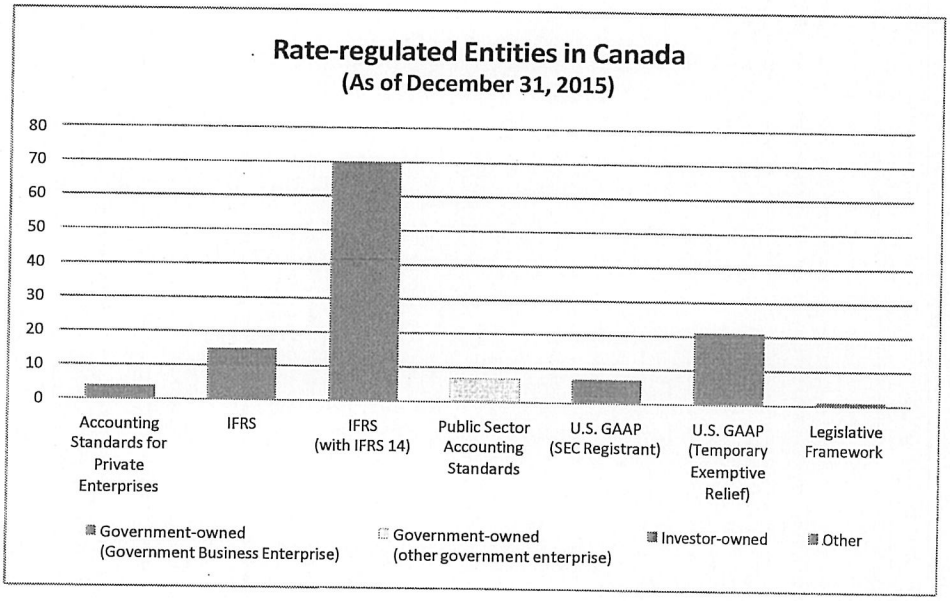
Appendix B:

Extract from the "Accounting Standards Advisory Forum Agenda Ref: 3A dated September 29, 2016" available on the IFRS website

Canadian Rate-regulated Entities

18. The accounting framework landscape for Canadian rate-regulated entities is currently diverse. For annual periods beginning on or after January 1, 2015, rate-regulated entities that are Canadian publicly accountable enterprises are required to apply IFRS. Rate-regulated entities that adopted IFRS for the first time after IFRS 14 *Regulatory Deferral Accounts* was issued continue to recognize these balances. Government Business Enterprises (which operate to generate a profit or on a break-even basis) that are also rate-regulated entities are also directed to apply standards applicable to for-profit entities, and thus apply IFRS. Canadian securities legislation permits dual-listed entities (i.e., Canadian entities also registered with the U.S. Securities and Exchange Commission) to apply U.S. GAAP in the normal course. Temporary exemptive relief is also available from the Canadian Securities Administrators that permits rate-regulated entities that are not dual-listed to apply U.S. GAAP in place of IFRS. If a rate-regulated entity is not a publicly accountable enterprise or a Government Business Enterprise, additional accounting framework options may also include Accounting Standards for Private Enterprises or Public Sector Accounting Standards. A non-GAAP reporting framework is used when legislated by the provincial owner of a government-owned rate-regulated entity.

19. As of December 31, 2015, there were approximately 125 rate-regulated entities in Canada. These entities mainly range in size from small entities owned by municipal governments to large investor-owned entities or entities owned by provincial governments.



Source: Information compiled based on audited financial statements for fiscal year 2015, or information from rate filings that confirmed the accounting framework used by these entities. Due to data collection constraints, the population could be slightly larger.

20. The chart above highlights two key points:

(a) The majority of investor-owned entities have chosen U.S. GAAP over IFRS. A few entities that are not reporting issuers apply Accounting Standards for Private Enterprises. Both U.S. GAAP and Accounting Standards for Private Enterprises permit the recognition of balances arising from rate regulation. Several entities that apply U.S. GAAP have told us this choice was influenced by the need to provide their users with financial statements that accurately reflect the economics of their business. Further, some entities presently using the temporary exemptive relief described in paragraph18 have said they are considering incurring the cost and effort necessary to become a registrant of the U.S. Securities and Exchange Commission in order to have the permanent ability to apply U.S. GAAP. While such a decision could be primarily for business reasons such as the entity expanding its operations into the U.S., it could also be attributed to the continuing uncertainty about the ultimate outcome of the IASB's Rate-regulated Activities project and the approaching expiry date of the securities regulators' exemptive relief.

(b) Public sector entities that are Government Business Enterprises tend to apply IFRS. The majority of these entities is made up of several large provincially-owned utilities, and many small municipally-owned local distribution utilities that do not issue debt or list in the U.S. stock market, and are not subject to Canadian securities legislation. As a result, they cannot apply U.S. GAAP. As shown in the chart, many of these entities adopted IFRS for the first time after the IASB issued IFRS 14, which allowed them to continue their previous accounting practices for rate-regulated activities.

21. Within the pool of government-owned rate-regulated entities, there are entities that do not meet the characteristics of Government Business Enterprises and are required to apply Public Sector Accounting Standards.

22. The data on the different accounting frameworks in Canada is unique. It demonstrates that when given a choice, rate-regulated entities select an accounting framework that captures the effects of rate regulation on their financial position and financial performance in order to communicate more decision-useful information to users.

http://www.ifrs.org/Meetings/MeetingDocs/ASAF/2016/September/1609-ASAF-03A-Rate-regulated-Activities-Canada.pdf

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White Paper on the Province's proposed Global Adjustment Smoothing Account

Below is a summary of IESO's preliminary views on the implementation of the Province's proposed Global Adjustment Smoothing Account.

Understanding that the finalization of the legal terms, the financing structure and other detailed terms will take several months and will involve collaboration between legal counsel, parties involved and other stakeholders, this letter is intended to provide the guideline and framework which could form the foundation of the plan.

Issues being considered in this document are:

Issue #1: Can the IESO recognize deferral or variance accounts related to the annual Global Adjustment Smoothing Account as a regulatory asset on its statement of financial position?

Issue #2: Can the IESO derecognize the deferral or variance accounts related to the Global Adjustment Smoothing Account upon sale to the OPG Trust?

1. Recognition of regulatory assets (deferral and variance accounts)

Background and Assumptions for issue #1

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The IESO's legal status is a not-for-profit, non-taxable, corporation established pursuant to Part II of the *Electricity Act, 1998*. IESO is classified as an Other Governmental Organization and prepares its financial statements in accordance with Canadian public sector accounting standards (PSAB).
2. IESO is rate regulated by the OEB in accordance with the Electricity Act, 1998 and the Ontario Energy Board ("OEB") Act, 1998 but currently does not recognize the economic impacts of rate regulation in its general purpose financial statements.
3. The IESO is required to obtain approval from the OEB under s. 25(1) of the Electricity Act, 1998 for the approval of its own expenditures, revenue requirement and fees. The last rate approval was obtained on December 29, 2016[1].
4. The OEB issued a Decision and Order on March 28, 2013 that permits IESO to recover the MDMR costs (the Smart Metering Charge) (see Appendix A). *(i.e. Costs incurred in the past will be fully recovered through future rates)*
5. Furthermore, in accordance with the *Electricity Act, 1998* and the *OEB Act, 1998*, the IESO has approved variance accounts to record all amounts payable or receivable by it in connection with the amounts paid to generators, the Financial Corporation, distributors and to entities with whom the IESO has a procurement contract. (i.e. costs incurred in the past will be fully recovered through future rates)
6. The province is contemplating deferring the recovery of a portion of the annual Global Adjustment Smoothing Account (comprised primarily of the electricity costs paid to the generators) over a period of 25-30 years, so that costs incurred would be fully recovered through future rates.
7. The *Electricity Act, 1998* and the *OEB Act, 1998* would be amended through legislation to require the deferral of the recovery of the Global Adjustment Smoothing Account and the future recovery in rates charged to customers.

[1] http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/556699/view/Dec_Order_IESO 20161229.PDF

8. The OEB would grant generic deferral or variance accounts to capture the difference between the amounts paid to generators and others, and the amounts collected in rates. Furthermore, the interest and ancillary costs related to the contemplated transaction would also be included in future rates charged to customers. In summary, the legislation would create a right to collect the incurred cost.

9. The IESO would change its accounting policies to permit the recognition of the economic impacts of rate regulation as from the 2016 financial year. IESO would adopt the guidance of ASC 980 *Regulated Operations* to better reflect the economic substance of its operations and enhance the transparency and accountability of its financial reporting.

Appropriate Accounting Principle for issue #1

ASC 980 Regulated Operations

- 980-10-15-2 *"The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:*

  (a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

  (b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.

  (c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."

- 980-10-20 Glossary, Definition of incurred costs *"A cost arising from cash paid out or obligation to pay for an acquired asset or service, a loss from any cause that has been sustained and has been or must be paid for."*

- 980-10-05-8 *"Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the GAAP applicable to business entities in general. The mere issuance of an accounting order not tied to rate treatment does not change an entity's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP. 980-340 – Other Assets and Deferred Costs."*

- 980-340-25-1 *"Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:*

  (a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

  (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

  A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date."

- 980-340-40-1: *"If at any time an entity's incurred cost no longer meets the criteria for the capitalization of an incurred cost (see paragraph 980-340-25-1), that cost shall be charged to earnings."*

- 980-350-50-1: "*In some cases, a regulator may permit an entity to include a cost that would be charged to expense by an unregulated entity as an allowable cost over a period of time by amortizing that cost for rate-making purposes, but the regulator does not include the unrecovered amount in the rate base. That procedure does not provide a return on investment during the recovery period. If recovery of such major costs is provided without a return on investment during the recovery period, the entity shall disclose the remaining amounts of such assets and the remaining recovery period applicable to them.*"
- 980-340-55-2: "*In some cases, a regulator may approve rates that are intended to recover an incurred cost over an extended period without a return on the unrecovered cost during the recovery period.*"
- 980-340-55-3: "*The regulator's action provides reasonable assurance of the existence of an asset (see paragraph 980-340-25-1). Accordingly, the regulated entity would capitalize the cost and amortize it over the period during which it will be allowed for rate-making purposes. That cost would not be recorded at discounted present value. An exception to this general rule is provided for costs of abandoned plants.*"

Issue #1: Can the IESO recognize deferral or variance accounts related to the annual Global Adjustment Smoothing Account as a regulatory asset on its statement of financial position?

US GAAP includes special accounting provisions that are applicable to entities with activities that are subject to rate regulation (see White Paper - Adoption of the Guidance in ASC 980 Regulated Operations). The result is that rate regulated entities are required to recognize regulatory assets and liabilities provided the following three criteria are met:

Criteria	Comment	Evaluation
The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.	IESO has unrecognized variance accounts related to the MDMR (smart meters), that have been approved by the OEB in accordance with the Electricity Act and the OEB Act (see Appendix A). It is important to note that Hydro One and OPG are both consolidated into the province's books, are both regulated by the OEB and their respective regulatory assets and liabilities are reported in the province's books.	Met
The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.	Currently, the rates approved by the OEB are designed to recover the IESO's costs of providing the regulated services and the pass-through related to the energy purchased from the generators. The contemplated transaction is based on the fact that the OEB would grant generic deferral or variance accounts to capture the difference between the amounts paid to generators and others, and the amounts collected in rates. Furthermore, the interest and ancillary costs related to the contemplated transaction would also be included in future rates charged to customers. In summary, the legislation would create a right to collect the incurred costs.	Met

In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."	Since the deferral or variance accounts would be sold to the OPG Trust at least on a monthly basis and cash would be received on the same day, this criteria would be met. This criteria would need to be monitored on a yearly basis to ensure that IESO and the OPG Trust would be able to recover the future deferred amount taking into account the levels of demand or competition during the recovery period.	Met
Conclusion: The three criteria would be met.		

Conclusion: Based on the assumptions mentioned above, IESO should be able to recognize a regulatory asset for the deferral of the annual Global Adjustment Smoothing Account. As mentioned in the ASC 980 guidance above, it is important that an accounting order be issued by the OEB which indicates the way the incurred costs would be handled for rate-making purposes as the OEB's action provides reasonable assurance of the existence of a regulatory asset.

2. Derecognition of regulatory assets (deferral and variance accounts)

Background and Assumptions for issue #2

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The annual Global Adjustment Smoothing Account that would be deferred in the deferral or variance accounts (the "Asset") would be significant.
2. The IESO does not currently have the financial capability to finance the Asset and is contemplating selling the Asset to a Trust to be set-up by OPG (the "OPG Trust").
3. The OPG Trust would be consolidated by OPG.
4. Proposed terms of the sale agreement between the IESO and the OPG Trust:
   - The sale contract would be structured as an absolute sale, which would assign future economic benefits or cash flows related to the Asset exclusively to the OPG Trust.
   - The arrangement would be structured whereby there is no recourse or obligations remaining of IESO related to the Asset.
   - The arrangement is not considered to be a financing transaction as IESO would have no obligations to the OPG Trust after the Asset is sold to the OPG Trust.
   - IESO would not retain any rights or benefits from the Asset.
   - IESO would not have any rights to interest or penalties on the Asset once it has been transferred to the OPG Trust.
   - The contract would be clear that IESO cannot pledge the Asset as collateral to obtain future cash flows or financing.
   - IESO would continue to collect related cash flows on the OPG Trust's behalf and remit those cash flows to the OPG Trust without material delay. In addition, IESO would not be entitled to reinvest such cash flows, except for investments in cash or cash equivalents during the short settlement period from the collection date to the date of required remittance to the OPG Trust, and interest earned on such cash and cash equivalents is passed to the OPG Trust. The contract would define IESO's role strictly as that of agent, under a pass-through arrangement.
   - Servicing, origination, and arrangement fees, would be collected by IESO in rates charged to ratepayers as part of its market dealings.
   - The Asset would be sold to the OPG Trust at least, on a monthly basis and cash would be received on the same day.

Appropriate Accounting Principles for issue #2

Public Sector Accounting Standard ("PSAS") 3210, *Assets*, defines an asset as "*...economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained.*" [par. 3]

.04 *"Assets have three essential characteristics:*

(a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;

(b) the public sector entity can control the economic resource and access to the future economic benefits; and

(c) the transaction or event giving rise to the public sector entity's control has already occurred."

.22 *"Control of an economic resource and of access to the future economic benefits are essential characteristics of an asset, whereas possession or ownership is not."*

.24 *"A public sector entity may act as trustee when it administers trusts on behalf of the beneficiaries specified in the agreement or statute. As trustee, the public sector entity merely administers the assets, following the terms*

and conditions set out in the agreement. It does not control the asset because it does not have access to the future economic benefits. Those benefits flow to the beneficiaries."

As noted in PS1000 Financial statement concepts:

.37 *"An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:*

(a) no future economic benefit;

(b) future economic benefit, but the government cannot obtain it; or

(c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred."

As noted in PS3450, derecognition of a financial liability:

.042 *"A government should remove a financial liability (or part of a financial liability) from its statement of financial position when, and only when, it is extinguished (i.e., when the obligation specified in the contract is discharged or cancelled, or expires)."*

.043 *"A financial liability (or part of a financial liability) is extinguished when the debtor either:*

(a) discharges the liability (or part of it) by paying the creditor, normally with cash, other financial assets, goods or services; or

(b) is legally released from primary responsibility for the liability (or part of it) either by process of law or by the creditor. (When the debtor has given a guarantee, this condition may still be met.)"

.046 *"Payment to a third party, including a trust (sometimes called "in-substance defeasance"), does not, by itself, relieve the debtor of its primary obligation to the creditor in the absence of legal release."*

.047 *"If a debtor pays a third party to assume an obligation and notifies its creditor that the third party has assumed its debt obligation, the debtor does not derecognize the debt obligation, unless the condition in paragraph PS 3450.043(b) is met. If the debtor pays a third party to assume an obligation and obtains a legal release from its creditor, the debtor has extinguished the debt. However, if the debtor agrees to make payments on the debt to the third party or direct to the original creditor, the debtor recognizes a new debt obligation to the third party."*

Issue #2: Can the IESO derecognize the deferral or variance accounts related to the annual Global Adjustment Smoothing Account upon sale to the OPG Trust?

PS3210 does not specifically address the derecognition of a regulatory asset as the concept of a regulatory asset does not exist under PSAS.

As mentioned above, regulatory assets do not meet the definition of intangible asset or financial asset. Specifically, regulatory assets do not meet the definition of financial asset because they are imposed on customers through the tariff (i.e., imposed by the OEB) and do not represent a right to receive payments from another party as a result of a contract.

More generally, PSAS.3210.37 suggests that an asset would no longer be recognized when it fails to meet the definition of an asset.

Based on PS1000.37(b), an item does not qualify as an asset of a government if the item involves future economic benefit, but the government cannot obtain it.

Based on the assumptions mentioned above, the legal title of the Asset would be transferred to the OPG Trust, as well as, ALL risks and rewards, including the following:

- the contract would define IESO's role strictly as that of agent, under a pass-through arrangement;
- all cash flows related to the Asset would be transferred without material delay to the OPG Trust;
- rights to interest or penalties on the Asset would be for the benefits of the OPG Trust;
- IESO cannot pledge the Asset; and
- no recourse or obligations remaining of IESO related to the Asset.

IESO should also evaluate whether the sale of the Asset should in fact be considered as a borrowing arrangement. In the absence of detailed guidance on this subject, we can analogize to the guidance in PS3450 *Financial Instruments* for the derecognition of a financial liability. Par. 43 states that *"A financial liability (or part of a financial liability) is extinguished when the debtor is legally released from primary responsibility for the liability (or part of it) either by process of law or by the creditor. (When the debtor has given a guarantee, this condition may still be met.)"* Based on the assumptions mentioned above, since the legal title of the Asset would be transferred to the OPG Trust, as well as, ALL risks and rewards, it can be concluded that the sale of the Asset is not a borrowing arrangement.

Conclusion: Based on the proposed terms of the sale agreement between the IESO and OPG Trust mentioned above, the deferral or variance accounts would be derecognized at the point where the IESO would derive no future economic benefit from it. This would occur where the IESO ultimately transfers the rights, risk and rewards related to those deferral or variance accounts to the OPG Trust. This would occur on the receipt of cash from the OPG Trust.

Appendix A:

Extract from the "DECISION and ORDER issued by the OEB on March 28, 2013" available on the IFRS website

Proceeding on the Ontario Energy Board's own motion to review the options for and ultimately determine the appropriate allocation and recovery of the Smart Metering Charge pursuant to section 19 of the Ontario Energy Board Act, 1998.

THE BOARD ORDERS THAT:

Effective May 1, 2013, the Smart Metering Entity charge to be levied and collected by the Smart Metering Entity from all Distributors identified in the Board's annual Yearbook of Electricity Distributors shall be $0.788 per month for each Residential and General Service <50kW customers for each distributor. The Smart Metering Entity charge shall be in effect from May 1, 2013 to October 31, 2018. The number of Residential and General Service <50kW customers to which the Smart Metering Entity charge will be applied to shall be in accordance with the methodology set forth in the Settlement Agreement attached as Appendix A.

http://www.ontarioenergyboard.ca/oeb/_Documents/EB-2012-0100/dec_order_IESO-SME_20130328.pdf

ONTARIO POWER GENERATION

February 27, 2017

Mr. Serge Imbrogno
Deputy Minister,
Ministry of Energy
4th Floor, Hearst Block
900 Bay Street
Toronto, Ontario
M7A 2E1

Dear Deputy:

Below is a summary of OPG's preliminary views on the implementation of the Province's proposed Global Adjustment Smoothing Account and financing structure. These views are contingent on the proposed terms and conditions that were sent to the Ministry of Energy on February 21, 2017.

Understanding that the finalization of the legal terms, the Trust indentures, financing structure and other detailed terms will take several months and will involve collaboration between legal counsel, input from capital markets, parties involved and other stakeholders, this letter is intended to provide the guideline and framework which could form the foundation of the plan.

Please do not hesitate to contact me if you have any questions regarding this summary.

Sincerely,

Mr. Ken Hartwick
Chief Financial Officer and Senior Vice President, Finance
Ontario Power Generation
W: 416-592-6985
C: 647-544-6985
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cc. Jeff Lyash, President and CEO, OPG

Background:

The Province has indicated that it will take steps to reduce electricity bills in the near term. It has identified reductions in the Global Adjustment Charge (GAC) charged to electricity customers as a means to achieve its policy goals. The Province is proposing to temporarily reduce the amount of the GAC charged to electricity customers (primarily RPP-eligible customers). The exact quantum and duration of the program is still not known but based on discussions with the Province GAC charges of approximately $2-5B per year for the next 5-10 years would be deferred and collected over future periods commencing after the deferral period. A combination of senior debt and subordinated debt (mainly sourced by additional equity from the shareholder) would be issued to fund the amount deferred. The financing cost of the debt and other costs of running the program would form part of the amounts recovered from customers over the term of the program.

The Province has requested that OPG administer the GAC deferral, because of OPG's participation in the market, regulatory knowledge and the potential ability to consolidate the activity and accounting with OPG. Given the significant amount of financing required for the GAC deferral, OPG has developed a financing structure (depicted below) to:

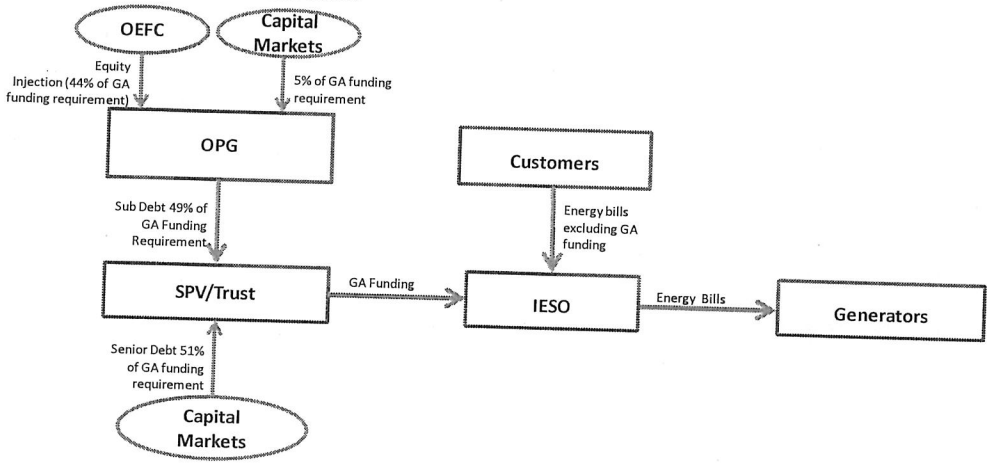
- restrict the risk to OPG;

- maximize the cost-effectiveness of the Trust or the Special Purpose Vehicle ("SPV") financing vehicle; and
- allow for consolidation into OPG financial statements.

The success of this structure is dependent on achieving a number of objectives which are reviewed in the following sections:

A. Ability to Recognize an Asset and Record Revenue
B. Ability to Consolidate the SPV into OPG
C. Ability to Finance
D. External Assessment
E. Risk Summary

All of the percentages shown in the graphic below are indicative and will be highly dependent on the legislation that the Province will enact:



Process:

The IESO will effectively sell the 'right to collect' deferred future revenue from ratepayers (GA Recovery Right asset) to the SPV in return for cash proceeds. In order for the SPV to purchase this asset the SPV will obtain the financing from two key sources: 51% directly from capital markets and 49% as subordinated debt from OPG. OPG will obtain 44% of this financing as an equity injection from the Province and 5% from capital markets.

A. Ability to Recognize an Asset and Record Revenue

Accounting Requirements under International Financial Reporting Standards (IFRS)

1) It is our understanding that the IESO and KPMG have concluded that the sale of this 'right to collect' future revenue (or regulatory asset) is not a financing transaction and will not be recorded as a financial liability. Based on that conclusion, the right to collect will be accounted for as an intangible asset in the SPV.

2) In order to the SPV to record this right as an intangible asset, the right must meet the following conditions:
   - The intangible asset must be separable and arise from a contractual or legal right (i.e. mandated by the Legislation and SPV Indenture Agreement).
   - The SPV must have the control and power to obtain future economic benefits from the intangible asset.
   - The SPV must be able to demonstrate that the intangible asset is purchased at fair value.

3) In order for the SPV to recognize appropriate revenue to offset any ongoing costs, the Legislation must require interest, carrying and administrative costs to be paid to the SPV on a monthly basis. This may result in additional amounts to be deferred to achieve the desired customer impact. Payment of revenue to the SPV is also important to service the interest expenses of the debt.

B. Ability to Consolidate the SPV into OPG under IFRS

OPG 'Control' of the SPV - Accounting Requirements

1) In order to meet the accounting definition of 'control', accounting guidance must be considered. There are no bright lines to determine whether OPG has exposure, or rights, to variable returns from its involvement with the SPV, or whether it has the ability to affect the returns of the SPV through its power over the SPV. Rather, all facts and circumstances are considered when assessing whether an entity has control over another entity. Based on the relevant accounting guidance under IFRS, OPG has proposed terms necessary to demonstrate that OPG has control over the SPV. OPG's external auditors, Ernst & Young, has provided their concurrence that based on the information provided to them to date that the following conditions should permit consolidation of the SPV by OPG.

Directive:

1. The SPV must be undertaken by OPG as a business initiative on its merits. A Shareholder Directive is to be limited to direct OPG to investigate the option of establishing a SPV vehicle to administer, finance and operate the Global Adjustment plan. The control, risk and rewards of that SPV will determine its consolidation into OPG as a business enterprise.

SPV:

2. The SPV should not operate in a predetermined way such that OPG does not have decision-making authority over the SPV's ongoing activities after its formation (i.e. should not operate on 'autopilot').
3. OPG must have the ability to appoint and remove the Trustee (or Board of Trustees), with no veto right by the Province. No party shall have the ability to remove OPG from its role and authority in the SPV.
4. The Province cannot have the right to veto OPG's decisions about the relevant activities of the SPV. OPG must have the power over the relevant activities of the SPV and be compensated. The relevant activities of the SPV include (but are not limited to) the evaluation and decisions on financing alternatives, duration, and the strategy to minimize financing costs. OPG must have the power to establish operating and capital budgets of the SPV.
5. OPG must have the power to determine or change operating and financing policies of the SPV, which will affect the variability of risks and returns.
6. The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following:
    - The SPV
    - Any of OPG's investments in the most subordinated debt of the Trust
7. OPG must own greater than 50% of the most subordinated debt and targeted to be no less than 5%[1] of the total debt of the SPV. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources. A quantitative analysis should be performed at a later date to corroborate the appropriateness of the 5% threshold to support that the 5% subordinated debt investment is sufficient to absorb most of the expected variability in the SPV.
8. OPG must have the ability to earn variable returns by exercising its authority, which shall be accomplished as follows:

[1] While the rest of the letter refers to a 10% investment in the most junior subordinated debt with OPG owning 5%, it should be noted that OPG should own more than 50% of the most subordinate debt. For simplicity, the degree to which OPG's ownership beyond 50% is not shown in this letter.

a. The cash flow from the restructured asset shall include interest determined based on a relevant benchmark that is appropriate relative to the restructured asset, plus an appropriate margin consistent with the relevant market and other risks
b. OPG shall have the authority to determine the financing strategy, which will vary the financing costs with the objective of enabling the SPV to achieve a more favourable return compared to the return from the restructured asset
c. The SPV shall establish classes of liabilities (senior, subordinated and the most subordinated). The classes would allow the SPV to delineate financing of lower risk investment and investment that would bear higher residual risk. The delineation would limit OPG's self-funded investment to a reasonable level in order to allow OPG to remain a self-sustaining entity.
d. OPG shall, through its ownership of the most subordinated liability, be able to capture and retain the pricing difference between cost of financing and benchmark for interest on the restructured asset, or any residual risk of restructured asset. The targeted return of the subordinated liability should be reflective of the underlying risks and compensate holders for active management that would be required.
e. OPG should participate in the detailed design of the above and the SPV documentation to ensure that it has substantive power and variability, which will allow OPG's Board of Directors to evaluate the opportunity as a business initiative instead of through a shareholder directive.

Nothwithstanding the above, under certain Defined Forced Majeure for emergency events (e.g. unlikely credit market event or disruption where it is not possible to borrow from the market at a reasonable rate), the OEFC may provide bridge financing beyond the designated percentage for a defined period. The relevant terms should ensure that this temporary measure does not detract from the rights of OPG to direct all of the relevant activities of the SPV. Additionally, OPG should not be protected from risk of loss by the OEFC with respect to its subordinated investment, nor should it lose its right to derive the residual returns should such bridge financing be required.

Legislation

9. The Legislation must require interest, carrying and administrative costs to be paid to the SPV on a monthly basis, so that the SPV is able to recognize appropriate revenue to offset any ongoing costs.
10. The Legislation must dictate the manner in which the restructured asset would be determined, collected, and the period of collection, so that the determination of the restructured asset will not be subject to the Province's decisions on an ongoing basis, but determined based on a formula. Alternatively, the Legislation may allow for an adjustment to the pre-determined deferral formula based on specific parameters that would limit the adjustment to the restructured asset. Adjustments beyond the specific parameters would require approval by the Board of Trustees.
11. The Legislation must be written to avoid legal or constitutional challenges and be irrevocable to reduce the cost of borrowing and with a specific formula which determines the deferral amount. As irrevocability would be difficult under Canadian law one mitigation would be to provide a Provincial guarantee which only applies with cancellation or amendment of the legislation.
12. The spirit of the above terms should be reflected in the SPV Indenture Agreement as well as Legislation, wherever possible.

2) The Trust is expected to be financed as follows:
   - 51% senior secured debt from external markets
   - 39% senior subordinated debt from OPG (via Province equity injection into OPG)

- 10% junior subordinated debt from OPG (5% from external markets and 5% from Province equity injection into OPG).

When assessing control, an investor shall consider the nature of its relationship with other parties and whether those parties are acting on the investor's behalf (i.e. they are 'de facto agents'). If OPG is assessed to be a 'de facto agent' of the Province, it will compromise the ability for OPG to consolidate the Trust. The split above is to meet the following conditions to ensure that OPG is not considered a 'de facto agent' of the Province:

- The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following:
  - The Trust
  - Any of OPG's investments in the most subordinated debt of the Trust
- OPG must own greater than 50% of the most subordinated debt and targeted to own no less than 5% of the total debt of the Trust. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources.

3) The Province will need to conclude on whether OPG still meets the definition of a Government Business Enterprise as defined under Public Sector Accounting Board standards in order to obtain the preferred consolidation treatment after the transaction. We also recommend that the Province to undertake the analysis deemed necessary to confirm the accounting treatment in its consolidated Public Accounts, including if the recognition of the intangible asset would result in an offsetting liability in the Public Accounts.

C. Ability to Finance

Property Right or Right to Collect
Legislative Requirements for Financing
The GA Recovery Right must be structured to encompass the following elements:

- Right to recover from and bill Ontario electricity customers for (1) the principal amount of GA that is being deferred, (2) all interest and other financing costs incurred in respect of the deferral of the GA, (3) all fees, expenses and other administrative costs associated with such financing;
- Repayment/amortization schedule as agreed by the IESO and any purchaser of such GA Recovery Right (or pursuant to a pre-defined schedule/formula that covers all of the purchaser's principal, interest and ongoing financing costs on a monthly basis);
- Repayment/amortization schedule must include a true up mechanism to ensure all costs associated with the deferral can be recovered from customers;
- IESO may dispose of the GA Recovery Right, provided that any such disposition shall be a true sale and absolute transfer to the purchaser of the IESO's right, title and interest in and to the GA Recovery Right;
- Purchaser will have the right to require the IESO (or any successor) to collect the principal amount of GA Recovery Right, together with interest, financing and administration costs, on the agreed repayment/amortization schedule;
- Right must be irrevocable and, if amended by future governments, debt holders have the right of action against the government to recover the amount outstanding including interest, fees, expenses and any damages resulting from the amendment;
- GA Recovery Right will not be subject to any set-off, counterclaim or other defence by the IESO or any successor or affiliated entity; and
- Make certain amendments to the Electricity Act to allow OPG to implement the SPV financing structure (e.g. allowing OPG to create subsidiaries and holding companies, and to have a beneficial interest in the SPV, etc). This would provide flexibility to accommodate possible variations to the financing structure that may be desirable over time.

Detailed legislative requirements are specified in the attachments as follows:

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.

Attachment 1

LEGISLATIVE REQUIREMENTS TO ALLOW DEFERRAL OF GLOBAL ADJUSTMENT AMOUNTS TO BE FINANCEABLE

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

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

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

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

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

1. The IESO will be empowered to create an asset (the "**Regulatory Asset**") consisting of all right, title and interest in and to:

   (a) right to recover from and bill Ontario electricity ratepayers for:

   (i) the principal amount of GA that is being deferred for collection;
   (ii) all interest and other financing costs incurred in respect of the deferral of the GA (whether through senior debt raised in the public markets or subordinated debt raised from OPG or others); and
   (iii) (subject to the comments in paragraph 5 below in respect of OPG's internal administrative costs only) all fees, expenses and other administrative costs associated with such financing, including up-front and ongoing financing costs and any indemnity payments;

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.

Attachment 2

STATUTORY AMENDMENTS

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

A. Amendments to Implement Structure

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

- **Section 53.1(1):** Amend to permit owning and operating generation facilities through subsidiaries (not only directly through OPG). In addition, amend to permit OPG to administer, manage, loan moneys to and have a beneficial interest in, if applicable, Financing Trust.

- **Section 53.2:** Amend to permit the Minister to acquire, hold, dispose of or otherwise deal with securities or debt obligations of, or any other interest in, OPG or any subsidiaries. This is to accommodate possible variations to the financing structure that may be desirable over time.

- **Section 53.■ (new):** New statutory section to permit the Minister to enter into arrangements relating to an exercise of powers under 53.2.

- **Section 53.■ (new)**: New statutory section providing that creditors of Financing Trust have no recourse to the assets of OPG or any of its subsidiaries (other than Financing Trust, if applicable). In addition, consideration should be given as to whether the Act should be amended so that the Financing Trust cannot be wound up or liquidated.

B. Miscellaneous Corporate Items to Address

- **OPG Articles:** Amend the OPG's articles to remove the private company restrictions.

- **MOA with Province:** Consider whether any amendments to OPG's MOA with the Province are required to contemplate the Financing Trust.

C. Amendments Under Electricity Act to Implement GA Smoothing

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

(i) Electricity Act:

- **Section ■ (New):** Establish a new power for the Minister to make directives to the IESO in relation to the global adjustment smoothing mechanism and, particularly, for purposes of establishing global adjustment smoothing amounts from time to time (expected to be monthly). To the extent possible, the directive power should be drafted so as to limit the ability for a future Minister to require the IESO to do anything that would materially and adversely affect the Financing Trust or its lenders. **[NTD: While our understanding is that the Minister would direct this, we note from other materials we have seen that OPG may instead be recommending a formula approach. It is not clear what the formula would look like, where it would be set out or how it would be applied and by whom]**

- **Paragraph 25.33(1):** This section says that IESO shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of market participants reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require IESO to ensure that, over time, payments by prescribed classes of market participants also reflect amounts paid to Financing Trust. **[NTD: Not certain this is needed if only to benefit residential and small business consumers, who are not market participants. May be needed in reference to payments from distributors and retailers]**

- **Paragraph 25.33(2):** This section says that distributors and retailers shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of consumers reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require distributors and retailers to ensure that, over time, payments by prescribed classes of consumers also reflect amounts paid to Financing Trust.

- **Note**: As described below, the regulation will need to include new requirements for the IESO to record the global adjustment smoothing amounts in one or more variance accounts and to use those amounts to offset amounts otherwise recorded in the variance accounts under Section 25.33(3) of the Act. For context, we note:

    - Section 25.33(3) says that adjustments under (1) or (2) relating to electricity consumed by consumers whose rates are determined by

the OEB under s. 79.16 of the OEB Act (i.e. RPP Customers) shall instead be made in accordance with the regulations to one or more variance accounts established and maintained by the IESO.

- Section 25.33(4) says IESO, distributors and retailers shall make and receive such payments, set-offs and credits as may be required or permitted by the regulations with respect to consumers described in (3), i.e. RPP Customers.

- Section 25.33(5) says that IESO shall establish and maintain such variance accounts as may be needed to record all amounts payable or receivable by it under 25.33.

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

- **Section 1(1):** Consider adding definitions for "Financing Trust" and "global adjustment smoothing amount" or such other terms as may be preferred.

- **Section 1.2(1) (New):** Add section providing that, for the purposes of this Regulation, the global adjustment smoothing amount for a month is the amount determined by the IESO in accordance with a directive from the Minister under section ■ of the Electricity Act in respect of the month. **[NTD: See above note re use of Minister directives]**

- **Section 1.2(2) (New):** Consider adding a section providing that the IESO shall publish the global adjustment smoothing amount for a month by no later than the 10th business day of the following month [to align with general publication requirements for global adjustment under s. 1.1(2)].

- **Section 10(1):** Amend formula for calculating Class B GA rate by subtracting the global adjustment smoothing amount for a month from "M", which is the total amount of the global adjustment for the month. The global adjustment smoothing amount could be designated as "X", such that the formula would be (M-X-N)/(P-Q). Define "X" as the global adjustment smoothing amount for the month as determined by the IESO in accordance with the Minister's directive under section ■ of the Electricity Act for the month. **[NTD: See above note re use of Minister directives]**

- **Section 10.1 (New):** Add new section to deal with adjustments under subsection 25.33(3) of the Act, i.e. in respect of RPP consumers. This section should require the IESO to establish, within the variance account(s) it maintains pursuant to subsection 25.33(3) of the Act, one or more subaccounts in which it shall record the global adjustment smoothing amounts applicable to the classes of consumers described in subsection 25.33(3) of the Act. This section must also specify that the IESO shall apply the amounts recorded in the subaccounts against the balances in the variance accounts for purposes of section 79.16(3) of the OEB Act.

- **Note:** This is a key aspect because, when the OEB determines RPP rates, it must take into account the balances in the variance accounts established by the IESO under s. 25.33 of the Electricity Act and make adjustments with a view to eliminating the balances within 12 months. This proposed new section 10.1 causes the IESO to reduce (in the near term) the variance account balances by the global adjustment smoothing amounts, as provided by Financing Trust, thereby enabling the OEB to determine RPP rates that, despite being lower for RPP consumers in the near term, still eliminate the relevant variance account balances within 12 months.

- **Paragraph 11(2)2.ii:** Amend the formula for calculating the allocation of global adjustment for a month to a licensed distributor that is a market participant by subtracting the global adjustment smoothing amount for a month from "M", which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as "X", such that the formula would be [(M-X-N) x (R+S-T)]/(P-Q). Define "X" as suggested under section 10(1).

- **Paragraph 11(2)3:** Amend the formula for calculating the allocation of global adjustment for a month to each Class B market participant by subtracting the global adjustment smoothing amount for a month from "M", which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as "X", such that the formula would be [(M-X-N) x U]/(P-Q). Define "X" as suggested under section 10(1).

- **Paragraph 16(7)4:** Consider amending the description of "Global Adjustment" that is required to be included on certain invoices so as to inform consumers that their portion of the global adjustment for the month (i) may have been reduced by the application of a global adjustment smoothing amount from the Financing Trust, or (ii) may include amounts payable to the Financing Trust in respect of global adjustment smoothing amounts previously applied.

- **Section 20(1):** This section establishes an obligation for the Ontario Electricity Financial Corporation and every licensed distributor that is a market participant to give the IESO such information as the IESO may require for the purposes of the Regulation in the form specified by the IESO and before the expiry of the period specified by the IESO. Consider amending to extend this obligation to the Financing Trust.

- **Section 20(6):** This section provides that on request by the OEB, the IESO, a licensed distributor, an embedded generator, a retailer or the OEFC shall give the OEB such information relating to this Regulation as the OEB may require, in the form and within the period specified by the OEB. Consider amending to extend this obligation to the Financing Trust.

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

Amendments to the *Ontario Energy Board Act*, including amendments to O. Reg. 95/05 (Classes of Consumers and Determination of Rates) and the introduction of a new regulation, would be needed to implement a cost recovery process for the Financing Trust in relation to the global adjustment smoothing mechanism, potentially with limited OEB oversight, as follows:

(i) Ontario Energy Board Act:

- **Section 78(3.3):** This provision establishes an obligation for the OEB, when determining rates for the retailing of electricity, to take into account balances in variance accounts established under section 25.33 of the Electricity Act and to make adjustments "with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct." Consider whether any amendments are needed, and confirm this works with the framework being proposed.

- **Section 78.7 (New):** We understand that the Province may want the OEB to have an oversight role. One possible approach would be to establish a new statutory section establishing that the IESO shall make payments to the Financing Trust with respect to the internal administrative costs incurred by the Financing Trust in connection with the purchase and management of the Regulatory Asset and the Financing Trust. Such payments by the IESO would need to be made in accordance with the order of the OEB then in effect, which orders shall be made by the OEB in accordance with rules prescribed under a new regulation.

    - The new regulation would need to be clear that the OEB does not have jurisdiction to consider the principal amount or any interest, financing costs, third party fees or expenses. Rather, OEB's role would be limited to considering the internal administrative costs of the Financing Trust and ensuring the Financing Trust receives an appropriate fee for its services, all of which would be recovered by the Financing Trust from the IESO, which would collect those amounts in the global adjustment. Note that, if this approach is accepted, the IESO and distributors and retailers would need the authority to collect such amounts as part of the GA and IESO would need the authority to pay such amounts to the Financing Trust. As such, additional amendments would be needed under O. Reg. 429/04.

- **Note:** Section 79.16 of the OEB Act does not require changes, but the significance of this provision should be understood.

    - Section 79.16 gives the OEB responsibility for determining electricity commodity prices for eligible consumers. Eligibility is determined under Reg. 95/05 (Classes of Consumers and Determination of Rates), which is also known as the Regulated Price Plan (RPP) Regulation.
    - Section 4(2) of the RPP Regulation defines RPP-eligible consumers as low volume consumers (i.e. those who annually use less than 150,000 kWh

or such other amount as prescribed), consumers with demand of 50 kW or less, residential consumers that have accounts with distributors, consumers who annually use 150,000 to 250,000 kW of electricity, and consumers who have accounts with distributors if in the farming business.

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

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

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

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

- If the OEB is to be given the role of reviewing and approving the recovery of OPG's internal administrative costs for the Financing Trust under the potential section 78.7 (see above), then this regulation should describe the process and criteria pursuant through which the OEB would determine the amounts that the IESO would be required to collect through the global adjustment, in accordance with section 25.33 of the Electricity Act, and pay to the Financing Trust in respect of the provision of global adjustment smoothing amounts. This part of the regulation should establish:

    - any reporting requirements from the Financing Trust and/or the IESO to the OEB in connection with the global adjustment smoothing mechanism;
    - the frequency of the OEB making determinations under this part of the regulation;
    - the process through which the OEB shall make these determinations, which should be a streamlined administrative process rather than a public hearing process or, if a hearing is needed, then the scope of the proceeding should be clearly and narrowly constrained so as to deter intervenor involvement, lengthy proceedings and reduce/eliminate risk to recovery by Financing Trust;

- the basis for the OEB's determinations as to the payments that shall be made to the Financing Trust, which should specify that:
  - the Financing Trust shall recover its prudently incurred internal administrative costs on a forecast basis each year;
  - the Financing Trust shall receive an appropriate fee each year (with some guidance as to what would be appropriate); and
  - the approved payment amounts shall be collected by the IESO through the global adjustment and paid to the Financing Trust in accordance with the order of the OEB then in effect. Note that O. Reg. 429/04 would likely need amendments to permit IESO (and distributors and retailers) to collect these amounts through the global adjustment.

GA Smoothing – OPG Accounting Considerations

- An SPV/Trust is a stand-alone entity able to conduct business separately under a Trust agreement

The conditions required for OPG to consolidate the SPV/Trust are outlined in the following table

Issue	Response
1. Decision Making	• OPG must have decision making authority on the operation of the SPV/Trust (without a veto right by the Province), including naming of trustees, establishing operating plans and budgets, setting or changing financing policies. • The SPV/Trust while operating within the legislation, must be controlled by OPG to operate freely and to alter terms and conditions not specified in the legislation to ensure recovery of the deferred amounts
2. Business Risk	• The SPV/Trust must have variability of returns as a normal business enterprise would, including such things as interest charged on deferred amounts, decisions on how to finance these deferred amounts, the ability to make / lose and keep any spread from financing
3. Funding	• The Province cannot directly or indirectly fund more than 50% of SPV/Trust or any investment in the SPV/Trust • OPG must own at least 50% of the most exposed equity /sub-debt in the SPV/Trust
4. Directive	• Directive that is issued should not be prescriptive or direct OPG to set up this business. The directive should only be "guiding" i.e. to allow OPG to evaluate options and put forward to the OPG Board a recommended plan for Shareholder approval

GA Smoothing – OPG Accounting Considerations - continued

Issue	Response
5. Other required Attributes:	The legislation that supports the formation of the SPV/Trust must have the following attributes: • Must require interest, carrying and administrative costs be paid to the Trust to allow for Revenue recognition • The amount to be deferred must either be specified or be calculated based on a specific formula that is not subject to ongoing decision making by the Province. **The Province cannot have the ability to override this formula** • Legislation should be written to avoid the possibility of being revoked with wording to ensure the SPV/Trust and its debt holders would have their capital guaranteed and paid for directly by the Province if such a situation were to happen • The spirit of the legislation should be reflected in the Trust Indenture Agreement

GA Financing Structure Requirements

KEY ELEMENTS REQUIRED TO ENSURE THE DEFERRAL OF GA CHARGES CAN BE FINANCED:

Creation of Strong Property Rights

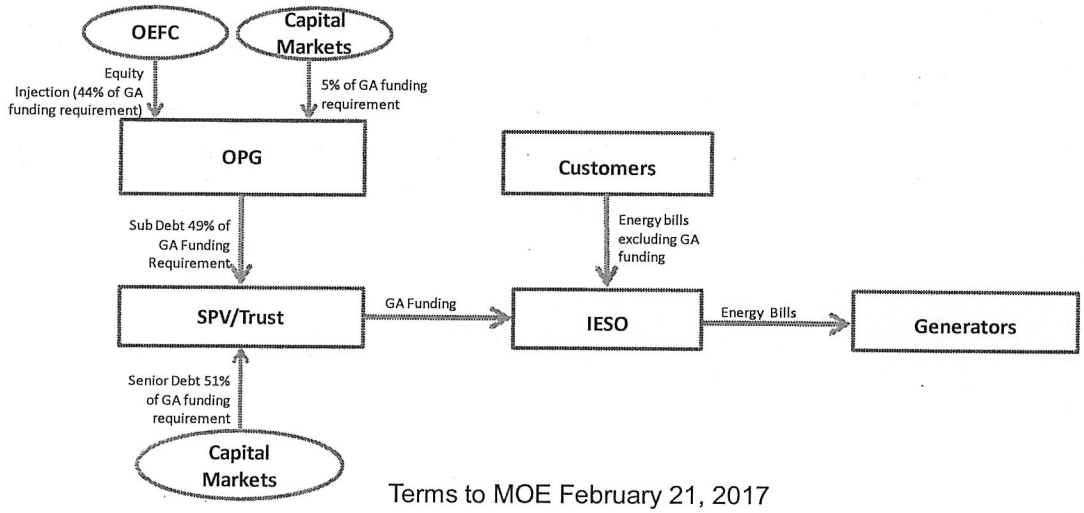
- Legislation enshrines the ability of the IESO to create a Right to charge customers in the future for the Global Adjustment (GA) deferred today including principal amount deferred, interest and other financing costs on the amount deferred and fees, expenses and other administrative costs.
- The Right can be sold to an appropriate Trust or Special Purpose Vehicle (SPV) to obtain funds to pay amounts due to generators under contracts or regulation. These SPVs are generally single purpose entities with no other operations that could add risk to the entity, 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.
- Right must be irrevocable and if the Right is amended by future governments the 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.
- Right must specify the recovery period or the mechanism for setting the recovery rate including true up of the rate to ensure all amounts are recovered

Economic Factors

- Limits on the recovery amount (principal, interest, fees and expenses) charged to customers in future periods must have compensating elements such as longer recovery period to ensure the full amount deferred plus interest, financing and other administration costs is recovered from customers.
- Need to balance customer relief with debt holder risk. Longer recovery periods and larger deferred balances increase risk to the debt holder of future government intervention.
- The amount required by the SPV to purchase and service the Right will be funded 51% from debt holders, 5% from OPG through capital markets and 44% from OPG via equity injection to OPG from the Province. The funding from OPG will be loaned to the SPV as subordinated debt.

GA Financing Structure Requirements - continued

- SPV will be used to raise the GA financing and ring fence OPG from its legal obligations
- SPV will be structured to allow for GBE accounting consolidation into OPG
- Given that SPV will be consolidated into OPG for accounting purposes, the significant amount of debt required to fund the GA deferral will have a severe impact on OPG's credit rating. If 100% of the requirement is funded by debt OPG would be downgraded.
- To manage this exposure and minimize the cost of funding. The required funding would be split into 2 buckets:
    1. 56% from capital markets, and
    2. The remainder provided by the Province via equity injection, which would be loaned to SPV as subordinated debt.
- The use of equity to fund a portion of the GA deferral also allows for an improvement in both Net Income and EBITDA as incremental revenue is captured by the increase in the value of the deferral which would offset the fiscal impact of the borrowing at Province level.
- Credit rating metrics are generally maintained within established limits.



Terms to MOE February 21, 2017

INDICATORs 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" that confers the power to govern the financial and operating policies of the organization
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 by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members
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, either on a net or line-by-line basis
Establish borrowing or investment limits or restrict the organization's investments
Restrict the revenue-generating capacity of the organization, notably the sources of revenue
Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources

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.]**

Maksymuik, Amanda (ENERGY)

From: Rehob, James (ENERGY)
Sent: March-03-17 3:34 PM
To: Maksymuik, Amanda (ENERGY)
Subject: FW: Documents to use for GA structure
Attachments: Overview of Legislative Changes for Financeability 23020589_3.docx; GA Smoothing - Potential Regulatory Framework (Confidential) - February 27 2017 (2).docx; Global Adjustment Deferral_White Paper_OPG r1a.pdf

Importance: High

From: Shear, Dan (ENERGY)
Sent: Friday, March 03, 2017 12:59 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Cc: Rehob, James (ENERGY)
Subject: Documents to use for GA structure
Importance: High

Hi Carolyn,

Forgive me if I am three steps behind everyone else, but I want to confirm which documents we should draw upon (at least at this preliminary stage) for the details/principles related to the GA deferral construct.

For e.g., I have three documents that are fairly recent that discuss the construct (copies attached):

- Legislative Requirements to Allow Deferral of GA Amounts to be Financeable (from OPG – attached to Feb27/17 letter from Ken Hartwick to Serge Imbrogno
- GA Smoothing – OPG Accounting Considerations (footer says "Terms to MOE Feb21/17")
- GA Deferral – Potential Framework for the "Regulated Assets"

It would be helpful (for me at least) to have a clear understanding of the starting point details (such as they are). Would you have a moment to discuss before the 1:30 call?

Dan

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]

ONTARIO POWER GENERATION

February 27, 2017

Mr. Serge Imbrogno
Deputy Minister,
Ministry of Energy
4th Floor, Hearst Block
900 Bay Street
Toronto, Ontario
M7A 2E1

Dear Deputy:

Below is a summary of OPG's preliminary views on the implementation of the Province's proposed Global Adjustment Smoothing Account and financing structure. These views are contingent on the proposed terms and conditions that were sent to the Ministry of Energy on February 21, 2017.

Understanding that the finalization of the legal terms, the Trust indentures, financing structure and other detailed terms will take several months and will involve collaboration between legal counsel, input from capital markets, parties involved and other stakeholders, this letter is intended to provide the guideline and framework which could form the foundation of the plan.

Please do not hesitate to contact me if you have any questions regarding this summary.

Sincerely,

Mr. Ken Hartwick
Chief Financial Officer and Senior Vice President, Finance
Ontario Power Generation
W: 416-592-6985
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:

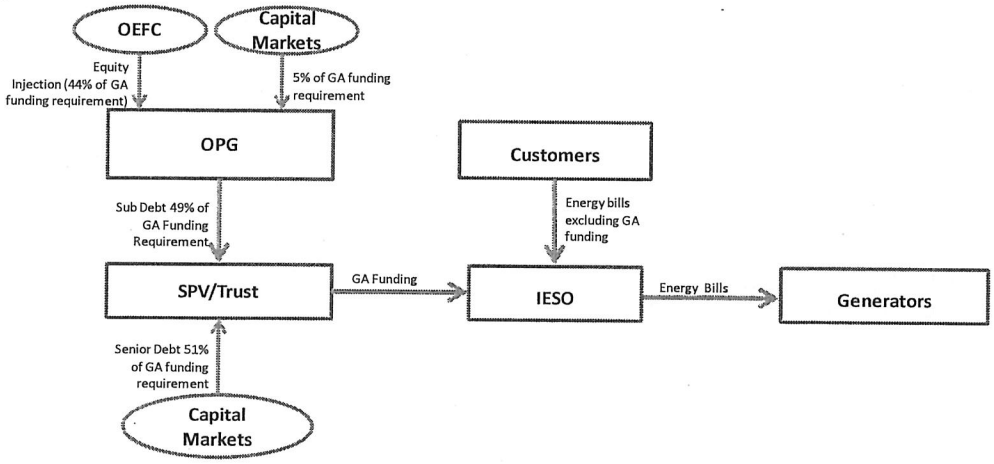
- restrict the risk to OPG;

- maximize the cost-effectiveness of the Trust or the Special Purpose Vehicle ("SPV") financing vehicle; and
- allow for consolidation into OPG financial statements.

The success of this structure is dependent on achieving a number of objectives which are reviewed in the following sections:

A. Ability to Recognize an Asset and Record Revenue
B. Ability to Consolidate the SPV into OPG
C. Ability to Finance
D. External Assessment
E. Risk Summary

All of the percentages shown in the graphic below are indicative and will be highly dependent on the legislation that the Province will enact:



Process:

The IESO will effectively sell the 'right to collect' deferred future revenue from ratepayers (GA Recovery Right asset) to the SPV in return for cash proceeds. In order for the SPV to purchase this asset the SPV will obtain the financing from two key sources: 51% directly from capital markets and 49% as subordinated debt from OPG. OPG will obtain 44% of this financing as an equity injection from the Province and 5% from capital markets.

A. Ability to Recognize an Asset and Record Revenue

Accounting Requirements under International Financial Reporting Standards (IFRS)

1) It is our understanding that the IESO and KPMG have concluded that the sale of this 'right to collect' future revenue (or regulatory asset) is not a financing transaction and will not be recorded as a financial liability. Based on that conclusion, the right to collect will be accounted for as an intangible asset in the SPV.

2) In order to the SPV to record this right as an intangible asset, the right must meet the following conditions:
   - The intangible asset must be separable and arise from a contractual or legal right (i.e. mandated by the Legislation and SPV Indenture Agreement).
   - The SPV must have the control and power to obtain future economic benefits from the intangible asset.
   - The SPV must be able to demonstrate that the intangible asset is purchased at fair value.

3) In order for the SPV to recognize appropriate revenue to offset any ongoing costs, the Legislation must require interest, carrying and administrative costs to be paid to the SPV on a monthly basis. This may result in additional amounts to be deferred to achieve the desired customer impact. Payment of revenue to the SPV is also important to service the interest expenses of the debt.

B. Ability to Consolidate the SPV into OPG under IFRS

OPG 'Control' of the SPV - Accounting Requirements

1) In order to meet the accounting definition of 'control', accounting guidance must be considered. There are no bright lines to determine whether OPG has exposure, or rights, to variable returns from its involvement with the SPV, or whether it has the ability to affect the returns of the SPV through its power over the SPV. Rather, all facts and circumstances are considered when assessing whether an entity has control over another entity. Based on the relevant accounting guidance under IFRS, OPG has proposed terms necessary to demonstrate that OPG has control over the SPV. OPG's external auditors, Ernst & Young, has provided their concurrence that based on the information provided to them to date that the following conditions should permit consolidation of the SPV by OPG.

Directive:

1. The SPV must be undertaken by OPG as a business initiative on its merits. A Shareholder Directive is to be limited to direct OPG to investigate the option of establishing a SPV vehicle to administer, finance and operate the Global Adjustment plan. The control, risk and rewards of that SPV will determine its consolidation into OPG as a business enterprise.

SPV:

2. The SPV should not operate in a predetermined way such that OPG does not have decision-making authority over the SPV's ongoing activities after its formation (i.e. should not operate on 'autopilot').
3. OPG must have the ability to appoint and remove the Trustee (or Board of Trustees), with no veto right by the Province. No party shall have the ability to remove OPG from its role and authority in the SPV.
4. The Province cannot have the right to veto OPG's decisions about the relevant activities of the SPV. OPG must have the power over the relevant activities of the SPV and be compensated. The relevant activities of the SPV include (but are not limited to) the evaluation and decisions on financing alternatives, duration, and the strategy to minimize financing costs. OPG must have the power to establish operating and capital budgets of the SPV.
5. OPG must have the power to determine or change operating and financing policies of the SPV, which will affect the variability of risks and returns.
6. The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following:
    - The SPV
    - Any of OPG's investments in the most subordinated debt of the Trust
7. OPG must own greater than 50% of the most subordinated debt and targeted to be no less than 5%[1] of the total debt of the SPV. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources. A quantitative analysis should be performed at a later date to corroborate the appropriateness of the 5% threshold to support that the 5% subordinated debt investment is sufficient to absorb most of the expected variability in the SPV.
8. OPG must have the ability to earn variable returns by exercising its authority, which shall be accomplished as follows:

[1] While the rest of the letter refers to a 10% investment in the most junior subordinated debt with OPG owning 5%, it should be noted that OPG should own more than 50% of the most subordinate debt. For simplicity, the degree to which OPG's ownership beyond 50% is not shown in this letter.

a. The cash flow from the restructured asset shall include interest determined based on a relevant benchmark that is appropriate relative to the restructured asset, plus an appropriate margin consistent with the relevant market and other risks
b. OPG shall have the authority to determine the financing strategy, which will vary the financing costs with the objective of enabling the SPV to achieve a more favourable return compared to the return from the restructured asset
c. The SPV shall establish classes of liabilities (senior, subordinated and the most subordinated). The classes would allow the SPV to delineate financing of lower risk investment and investment that would bear higher residual risk. The delineation would limit OPG's self-funded investment to a reasonable level in order to allow OPG to remain a self-sustaining entity.
d. OPG shall, through its ownership of the most subordinated liability, be able to capture and retain the pricing difference between cost of financing and benchmark for interest on the restructured asset, or any residual risk of restructured asset. The targeted return of the subordinated liability should be reflective of the underlying risks and compensate holders for active management that would be required.
e. OPG should participate in the detailed design of the above and the SPV documentation to ensure that it has substantive power and variability, which will allow OPG's Board of Directors to evaluate the opportunity as a business initiative instead of through a shareholder directive.

Nothwithstanding the above, under certain Defined Forced Majeure for emergency events (e.g. unlikely credit market event or disruption where it is not possible to borrow from the market at a reasonable rate), the OEFC may provide bridge financing beyond the designated percentage for a defined period. The relevant terms should ensure that this temporary measure does not detract from the rights of OPG to direct all of the relevant activities of the SPV. Additionally, OPG should not be protected from risk of loss by the OEFC with respect to its subordinated investment, nor should it lose its right to derive the residual returns should such bridge financing be required.

Legislation

9. The Legislation must require interest, carrying and administrative costs to be paid to the SPV on a monthly basis, so that the SPV is able to recognize appropriate revenue to offset any ongoing costs.
10. The Legislation must dictate the manner in which the restructured asset would be determined, collected, and the period of collection, so that the determination of the restructured asset will not be subject to the Province's decisions on an ongoing basis, but determined based on a formula. Alternatively, the Legislation may allow for an adjustment to the pre-determined deferral formula based on specific parameters that would limit the adjustment to the restructured asset. Adjustments beyond the specific parameters would require approval by the Board of Trustees.
11. The Legislation must be written to avoid legal or constitutional challenges and be irrevocable to reduce the cost of borrowing and with a specific formula which determines the deferral amount. As irrevocability would be difficult under Canadian law one mitigation would be to provide a Provincial guarantee which only applies with cancellation or amendment of the legislation.
12. The spirit of the above terms should be reflected in the SPV Indenture Agreement as well as Legislation, wherever possible.

2) The Trust is expected to be financed as follows:
   - 51% senior secured debt from external markets
   - 39% senior subordinated debt from OPG (via Province equity injection into OPG)

- 10% junior subordinated debt from OPG (5% from external markets and 5% from Province equity injection into OPG).

When assessing control, an investor shall consider the nature of its relationship with other parties and whether those parties are acting on the investor's behalf (i.e. they are 'de facto agents'). If OPG is assessed to be a 'de facto agent' of the Province, it will compromise the ability for OPG to consolidate the Trust. The split above is to meet the following conditions to ensure that OPG is not considered a 'de facto agent' of the Province:

- The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following:
  - The Trust
  - Any of OPG's investments in the most subordinated debt of the Trust
- OPG must own greater than 50% of the most subordinated debt and targeted to own no less than 5% of the total debt of the Trust. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources.

3) The Province will need to conclude on whether OPG still meets the definition of a Government Business Enterprise as defined under Public Sector Accounting Board standards in order to obtain the preferred consolidation treatment after the transaction. We also recommend that the Province to undertake the analysis deemed necessary to confirm the accounting treatment in its consolidated Public Accounts, including if the recognition of the intangible asset would result in an offsetting liability in the Public Accounts.

C. Ability to Finance

Property Right or Right to Collect
Legislative Requirements for Financing

The GA Recovery Right must be structured to encompass the following elements:

- Right to recover from and bill Ontario electricity customers for (1) the principal amount of GA that is being deferred, (2) all interest and other financing costs incurred in respect of the deferral of the GA, (3) all fees, expenses and other administrative costs associated with such financing;
- Repayment/amortization schedule as agreed by the IESO and any purchaser of such GA Recovery Right (or pursuant to a pre-defined schedule/formula that covers all of the purchaser's principal, interest and ongoing financing costs on a monthly basis);
- Repayment/amortization schedule must include a true up mechanism to ensure all costs associated with the deferral can be recovered from customers;
- IESO may dispose of the GA Recovery Right, provided that any such disposition shall be a true sale and absolute transfer to the purchaser of the IESO's right, title and interest in and to the GA Recovery Right;
- Purchaser will have the right to require the IESO (or any successor) to collect the principal amount of GA Recovery Right, together with interest, financing and administration costs, on the agreed repayment/amortization schedule;
- Right must be irrevocable and, if amended by future governments, debt holders have the right of action against the government to recover the amount outstanding including interest, fees, expenses and any damages resulting from the amendment;
- GA Recovery Right will not be subject to any set-off, counterclaim or other defence by the IESO or any successor or affiliated entity; and
- Make certain amendments to the Electricity Act to allow OPG to implement the SPV financing structure (e.g. allowing OPG to create subsidiaries and holding companies, and to have a beneficial interest in the SPV, etc). This would provide flexibility to accommodate possible variations to the financing structure that may be desirable over time.

Detailed legislative requirements are specified in the attachments as follows:

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.

Attachment 1

LEGISLATIVE REQUIREMENTS TO ALLOW DEFERRAL OF GLOBAL ADJUSTMENT AMOUNTS TO BE FINANCEABLE

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

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

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

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

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

1. The IESO will be empowered to create an asset (the "**Regulatory Asset**") consisting of all right, title and interest in and to:

   (a) right to recover from and bill Ontario electricity ratepayers for:

   (i) the principal amount of GA that is being deferred for collection;
   (ii) all interest and other financing costs incurred in respect of the deferral of the GA (whether through senior debt raised in the public markets or subordinated debt raised from OPG or others); and
   (iii) (subject to the comments in paragraph 5 below in respect of OPG's internal administrative costs only) all fees, expenses and other administrative costs associated with such financing, including up-front and ongoing financing costs and any indemnity payments;

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.

Attachment 2

STATUTORY AMENDMENTS

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

A. Amendments to Implement Structure

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

- **Section 53.1(1):** Amend to permit owning and operating generation facilities through subsidiaries (not only directly through OPG). In addition, amend to permit OPG to administer, manage, loan moneys to and have a beneficial interest in, if applicable, Financing Trust.

- **Section 53.2:** Amend to permit the Minister to acquire, hold, dispose of or otherwise deal with securities or debt obligations of, or any other interest in, OPG or any subsidiaries. This is to accommodate possible variations to the financing structure that may be desirable over time.

- **Section 53.■ (new):** New statutory section to permit the Minister to enter into arrangements relating to an exercise of powers under 53.2.

- **Section 53.■ (new)**: New statutory section providing that creditors of Financing Trust have no recourse to the assets of OPG or any of its subsidiaries (other than Financing Trust, if applicable). In addition, consideration should be given as to whether the Act should be amended so that the Financing Trust cannot be wound up or liquidated.

B. Miscellaneous Corporate Items to Address

- **OPG Articles:** Amend the OPG's articles to remove the private company restrictions.

- **MOA with Province:** Consider whether any amendments to OPG's MOA with the Province are required to contemplate the Financing Trust.

C. Amendments Under Electricity Act to Implement GA Smoothing

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

(i) Electricity Act:

- **Section ■ (New):** Establish a new power for the Minister to make directives to the IESO in relation to the global adjustment smoothing mechanism and, particularly, for purposes of establishing global adjustment smoothing amounts from time to time (expected to be monthly). To the extent possible, the directive power should be drafted so as to limit the ability for a future Minister to require the IESO to do anything that would materially and adversely affect the Financing Trust or its lenders. **[NTD: While our understanding is that the Minister would direct this, we note from other materials we have seen that OPG may instead be recommending a formula approach. It is not clear what the formula would look like, where it would be set out or how it would be applied and by whom]**

- **Paragraph 25.33(1):** This section says that IESO shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of market participants reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require IESO to ensure that, over time, payments by prescribed classes of market participants also reflect amounts paid to Financing Trust. **[NTD: Not certain this is needed if only to benefit residential and small business consumers, who are not market participants. May be needed in reference to payments from distributors and retailers]**

- **Paragraph 25.33(2):** This section says that distributors and retailers shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of consumers reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require distributors and retailers to ensure that, over time, payments by prescribed classes of consumers also reflect amounts paid to Financing Trust.

- **Note**: As described below, the regulation will need to include new requirements for the IESO to record the global adjustment smoothing amounts in one or more variance accounts and to use those amounts to offset amounts otherwise recorded in the variance accounts under Section 25.33(3) of the Act. For context, we note:

    - Section 25.33(3) says that adjustments under (1) or (2) relating to electricity consumed by consumers whose rates are determined by

the OEB under s. 79.16 of the OEB Act (i.e. RPP Customers) shall instead be made in accordance with the regulations to one or more variance accounts established and maintained by the IESO.

- Section 25.33(4) says IESO, distributors and retailers shall make and receive such payments, set-offs and credits as may be required or permitted by the regulations with respect to consumers described in (3), i.e. RPP Customers.

- Section 25.33(5) says that IESO shall establish and maintain such variance accounts as may be needed to record all amounts payable or receivable by it under 25.33.

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

- **Section 1(1):** Consider adding definitions for "Financing Trust" and "global adjustment smoothing amount" or such other terms as may be preferred.

- **Section 1.2(1) (New):** Add section providing that, for the purposes of this Regulation, the global adjustment smoothing amount for a month is the amount determined by the IESO in accordance with a directive from the Minister under section ■ of the Electricity Act in respect of the month. **[NTD: See above note re use of Minister directives]**

- **Section 1.2(2) (New):** Consider adding a section providing that the IESO shall publish the global adjustment smoothing amount for a month by no later than the 10th business day of the following month [to align with general publication requirements for global adjustment under s. 1.1(2)].

- **Section 10(1):** Amend formula for calculating Class B GA rate by subtracting the global adjustment smoothing amount for a month from "M", which is the total amount of the global adjustment for the month. The global adjustment smoothing amount could be designated as "X", such that the formula would be (M-X-N)/(P-Q). Define "X" as the global adjustment smoothing amount for the month as determined by the IESO in accordance with the Minister's directive under section ■ of the Electricity Act for the month. **[NTD: See above note re use of Minister directives]**

- **Section 10.1 (New):** Add new section to deal with adjustments under subsection 25.33(3) of the Act, i.e. in respect of RPP consumers. This section should require the IESO to establish, within the variance account(s) it maintains pursuant to subsection 25.33(3) of the Act, one or more subaccounts in which it shall record the global adjustment smoothing amounts applicable to the classes of consumers described in subsection 25.33(3) of the Act. This section must also specify that the IESO shall apply the amounts recorded in the subaccounts against the balances in the variance accounts for purposes of section 79.16(3) of the OEB Act.

- **Note:** This is a key aspect because, when the OEB determines RPP rates, it must take into account the balances in the variance accounts established by the IESO under s. 25.33 of the Electricity Act and make adjustments with a view to eliminating the balances within 12 months. This proposed new section 10.1 causes the IESO to reduce (in the near term) the variance account balances by the global adjustment smoothing amounts, as provided by Financing Trust, thereby enabling the OEB to determine RPP rates that, despite being lower for RPP consumers in the near term, still eliminate the relevant variance account balances within 12 months.

- **Paragraph 11(2)2.ii:** Amend the formula for calculating the allocation of global adjustment for a month to a licensed distributor that is a market participant by subtracting the global adjustment smoothing amount for a month from "M", which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as "X", such that the formula would be [(M-X-N) x (R+S-T)]/(P-Q). Define "X" as suggested under section 10(1).

- **Paragraph 11(2)3:** Amend the formula for calculating the allocation of global adjustment for a month to each Class B market participant by subtracting the global adjustment smoothing amount for a month from "M", which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as "X", such that the formula would be [(M-X-N) x U]/(P-Q). Define "X" as suggested under section 10(1).

- **Paragraph 16(7)4:** Consider amending the description of "Global Adjustment" that is required to be included on certain invoices so as to inform consumers that their portion of the global adjustment for the month (i) may have been reduced by the application of a global adjustment smoothing amount from the Financing Trust, or (ii) may include amounts payable to the Financing Trust in respect of global adjustment smoothing amounts previously applied.

- **Section 20(1):** This section establishes an obligation for the Ontario Electricity Financial Corporation and every licensed distributor that is a market participant to give the IESO such information as the IESO may require for the purposes of the Regulation in the form specified by the IESO and before the expiry of the period specified by the IESO. Consider amending to extend this obligation to the Financing Trust.

- **Section 20(6):** This section provides that on request by the OEB, the IESO, a licensed distributor, an embedded generator, a retailer or the OEFC shall give the OEB such information relating to this Regulation as the OEB may require, in the form and within the period specified by the OEB. Consider amending to extend this obligation to the Financing Trust.

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

Amendments to the *Ontario Energy Board Act*, including amendments to O. Reg. 95/05 (Classes of Consumers and Determination of Rates) and the introduction of a new regulation, would be needed to implement a cost recovery process for the Financing Trust in relation to the global adjustment smoothing mechanism, potentially with limited OEB oversight, as follows:

(i) Ontario Energy Board Act:

- **Section 78(3.3):** This provision establishes an obligation for the OEB, when determining rates for the retailing of electricity, to take into account balances in variance accounts established under section 25.33 of the Electricity Act and to make adjustments "with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct." Consider whether any amendments are needed, and confirm this works with the framework being proposed.

- **Section 78.7 (New):** We understand that the Province may want the OEB to have an oversight role. One possible approach would be to establish a new statutory section establishing that the IESO shall make payments to the Financing Trust with respect to the internal administrative costs incurred by the Financing Trust in connection with the purchase and management of the Regulatory Asset and the Financing Trust. Such payments by the IESO would need to be made in accordance with the order of the OEB then in effect, which orders shall be made by the OEB in accordance with rules prescribed under a new regulation.

    - The new regulation would need to be clear that the OEB does not have jurisdiction to consider the principal amount or any interest, financing costs, third party fees or expenses. Rather, OEB's role would be limited to considering the internal administrative costs of the Financing Trust and ensuring the Financing Trust receives an appropriate fee for its services, all of which would be recovered by the Financing Trust from the IESO, which would collect those amounts in the global adjustment. Note that, if this approach is accepted, the IESO and distributors and retailers would need the authority to collect such amounts as part of the GA and IESO would need the authority to pay such amounts to the Financing Trust. As such, additional amendments would be needed under O. Reg. 429/04.

- **Note:** Section 79.16 of the OEB Act does not require changes, but the significance of this provision should be understood.

    - Section 79.16 gives the OEB responsibility for determining electricity commodity prices for eligible consumers. Eligibility is determined under Reg. 95/05 (Classes of Consumers and Determination of Rates), which is also known as the Regulated Price Plan (RPP) Regulation.
    - Section 4(2) of the RPP Regulation defines RPP-eligible consumers as low volume consumers (i.e. those who annually use less than 150,000 kWh

or such other amount as prescribed), consumers with demand of 50 kW or less, residential consumers that have accounts with distributors, consumers who annually use 150,000 to 250,000 kW of electricity, and consumers who have accounts with distributors if in the farming business.

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

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

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

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

- If the OEB is to be given the role of reviewing and approving the recovery of OPG's internal administrative costs for the Financing Trust under the potential section 78.7 (see above), then this regulation should describe the process and criteria pursuant through which the OEB would determine the amounts that the IESO would be required to collect through the global adjustment, in accordance with section 25.33 of the Electricity Act, and pay to the Financing Trust in respect of the provision of global adjustment smoothing amounts. This part of the regulation should establish:

    - any reporting requirements from the Financing Trust and/or the IESO to the OEB in connection with the global adjustment smoothing mechanism;
    - the frequency of the OEB making determinations under this part of the regulation;
    - the process through which the OEB shall make these determinations, which should be a streamlined administrative process rather than a public hearing process or, if a hearing is needed, then the scope of the proceeding should be clearly and narrowly constrained so as to deter intervenor involvement, lengthy proceedings and reduce/eliminate risk to recovery by Financing Trust;

- the basis for the OEB's determinations as to the payments that shall be made to the Financing Trust, which should specify that:
  - the Financing Trust shall recover its prudently incurred internal administrative costs on a forecast basis each year;
  - the Financing Trust shall receive an appropriate fee each year (with some guidance as to what would be appropriate); and
  - the approved payment amounts shall be collected by the IESO through the global adjustment and paid to the Financing Trust in accordance with the order of the OEB then in effect. Note that O. Reg. 429/04 would likely need amendments to permit IESO (and distributors and retailers) to collect these amounts through the global adjustment.

WHITE PAPERS – WORKING DRAFT #7

Independent Electricity System Operator ("IESO" or the "Company") is considering making changes in its accounting policies to reflect the balances of market participants within the IESO-administered markets (see separate technical analysis) and the economic impacts of rate regulation, as the Company believes that the changes would result in a more appropriate presentation of events or transactions in its financial statements.

Issues being considered in this document are:

Issue #1: Can the IESO adopt the guidance in ASC 980 *Regulated Operations (US GAAP in FASB)*?

Issue #2: Can the IESO recognize deferral or variance accounts related to the deferral of the annual Global Adjustment account as a regulatory asset on its statement of financial position?

Issue #3: Can the IESO derecognize the variance accounts related to the deferral of the annual Global Adjustment account?

1. Adoption of the guidance in ASC 980 Regulated Operations

Background and Assumptions for issues #1 and #2

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The IESO's legal status is a not-for-profit, non-taxable, corporation established pursuant to Part II of the *Electricity Act, 1998*. IESO is classified as an Other Governmental Organization and prepares its financial statements in accordance with Canadian public sector accounting standards (PSAB).
2. The IESO is required to submit its proposed expenditures, revenue requirements and fees yearly to the OEB for review and approval.
3. IESO is rate regulated by the OEB in accordance with the *Electricity Act, 1998* and the *Ontario Energy Board ("OEB") Act, 1998* but currently does not recognize the economic impacts of rate regulation in its general purpose financial statements.
4. The OEB issued a Decision and Order on March 28, 2013 that permits IESO to recover the MDMR costs (the Smart Metering Charge) (see Appendix B). *(i.e. Costs incurred in the past will be fully recovered through future rates)*
5. Furthermore, in accordance with the *Electricity Act, 1998* and the *OEB Act, 1998*, the IESO has approved variance accounts to record all amounts payable or receivable by it in connection with the amounts paid to generators, the Financial Corporation, distributors and to entities with whom the IESO has a procurement contract. (i.e. costs incurred in the past will be fully recovered through future rates)
6. The province is contemplating deferring the recovery of a portion of the annual Global Adjustment account (comprised primarily of the electricity costs paid to the generators) over a period of 25-30 years, so that costs incurred would be fully recovered through future rates.
7. The *Electricity Act, 1998* and the *OEB Act, 1998* would be amended through legislation to require the deferral of the recovery of the Global Adjustment account and the future recovery in rates charged to customers.
8. The OEB would grant generic deferral or variance accounts to capture the difference between the amounts paid to generators and others, and the amounts collected in rates. Furthermore, the interest and ancillary costs related to the contemplated transaction would also be included in future rates charged to customers. In summary, the legislation would create a right to collect the incurred cost.
9. The IESO would change its accounting policies to permit the recognition of the economic impacts of rate regulation as from the 2016 financial year. IESO would adopt the guidance of ASC 980 *Regulated Operations* to better reflect the economic substance of its operations and enhance the transparency and accountability of its financial reporting.

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Appropriate Accounting Principle for issue #1

PSAS requires

PS2120.02, "*a change in an accounting policy may be made... if it is considered that the change would result in a more appropriate presentation of events or transactions in the financial statements of the government.*"

PS1150.05 "*When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:*

(a) the primary sources of GAAP; and

(b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000."

PS1150.19 "*Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.*"

PS1150.08 "A public sector reporting entity consults sources other than primary sources of GAAP to assist in selecting accounting policies and disclosures only when these sources comply with paragraph PS1150.05. The public sector reporting entity evaluates sources in selecting the appropriate accounting policies and disclosures based on all of the following criteria:

(a) The specificity of the source — A source that deals with the specific circumstances is likely to be more relevant than one from which the public sector reporting entity must analogize.

(b) The authority of the issuer or author — A source issued by an accounting standard setter in its own jurisdiction is likely to be more relevant than a source issued by others in the same jurisdiction.

(c) The continued relevance of the source — The passage of time may diminish the relevance of certain sources.

(d) The development process for the source — A source developed after extensive consultation and debate is likely to be more relevant than a source developed without such discipline."

PS1150.10 "PSAB considers a source to be consistent with the concepts in paragraph PS 1150.05(b) when the guidance in that source is compatible with the (i) qualitative characteristics of financial information, (ii) the elements of financial statements, and (iii) the recognition and measurement criteria in paragraph PS 1150.05(b)."

PS1000.58 "In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles."

PS3210.03 "Assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained."

PS3210.04 "Assets have three essential characteristics:

(a) They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows.

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(b) *The public sector entity can control the economic resource and access to the future economic benefits.*

(c) *The transaction or event giving rise to the public sector entity's control has already occurred."*

Issue #1: Can the IESO adopt the guidance in ASC 980 *Regulated Operations*?

PSAS does not address accounting concepts in a rate regulated environment. Since there is no guidance in PSAS regarding the recognition and measurement of regulatory assets and liabilities, IESO may consider other sources based upon PSAS 1150.05 in the GAAP hierarchy to determine appropriate accounting policies in a rate regulated environment.

Within AcSB, Accounting Standards for Private Enterprises (ASPE) defines a rate regulated entity but provides no guidance on regulatory assets and liabilities, however requires disclosure of such balances if they are recognized. IASB has not completed their project on rate regulated activities and current standards only include a holding standard based upon what was done under previous GAAP. It will be important for the IESO to monitor the IASB's ongoing project on rate regulated activities as this may affect the recognition, measurement, presentation and disclosures of the regulatory assets and liabilities. Both FASB and GASB have guidance on accounting in a regulatory environment. IPSASB does not provide any guidance on accounting by rate regulated entities.

It is important to note that rate regulated entities that prepare their general purpose financial statements in accordance with ASPE (e.g. the three Fortis subsidiaries in Ontario), as well as those rate regulated entities that are eligible to elect to apply the requirements of IFRS 14 and elected to do so when they adopted IFRS, generally all recognize regulatory deferral and variance accounts in accordance with US GAAP accounting principles set out ASC 980 *Regulated Operations*.

Statement 62 issued by GASB in December 2010 is effective for financial statements for periods beginning after December 15, 2011. The objective of the Statement is to incorporate into the GASB's authoritative literature certain accounting and financial reporting guidance that is included in the Financial Accounting Standards Board (FASB) Statements and Interpretations issued on or before November 30, 1989, which does not conflict with or contradict GASB pronouncements. Paragraphs 476–500 may be applied to activities reported in business-type activities that have regulated operations that meet all of the three criteria in paragraph 476 as follows:

(a) The regulated business-type activity's rates for regulated services provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

(b) The regulated rates are designed to recover the specific regulated business-type activity's costs of providing the regulated services.

(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the regulated business-type activity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.

The criteria above and the guidance in paragraphs 476-500 are based on ASC 980 *Regulated Operations*.

It is also important to note that in its statement of financial position, the Ontario Electricity Financial Corporation ("OEFC") recognizes a net unamortized liability balance for power purchase contracts, as detailed in the summary of significant accounting policies:

"The liability for power purchase contracts was originally calculated by discounting estimated losses over the life of the contracts. Under the *Electricity Restructuring Act, 2004*, OEFC began receiving actual contract prices for power from electricity consumers, effective January 1, 2005, and no longer incurs losses on these power purchase contracts. At that time, the Ministry of Finance estimated that the bulk of the liability would be eliminated over 12 years as existing electricity contracts expire. As a result, the bulk of the liability is being amortized to revenue over that period."

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Although this liability is not defined as a regulatory liability in the OEFC's financial statements, the argument can be made that it substantively meets the criteria under ASC 980.

In summary

Rate regulated entities in North America reporting under ASPE, IFRS (entities which have elected to use IFRS 14) and GASB generally all recognize regulatory deferral and variance accounts in accordance with US GAAP accounting principles based on ASC 980 *Regulated Operations* (see Appendix A for the accounting framework used by the Canadian rate regulated entities).

Evaluation of Other Sources of GAAP

As required by PS 1150.05(b), we need to analyze whether the concepts in the other source (i.e. ASC 980) are compatible with the (i) qualitative characteristics of financial information, (ii) the elements of financial statements, and (iii) the recognition and measurement criteria in PS 1000.

When looking to other sources of GAAP, PSAS requires the other sources of GAAP to be evaluated

1. *as to whether they are consistent with accounting policies and disclosure within PSAS,*
2. *as to whether they are consistent with the application of concepts in PS 1000 and*
3. *as to all of the following criteria:*
   - *(a) Source deals with the specific circumstance*
   - *(b) Source is issued by an accounting standard setter*
   - *(c) Source continues to be relevant*
   - *(d) Source uses a consultative process and deliberation when developing policies*

(i) Qualitative Characteristics of Financial Information

FASB	PSAS 1000	Evaluation
Concepts and objectives are for both business and non-business organizations as well as governmental units (Concept #4.3 to 4.5)	Public, legislators, councilors, investors, analysts, other governments (par. 14)	FASB considers governmental units
Financial reporting should: – Be useful in making resource allocation decisions – Be useful in assessing services and ability to provide services – Be useful in assessing management stewardship and performance – Provide information about economic resources, obligations, net resources and changes in them (Concept # 4.33-.54)	Financial statements should be relevant to the needs of the users and reliable. Relevance is achieved through timeliness, predictability and accountability value. Reliable information has the following characteristics: representational faithfulness, completeness, neutrality, conservatism and verifiability. (par. 28-29)	Similar

(ii) Elements of Financial Statements

FASB	PSAS	Evaluation
Assets (Concept #6.25-.34)		

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Probable future economic benefits obtained or controlled by the entity as a result of past transactions or events.	Economic resources controlled by a government as a result of past transactions or event and from which future economic benefits are expected to be obtained. (par. 35)	Essential characteristics similar
Liabilities (Concept #6.35-.43)		
Probable future sacrifices of economic benefits arising from present obligations of the entity to transfer assets or provide services in the future as a result of past transactions or events.	Present obligations to others arising from past transactions or events, the settlement of which is expected to result in the future sacrifice of economic benefits with little or no discretion to avoid settlement. (par. 44)	Essential characteristics similar
Revenues (Concept #6.78-.79)		
Inflows from delivering or producing goods, rendering services or other activities that constitute the entity's central operations.	Increases in economic resources resulting from operations, transactions and events of the accounting period. (par. 46)	Similar
Expenses (Concept # 6.80-.81)		
Outflows from delivering or producing goods, rendering services or carrying out other activities that constitute the entity's central operations.	Decreases in economic resources resulting from operations, transactions and events of the accounting period. (par. 49)	Similar

(iii) Recognition Criteria

FASB	PSAS	Evaluation
To be recognized, an item must meet the definition of an element of the financial statements, must be measurable with sufficient reliability, be relevant and be reliable. (Concept # 5.64)	Item must have an appropriate basis of measurement, a reasonable estimate can be made of the amount and if the item involves obtaining or giving up future economic benefits, it is expected those benefits will be obtained or given up. (par. 55)	Similar

(iii) Measurement Criteria

FASB	PSAS	Evaluation
Measurement basis dependent upon nature of item. Historical cost basis, replacement cost, market value. (Concept # 5.65-.70)	Primarily using historical cost basis. Replacement cost and realizable value are also used, but in limited circumstances. (par. 60)	Similar

Criteria of PS 1150.08

Criteria	Evaluation
Source deals with the specific circumstance	Yes, ASC 980 Regulated Operations

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Source is issued by an accounting standard setter	Yes, FASB
Source continues to be relevant	Yes, still used by rate regulated entities
Source uses a consultative process and deliberation when developing policies	Yes, comprehensive consultative process and deliberation

Evaluation whether a deferral of the Global Adjustment account meet the definition of Assets as per Section PS3210

PS3210 defines assets as *"economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained."* (par. 03)

The analysis of the three essential characteristics as defined by PS3210.4 are analyzed in the next table.

Characteristics	**Additional guidance**	**Comments**
They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows. (par. 4(a))	The essence of assets are their future economic benefits. Assets embody future economic benefits that allow public sector entities to achieve their objectives. The future economic benefits embodied in assets involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows or to reduce cash outflows. (par. 11) The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. (par. 13)	The economic benefit embodied in the variance accounts (i.e regulatory asset) is the right to collect the incurred costs from ratepayers in order to settle the liability for the energy already consumed by the ratepayers. The electricity Act, 1998 ("EA") section 25.33(1) states: *"The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,* *a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998; and* *b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract."*
The public sector entity can control the economic resource and access to the future economic benefits. (par. 4(b))	Economic resources can arise from, but are not limited to, the following: government's own legislation (for example, taxes, fines and penalties); (par. 08(c)) A public sector entity controls the economic resource and access to the future economic benefits when it: a. can benefit from the economic resource through its capacity to	The economic resources is the right created by the legislation that the energy costs IESO incurs will result in future cash flows. In the regulatory environments, incurring costs creates an enforceable right to set rates at a level that permits IESO to recover those costs. The adjustment of future rates is the mechanism the OEB uses to

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	provide goods and services, to provide future cash inflows or to reduce cash outflows; b. can deny or regulate access to those benefits by others; and c. is exposed to the risks associated with the economic resource. (par.16)	implement the right. Currently, the EA section 25.33(5) states: *"The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section."* The legislation would be amended to permit IESO to collect specifically the deferral of the energy costs and the related interest and administrative costs.
The transaction or event giving rise to the public sector entity's control has already occurred. (par.4(c))	It is the occurrence of a past transaction or event on or before the financial statement date that distinguishes a present economic resource controlled by a public sector entity from an economic resource that may be controlled by a public sector entity in the future. (par. 25) The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities. (par. 26)	The past event giving rise to IESO's control occurs as the energy cost is incurred, as IESO has a right to collect it from the ratepayers.
Conclusion: The right to collect the deferral of the energy costs and the related interest and administrative costs meets the definition of assets.		

When concepts are in conflict with PSAS then PSAS prevails (PS 1150.12). For example, PSAS does not recognize intangible assets (PS 3150.03, .14 and PS1000.58). So if regulatory assets are considered to be intangible assets, they would not be allowed to be recognized through another source of GAAP.

It is worth noting that the economic impacts of rate regulation are not recognized under US GAAP as intangible assets as the FASB has specific guidance to deal with this type of asset. It is also worth noting that the IASB has an ongoing project on rate regulated activities and are currently developing an accounting model based on the principles of IFRS 15 *Revenue from contracts with customers* to provide a principle-based framework for recognizing regulatory assets (see Agenda Ref. 9 for the IASB meeting on February 23, 2017). Furthermore, the Summary Comment Letter Analysis related to the ED/2009/8 on Rate Regulated Activities published by the IASB in July 2009 states on page 2 of 50

"The IFRIC observed that it had previously discussed whether a regulatory asset should be recognized in the context of service concession arrangements, either as deferred costs or as an intangible asset to reflect an expectation that the entity will recover these costs as part of the price charged in future periods. It had concluded that entities applying IFRSs should recognize only assets that qualified for recognition in accordance with the IASB's *Framework for the Preparation and Presentation of Financial Statements* and

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relevant accounting standards, such as IAS 11 *Construction Contracts*, IAS 18 *Revenue*, IAS 16 *Property, Plant and Equipment* and IAS 38 *Intangible Assets*."

Therefore, we can conclude that ASC 980 is NOT in conflict with PS 3150.03, .14 and PS1000.58 with respect to intangible assets.

Conclusion:
FASB is appropriate to use as "*other source of GAAP*". FASB standard ASC 980 has extensive guidance for rate regulated entities including the recognition of regulatory assets and use of rate regulated accounting by IESO would be consistent with current reporting practices of H1, OPG and OEFC.

Appropriate Accounting Principle for issue #2

ASC 980 Regulated Operations

- 980-10-15-2 *"The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:*

  (a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

  (b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.

  (c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."

- 980-10-20 Glossary, Definition of incurred costs *"A cost arising from cash paid out or obligation to pay for an acquired asset or service, a loss from any cause that has been sustained and has been or must be paid for."*

- 980-10-05-8 *"Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the GAAP applicable to business entities in general. The mere issuance of an accounting order not tied to rate treatment does not change an entity's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP.980-340 – Other Assets and Deferred Costs."*

- 980-340-25-1 *"Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:*

  (a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

  (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

  A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date."

- 980-340-40-1: *"If at any time an entity's incurred cost no longer meets the criteria for the capitalization*

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of an incurred cost (see paragraph 980-340-25-1), that cost shall be charged to earnings."

- 980-350-50-1: *"In some cases, a regulator may permit an entity to include a cost that would be charged to expense by an unregulated entity as an allowable cost over a period of time by amortizing that cost for rate-making purposes, but the regulator does not include the unrecovered amount in the rate base. That procedure does not provide a return on investment during the recovery period. If recovery of such major costs is provided without a return on investment during the recovery period, the entity shall disclose the remaining amounts of such assets and the remaining recovery period applicable to them."*
- 980-340-55-2: *"In some cases, a regulator may approve rates that are intended to recover an incurred cost over an extended period without a return on the unrecovered cost during the recovery period."*
- 980-340-55-3: *"The regulator's action provides reasonable assurance of the existence of an asset (see paragraph 980-340-25-1). Accordingly, the regulated entity would capitalize the cost and amortize it over the period during which it will be allowed for rate-making purposes. That cost would not be recorded at discounted present value. An exception to this general rule is provided for costs of abandoned plants."*

Issue #2: Can the IESO recognize deferral or variance accounts related to the deferral of the annual Global Adjustment account as a regulatory asset on its statement of financial position?

As described in issue #1, US GAAP includes special accounting provisions that are applicable to entities with activities that are subject to rate regulation. The result is that rate regulated entities are required to recognize regulatory assets and liabilities provided the following three criteria are met:

Criteria	Comment	Evaluation
The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.	IESO has unrecognized variance accounts related to the MDMR (smart meters), that have been approved by the OEB in accordance with the Electricity Act and the OEB Act (see Appendix B). It is important to note that Hydro One and OPG are both consolidated into the province's books, are both regulated by the OEB and their respective regulatory assets and liabilities are reported in the province's books.	Met
The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.	Currently, the rates approved by the OEB are designed to recover the IESO's costs of providing the regulated services and the pass-through related to the energy purchased from the generators. The contemplated transaction is based on the fact that the OEB would grant generic deferral or variance accounts to capture the difference between the amounts paid to generators and others, and the amounts collected in rates. Furthermore, the interest and ancillary costs related to the contemplated transaction would also be included in future rates charged to customers. In summary, the legislation would create a right to collect the incurred costs.	Met

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In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."	Since the deferral or variance accounts would be sold to the OPG Trust at least on a monthly basis and cash would be received on the same day, this criteria would be met. This criteria would need to be monitored on a yearly basis to ensure that IESO and the OPG Trust would be able to recover the future deferred amount taking into account the levels of demand or competition during the recovery period.	Met
Conclusion: Since the three criteria are met, IESO should be able to adopt the guidance in ASC 980.		

Conclusion: Based on the assumptions mentioned above, IESO should be able to recognize a regulatory asset for the deferral of the annual Global Adjustment account. As mentioned in the ASC 980 guidance above, it is important that an accounting order be issued by the OEB which indicates the way the incurred costs would be handled for rate-making purposes as the OEB's action provides reasonable assurance of the existence of a regulatory asset.

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2. Derecognition of the regulatory assets

Background and Assumptions for issue #3

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The annual Global Adjustment account that would be deferred in the deferral or variance accounts (the "Asset") would be significant.
2. The IESO does not currently have the financial capability to finance the Asset and is contemplating selling the Asset to a Trust to be set-up by OPG (the "OPG Trust").
3. The OPG Trust would be consolidated by OPG.
4. Proposed terms of the sale agreement between the IESO and the OPG Trust:
   - The sale contract would be structured as an absolute sale, which would assign future economic benefits or cash flows related to the Asset exclusively to the OPG Trust.
   - The arrangement would be structured whereby there is no recourse or obligations remaining of IESO related to the Asset.
   - The arrangement is not considered to be a financing transaction as IESO would have no obligations to the OPG Trust after the Asset is sold to the OPG Trust.
   - IESO would not retain any rights or benefits from the Asset.
   - IESO would not have any rights to interest or penalties on the Asset once it has been transferred to the OPG Trust.
   - The contract would be clear that IESO cannot pledge the Asset as collateral to obtain future cash flows or financing.
   - IESO would continue to collect related cash flows on the OPG Trust's behalf and remit those cash flows to the OPG Trust without material delay. In addition, IESO would not be entitled to reinvest such cash flows, except for investments in cash or cash equivalents during the short settlement period from the collection date to the date of required remittance to the OPG Trust, and interest earned on such cash and cash equivalents is passed to the OPG Trust. The contract would define IESO's role strictly as that of agent, under a pass-through arrangement.
   - Servicing, origination, and arrangement fees, would be collected by IESO in rates charged to ratepayers as part of its market dealings.
   - The Asset would be sold to the OPG Trust at least, on a monthly basis and cash would be received on the same day.

Appropriate Accounting Principles for issue #3

Public Sector Accounting Standard ("PSAS") 3210, *Assets*, defines an asset as "*...economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained.*" [par. 3]

.04 *"Assets have three essential characteristics:*

(a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;

(b) the public sector entity can control the economic resource and access to the future economic benefits; and

(c) the transaction or event giving rise to the public sector entity's control has already occurred."

.22 *"Control of an economic resource and of access to the future economic benefits are essential characteristics of an asset, whereas possession or ownership is not."*

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.24 *"A public sector entity may act as trustee when it administers trusts on behalf of the beneficiaries specified in the agreement or statute. As trustee, the public sector entity merely administers the assets, following the terms and conditions set out in the agreement. It does not control the asset because it does not have access to the future economic benefits. Those benefits flow to the beneficiaries."*

As noted in PS1000 Financial statement concepts:

".37 An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

(a) no future economic benefit;

(b) future economic benefit, but the government cannot obtain it; or

(c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred."

Issue #3: Can the IESO derecognize the variance accounts related to the deferral of the annual Global Adjustment account upon sale to OPGTrust?

PS3210 does not specifically address the derecognition of a regulatory asset. The concept of a regulatory asset does not exist under PSAS.

It is also well understood in this industry that regulatory assets do not meet the definition of intangible asset or financial asset. Specifically, regulatory assets do not meet the definition of financial asset because they are imposed on customers through the tariff (i.e., imposed by the OEB) and do not represent a right to receive payments from another party as a result of a contract.

More generally, PSAS.3210.37 suggests that an asset would no longer be recognized when it fails to meet the definition of an asset.

Based on PS1000.37(b), an item does not qualify as an asset of a government if the item involves future economic benefit, but the government cannot obtain it.

Based on the assumptions mentioned above, ALL risks and rewards would be transferred to the OPG Trust including the following:

- the contract would define IESO's role strictly as that of agent, under a pass-through arrangement;
- all cash flows related to the Asset would be transferred without material delay to the OPG Trust;
- rights to interest or penalties on the Asset would be for the benefits of the OPG Trust;
- IESO cannot pledge the Asset; and
- no recourse or obligations remaining of IESO related to the Asset.

Conclusion: Based on the proposed terms of the sale agreement between the IESO and OPG Trust mentioned above, the deferral or variance accounts would be derecognized at the point where the IESO would derive no future economic benefit from it. This would occur where the IESO ultimately transfers the rights, risk and rewards related to those deferral or variance accounts to the OPG Trust. This would occur on the reception of cash from the OPG Trust.

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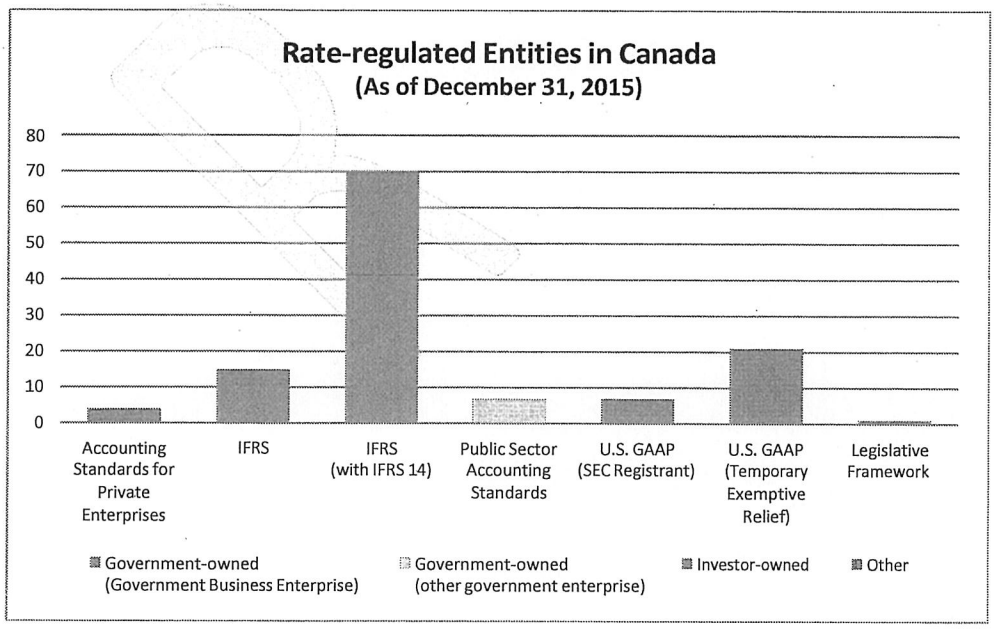
Appendix A:

Extract from the "Accounting Standards Advisory Forum Agenda Ref: 3A dated September 29, 2016" available on the IFRS website

Canadian Rate-regulated Entities

18. The accounting framework landscape for Canadian rate-regulated entities is currently diverse. For annual periods beginning on or after January 1, 2015, rate-regulated entities that are Canadian publicly accountable enterprises are required to apply IFRS. Rate-regulated entities that adopted IFRS for the first time after IFRS 14 *Regulatory Deferral Accounts* was issued continue to recognize these balances. Government Business Enterprises (which operate to generate a profit or on a break-even basis) that are also rate-regulated entities are also directed to apply standards applicable to for-profit entities, and thus apply IFRS. Canadian securities legislation permits dual-listed entities (i.e., Canadian entities also registered with the U.S. Securities and Exchange Commission) to apply U.S. GAAP in the normal course. Temporary exemptive relief is also available from the Canadian Securities Administrators that permits rate-regulated entities that are not dual-listed to apply U.S. GAAP in place of IFRS. If a rate-regulated entity is not a publicly accountable enterprise or a Government Business Enterprise, additional accounting framework options may also include Accounting Standards for Private Enterprises or Public Sector Accounting Standards. A non-GAAP reporting framework is used when legislated by the provincial owner of a government-owned rate-regulated entity.

19. As of December 31, 2015, there were approximately 125 rate-regulated entities in Canada. These entities mainly range in size from small entities owned by municipal governments to large investor-owned entities or entities owned by provincial governments.



Source: Information compiled based on audited financial statements for fiscal year 2015, or information from rate filings that confirmed the accounting framework used by these entities. Due to data collection constraints, the population could be slightly larger.

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20. The chart above highlights two key points:

(a) The majority of investor-owned entities have chosen U.S. GAAP over IFRS. A few entities that are not reporting issuers apply Accounting Standards for Private Enterprises. Both U.S. GAAP and Accounting Standards for Private Enterprises permit the recognition of balances arising from rate regulation. Several entities that apply U.S. GAAP have told us this choice was influenced by the need to provide their users with financial statements that accurately reflect the economics of their business. Further, some entities presently using the temporary exemptive relief described in paragraph18 have said they are considering incurring the cost and effort necessary to become a registrant of the U.S. Securities and Exchange Commission in order to have the permanent ability to apply U.S. GAAP. While such a decision could be primarily for business reasons such as the entity expanding its operations into the U.S., it could also be attributed to the continuing uncertainty about the ultimate outcome of the IASB's Rate-regulated Activities project and the approaching expiry date of the securities regulators' exemptive relief.

(b) Public sector entities that are Government Business Enterprises tend to apply IFRS. The majority of these entities is made up of several large provincially-owned utilities, and many small municipally-owned local distribution utilities that do not issue debt or list in the U.S. stock market, and are not subject to Canadian securities legislation. As a result, they cannot apply U.S. GAAP. As shown in the chart, many of these entities adopted IFRS for the first time after the IASB issued IFRS 14, which allowed them to continue their previous accounting practices for rate-regulated activities.

21. Within the pool of government-owned rate-regulated entities, there are entities that do not meet the characteristics of Government Business Enterprises and are required to apply Public Sector Accounting Standards.

22. The data on the different accounting frameworks in Canada is unique. It demonstrates that when given a choice, rate-regulated entities select an accounting framework that captures the effects of rate regulation on their financial position and financial performance in order to communicate more decision-useful information to users.

http://www.ifrs.org/Meetings/MeetingDocs/ASAF/2016/September/1609-ASAF-03A-Rate-regulated-Activities-Canada.pdf

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