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Division: Legal

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Intergenerational Fairness in Hydro Rates Act, 2017

[OLC Notes re this draft:
Some of the decisions regarding roles for Minister, OEB etc. may just now (7:15 pm or so) now have been landed but haven't caught up to Dan or I justyet – hopefully by tomorrow mid-morning we'll have more percision.]
- Because you asked for a comprehensive document instead of receiving drafts of smaller components of the bill, I have worked as quickly as possible to present a draft bill based on the Blakes document. *[NTD-Thanks, Tara – that has been really helpful – having everything in one place is much easier for me in particular, thank you!]*
- Please note that I have not dealt with all elements of the Blakes document in this draft. For example, I have not yet dealt with any provisions of the Blakes document dealing with the "True-Up Amount". *[ntd: Understood, we'll have to keep abreast of what has and hasn't yet been addressed. Thanks for flagging this.]*
- I have drafted most of the provisions based on my own reading of the Blakes document. I am aware that my understanding of what is needed may therefore be inaccurate in several places. *[NTD: Understood, but we appear to be reading the document in the same way in most respects. There are questions we have as well and we are working to resolve them.]*
- In some places, I have included place holders or questions in order to flag items that I need to return to in the next draft. *[NTD: Understood, thank you.]*
- Where possible, I have tried to annotate the drafting to indicate the provisions of the Blakes document that I have relied upon, but I have not done so consistently due to time pressures and in some cases didn't bother because I thought it was obvious. *[NTD-Understood. Thanks, Tara.]*
- When reviewing the draft and providing the next instructions please acknowledge each of my notes/questions with a written comment in the draft, even if it is just to flag for me that you will be answering the question at a later time. *[NTD: Yes, will do.]*-This will help me to understand which notes should remain in the next draft and which can be removed. *[NTD: Fair enough, thanks, Tara!]*]

Preamble
[OLC Note: You mentioned that you may want to include a Preamble and a Purpose clause in the Bill for constitutional law purposes. *[NTD: Yes, that's correct. We have been receiving constitutional law advice from Prof. Peter Hogg (who is also Counsel to Blakes) as well as another leading constitutional law expert. The advice we've been receiving thus far is that these kinds of clauses provide valuable interpretive context which is anticipated to be quite helpful were Government required to defend its approach*

before a reviewing court or tribunal.]x` I have included some preliminary wording for both a preamble and a purpose clause based on Article 1 of the Blakes document to get the discussion started but you'll obviously be seeking advice from constitutional law experts on what would achieve your intended outcome. 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. *[NTD: Agree. We are certainly continuing to seek constitutional law advice.]*Please also note that there is some uncertainty about whether a Preamble may be amended by motion after Second Reading of the Bill, *[ntd: Very important point, thanks for pointing this out. Please leave that note in for the next draft – thanks!]* whereas the purpose clause can be amended in the same way as any other provision of the bill may be amended.]*[ntd: One has to wonder what practical utility was designed or intended to be sought by creating a distinction in the Standing Orders like that – very arcane in my view.]*

The Government of Ontario has invested in decarbonizing and modernizing the Province's electricity infrastructure. Electricity costs have increased for consumers as a result of this investment.

Given the long-term benefits that future generations of Ontarians will receive from this Government's investment, it is appropriate to allocate the 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 the draft but please note that the structure of the bill is still very much up for discussion.]

CONTENTS

PART I
GENERAL

1. Definitions
2. Purpose
3. Undertaking by Lieutenant Governor in Council

PART II
TRANSITION CHARGES

4. Specified consumers to pay transition charge
5. Irrevocability of transition charge

DUTIES OF IESO

6. IESO to determine transition charge for vendor

DUTIES OF VENDOR

7. Vendor to determine transition charge for specified consumer

PART III
HOW TRANSITION CHARGES ARE DETERMINED

FAIR ALLOCATION PLAN

8. Fair Allocation Plan
9. Principles
10. Methodology

FINANCING PLAN

11. Financing Plan to be prepared by prescribed entity
12. Contents of plan

FUNDING SHORTFALL

13. Definitions
14. Funding shortfall
14.1 Net payment
15. Consumer contribution
16. Applied surplus
17. Unapplied surplus

FINANCE AMOUNT

18. Definitions
19. Finance amount
20. Finance reserve balance
21. Funding costs

PART IV
THE REGULATORY ASSET

ESTABLISHMENT OF REGULATORY ASSET

22. Regulatory asset established

TRANSFER OF REGULATORY ASSET

23. Transfer of regulatory asset
24.
25. Validity of transfer

ADMINISTRATION OF REGULATORY ASSET

26. Administrative agent
27. Regulatory asset owner may grant pledge
28. Collective action required
29. Exercise of rights

REGULATORY ASSET ACCOUNTS

30. Pro rating of payments
31. Vendor
32. IESO
33. Accounts held by agents

AGENTS

34. Appointment of agent, invoicing
35. Appointment of agent, collection, etc.

PART V
MISCELLANEOUS

36. Enforcement
37. Successors
38. Conflict
39. No further approvals, etc.
100. Regulations

PART VI
CONSEQUENTIAL AMENDMENTS

101. Electricity Act, 1998
102. Ontario Energy Board Act, 1998

PART VII
COMMENCEMENT AND SHORT TITLE

103. Commencement
104. Short title

PART I
GENERAL

[OLC Note: All definitions will need to be re-evaluated as the drafting of the substantive provisions becomes more settled. *[ntd: understood, thanks, Tara. Probably a good idea to retain this important note (it will hopefully remind us all to continue to actively evaluate whether the definitions work in the various circumstances they need to.]* All definitions are preliminary at this point until we have a better handle on how each term is going to be used. *[NTD: Understood.]*]

Definitions

1. (1) In this Act,

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner under the Financing Plan [for the purposes of this Act]; ("French")

[OLC Note: Will have to consider the above definition more carefully as the drafting evolves. *[NTD: Yes, agreed – we'll all have to actively evaluate these definitions. See suggested revision for your consideration. It tries to draw the specific link to the "Finance Plan" in a more explicit and direct manner than referencing the "purposes of this Act". We think that linkage is important to make explicit.]*]

"green generation assets" means electricity generation facilities that are constructed, acquired or developed in connection with the green generation contracts and any related equipment; ("French")

"green generation contracts" means the contracts entered into by the IESO for electricity to be supplied during the period beginning on May 1, 2017 and ending on the prescribed date, other than contracts with Bruce Power L.P or Bruce Power A. L.P.; ("French")

[OLC Note: Consider whether you might want to leave the underlined phrase to regulations (since the company names may change over time, etc.). *[ntd: to your point, perhaps leave initial reference in legislation but include "or its successors or assigns". .* Also wondering whether you'd want some reg-making power to exclude certain contracts generally (e.g. might there be new contracts that would arise that you would not want to have included in the green generation contracts?). *We would need some reg-making power to exclude other contracts/generators [To confirm with Dan/Blakes]*]

"green generation costs" means the costs incurred [by the IESO?] in relation to the green generation contracts; ("French")

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

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

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

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

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means, subject to subsection (4),

(a) the period beginning on the day this Act receives Royal Assent and ending on June 30, 2017,

[OLC Note: Didn't you want to make this retroactive to May 1, 2017? Or is that not necessary?]*[ntd: We have to confirm this point for next instructions.]*

(b) the period beginning on July 1, 2017 and ending on December 31, 2017,

(c) every six-month period following the period mentioned in clause (b); ("French")

"regulation" means a regulation made under this Act; ("règlement")

"service area", with respect to a [licensed distributor or licensed retailer? *Ntd: lets refer to both for now, please*], means the area in which the distributor is authorized by its licence to distribute electricity or the area in which the retailer is authorized by its licence to retail electricity, as the case may be; ("secteur de service") *[ntd: out of order – just flagging, thanks.]*

[OLC note: The above definition is adapted from the *Electricity Act* definition. Does this work? *[NTD: It works for us but will continue to receive comments from other.]*

"regulatory asset" means the regulatory asset established under section X; ("French")

"regulatory asset owner" means, collectively, the owners of the regulatory asset, which may include,

(a) the IESO, to the extent that it retains any ownership interest in, to or under the regulatory asset, and

(b) a transferee, to the extent that it has acquired and 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; ("French")

[OLC Note: Does one "own" an ownership interest? Good point: I think "and possesses" might work – or "holds".]

"specified consumer" means a consumer within the meaning of the *Electricity Act, 1998* who meets the criteria set out in subsection (2); ("French")

"transfer" means an assignment, conveyance, disposition or sale; ("French")

"transferee" means any person to whom all or part of the regulatory asset has been transferred; ("French")

"transition charge" means the charge of that name that is included on the invoice of a consumer under this Act; ("French")

"vendor" means a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

[OLC Note: ENE LSB noted that the definition of "vendor" needs to be considered further. Also, your instructions were to include the IESO in the definition of "vendor" but I don't think that works. Please confirm. NTD: I believe that the IESO theoretically (and perhaps actually, for a few) does serve (just a few) eligible consumers who are directly connected but we'll confirms for next draft.]

Specified consumers

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

[OLC Note: Need to consider that a person could fall in and out of meeting the criteria below… for example could uses 251K in 2017 but only 240K in 2016. Yes, that happens but not normally since they'd probably be billed on a different basis (e.g. demand) if that was their consumption pattern - they likely qualify for the "demand less than 50 kilowatts" in any event so our expectation is that they would still be captured. It's a point we'll have to ~~consider~~bear in mind but we don't think it changes the draft here.]

1. The consumer has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

[OLC Note: Does "50 kilowatts" mean the same thing as "50 kilowatt hours of electricity"? *[NTD: No, 50 kilowatts is a demand threshold that relates to the highest instantaneous draw from the distribution system that a consumer has during a month – this is an a reasonably high threshold for a residential-class consumer.]* What does "demand" mean? Does it need to be linked to a period of time (e.g. monthly?). I'm assuming that it is something different from "annual use". *[ntd: yes, correct on both*

counts – it is a monthly in frequency and not an annual concept.] Also by saying "or such other amount as may be prescribed, do you mean to say that the amount may change over time? *[ntd: When we first started using ~~that~~monthly demand as an eligibility criteria for a type of residential consumer classification, we thought we might increase it or decrease it. However, its remained the demand threshhold for these lower volume consumers since some time in 2003~~2~~.* Consider what the implications may be for people who are under the 50 kW threshold but then over a different threshold. *[NTD: Yes, we have considered that in many past derivations of this approach to classification of residential consumers. Policy has always been to allow consumers to have several doors which they can meet, so that they only have to meet one of the eligibility criteria to qualify, even if they don't meet any of the others.]*]

2. The consumer annually uses [consumes?] *[NTD: We have used "uses" and that seems to work. "Consumers" correct but then you'd have to write "The consumer annually consumes….]* not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed. *[NTD: For these references, we drew from O. Reg. 95/05 made under the Ontario Energy Board Act, 1998 (Classes of Consumers and Determination of Rates), s. 4(2) – which was essentially the basis for the Ontario Rebate for Electricity Consumers Act, 2016 eligibility criteria, though we tweaked the criteria a bit around multi-residential complexes – see sub-para 4 iii the "without regard to the s.5 of the RTA…" language .].*

3. 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.

4. The consumer has an account with an electricity vendor that 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 consumer satisfies such criteria as may be prescribed.

Same

(3) In this Act, a reference to a specified consumer of an electricity vendor who is a licensed distributor or a licensed retailer means a specified consumer who [~~resides?~~] has an account with an electricity vendor for the provision of electricity in Ontario. ~~in the service area of the distributor or retailer, as the case may be.~~

[OLC Note: Does this work to explain what we mean when we say "a vendor's specified consumer"? *[NTD We think we need to settle on "electricity vendor" as the term and expand the description to ensure that it captures any specified consumer in Ontario who has an account with the electricity vendor for the provision of electricity in Ontario.]*]

Reference period

(4) Clauses (b) and (c) of the definition of "reference period" do not apply if the Fair Allocation Plan specifies different reference periods.

[OLC Note: Subs. (4) is quite unusual as it would allow for an external document prepared by an external body to essentially override the legislation. Are you sure you don't want to impose some parameters? *[NTD: Fair point, please keep this point in for the next draft. Thank you!*]

Intention of the Legislature

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

[OLC Note: The above subsection is intended to address the instruction included in the Blakes doc in Article 12 (5) - "Severability". This kind of provision is generally not considered necessary but the above is based on a provision that was included in the *Climate Change Mitigation and Low-carbon Economy Act, 2016.* Please advise if this achieves your desired objective.] *[ntd: This is good and should be kept in until or unless an explicit instruction to override or change it is received. Thanks!]*

Same

(6) The fact that any provision of this Act is held to be invalid [or ceases to be in effect for any reason *[ntd: yes, looks good.]*] does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

[OLC Note: This is meant to address Article 12 (4) of the Blakes doc. This provision is a bit unusual and will have to be considered further to ensure that it achieves the desired

outcome. *[NTD: understood. It appears to increase the durability of the obligations so it would be good to retain.]*

Purpose

2. The purpose of this Act is to provide for the fair and cost-effective allocation of green generation costs among specified consumers throughout the useful life of green generation assets.

[OLC Note: Do you need a provision that states "This Act binds the Crown"?] *[NTD: We may, we'll have to consider this further for the next draft. Please keep note in for next draft, thank you.]*

Undertaking by Lieutenant Governor in Council

3. [Drafting TBD - Article 10 of Blakes document under consideration by OLC] *[NTD: Understood. We've received a draft from Mark S. and will provide comments to him soonest, once we receive Blakes input.]*

PART II
TRANSITION CHARGES

[OLC Note: Rather than deal with different concepts of charges (e.g. period transition charges; transition charges etc.) can we leave the details to either the Fair Allocation Plan or the regulations? *[ntd: We'll explore this idea with Blakes etc.]* It seems to me that the most crucial point to communicate in the Bill is that the IESO will charge electricity vendors and that electricity vendors will charge specified consumers an amount on every invoice. See possible reg-making authority set out below. *[NTD: Fair enough, we'll take this back. Please retain this note. Thank you.]*]

DUTY OF SPECIFIED CONSUMERS TO PAY

Specified consumers to pay transition charge

4. (1) Upon receipt of an invoice that includes a transition charge determined under this Act, a specified consumer shall pay the transition charge to the vendor in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether payment of the amounts is inconsistent with the Fair Allocation Plan applicable at the time when the payment is due;

[OLC Note: As drafted, subs. (1) indicates that the amount must have been determined in accordance with the methodology set out in the Fair Allocation Plan, so I'm not sure what we mean by clause (a). Isn't the whole point of the Fair Allocation Plan to ensure that

the amounts are calculated properly? *NTD: The actual transition charges (amounts to be recovered from consumers) are to be derived from the Finance Plan which, itself, is supposed to be based on the Fair Allocation Plan. If for some reason the OPG Finance Plan somehow results in the amounts to be recovered from consumers via Transition Charges to be "out of sync" with the Fair Allocation Plan in force at the time, clause (a) is supposed to ensure that those amounts are still capable of being recovered from consumers. NTD for clients:* ***Consumer protection issue: should there be any provisions designed to protect the consumer from an inordinate transition charge? (one that is out of sink with the Fair Allocation Plan)?***]

(b) whether the payments relate to [financial obligations] incurred in a manner that did not comply with the Financing Plan; and

[OLC Note: Again, what is the point of the Financing Plan if it is not going to have any legal effect on what people have to pay? *[NTD: Its supposed to be the basis upon which the Financing Plan (borrowing activities of OPG/Trust) and the basis upon which Transition Charges are generally based. Keeping the linkage between the Fair Allocation Plan, the Finance Plan and Transition Charges is designed to strengthen the constitutional case. However, the obligation on consumers to pay is to be robust enough to survive any discrepancy between the Transition Charges and the Fair Allocation Plan.*
]

Indebtedness of specified consumer

(4) An unpaid transition charge that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to the regulatory asset owner.

Same

(5) The indebtedness mentioned in subsection (4) is a [single and separate? NTD: Yes, please leave in "single and separate" for the next draft.] debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

[OLC Note: The phrase "single and separate" doesn't appear anywhere in Ontario's Current Consolidated Laws (Statutes and Regulations). Understood, it may be that it's a term that is used in the U.S. for expressing these kinds of concepts. We have to note the US law (for the purposes of creating the binding legal obligations we're attempting to create) and this may be just one of a number of drafting adjustments we're being asked to adopt, if it is possible to do so.] I also haven't been able to find either term in relation to the phrase "debt obligation". Is there another way to describe what is meant by this phrase in the Ontario context? Is there some other statutory context in which we have tried to communicate this same idea -- would be good to consider precedent language.] [NTD: we will look at the PPSA to see if in fact that statute provides us with a parallel "Ontario-based" context. Please keep the note in for the next draft.]

Irrevocability of transition charge

5. Any transition charge shown on an invoice issued to a specified consumer under this Act is irrevocable[and may not be set off or by-passed].

[OLC Notes:

1. What is meant by "set off" *[ntd: reduced or nullified by using another credit: e.g. if one was on equal billing with their distributor, paid a flat monthly fee of, say, $150, then regularly built up a credit on their bill relating to the commodity charges, that credit could conceivably be used to "off set" (or be set-off) against these charges – would likely not happen for a host of other reasons (e.g. the manner in which the OEB passes through the commodity and fixes transmission and distribution rates, but theoretically I think that's the scenario they're trying to protect against].* and "by-passed"? *[NTD: By pass is simply "avoidance" (saying that "the transition charges not to be bypassed" means that they are not to be avoided (it's the basis of an anti-avoidance statement or provision)*

Instructions also include the following….

Anti-avoidance; No-by-pass *– Transition Charges attributed to a Ratepayer in respect of any Finance Amount incurred under ~~with~~ the ~~Treasury~~ Finance Plan applicable at the time the related Funding Obligation was incurred may not be avoided and shall be [non-by-passable].] [NTD: Yes, we still see it this way but we're happy to further explore. If you are not comfortable including this language or something like it, could you keep the note in for the next draft?]*

2. Instructions in Article 3 (5) refer to the "irrevocability" of the charges. When would the "irrevocability" take effect? *[NTD: The irrevocability would take effect at the time that the "electricity vendor" (e.g. distributor, (or retailer, if on retailer consolidated billing)* ***invoices*** *the consumer. By that time, the electricity vendor should have received the appropriate information from the IESO and have been able to calculate the consumers' Transition Charge.]* At some point before invoicing? *[NTD: We'll confirm but we think its upon invoicing the consumer.]* Only upon entering the information on the invoice? *[ntd: please keep the note in but draft to "upon invoicing the consumer"]* What if the invoice is issued but the person never receives the invoice? *[NTD: The consumer would still be liable, just as they would be today regarding invoicing for all other electricity charges.]* What if there is an error in the calculation of the invoice? *[ntd: same answer]* Or if there is some other kind of mix-up where the wrong invoice is sent to a person? *[ntd: same answer – errors and ommissions don't vitiate a rightful claim or obligation in this regard.]* There is some indication in the instructions that there may be some ability to adjust the amount based on a "manifest calculation error" but what does that mean? *[ntd: We're planning to take this up with Blakes and the client – we want to include a provision that protects the consumer against aggregious errors in calculating transition charges. I gather, practically speaking, that if the initial calculation of the Transition Charges were for some reason found to be wrong (too high, too low), then the amount would be "trued up" but none of that is specified in the Blakes document. There are regular true-ups involved in this new strategy but I think the "manifest calculation error" is of a higher order of inaccuracy than the normal variances that are going to be*

regularly trued-up against. Please keep your good note to draft in and we'll explore further with clients and Blakes. (See Article 4 (5) in instructions).

I note that in the instruction on Article 4 (1), you state: "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". Does this mean the person is deemed to be billed even if they never see the invoice and even if there is an error in the invoice?] *[NTD-: This has to be part of the same discussion to ensure there are adequate consumer protection measures in place. While not receiving the invoice for costs that are properly incurred is not a defence to having to pay the obligation, there should be rules (our hypothesis) designed to ensure the consumer receives adequate notice, time to pay/catch up, etc. We intend to check the Ontario Energy Board's Distribution System Code to see how billing errors are dealt with there.]*

DUTIES OF IESO

IESO to determine transition charge for vendor

6. (1) The IESO shall apply the methodology set out in the Fair Allocation Plan to determine the amount payable on a monthly basis by each vendor on behalf of the vendor's specified consumers for transition charges.

IESO to invoice vendors

(2) The IESO shall issue an invoice to each vendor for the transition charges in accordance with the regulations.

IESO to collect

(3) The IESO shall, as an agent of the regulatory asset owner, make reasonably diligent efforts to collect transition charges from vendors.

Deposit

(4) The IESO shall promptly deposit payments for transition charges in the account established under section X.

IESO's to remit

(5) The IESO shall remit amounts received to the [ra holder *[ntd: yes, the Regulatory Asset owner – the one that holds or owns the interest in the RA*] in accordance with the regulations.

DUTIES OF VENDOR

Vendor to determine transition charge for specified consumer

7. (1) In order to recover transition charges invoiced to an electricity vendor under subsection [previous section] (1), each electricity vendor shall apply the methodology set

out in the Fair Allocation Plan to determine the proportionate share of transition charges payable on a monthly basis by each of its specified consumers.

Vendor to invoice specified consumers

(2) The vendor shall issue an invoice to each specified consumer for the applicable amount of transition charges in accordance with the regulations.

Vendor to collect

(3) (1) Each vendor shall, as an agent of the regulatory asset owner, make reasonably diligent efforts to collect transition charges from specified consumers.

Deposit

(4) The vendor shall promptly deposit payments for transition charges in the account established under section X.

Remittance to IESO

(5) The vendor shall remit all amounts received to the IESO in accordance with the regulations.

PART III
HOW TRANSITION CHARGES ARE DETERMINED

FAIR ALLOCATION PLAN

[NTD: Latest thinking is that the first five years of the plan would be set out in the Bill. This means moving over some of the provisions from the draft RPP reg. amendments. See the mark-up of the draft RPP amending reg. for details.]

Fair Allocation Plan

8. (1) In order to ensure the fair allocation of green generation costs among specified consumers beginning on May 1, 2017, the Minister, with the approval of the LGIC, shall prepare a written plan entitled the Fair Allocation Plan.

[OLC Notes:

- Do you want to impose a timing requirement on the preparation of the plan? When does the plan take effect? *[NTD: Latest thinking is that the first plan would be "hard wired" into the legislation (with some detail in the regulations) based on the "proxy-consumer" concept. Therefore, we would include a provision that states explicitly that the elements of the substantive provision we provide for in this bill represents the Fair Allocation Plan for the first [five] years.]*
- Do you want to impose a publication requirement for the plan? *[ntd: Yes, seems reasonable – likely on OPG's website or other Government website.]*

- Do you want to have the plan subject to LGIC approval? OEB review/approval?] *[NTD- **Great question – please maintain this NTD for the next draft. It appears (just now heard very late today) that Minister is to be able to approve the Fair Allocation Plan (with LGIC approval)]***

[OLC Note: Please confirm whether the "funding shortfall" should be mentioned above or if it is accurate to refer to the green generation costs.]
[NTD: we're concerned that there needs to be a process for determining impact on the proxy consumer of the transition costs arising out of the Finance Plans which are based on the Fair Allocation Plan. Please provide an NTD to this affect so that we can pursue this with Blakes and the clients.]

Amendments to plan

(2) The Minister may amend the plan at any time as the Minister considers advisable.
[OLC Notes: *[NTD: We are hearing now that the Minister is not to be empowered with the authority to amend or change the Fair Allocation Plan. Once the plan is "set" its to operate in an unimpeded fashion.]*
- What does the Minister have to do in order to implement the amendments? (e.g. LGIC approval of amended plan required? Notification to anyone? Publication?) ***[NTD: Re amendments –We'll have to confirm our instructions here – the plan is to only be amended on under a very limited set of circumstances to be articulated in the next draft.]***
- do you want to impose limits on the scope of amendments that can be made?] *[NTD: We hope to be able to provide further, clearer instructions on circumstances in which the FAP may be amended.]*

[OLC Note: What is the legal significance of the Fair Allocation Plan? For example, do we want a provision that says something like "The IESO and the OEB shall comply with the plan?] *[ntd: The Fair Allocation Plan represents the statute-based approach for fairly allocating Green Generation Initiative costs across multiple generations of prescribed consumers. It is the basis of the Finance Plans and the Transition Charges. Yes, we think it would be a great idea to have a provision which states that the OPG Financing Entity, the IESO and electricity vendors must comply with the Fair Allocation Plan.]*

Principles

9. In preparing the Fair Allocation Plan, the Minister shall have regard to the following principles:
[NTD: we're concerned that there needs to be a process for determining impact on the proxy consumer of the transitions arising out of the Finance Plans which are based on the Fair Allocation Plan. Please provide an NTD to this affect so that we can pursue this with Blakes and the clients.]

1. Green generation costs should be allocated over a period not to exceed the later of,

    i. the last day of the estimated remaining useful life of the green generation assets, and

    ii. the last day on which the IESO has obligations under the green generation contracts.

2. The share of green generation costs allocated to a particular group of consumers in respect of a reference period should be proportionate to a reasonable assessment of the benefits of the green generation contracts to the group of consumers over that reference period.

3. The estimated green generation costs allocated to a group of consumers for a reference period should not exceed the estimated value of the green generation assets [during and after the reference period?].

4. No group of consumers should bear an unreasonably disproportionate share of the green generation costs and adjustments should be made over time if the Minister is of the opinion that a group of consumers has paid more than is reasonably proportionate.

5. Allocation of the green generation costs should be determined for reference periods.

6. A reasonable estimate of the rate of inflation should be applied.

Methodology

10. (1) The Minister shall set out in the Fair Allocation Plan the methodology to be used for allocating green generation costs among specified consumers, which methodology shall include the inclusion by vendors of transition charges on the invoices of specified consumers.

Same

(2) The Lieutenant Governor in Council may make regulations governing the methodology, which may include requiring the Minister to have regard to prescribed considerations when selecting the methodology.

FINANCING PLAN

Financing Plan to be prepared by prescribed entity

11. (1) In order to ensure that decisions made by the IESO or a transferee relating to the financing of [unrecovered costs associated with the creation and implementation of the green generation ~~costs~~initiative? ~~the funding shortfall as determined under section X?~~] *[This deserves confirmation, but the Blakes document refers to the Financing Plans as "....allocating the unrecovered transition costs across present and future Ratepayer Groups which appears to line up with the FAP. Problem is that the definition for "unrecovered transition costs" isn't instantly relatable to the other concepts we've derived so far in this draft. The Green Generation Initiative embodies essentially the same principle and it is present in the description of the Financing Plan (see Article ...]* are consistent with the Fair Allocation Plan and are cost-effective, the Ontario Energy Board shall prepare and propose to the Minister a plan entitled the Financing Plan. ***[ntd: Our current information / instruction is that the OEB would not be responsible for preparing the Financing Plan, the latest information ENERGY LSB has is that Financing Plans would be prepared by the OPG for execution by its Financing Trust.]*** [OLC Note: Do you want to impose a timing requirement on the preparation of the plan? ***[NTD: Good question. Practically speaking it has to happen within the first few months but we should have an NTD to confirm the timing of this.]*** When does the plan take effect?] ***[NTD: Please retain this NTD – it needs further discussion/consultation with Blakes.]***

Other prescribed entity

(1.1) If the another entity is prescribed for the purposes of this Part, that entity shall have all of the obligations and duties of the Ontario Energy Board under this Part and all references to the Board in this Part are deemed to be references to that entity. ***[NTD: This, too, needs an NTD: It is not clear what role the OEB would have and whether a replacement entity is required. Please maintain this NTD for the next draft.]***

Approval by Minister

(2) Upon receipt of a proposed Financing Plan or proposed amendments to the plan,, the Minister shall, in writing, ***[NTD: The issue of whether the Minister would be providing this kind of approval or any supervision over the Financing Plan has to be confirmed. This provision should stay but please include an NTD to ask for a decision on this point. Thank you!]***

(a) approve the proposed plan or proposed amendments; or

(b) make any amendments to the proposed plan or proposed amendments that the Minister considers appropriate and approve the plan or amendments subject to those further amendments.

Publication

(3) The approved Financing Plan and any subsequent amendments to the plan under this section shall be made available to the public in a manner approved by the Minister. ***[NTD-:Same. Needs confirmation as to the Minister' role and manner of publication (assume Financing Plan is to be posted, once it is approved, on OPG's website) – please include an NTD on this point as well.]***

Amendments to approved plan

(4) The Financing Plan may be amended at any time by,

(a) the Ontario Energy Board, subject to the Minister's approval of any such amendments under subsection (2); ***[ntd: The most recent understanding is that OEB would not be responsible for preparing or amending the Financing Plans, the latest information ENERGY LSB has is that Financing Plans would be prepared by the OPG Financing Trust in a manner consistent with the FAP. We'll have to confirm whether amendments are to be provided for and under what circumstances (including what safeguards or elements of supervision).]***or

(b) the Minister. ***[ntd: same as NTD in the opening flush – Some of these decisions may now have been landed but haven't caught up to Dan or I justyet – hopefully by tomorrow mid-morning we'll have more percision.]***

[OLC Notes:
- What does the Minister have to do in order to implement the amendments? Notification to anyone? Publication?) *[NTD: Publication should be part of any creation or establishment of these Financing Plans. Please maintain an NTD for this in the next draft.]*
- do you want to impose limits on the scope of amendments that can be made?]
[NTD: Good question, please maintain an NTD for the next draft. Thanks!]
[OLC Note: Do you want to impose a requirement that the ~~Treasury~~ Financing Plan be reviewed every time the Fair Allocation Plan is amended?] *[NTD-Good point, please maintain for the next draft.]*

[OLC Note: What is the legal significance of the ~~Treasury~~ Financing Plan? For example, do we want a provision that says something like "The IESO and the OEB shall comply with the plan?] *[NTD: Yes, I think so – As we learn more about the Financing Plan, we're finding that the OEB must comply with it in establishing its RPP work. OPG must create the Financing Plans in a manner which is consistent with the Fair Allocation Plan. Transition Charges are to be based on the properly –made Fair Allocation Plans and are to be calculated and imposed on specified consumers in a manner consistent with both the Financing Plans and the FAP. However, in terms of compliance, the OEB would not be complying with the Financing Plan. The IESO and electricity vendors*

would be complying with the relevant Financing Plan applicable to the relevant reference period in calculating and imposing the Transition Charges on specified consumers.]

Contents of plan

12. (1) The Financing Plan shall include the following:

1. A description of one or more transfers that may be made in respect of the regulatory asset established under Part **.

2. A description of the basis upon which funding obligations may be incurred as a means of recovering [green generation costs? *[NTD: Please use "Green Generation Costs" for now and please provide an NTD to confirm. Thanks.]* the funding shortfall?] in a manner that is consistent with the applicable Fair Allocation Plan. *[NTD: Funding shortfall.]*

3. A description of the [potential? *[NTD: Not sure "potential" is required since the reference back to para 2 should be clear enough.]* funding obligations mentioned in paragraph 2, which may include the following:

    i. Indebtedness.

    ii. Payment obligations arising under or in respect of derivatives.

    iii. Payment obligations owing to service providers, administrative agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies.

    iv. Refinancing an existing funding obligation by applying the net proceeds obtained by incurring other funding obligations.

3. Such other matters as may be prescribed by the regulations.

Special purpose financing entities

(2) The Financing Plan may, in accordance with the regulations, ~~[contemplate?]~~ provide for ~~[direct?]~~ the establishment of one or more special purpose financing entities that may incur funding obligations.

Administrative agent

(2.1) The Financing Plan may require an entity other than the Ontario Energy Board to perform the functions described in section [xx], in which case that entity shall perform those functions in accordance with such terms as may be specified in the Financing Plan.

[NTD:The OEB's role and therefore the requirement for a replacement entity must be confirmed. Please leave the drafting "as is" but please also include an NTD to this effect. Thank you!]

Prohibition

(3) The Financing Plan shall not provide for funding obligations to be incurred with any recourse to any assets of the electricity vendors, the IESO, the Ontario Energy Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or [an obligation in relation to a finance amount].

[OLC Note: What is meant by the phrase in square brackets? *[NTD: Please maintain this NTD and we'll confirm the intention here]*]

Funding obligations unaffected by amendment to Fair Allocation Plan

(4) No funding obligation incurred under the Financing Plan shall be affected by an amendment to the Fair Allocation Plan that is made after the funding obligation has been incurred.

[OLC Note: The above subs. (4) is based on instructions on the "irrevocability" of the transition charges. It seems to belong here. *[ntd: Yes, it does seem to fit so long as we also create an "irrevocability" requirement (provision) specifically tied to the Transition Charges themselves, not just the funding obligations incurred by the OPG Trust or administrative agent under/pursuant to the Financing Plan. Thanks.]* However we should clarify a few things:

1. What is meant by "incurred under" the Financing Plan? _ This could suggest that it has to be authorized by the FP, which I don't think you want, but please confirm. *[NTD: I actually do think that we want to ensure that funding obligations are created based on the Financing Plan – we have to ensure that the funding obligations are consistent with ("incurred in a manner consistent with") the Financing Plan. Its worth keeping an NTD clarifying whether the funding obligations are to be "authorized by" or just "consistent with" the FP.*
2. What is meant by "affected"?] *[NTD: Changed: no funding obligation would be changed or modified by changes to the FAP.]*

[OLC Note: Consider Article 8 (9) entitled "incurrences are binding" -- I believe we have already stated in the Part dealing with the regulatory asset that the rights are enforceable etc. even if charges have been imposed in a manner that does not follow the Financing Plan. Is more drafting required? Please advise.] *[ntd: please maintain for next draft, thank you!]*

FUNDING SHORTFALL

Definitions

13. In sections [subsequent sections under Funding Shortfall heading],

"applied surplus" means the amount calculated under section 16; ("French")
[OLC Note: In the Blakes document, this is the "IESO applied surplus". *[NTD: Understood, thank you. Please maintain NTD.]*]

"consumer contributions" means the amount calculated under section 15; ("French")
[OLC Note: In the Blakes document, this is the "GA Power Contract Contribution" *[NTD: Understood, thank you. Please maintain NTD.]*.]

"net payment" means the amount calculated under subsection 14.1 (1); ("French")
[OLC Note: In the Blakes document, this is the "IESO Power Contract Net Payment". *[NTD: Understood, thank you. Please maintain NTD.]*]

"net receipt" means the amount calculated under subsection 14.1 (2); ("French")
[OLC Note: In the Blakes document, this is the "IESO Power Contract Net Receipt". *[NTD: Understood, thank you. Please maintain NTD.]*]

"unapplied surplus" means the amount calculated under section 17. ("French")
[OLC Note: In the Blakes document, this is the "IESO unapplied surplus". *[NTD: Understood, thank you. Please maintain NTD.]*]

Funding shortfall

14. (1) For the purposes of this Act, the funding shortfall for a reference period shall be determined by applying the following formula:

$$(A - B) - C$$

Where,

A = the net payment for the reference period,

B = the consumer contribution for the reference period,

C = the applied surplus for the reference period.

Net payment

14.1 (1) The net payment for a reference period is determined as follows:

1. Calculate the sum of the amounts payable by IESO to generators under all green generation contracts for the reference period.

2. Calculate the sum of amounts payable by generators to the IESO under all green generation contracts for the reference period.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Net receipt

(2) The net receipt for a reference period is determined by subtracting the amount calculated under paragraph 1 of subsection (1) from the amount calculated under paragraph 2 of subsection (1).

Consumer contribution

15. The consumer contribution for a reference period is the aggregate of the payments to be made by the specified consumers in respect of the reference period for transition charges, as determined under the Fair Allocation Plan.

Applied surplus

16. The applied surplus for a reference period is the lesser of the following amounts:

1. The amount by which the net payment exceeds the consumer contribution for the period.

2. The unapplied surplus on the last day of the reference period that immediately preceded the relevant reference period.

Unapplied surplus

17. The unapplied surplus on a specified day shall be determined by applying the following formula:

$$(D + E) - (F + G)$$

Where,

D = the sum of all net receipts for the reference periods occurring before the specified date,

E = the sum of all consumer contributions for the reference periods occurring before the specified date,

F = the sum of all net payments for the reference periods occurring before the specified date, and

G = the sum of all applied surpluses for each reference period occurring before the specified date.

FINANCE AMOUNT

Definitions

18. In sections 19, 20 and 21,

"funding costs" means the amount determined under section 21; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of a transferee by applying the net proceeds obtained by the transferee incurring one or more other funding obligations. ("French")

[OLC Note: In the Blakes document, this is the "refinancing" definition. *[NTD: Understood, thank you. Please maintain NTD.]*]

Finance amount

19. (1) For the purposes of this Act, the finance amount for a reference period shall be determined by calculating the sum of the following:

1. The sum of all payments made by a transferee [during the reference period? *[NTD: please maintain this reference to "reference period" for this draft and please maintain an NTD to confirm. Thanks!]* to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the transferee under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

[OLC Note: Para. 1 is the definition of "repayment" from the Blakes doc. However, that definition include bracketed text that says: (*including making Finance Reserve Deposits).* I don't understand this because (1) Finance Reserve Deposit is listed as a separate line item in the definition of "finance amount" (see para. 4 below). In order to avoid duplication, can we exclude "finance reserve deposits" from para. 1?] *[NTD: Please maintain this as a NTD for the next draft – we'll try to confirm this for you then. Thanks!]*

2. The sum of all funding costs for the reference period.

3. The sum of all amounts payable by or on behalf of a transferee to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

[OLC Note: Para. 3 is the definition of "redemption amount" from the Blakes doc. *[NTD: Understood, thank you. Please maintain NTD.]*]

4. The balance of the finance reserve at the end of the reference period, as determined under section 20~~3~~. *[NTD: I'm hopeful there won't be 203 sections in this proposed bill – hope you were referring to s.20 – Thanks!]*

5. The sum of any other amounts payable by a transferee for the reference period that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

[OLC Note: Para. 5 is based on the definition of "additional funding charges". Since many of the items included in this definition are examples, I'm hoping we can focus our energy on getting the high level description in para. 5 right and then supplementing this by regulation with the examples if necessary. *[NTD:That seems like a fair approach.]* If it's essential to include the examples in the Bill then I will need to discuss what is meant by each of the different items in order to draft this. *[NTD: Understood. We'll confirm on our end.]*]

Finance reserve balance

20. (1) For the purposes of paragraph 4 of section 19, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

[OLC Note: This section is a modification of the definitions provided in the Blakes document for "Finance Reserve Deposits" and "Finance Reserve Withdrawals". The proposed definition of "FR deposit" involved a subtraction of the "FR withdrawal" so the term 'deposit' was not really descriptive of a pure deposit but rather the balance. ***[NTD: Understood, thank you. Please maintain NTD.]***]

1. Calculate the sum of all amounts deposited [to what account? *[NTD: we'll have to confirm this for you on next draft. Thanks!]* during the reference period ~~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.

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? *[NTD: Need to confirm.]* as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Funding costs

21. The funding costs for a reference period are determined by taking the following steps:

1. Calculate the aggregate of all interest and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of the transferee during the reference period in respect of all funding obligations, including the following:

    i. Standby commitment fees or charges paid to any lender.

    ii. Credit enhancement fees or charges paid to any credit enhancer.

    iii. Liquidity fees or charges paid to any liquidity provider.

    iv. Payments, including termination payments, made under derivatives.

    v. Deposits made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a funding obligation.

2. Calculate the aggregate of all amounts received by or on behalf of the transferees during the reference period in respect of a funding obligation, including reimbursement of any amounts referred to in subparagraphs 1 i to v.

[OLC Note: Para. 2 is the definition of "finance receipts" in the Blakes doc. *[NTD: Understood, thank you. Please maintain NTD.]*]

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

PART IV
THE REGULATORY ASSET

[OLC Note: The provisions in Articles 4 (9) and 5 (10) relating to the Regulatory Asset Owner having standing would perhaps fit best in the part dealing with the Regulatory Asset. I'm not sure why this provision would be needed in addition to what is already being stated below (if the statutory right is sold/assigned to the new owner then doesn't that bring with it the ability to enforce the right? *[ntd: Likely the plan is to belabour the point (belt & suspenders) for the benefit of the financibility of the plan.*) Please instruct.]

ESTABLISHMENT OF REGULATORY ASSET

Regulatory asset established

22. (1) The IESO has property rights and interests, which together constitute a regulatory asset, in the following:

[OLC Note: As a drafting matter, we would typically want each of the items in a list to be distinct from one another (no overlap between the items in the list). Could you please assist with reviewing the language to ensure that each item is distinct. *[NTD: We will and confirm on a future draft.*]

1. The right of the IESO to record its portion of the regulatory asset in its accounts.

[OLC Note: Should the "right" referred to in para. 1 be set out in the statute somewhere? Would the IESO have this "right" if the statute were silent on this matter? *[NTD: Perhaps in a clarification provision in directly under sub (1), such as a (1.1) For greater clarity, the IESO has the right to record amounts in its accounts which relate to the Regulatory Asset or its proportionate share thereof".*]

[OLC Note: For the paragraphs below where I have suggested a cross-reference, please take a look at the relevant sections and let me know if you think a cross-reference would work well. *[ntd: yes, we will.]* We could always put a parenthetical reference after the cross-reference to flag the topic for readers of the law, but this way we can be sure that we are lining up the rights with the actual rights that are being given under the statute. *[NTD: This bears further consideration, thanks.]*]

2. The rights of the IESO under sections [include cross reference to sections that authorize the IESO to impose, bill, invoice, collect and receive amounts and the right to determine the amounts? *NTD: Please work from that assumption. Thanks.*].

3. The right to enforce section [include cross-reference to the section that creates indebtedness of each specified consumer to pay the transition charges, together with all related late payment fees or interest charges]. *NTD: Please work from that assumption. Thanks.*].

4. The right to enforce section [include cross-reference to section that requires vendor to impose, bill, invoice, collect and receive transition charges, including amounts required to be remitted to the IESO and all collections and the proceeds of any enforcement action undertaken by the vendor to recover payments]. *NTD: Please work from that assumption. Thanks.*].

5. The right to enforce section [include cross-reference to section that sets out the duties of IESO to collect and receive remittances with respect to and to remit IESO Remittances to or to the accounts of the regulatory asset owner, each with respect to its Regulatory Asset, including all collections and the proceeds of any enforcement action undertaken by it…]. *NTD: Please work from that assumption. Thanks.*].

7. The right to receive and collect all transition charges under [include cross-reference]. *[NTD: We'll have to confirm for the next draft, thanks!]*

8. The right to all amounts and entitlements under each account created under sections [cross-ref to regulatory asset accounts sections *NTD: Please work from that assumption. Thanks.*]] and all amounts on deposit in those accounts.

[OLC Note: I believe those provisions refer to all of those amounts being held in trust for the regulatory asset owner. Is it necessary to layer this on top of that trust? *NTD: Please work from the assumption that it is for now, but we'll confirm for you on a future draft.*]

9. All rights of any kind, whether in tort, contract or otherwise, of the IESO that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset.

[OLC Note: Para. 9 is essentially a cut and paste of the Blake's definition of "Related Rights". NTD- Understood, thank you.]

10. The right to all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 9, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

[OLC Note: Please check to see if para. 10 is necessary or if any elements could be covered/addressed under one of the previous paragraphs.]NTD – we'll have to provide further instructions on a future draft, thank you.]

[OLC Note:
1. I wonder whether the proposal allows for double recovery in some cases (e.g. right to recover both amounts that the distributor has to remit AND the amounts that the consumers have to pay). *[ntd: Interesting point – we'll have to provide a safeguard of some kind for this - please provide an NTD in this regard.]* This would be addressed by ensuring each of the above items in the list is distinct from one another.
2. The "regulatory asset holder" would include the IESO for at least a bit of time at the beginning. But some of the items included in the list for the regulatory asset include *obligations of the IESO*. I understand that when the regulatory asset is sold/assigned, the IESO's obligation to accept remittances from distributors would be transferred to the

Financing Entity but I don't understand how this obligation could form part of the initial regulatory asset that the statute initially gives to the IESO itself. *[NTD: We'll have to consider a bit further – please maintain these notes but we hope to sort this out soon.]* Does the regulatory asset "grow" when it is assigned/sold to the financing entity and is no longer held by the IESO? *[NTD – great question but need to confirm – We would think that the regulatory asset is sold "as is" based on static amounts accrued "to date" but this needs to be confirmed.]* Is it necessary to handle rules relating to the IESO separately from other holders of the regulatory asset?] *[NTD: Needs confirmation – please maintain the NTD.]*

Same

(2) The establishment of the regulatory asset is not affected by failure to impose, attribute, invoice, accrue or collect transition charges.

No set-off, etc.

(3) The regulatory asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, the IESO, an agent of the regulatory asset owner or an owner of distribution system assets in the Province;

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

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

[OLC Note: Above is from Article 5 (12) of the instructions - I'm not sure if this is covered elsewhere in the draft. What do we mean by set off or reduced? *[NTD:appears to us to mean " cannot be changed in a manner which reduces its economic value to the owner of the regulatory asset by any of the listed events or circumstances, etc.]* Need to check how this provision lines up with other provisions dealing with set off and reduction (e.g. transition charges irrevocable).*[NTD – understood. We will as well on our end.]*]

TRANSFER OF REGULATORY ASSET

Transfer of regulatory asset

23. The IESO may transfer the regulatory asset to any entity.

[OLC Note: need to expand the rules in a subsequent draft to address other potential transferors an entity that receives the Regulatory Asset from the IESO may then go on to sell the Regulatory Asset to someone else. *[NTD: Yes, understood –please maintain this NTD. Thanks!]*]

Ownership of a portion of the regulatory asset

24. The regulatory asset owner may transfer ~~of~~ a portion of its rights and interests in the regulatory asset, including by way of a transfer of a divided or an undivided interest.

Validity of transfer

25. (1) A transfer of the regulatory asset is [final and binding? valid and enforceable?] *[ntd: ALL of the suggested phrases should be maintained for now, unless there are objections.]* and confers the regulatory asset upon the transferee in accordance with the terms of the transfer.

[OLC Note: I understand that the intention is to communicate the finality of the sale/transfer but some of the terminology included in the instructions relating to "validity of dispositions" seems to be redundant of what is drafted in subs. (1) above. *[NTD: understood, we'll review from this perspective.]*
The following terms do not appear in any current consolidated law (statutes and regulations) on e-Laws: "absolute transfer"; "true sale". I don't know what these terms mean or what they are adding beyond what we have already said in subs. (1). Please advise.]*[NTD: They likely appear as a function of the references to US law which we are forced to grapple with due to the nature of the exercise.]*

[OLC Note: Are there any circumstances under which the "transfer" should not be final and binding?] *[NTD: None known of at this point. Please maintain this NTD as its an important question/issue to confirm.]*

Same

(2) For greater certainty, subsection (1) applies despite the existence of any of the following:

1. Any provision of an Act, regulation or contract relating to the transfer.

[OLC Note: Given that we are including a conflict provision under the "Miscellaneous" part of the Bill, I'd think para. 1 could be removed and we could address any concerns in that conflict provision. Please advise. *[NTD: Not comfortable removing it yet. Please maintain with NTD for now. Thanks!]*]

2. Any consent that may be offered by a party to an agreement in respect of the transfer.

3. Any other circumstances, including the following:

[OLC Note: The risk with including the following list of circumstances in the statute is that someone might successfully argue (even though the list is drafted to be non-exhaustive) that because some other unforeseen circumstance is not listed, the transfer could be legitimately challenged on the basis of that other unforeseen circumstance.

[NTD: I acknowledge that the argument exists but find it specious – it seems to fly in the face of the clear meaning of "including" though I gather courts might look for ways to read flexibility into a statute – I'm not sure we can do anything to address this risk from a practical perspective.]

i. Revenues or other proceeds from transition charges have comingled with other amounts.

ii. Any interest (including any partial, residual or subordinated interest, whether direct or indirect) has been retained in the regulatory asset by the IESO.

iii. Any right to repurchase the regulatory asset in favour of the IESO has been retained.

iv. Any recourse that a transferee may have against the IESO is available. [OLC Note: What recourse would this be? *[NTD: We're not sure just yet - other than a cross-claim of some kind... we'll have to further consider.*]

v. Any indemnification rights or obligations are provided [to the transferee?] *[NTD: please leave as drafted for now – we'll consider for next draft.]* by the IESO.

vi. Any obligation [imposed on? [yes, imposed on]? By what mechanism? This Act or at common law] the IESO to collect and remit transition charges on behalf of a transferee, including but not limited to, any retention by the IESO to bare legal title for the purpose of collecting transition charges.

[OLC Note: Since the obligation referred to in vi above is an obligation that we are creating in the statute, I can't imagine that it would need to be included in this list. Do you agree? NTD: at this point, given the "belt and suspenders" approach that appears to be advocated, I'm not sure it can be removed just yet.] Or is this referring to a different obligation?] *[NTD Not sure – lets consider further for next draft.]*

vii. The ascribed or intended treatment of the transfer by the IESO or the transferee for tax, financial reporting or other purposes.

Deemed perfection, etc.

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

Priority of transfer, assignment, etc.

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

ADMINISTRATION OF REGULATORY ASSET

Administrative agent

26. (1) Unless the Financing Plan [provides for? Requires? NTD: "provides for" should work] another entity to administer the incurrence and payment of funding obligations by transferees, the Ontario Energy Board shall perform those functions as agent of the regulatory asset owner.

Application of amounts

(2) For the purposes of performing the functions mentioned in subsection (1), the Ontario Energy Board shall ensure that any amounts transferred to it as agent for the regulatory asset owner shall only be applied or used to pay finance amounts, as determined under section 19, when they are due and payable.

Regulatory asset owner may grant pledge

27. (1) The regulatory asset owner may, [in accordance with the Financing Plan?] grant a pledge to or in favour of a person in, to and over all or a specified portion of the regulatory asset. *[NTD: Not sure – please maintain the NTD – thought it wouldn't be tied to the FP at this point in the transaction so would have to confirm.]*
[OLC Note: The drafting of s. 27 is very rough. I will need to work on the drafting of this section further… just trying to understand the concepts for now. Please advise as to whether this is correct.] *[NTD: We'll try to provide more direction on the next draft.]*

Types of pledge

(2) A pledge may be a lien, mortgage, charge, right of set-off or security interest.

Validity

(3) Subject to subsections (4) and (5), despite any limitations or restriction on the pledge that may arise under an Act or a contract, the pledge may be made to secure a funding obligation and when granted shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the person to whom the pledge is granted a valid security interest in, to and in respect of the regulatory asset in accordance with the terms of the pledge.

Same

(4) Subsection (3) applies if the description of the regulatory asset in the agreement giving effect to the pledge expressly refers to this section.

Financing Plan may require consent

(5) If the Financing Plan requires the consent of any person before the pledge may be given effect, that consent must be obtained [in accordance with the regulations? The plan?] before the pledge takes effect. *[NTD: Fair question – please maintain NTD for now.]*

Deemed perfection and priority of pledges

(6) The pledge is deemed to have been and shall be perfected, valid and binding from the time when the Pledge is made and shall be valid and binding as against the regulatory asset owner and all other persons who have claims of any kind against the regulatory asset owner.

Same

(7) Subsection (6) applies regardless of whether the persons mentioned in that subsection have notice of the pledge and the security interests under the pledge shall have priority over any liens in favour of those persons.

Proceeds

(8) All proceeds of the regulatory asset that are subject to the pledge and that are received by the regulatory 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. NTD: Possibly, but given "belt and suspenders" approach being advocated, please maintain this for now and we'll have to review for conflicts/internal consistency.]

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 regulatory asset subject to the Pledge, subject to the written consent of the person to whom the pledge has been granted.

Same

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

[OLC Note: Is the following something you want to specify in the Bill? *A Pledgee shall cause a financing statement to be filed in respect of a Pledge for informational purposes*

only under the [PPSA]. [NTD:We'll have to check – thanks for maintaining this NTD for now.]

Collective action required

28. If the IESO or a transferee owns a right or interest in the regulatory asset that comprises less than the entire property right and interest constituted by the regulatory asset, the right or interest shall only be enforced by the regulatory asset owner collectively, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the regulatory asset owner as a collective in accordance with its terms.

[OLC Note: It seems that successors may need to be addressed here. Also Pledgees have not yet been addressed in this draft. *[NTD: Understood – please maintain this for the next draft.]*]

Exercise of rights

29. The rights of the regulatory asset owner to collect and enforce its rights and interests in, to and in respect of the regulatory asset shall be exercised in accordance with section [xx].

REGULATORY ASSET ACCOUNTS

Pro rating of payments

30. (1) This section applies if,

(a) an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices; and

(b) the amount paid is less than the total amount payable.

Same

(2) The electricity vendor shall distribute the payment on a pro rata basis in order to allocate a portion of the payment to the transition charges payable under the relevant invoices.

Deposit

(3) The electricity vendor shall deposit the portion of the payment allocated to transition charges into the account established under section 31.

Electricity v~~V~~endor

31. (1) Each electricity vendor shall establish and maintain an account into which the vendor deposits [or receives? *[NTD: May we have both "deposits" and "receives" for now please?]* only the following:

1. Payments by specified consumers for transition charges.

2. Portions of payments by specified consumers that are attributed to ~~be for~~ transition charges under subsection x (3).

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

Held in trust

(2) The amounts required to be deposited or received into the account referred to in subsection (1) are deemed to be held in trust for the regulatory asset owner.

IESO

32. (1) The IESO shall establish and maintain an account into which the IESO deposits [or receives?] [NTD: may we have both "deposits" and "receives" for now please?] only amounts remitted from accounts established under section 31.
[OLC Note - *These amounts remitted are meant to be what is referred to as "electricity distributor remittances" in the Blakes document, which I believes means remittance of the amounts mentioned in paras. 1-3 of the vendor's account section above. NTD – thanks, we'll have to consider this further.]*]

(2) The amounts required to be deposited or received into the account are deemed to be held in trust for the [regulatory asset holder].

Accounts held by agents

33. (1) If a person is appointed under section 34 or 35 and accepts the appointment in accordance with the applicable section, the person shall establish and maintain an account into which the person deposits or receives any of the amounts mentioned in sections 31 and 32 in respect of which the person has assumed obligations under section 34 or 35.

Held in trust

(2) The amounts required to be deposited or received into the account are deemed to be held in trust for the regulatory asset owner.

AGENTS

[OLC Note: My idea below is that if we can clearly provide for the circumstances in which "alternative invoicing agents" or "alternative collection agents" may be required to assume statutory obligations, then we don't need to repeat references to these entities throughout the Act whenever they may have to assume statutory obligations that would otherwise be the obligations of the IESO or a vendor. *[NTD: this seems like a sound way of centralizing the approach to agents (and replacement entities)?]* The goal is for this Part to ensure that when we impose obligations on the IESO or a vendor, that will be sufficient to transfer the requirement to an agent when necessary since this Part operates to deem the agent to be the IESO/vendor. *[NTD: understood, we'll have to consider a little further, though to ensure it works.*]

[OLC Note: Consider whether you need to clarify status of any agents as non-Crown agents. *[NTD: Good point! I think in all cases the agents referred to here would be "not an agent of HMQ for any purpose, despite the Crown Agency Act" – see s. 8 of EA regarding the IESO as one example of this – we provide similar language for OPG and Hydro One, as I recall.]*]

Appointment of agent, invoicing

34. (1) If a prescribed circumstance applies, the regulatory asset owner may appoint a person to carry out some or all of the obligations of a vendor under this Act in the place of a vendor with respect to invoicing.

[OLC Note: I have used the phrase "prescribed circumstances" to capture the concept of a "replacement event". *[NTD: Understood and should work. We'll have to confirm.]* I'm not sure if this is something that you'd want to include in regulations or if it's something you'd like to provide for otherwise (e.g. in the Financing Plan?). Please instruct. *[NTD:We'll have to discuss and provide direction on the next or future draft.]*]

[OLC Note: This section (and the following section dealing with collections) is unusual because the statutory obligations of the parties are determined by a document that exists outside of the legislation and regulations and that is prepared by someone external (a written appointment prepared by the RA owner). So it is a very significant delegation of legislative power. *[NTD: Understood – please maintain these NTD's – thanks!]*

It's basically giving the RA owner the power to exempt an electricity vendor from specific provisions of the Act and to simultaneously impose statutory obligations on a party who would not otherwise be subject to the Act. *[NTD: I think we have to mull this over internally, please maintain this NTD for the next draft.]*

Would the appointment, once "accepted", be published somehow so that consumers would understand who has a legitimate obligation to issue the invoices or to collect? *[NTD: We have to confirm but this does sound like a very good idea.]*

What happens if the appointment needs to be cancelled or amended? *[NTD: I'm not sure what is meant by the question here – the power to appoint someone else to do the work has to revert to the RA owner. Notice of the new appointee should be provided to the public and on a timely basis (our thought –but does have to be confirmed).]*

I think we have to provide some mechanism for all affected parties to understand who has the statutory obligations at any given point in time.] *[NTD:I think the authority to appoint always has to reside with the RA owner (or at least in one place). Hence, the appointee may become bankrupt, may suddenly refuse to act, etc. in those circumstances, the appointment should be "revoked" by the RA owner and the power to appoint someone else should revert back to RA owner to be exercised afresh. This has to be confirmed with Blakes / others.]*

Appointment to be in writing

(2) An appointment under subsection (1) shall be in writing and shall specify the provisions of this Act that set out the obligations that the appointed person would be required to carry out.

Acceptance

(3) If the person appointed accepts the appointment in writing, that person is deemed to be the vendor for the purposes of the provisions specified in the appointment.

Notice to vendor

(4) Upon acceptance under subsection (3), the regulatory asset owner shall provide written notice to the vendor affected by the appointment of the details regarding the appointment.

Duties of vendor

(5) Upon receipt of a notice under subsection (4), the electricity vendor is no longer required to comply with the provisions specified in the appointment.

Same, regulations

(6) The Minister may make regulations specifying steps that an electricity vendor is required to take upon receipt of a notice under subsection (5), which may include the execution of instruments in order to allow the appointed person to carry out the obligations specified in the appointment.

Appointment of agent, collection, etc.

35. (1) If a prescribed circumstance applies, the regulatory asset owner may appoint a person to carry out some or all of the obligations relating to collection, segregation and remittance under this Act in the place of a vendor or the IESO, as the case may be.

Appointment to be in writing

(2) An appointment under subsection (1) shall be in writing and shall specify the provisions of this Act that set out the obligations that the appointed person would be required to carry out.

Acceptance

(3) If the person appointed accepts the appointment in writing, that person is deemed to be the electricity vendor for the purposes of the provisions specified in the appointment.

Notice to electricity vendor, IESO

(4) Upon acceptance under subsection (3), the regulatory asset owner shall provide written notice to the electricity vendor or the IESO, as the case may be, of the details regarding the appointment.

Duties of vendor, IESO

(5) Upon receipt of a notice under subsection (4), the electricity vendor is no longer required to comply with the provisions specified in the appointment.

Same, regulations

(6) The Minister may make regulations specifying steps that an electricity vendor or the IESO is required to take upon receipt of a notice under subsection (5), which may include the execution of instruments in order to allow the appointed person to carry out the obligations specified in the appointment.

PART V
MISCELLANEOUS

Enforcement

36. [OLC note - Article 9 of Blakes doc deals with "compliance matters" but more instructions are required in order to draft. What are the "regulatory sanctions"? [NTD: Fair points but we need to confirm this in a future draft. Thanks!] Perhaps this needs to be linked up with authority of the OEB under existing legislation? [NTD: You're thinking about OEBA ss. 112 and 125.1 et seq, I gather] Please instruct.] *[NTD: We will provide further direction on a future draft. Thanks very much!]*

[OLC Note: Are there to be any offences created under this Act? [NTD: we'll have to confirm one way or the other.] If so, what are they? [NTD: must confirm.] What are the penalties? [same] What is the liability of directors and officers of a corporation? [NTD: we'll have t confirm, great questions all!] Is there a limitation period on proceedings?] [NTD; same – must confirm.]

[OLC Note: I also believe that the following provision from Article 5 (13) of the Blakes document is an enforcement matter, so please consider this provision along with other compliance matters:[NTD: Will do.]\
[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.]*

Successors

37. [OLC Note: Articles 4 (6) and (7) and Articles 5 (7) and (8) are rules about successors to distributors and the IESO being bound by specific requirements. Still to be drafted.] *[NTD: Understood.]*

[OLC Note: I think that Article 5 (9) also relates to succession to some extent --- I think I need some more information in order to understand it. *[NTD: we'll try to help.]* I understand that this is included in anticipation of restructuring of the distribution system *[NTD: or the sale of a distributor to another party (as we read it).]*. But if we use the defined terms from the Electricity Act (distributor and distribution system) then this doesn't make any sense since a "distributor" is [in accordance with the EA you mean?] just someone who owns or operates a "distribution system".*[Correct as far as the EA goes.]* It also seems unusual to impose a legal requirement that would be triggered by the regulatory asset owner "requesting" that the new entities comply. Normally I think this kind of issue (new parties becoming part of the distribution system) would be handled through an amendment to the Act when the situation actually arose. Perhaps with more information I will better understand.*[NTD: we'll work on our end to get some more clarity as well for a future draft. Thanks, Tara!]*

Owners of Distribution Assets *- If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province, then such person shall, if requested by the Regulatory Asset Owner, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to Ratepayers in its applicable service area, including all consumers connected to the electricity distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by*

Ratepayers as provided in this Part; (c) terminate service to non-paying Ratepayers on the same basis as termination of service is permitted for non-payment of electricity transmission and distribution rates;-(d) exercise all enforcement rights of the Regulatory Asset Owner 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.]

[OLC Note re Article 12 (1) of the Blakes doc ("Choice of law") -- usually in legislation we don't have to specify that the laws of Ontario apply. Is this necessary?] [NTD: Agreed, its quite contractual – please maintain this NTD for now, and we'll clarify on the next draft.] Thanks!]

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.] [NTD: we'll work toward this end for the next draft, thanks..]

No further approvals, etc.

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

[OLC Note: This is to address Article 12 (3) of the Blakes doc. Could you please explain the intention behind this provision in order to ensure it achieves the intended goal? Is it to ensure that nothing like an Environmental Assessment is required with respect to a funding obligation? [NTD-we'll confirm for future draft.] Because it is so broad, it would also purport to cover things like consultation with Indigenous partners. Do you want to keep some reg-making power to allow for exceptions to this rule or do you want to narrow it somehow to address specific concerns that you have?] [NTD-we'll confirm for future draft.]

[OLC Note: Should the Bill address any issues relating to Immunity of the Crown, liability of various individuals, etc.?] **[NTD-we'll confirm for future draft.]**

Regulations

100x. The Lieutenant Governor in Council may make regulations,

(a) governing the inclusion of transition charges in invoices, which may include requiring notice to be provided by vendors to specified persons regarding the transition charges to be imposed over specified periods of time.

[OLC Note: Both of Articles 4 and 5 in the instructions included extremely broad regulation-making powers. I am deferring the issue of regulation-making authority until we have worked out more of the substance of the bill and have a better sense of what kind of reg-making power would be needed. Understood, seems like a very sensible approach.] Expansion of regulation-making powers may also be something that we deal with in more detail at the motions stage, if we are running short of time. [NTD: May not be very politically saleable but necessary – we always get push back from our Minister's office on attempting to amend a bill in Committee….]

Please advise if there are reg-making powers that you would like to give to the Minister vs. LGIC.] [NTD **[NTD-we'll confirm for future draft.]**

PART VI
CONSEQUENTIAL AMENDMENTS

Electricity Act, 1998

101x. [instructions required]

[NTD-we'll confirm for future draft.]

Ontario Energy Board Act, 1998

102x. [instructions required] **[NTD-we'll confirm for future draft.]**

PART VII
COMMENCEMENT AND SHORT TITLE

Commencement

103x. This Act comes into force on [NTD-we'll confirm for future draft.]~~[insert commencement rule]~~

Short title

104x. The short title of this Act is the *[TBD], 2017*.

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Intergenerational Fairness in Hydro Rates Act, 2017

[OLC Notes re this draft:
Some of the decisions regarding roles for Minister, OEB etc. may just now (7:15 pm or so) now have been landed but haven't caught up to Dan or I justyet – hopefully by tomorrow mid-morning we'll have more percision.]
- Because you asked for a comprehensive document instead of receiving drafts of smaller components of the bill, I have worked as quickly as possible to present a draft bill based on the Blakes document. *[NTD-Thanks, Tara – that has been really helpful – having everything in one place is much easier for me in particular, thank you!]*
- Please note that I have not dealt with all elements of the Blakes document in this draft. For example, I have not yet dealt with any provisions of the Blakes document dealing with the "True-Up Amount". *[ntd: Understood, we'll have to keep abreast of what has and hasn't yet been addressed. Thanks for flagging this.]*
- I have drafted most of the provisions based on my own reading of the Blakes document. I am aware that my understanding of what is needed may therefore be inaccurate in several places. *[NTD: Understood, but we appear to be reading the document in the same way in most respects. There are questions we have as well and we are working to resolve them.]*
- In some places, I have included place holders or questions in order to flag items that I need to return to in the next draft. *[NTD: Understood, thank you.]*
- Where possible, I have tried to annotate the drafting to indicate the provisions of the Blakes document that I have relied upon, but I have not done so consistently due to time pressures and in some cases didn't bother because I thought it was obvious. *[NTD-Understood. Thanks, Tara.]*
- When reviewing the draft and providing the next instructions please acknowledge each of my notes/questions with a written comment in the draft, even if it is just to flag for me that you will be answering the question at a later time. *[NTD: Yes, will do.]*-This will help me to understand which notes should remain in the next draft and which can be removed. *[NTD: Fair enough, thanks, Tara!]*]

Preamble
[OLC Note: You mentioned that you may want to include a Preamble and a Purpose clause in the Bill for constitutional law purposes. *[NTD: Yes, that's correct. We have been receiving constitutional law advice from Prof. Peter Hogg (who is also Counsel to Blakes) as well as another leading constitutional law expert. The advice we've been receiving thus far is that these kinds of clauses provide valuable interpretive context which is anticipated to be quite helpful were Government required to defend its approach*

before a reviewing court or tribunal.]x` I have included some preliminary wording for both a preamble and a purpose clause based on Article 1 of the Blakes document to get the discussion started but you'll obviously be seeking advice from constitutional law experts on what would achieve your intended outcome. 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. *[NTD: Agree. We are certainly continuing to seek constitutional law advice.]*Please also note that there is some uncertainty about whether a Preamble may be amended by motion after Second Reading of the Bill, *[ntd: Very important point, thanks for pointing this out. Please leave that note in for the next draft – thanks!]* whereas the purpose clause can be amended in the same way as any other provision of the bill may be amended.]*[ntd: One has to wonder what practical utility was designed or intended to be sought by creating a distinction in the Standing Orders like that – very arcane in my view.]*

The Government of Ontario has invested in decarbonizing and modernizing the Province's electricity infrastructure. Electricity costs have increased for consumers as a result of this investment.

Given the long-term benefits that future generations of Ontarians will receive from this Government's investment, it is appropriate to allocate the 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 the draft but please note that the structure of the bill is still very much up for discussion.]

CONTENTS

PART I
GENERAL

1. Definitions
2. Purpose
3. Undertaking by Lieutenant Governor in Council

PART II
TRANSITION CHARGES

4. Specified consumers to pay transition charge
5. Irrevocability of transition charge

DUTIES OF IESO

6. IESO to determine transition charge for vendor

DUTIES OF VENDOR

7. Vendor to determine transition charge for specified consumer

PART III
HOW TRANSITION CHARGES ARE DETERMINED

FAIR ALLOCATION PLAN

8. Fair Allocation Plan
9. Principles
10. Methodology

FINANCING PLAN

11. Financing Plan to be prepared by prescribed entity
12. Contents of plan

FUNDING SHORTFALL

13. Definitions
14. Funding shortfall
14.1 Net payment
15. Consumer contribution
16. Applied surplus
17. Unapplied surplus

FINANCE AMOUNT

18. Definitions
19. Finance amount
20. Finance reserve balance
21. Funding costs

PART IV
THE REGULATORY ASSET

ESTABLISHMENT OF REGULATORY ASSET

22. Regulatory asset established

TRANSFER OF REGULATORY ASSET

23. Transfer of regulatory asset
24.
25. Validity of transfer

ADMINISTRATION OF REGULATORY ASSET

26. Administrative agent
27. Regulatory asset owner may grant pledge
28. Collective action required
29. Exercise of rights

REGULATORY ASSET ACCOUNTS

30. Pro rating of payments
31. Vendor
32. IESO
33. Accounts held by agents

AGENTS

34. Appointment of agent, invoicing
35. Appointment of agent, collection, etc.

PART V
MISCELLANEOUS

36. Enforcement
37. Successors
38. Conflict
39. No further approvals, etc.
100. Regulations

PART VI
CONSEQUENTIAL AMENDMENTS

101. Electricity Act, 1998
102. Ontario Energy Board Act, 1998

PART VII
COMMENCEMENT AND SHORT TITLE

103. Commencement
104. Short title

PART I
GENERAL

[OLC Note: All definitions will need to be re-evaluated as the drafting of the substantive provisions becomes more settled. *[ntd: understood, thanks, Tara. Probably a good idea to retain this important note (it will hopefully remind us all to continue to actively evaluate whether the definitions work in the various circumstances they need to.]* All definitions are preliminary at this point until we have a better handle on how each term is going to be used. *[NTD: Understood.]*]

Definitions

1. (1) In this Act,

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner under the Financing Plan [for the purposes of this Act]; ("French")

[OLC Note: Will have to consider the above definition more carefully as the drafting evolves. *[NTD: Yes, agreed – we'll all have to actively evaluate these definitions. See suggested revision for your consideration. It tries to draw the specific link to the "Finance Plan" in a more explicit and direct manner than referencing the "purposes of this Act". We think that linkage is important to make explicit.*]

"green generation assets" means electricity generation facilities that are constructed, acquired or developed in connection with the green generation contracts and any related equipment; ("French")

"green generation contracts" means the contracts entered into by the IESO for electricity to be supplied during the period beginning on May 1, 2017 and ending on the prescribed date, other than contracts with Bruce Power L.P or Bruce Power A. L.P.; ("French")

[OLC Note: Consider whether you might want to leave the underlined phrase to regulations (since the company names may change over time, etc.). *[ntd: to your point, perhaps leave initial reference in legislation but include "or its successors or assigns". .* Also wondering whether you'd want some reg-making power to exclude certain contracts generally (e.g. might there be new contracts that would arise that you would not want to have included in the green generation contracts?). *We would need some reg-making power to exclude other contracts/generators [To confirm with Dan/Blakes]*]

"green generation costs" means the costs incurred [by the IESO?] in relation to the green generation contracts; ("French")

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

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

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

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

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means, subject to subsection (4),

(a) the period beginning on the day this Act receives Royal Assent and ending on June 30, 2017,

[OLC Note: Didn't you want to make this retroactive to May 1, 2017? Or is that not necessary?]*[ntd: We have to confirm this point for next instructions.]*

(b) the period beginning on July 1, 2017 and ending on December 31, 2017,

(c) every six-month period following the period mentioned in clause (b); ("French")

"regulation" means a regulation made under this Act; ("règlement")

"service area", with respect to a [licensed distributor or licensed retailer? *Ntd: lets refer to both for now, please*], means the area in which the distributor is authorized by its licence to distribute electricity or the area in which the retailer is authorized by its licence to retail electricity, as the case may be; ("secteur de service") *[ntd: out of order – just flagging, thanks.]*

[OLC note: The above definition is adapted from the *Electricity Act* definition. Does this work? *[NTD: It works for us but will continue to receive comments from other.]*

"regulatory asset" means the regulatory asset established under section X; ("French")

"regulatory asset owner" means, collectively, the owners of the regulatory asset, which may include,

(a) the IESO, to the extent that it retains any ownership interest in, to or under the regulatory asset, and

(b) a transferee, to the extent that it has acquired and 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; ("French")

[OLC Note: Does one "own" an ownership interest? Good point: I think "and possesses" might work – or "holds".]

"specified consumer" means a consumer within the meaning of the *Electricity Act, 1998* who meets the criteria set out in subsection (2); ("French")

"transfer" means an assignment, conveyance, disposition or sale; ("French")

"transferee" means any person to whom all or part of the regulatory asset has been transferred; ("French")

"transition charge" means the charge of that name that is included on the invoice of a consumer under this Act; ("French")

"vendor" means a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

[OLC Note: ENE LSB noted that the definition of "vendor" needs to be considered further. Also, your instructions were to include the IESO in the definition of "vendor" but I don't think that works. Please confirm. NTD: I believe that the IESO theoretically (and perhaps actually, for a few) does serve (just a few) eligible consumers who are directly connected but we'll confirms for next draft.]

Specified consumers

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

[OLC Note: Need to consider that a person could fall in and out of meeting the criteria below… for example could uses 251K in 2017 but only 240K in 2016. Yes, that happens but not normally since they'd probably be billed on a different basis (e.g. demand) if that was their consumption pattern - they likely qualify for the "demand less than 50 kilowatts" in any event so our expectation is that they would still be captured. It's a point we'll have to ~~consider~~bear in mind but we don't think it changes the draft here.]

1. The consumer has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

[OLC Note: Does "50 kilowatts" mean the same thing as "50 kilowatt hours of electricity"? *[NTD: No, 50 kilowatts is a demand threshold that relates to the highest instantaneous draw from the distribution system that a consumer has during a month – this is an a reasonably high threshold for a residential-class consumer.]* What does "demand" mean? Does it need to be linked to a period of time (e.g. monthly?). I'm assuming that it is something different from "annual use". *[ntd: yes, correct on both*

counts – it is a monthly in frequency and not an annual concept.] Also by saying "or such other amount as may be prescribed, do you mean to say that the amount may change over time? *[ntd: When we first started using ~~that~~monthly demand as an eligibility criteria for a type of residential consumer classification, we thought we might increase it or decrease it. However, its remained the demand threshhold for these lower volume consumers since some time in 2003~~2~~.* Consider what the implications may be for people who are under the 50 kW threshold but then over a different threshold. *[NTD: Yes, we have considered that in many past derivations of this approach to classification of residential consumers. Policy has always been to allow consumers to have several doors which they can meet, so that they only have to meet one of the eligibility criteria to qualify, even if they don't meet any of the others.]*]

2. The consumer annually uses [consumes?] *[NTD: We have used "uses" and that seems to work. "Consumers" correct but then you'd have to write "The consumer annually consumes....]* not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed. *[NTD: For these references, we drew from O. Reg. 95/05 made under the Ontario Energy Board Act, 1998 (Classes of Consumers and Determination of Rates), s. 4(2) – which was essentially the basis for the Ontario Rebate for Electricity Consumers Act, 2016 eligibility criteria, though we tweaked the criteria a bit around multi-residential complexes – see sub-para 4 iii the "without regard to the s.5 of the RTA..." language .].*

3. 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.

4. The consumer has an account with an electricity vendor that 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 consumer satisfies such criteria as may be prescribed.

Same

(3) In this Act, a reference to a specified consumer of an electricity vendor who is a licensed distributor or a licensed retailer means a specified consumer who [~~resides?~~] has an account with an electricity vendor for the provision of electricity in Ontario. ~~in the service area of the distributor or retailer, as the case may be.~~

[OLC Note: Does this work to explain what we mean when we say "a vendor's specified consumer"? *[NTD We think we need to settle on "electricity vendor" as the term and expand the description to ensure that it captures any specified consumer in Ontario who has an account with the electricity vendor for the provision of electricity in Ontario.]*]

Reference period

(4) Clauses (b) and (c) of the definition of "reference period" do not apply if the Fair Allocation Plan specifies different reference periods.

[OLC Note: Subs. (4) is quite unusual as it would allow for an external document prepared by an external body to essentially override the legislation. Are you sure you don't want to impose some parameters? *[NTD: Fair point, please keep this point in for the next draft. Thank you!*]

Intention of the Legislature

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

[OLC Note: The above subsection is intended to address the instruction included in the Blakes doc in Article 12 (5) - "Severability". This kind of provision is generally not considered necessary but the above is based on a provision that was included in the *Climate Change Mitigation and Low-carbon Economy Act, 2016.* Please advise if this achieves your desired objective.] *[ntd: This is good and should be kept in until or unless an explicit instruction to override or change it is received. Thanks!]*

Same

(6) The fact that any provision of this Act is held to be invalid [or ceases to be in effect for any reason *[ntd: yes, looks good.]*] does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

[OLC Note: This is meant to address Article 12 (4) of the Blakes doc. This provision is a bit unusual and will have to be considered further to ensure that it achieves the desired

outcome. *[NTD: understood. It appears to increase the durability of the obligations so it would be good to retain.]*

Purpose

2. The purpose of this Act is to provide for the fair and cost-effective allocation of green generation costs among specified consumers throughout the useful life of green generation assets.

[OLC Note: Do you need a provision that states "This Act binds the Crown"?] *[NTD: We may, we'll have to consider this further for the next draft. Please keep note in for next draft, thank you.]*

Undertaking by Lieutenant Governor in Council

3. [Drafting TBD - Article 10 of Blakes document under consideration by OLC] *[NTD: Understood. We've received a draft from Mark S. and will provide comments to him soonest, once we receive Blakes input.]*

PART II
TRANSITION CHARGES

[OLC Note: Rather than deal with different concepts of charges (e.g. period transition charges; transition charges etc.) can we leave the details to either the Fair Allocation Plan or the regulations? *[ntd: We'll explore this idea with Blakes etc.]* It seems to me that the most crucial point to communicate in the Bill is that the IESO will charge electricity vendors and that electricity vendors will charge specified consumers an amount on every invoice. See possible reg-making authority set out below. *[NTD: Fair enough, we'll take this back. Please retain this note. Thank you.]*]

DUTY OF SPECIFIED CONSUMERS TO PAY

Specified consumers to pay transition charge

4. (1) Upon receipt of an invoice that includes a transition charge determined under this Act, a specified consumer shall pay the transition charge to the vendor in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether payment of the amounts is inconsistent with the Fair Allocation Plan applicable at the time when the payment is due;

[OLC Note: As drafted, subs. (1) indicates that the amount must have been determined in accordance with the methodology set out in the Fair Allocation Plan, so I'm not sure what we mean by clause (a). Isn't the whole point of the Fair Allocation Plan to ensure that

the amounts are calculated properly? *NTD: The actual transition charges (amounts to be recovered from consumers) are to be derived from the Finance Plan which, itself, is supposed to be based on the Fair Allocation Plan. If for some reason the OPG Finance Plan somehow results in the amounts to be recovered from consumers via Transition Charges to be "out of sync" with the Fair Allocation Plan in force at the time, clause (a) is supposed to ensure that those amounts are still capable of being recovered from consumers. NTD for clients:* ***Consumer protection issue: should there be any provisions designed to protect the consumer from an inordinate transition charge? (one that is out of sink with the Fair Allocation Plan)?***]

(b) whether the payments relate to [financial obligations] incurred in a manner that did not comply with the Financing Plan; and

[OLC Note: Again, what is the point of the Financing Plan if it is not going to have any legal effect on what people have to pay? *[NTD: Its supposed to be the basis upon which the Financing Plan (borrowing activities of OPG/Trust) and the basis upon which Transition Charges are generally based. Keeping the linkage between the Fair Allocation Plan, the Finance Plan and Transition Charges is designed to strengthen the constitutional case. However, the obligation on consumers to pay is to be robust enough to survive any discrepancy between the Transition Charges and the Fair Allocation Plan.*
]

Indebtedness of specified consumer

(4) An unpaid transition charge that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to the regulatory asset owner.

Same

(5) The indebtedness mentioned in subsection (4) is a [single and separate? NTD: Yes, please leave in "single and separate" for the next draft.] debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

[OLC Note: The phrase "single and separate" doesn't appear anywhere in Ontario's Current Consolidated Laws (Statutes and Regulations). Understood, it may be that it's a term that is used in the U.S. for expressing these kinds of concepts. We have to note the US law (for the purposes of creating the binding legal obligations we're attempting to create) and this may be just one of a number of drafting adjustments we're being asked to adopt, if it is possible to do so.] I also haven't been able to find either term in relation to the phrase "debt obligation". Is there another way to describe what is meant by this phrase in the Ontario context? Is there some other statutory context in which we have tried to communicate this same idea -- would be good to consider precedent language.] [NTD: we will look at the PPSA to see if in fact that statute provides us with a parallel "Ontario-based" context. Please keep the note in for the next draft.]

Irrevocability of transition charge

5. Any transition charge shown on an invoice issued to a specified consumer under this Act is irrevocable[and may not be set off or by-passed].

[OLC Notes:

1. What is meant by "set off" *[ntd: reduced or nullified by using another credit: e.g. if one was on equal billing with their distributor, paid a flat monthly fee of, say, $150, then regularly built up a credit on their bill relating to the commodity charges, that credit could conceivably be used to "off set" (or be set-off) against these charges – would likely not happen for a host of other reasons (e.g. the manner in which the OEB passes through the commodity and fixes transmission and distribution rates, but theoretically I think that's the scenario they're trying to protect against].* and "by-passed"? *[NTD: By pass is simply "avoidance" (saying that "the transition charges not to be bypassed" means that they are not to be avoided (it's the basis of an anti-avoidance statement or provision)*
Instructions also include the following….
Anti-avoidance; No-by-pass *– Transition Charges attributed to a Ratepayer in respect of any Finance Amount incurred under ~~with~~ the ~~Treasury~~ Finance Plan applicable at the time the related Funding Obligation was incurred may not be avoided and shall be [non-by-passable].]* *[NTD: Yes, we still see it this way but we're happy to further explore. If you are not comfortable including this language or something like it, could you keep the note in for the next draft?]*

2. Instructions in Article 3 (5) refer to the "irrevocability" of the charges. When would the "irrevocability" take effect? *[NTD: The irrevocability would take effect at the time that the "electricity vendor" (e.g. distributor, (or retailer, if on retailer consolidated billing)* ***invoices*** *the consumer. By that time, the electricity vendor should have received the appropriate information from the IESO and have been able to calculate the consumers' Transition Charge.]* At some point before invoicing? *[NTD: We'll confirm but we think its upon invoicing the consumer.]* Only upon entering the information on the invoice? *[ntd: please keep the note in but draft to "upon invoicing the consumer"]* What if the invoice is issued but the person never receives the invoice? *[NTD: The consumer would still be liable, just as they would be today regarding invoicing for all other electricity charges.]* What if there is an error in the calculation of the invoice? *[ntd: same answer]* Or if there is some other kind of mix-up where the wrong invoice is sent to a person? *[ntd: same answer – errors and ommissions don't vitiate a rightful claim or obligation in this regard.]* There is some indication in the instructions that there may be some ability to adjust the amount based on a "manifest calculation error" but what does that mean? *[ntd: We're planning to take this up with Blakes and the client – we want to include a provision that protects the consumer against aggregious errors in calculating transition charges. I gather, practically speaking, that if the initial calculation of the Transition Charges were for some reason found to be wrong (too high, too low), then the amount would be "trued up" but none of that is specified in the Blakes document. There are regular true-ups involved in this new strategy but I think the "manifest calculation error" is of a higher order of inaccuracy than the normal variances that are going to be*

regularly trued-up against. Please keep your good note to draft in and we'll explore further with clients and Blakes. (See Article 4 (5) in instructions).

I note that in the instruction on Article 4 (1), you state: "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". Does this mean the person is deemed to be billed even if they never see the invoice and even if there is an error in the invoice?] *[NTD-: This has to be part of the same discussion to ensure there are adequate consumer protection measures in place. While not receiving the invoice for costs that are properly incurred is not a defence to having to pay the obligation, there should be rules (our hypothesis) designed to ensure the consumer receives adequate notice, time to pay/catch up, etc. We intend to check the Ontario Energy Board's Distribution System Code to see how billing errors are dealt with there.]*

DUTIES OF IESO

IESO to determine transition charge for vendor

6. (1) The IESO shall apply the methodology set out in the Fair Allocation Plan to determine the amount payable on a monthly basis by each vendor on behalf of the vendor's specified consumers for transition charges.

IESO to invoice vendors

(2) The IESO shall issue an invoice to each vendor for the transition charges in accordance with the regulations.

IESO to collect

(3) The IESO shall, as an agent of the regulatory asset owner, make reasonably diligent efforts to collect transition charges from vendors.

Deposit

(4) The IESO shall promptly deposit payments for transition charges in the account established under section X.

IESO's to remit

(5) The IESO shall remit amounts received to the [ra holder *[ntd: yes, the Regulatory Asset owner – the one that holds or owns the interest in the RA*] in accordance with the regulations.

DUTIES OF VENDOR

Vendor to determine transition charge for specified consumer

7. (1) In order to recover transition charges invoiced to an electricity vendor under subsection [previous section] (1), each electricity vendor shall apply the methodology set

out in the Fair Allocation Plan to determine the proportionate share of transition charges payable on a monthly basis by each of its specified consumers.

Vendor to invoice specified consumers

(2) The vendor shall issue an invoice to each specified consumer for the applicable amount of transition charges in accordance with the regulations.

Vendor to collect

(3) (1) Each vendor shall, as an agent of the regulatory asset owner, make reasonably diligent efforts to collect transition charges from specified consumers.

Deposit

(4) The vendor shall promptly deposit payments for transition charges in the account established under section X.

Remittance to IESO

(5) The vendor shall remit all amounts received to the IESO in accordance with the regulations.

PART III
HOW TRANSITION CHARGES ARE DETERMINED

FAIR ALLOCATION PLAN

[NTD: Latest thinking is that the first five years of the plan would be set out in the Bill. This means moving over some of the provisions from the draft RPP reg. amendments. See the mark-up of the draft RPP amending reg. for details.]

Fair Allocation Plan

8. (1) In order to ensure the fair allocation of green generation costs among specified consumers beginning on May 1, 2017, the Minister, with the approval of the LGIC, shall prepare a written plan entitled the Fair Allocation Plan.

[OLC Notes:

- Do you want to impose a timing requirement on the preparation of the plan? When does the plan take effect? *[NTD: Latest thinking is that the first plan would be "hard wired" into the legislation (with some detail in the regulations) based on the "proxy-consumer" concept. Therefore, we would include a provision that states explicitly that the elements of the substantive provision we provide for in this bill represents the Fair Allocation Plan for the first [five] years.]*
- Do you want to impose a publication requirement for the plan? *[ntd: Yes, seems reasonable – likely on OPG's website or other Government website.]*

- Do you want to have the plan subject to LGIC approval? OEB review/approval?] *[NTD- **Great question – please maintain this NTD for the next draft. It appears (just now heard very late today) that Minister is to be able to approve the Fair Allocation Plan (with LGIC approval)]***

[OLC Note: Please confirm whether the "funding shortfall" should be mentioned above or if it is accurate to refer to the green generation costs.]
[NTD: we're concerned that there needs to be a process for determining impact on the proxy consumer of the transition costs arising out of the Finance Plans which are based on the Fair Allocation Plan. Please provide an NTD to this affect so that we can pursue this with Blakes and the clients.]

Amendments to plan

(2) The Minister may amend the plan at any time as the Minister considers advisable.
[OLC Notes: *[NTD: We are hearing now that the Minister is not to be empowered with the authority to amend or change the Fair Allocation Plan. Once the plan is "set" its to operate in an unimpeded fashion.]*
- What does the Minister have to do in order to implement the amendments? (e.g. LGIC approval of amended plan required? Notification to anyone? Publication?) ***[NTD: Re amendments –We'll have to confirm our instructions here – the plan is to only be amended on under a very limited set of circumstances to be articulated in the next draft.]***
- do you want to impose limits on the scope of amendments that can be made?] *[NTD: We hope to be able to provide further, clearer instructions on circumstances in which the FAP may be amended.]*

[OLC Note: What is the legal significance of the Fair Allocation Plan? For example, do we want a provision that says something like "The IESO and the OEB shall comply with the plan?] *[ntd: The Fair Allocation Plan represents the statute-based approach for fairly allocating Green Generation Initiative costs across multiple generations of prescribed consumers. It is the basis of the Finance Plans and the Transition Charges. Yes, we think it would be a great idea to have a provision which states that the OPG Financing Entity, the IESO and electricity vendors must comply with the Fair Allocation Plan.]*

Principles

9. In preparing the Fair Allocation Plan, the Minister shall have regard to the following principles:
[NTD: we're concerned that there needs to be a process for determining impact on the proxy consumer of the transitions arising out of the Finance Plans which are based on the Fair Allocation Plan. Please provide an NTD to this affect so that we can pursue this with Blakes and the clients.]

1. Green generation costs should be allocated over a period not to exceed the later of,

    i. the last day of the estimated remaining useful life of the green generation assets, and

    ii. the last day on which the IESO has obligations under the green generation contracts.

2. The share of green generation costs allocated to a particular group of consumers in respect of a reference period should be proportionate to a reasonable assessment of the benefits of the green generation contracts to the group of consumers over that reference period.

3. The estimated green generation costs allocated to a group of consumers for a reference period should not exceed the estimated value of the green generation assets [during and after the reference period?].

4. No group of consumers should bear an unreasonably disproportionate share of the green generation costs and adjustments should be made over time if the Minister is of the opinion that a group of consumers has paid more than is reasonably proportionate.

5. Allocation of the green generation costs should be determined for reference periods.

6. A reasonable estimate of the rate of inflation should be applied.

Methodology

10. (1) The Minister shall set out in the Fair Allocation Plan the methodology to be used for allocating green generation costs among specified consumers, which methodology shall include the inclusion by vendors of transition charges on the invoices of specified consumers.

Same

(2) The Lieutenant Governor in Council may make regulations governing the methodology, which may include requiring the Minister to have regard to prescribed considerations when selecting the methodology.

FINANCING PLAN

Financing Plan to be prepared by prescribed entity

11. (1) In order to ensure that decisions made by the IESO or a transferee relating to the financing of [unrecovered costs associated with the creation and implementation of the green generation ~~costs~~initiative? ~~the funding shortfall as determined under section X?]~~ *[This deserves confirmation, but the Blakes document refers to the Financing Plans as "....allocating the unrecovered transition costs across present and future Ratepayer Groups which appears to line up with the FAP. Problem is that the definition for "unrecovered transition costs" isn't instantly relatable to the other concepts we've derived so far in this draft. The Green Generation Initiative embodies essentially the same principle and it is present in the description of the Financing Plan (see Article ...]* are consistent with the Fair Allocation Plan and are cost-effective, the Ontario Energy Board shall prepare and propose to the Minister a plan entitled the Financing Plan. ***[ntd: Our current information / instruction is that the OEB would not be responsible for preparing the Financing Plan, the latest information ENERGY LSB has is that Financing Plans would be prepared by the OPG for execution by its Financing Trust.]*** [OLC Note: Do you want to impose a timing requirement on the preparation of the plan? ***[NTD: Good question. Practically speaking it has to happen within the first few months but we should have an NTD to confirm the timing of this.]*** When does the plan take effect?] ***[NTD: Please retain this NTD – it needs further discussion/consultation with Blakes.]***

Other prescribed entity

(1.1) If the another entity is prescribed for the purposes of this Part, that entity shall have all of the obligations and duties of the Ontario Energy Board under this Part and all references to the Board in this Part are deemed to be references to that entity. ***[NTD: This, too, needs an NTD: It is not clear what role the OEB would have and whether a replacement entity is required. Please maintain this NTD for the next draft.]***

Approval by Minister

(2) Upon receipt of a proposed Financing Plan or proposed amendments to the plan,, the Minister shall, in writing, ***[NTD: The issue of whether the Minister would be providing this kind of approval or any supervision over the Financing Plan has to be confirmed. This provision should stay but please include an NTD to ask for a decision on this point. Thank you!]***

(a) approve the proposed plan or proposed amendments; or

(b) make any amendments to the proposed plan or proposed amendments that the Minister considers appropriate and approve the plan or amendments subject to those further amendments.

Publication

(3) The approved Financing Plan and any subsequent amendments to the plan under this section shall be made available to the public in a manner approved by the Minister. *[NTD-:Same. Needs confirmation as to the Minister' role and manner of publication (assume Financing Plan is to be posted, once it is approved, on OPG's website) – please include an NTD on this point as well.]*

Amendments to approved plan

(4) The Financing Plan may be amended at any time by,

(a) the Ontario Energy Board, subject to the Minister's approval of any such amendments under subsection (2); *[ntd: The most recent understanding is that OEB would not be responsible for preparing or amending the Financing Plans, the latest information ENERGY LSB has is that Financing Plans would be prepared by the OPG Financing Trust in a manner consistent with the FAP. We'll have to confirm whether amendments are to be provided for and under what circumstances (including what safeguards or elements of supervision).]*or

(b) the Minister. *[ntd: same as NTD in the opening flush – Some of these decisions may now have been landed but haven't caught up to Dan or I justyet – hopefully by tomorrow mid-morning we'll have more percision.]*

[OLC Notes:
- What does the Minister have to do in order to implement the amendments? Notification to anyone? Publication?) *[NTD: Publication should be part of any creation or establishment of these Financing Plans. Please maintain an NTD for this in the next draft.]*
- do you want to impose limits on the scope of amendments that can be made?]
[NTD: Good question, please maintain an NTD for the next draft. Thanks!]
[OLC Note: Do you want to impose a requirement that the ~~Treasury~~ Financing Plan be reviewed every time the Fair Allocation Plan is amended?] *[NTD-Good point, please maintain for the next draft.]*

[OLC Note: What is the legal significance of the ~~Treasury~~ Financing Plan? For example, do we want a provision that says something like "The IESO and the OEB shall comply with the plan?] *[NTD: Yes, I think so – As we learn more about the Financing Plan, we're finding that the OEB must comply with it in establishing its RPP work. OPG must create the Financing Plans in a manner which is consistent with the Fair Allocation Plan. Transition Charges are to be based on the properly –made Fair Allocation Plans and are to be calculated and imposed on specified consumers in a manner consistent with both the Financing Plans and the FAP. However, in terms of compliance, the OEB would not be complying with the Financing Plan. The IESO and electricity vendors*

would be complying with the relevant Financing Plan applicable to the relevant reference period in calculating and imposing the Transition Charges on specified consumers.]

Contents of plan

12. (1) The Financing Plan shall include the following:

1. A description of one or more transfers that may be made in respect of the regulatory asset established under Part **.

2. A description of the basis upon which funding obligations may be incurred as a means of recovering [green generation costs? *[NTD: Please use "Green Generation Costs" for now and please provide an NTD to confirm. Thanks.]* the funding shortfall?] in a manner that is consistent with the applicable Fair Allocation Plan. *[NTD: Funding shortfall.]*

3. A description of the [potential? *[NTD: Not sure "potential" is required since the reference back to para 2 should be clear enough.*] funding obligations mentioned in paragraph 2, which may include the following:

    i. Indebtedness.

    ii. Payment obligations arising under or in respect of derivatives.

    iii. Payment obligations owing to service providers, administrative agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies.

    iv. Refinancing an existing funding obligation by applying the net proceeds obtained by incurring other funding obligations.

3. Such other matters as may be prescribed by the regulations.

Special purpose financing entities

(2) The Financing Plan may, in accordance with the regulations, ~~[contemplate?]~~ provide for ~~[direct?]~~ the establishment of one or more special purpose financing entities that may incur funding obligations.

Administrative agent

(2.1) The Financing Plan may require an entity other than the Ontario Energy Board to perform the functions described in section [xx], in which case that entity shall perform those functions in accordance with such terms as may be specified in the Financing Plan.

[NTD:The OEB's role and therefore the requirement for a replacement entity must be confirmed. Please leave the drafting "as is" but please also include an NTD to this effect. Thank you!]

Prohibition

(3) The Financing Plan shall not provide for funding obligations to be incurred with any recourse to any assets of the electricity vendors, the IESO, the Ontario Energy Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or [an obligation in relation to a finance amount].

[OLC Note: What is meant by the phrase in square brackets? *[NTD: Please maintain this NTD and we'll confirm the intention here]*]

Funding obligations unaffected by amendment to Fair Allocation Plan

(4) No funding obligation incurred under the Financing Plan shall be affected by an amendment to the Fair Allocation Plan that is made after the funding obligation has been incurred.

[OLC Note: The above subs. (4) is based on instructions on the "irrevocability" of the transition charges. It seems to belong here. *[ntd: Yes, it does seem to fit so long as we also create an "irrevocability" requirement (provision) specifically tied to the Transition Charges themselves, not just the funding obligations incurred by the OPG Trust or administrative agent under/pursuant to the Financing Plan. Thanks.]* However we should clarify a few things:

1. What is meant by "incurred under" the Financing Plan? This could suggest that it has to be authorized by the FP, which I don't think you want, but please confirm. *[NTD: I actually do think that we want to ensure that funding obligations are created based on the Financing Plan – we have to ensure that the funding obligations are consistent with ("incurred in a manner consistent with") the Financing Plan. Its worth keeping an NTD clarifying whether the funding obligations are to be "authorized by" or just "consistent with" the FP.*
2. What is meant by "affected"?] *[NTD: Changed: no funding obligation would be changed or modified by changes to the FAP.]*

[OLC Note: Consider Article 8 (9) entitled "incurrences are binding" -- I believe we have already stated in the Part dealing with the regulatory asset that the rights are enforceable etc. even if charges have been imposed in a manner that does not follow the Financing Plan. Is more drafting required? Please advise.] *[ntd: please maintain for next draft, thank you!]*

FUNDING SHORTFALL

Definitions

13. In sections [subsequent sections under Funding Shortfall heading],

"applied surplus" means the amount calculated under section 16; ("French")
[OLC Note: In the Blakes document, this is the "IESO applied surplus". *[NTD: Understood, thank you. Please maintain NTD.]*]

"consumer contributions" means the amount calculated under section 15; ("French")
[OLC Note: In the Blakes document, this is the "GA Power Contract Contribution" *[NTD: Understood, thank you. Please maintain NTD.]*.]

"net payment" means the amount calculated under subsection 14.1 (1); ("French")
[OLC Note: In the Blakes document, this is the "IESO Power Contract Net Payment". *[NTD: Understood, thank you. Please maintain NTD.]*]

"net receipt" means the amount calculated under subsection 14.1 (2); ("French")
[OLC Note: In the Blakes document, this is the "IESO Power Contract Net Receipt". *[NTD: Understood, thank you. Please maintain NTD.]*]

"unapplied surplus" means the amount calculated under section 17. ("French")
[OLC Note: In the Blakes document, this is the "IESO unapplied surplus". *[NTD: Understood, thank you. Please maintain NTD.]*]

Funding shortfall

14. (1) For the purposes of this Act, the funding shortfall for a reference period shall be determined by applying the following formula:

$$(A - B) - C$$

Where,

A = the net payment for the reference period,

B = the consumer contribution for the reference period,

C = the applied surplus for the reference period.

Net payment

14.1 (1) The net payment for a reference period is determined as follows:

1. Calculate the sum of the amounts payable by IESO to generators under all green generation contracts for the reference period.

2. Calculate the sum of amounts payable by generators to the IESO under all green generation contracts for the reference period.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Net receipt

(2) The net receipt for a reference period is determined by subtracting the amount calculated under paragraph 1 of subsection (1) from the amount calculated under paragraph 2 of subsection (1).

Consumer contribution

15. The consumer contribution for a reference period is the aggregate of the payments to be made by the specified consumers in respect of the reference period for transition charges, as determined under the Fair Allocation Plan.

Applied surplus

16. The applied surplus for a reference period is the lesser of the following amounts:

1. The amount by which the net payment exceeds the consumer contribution for the period.

2. The unapplied surplus on the last day of the reference period that immediately preceded the relevant reference period.

Unapplied surplus

17. The unapplied surplus on a specified day shall be determined by applying the following formula:

$$(D + E) - (F + G)$$

Where,

D = the sum of all net receipts for the reference periods occurring before the specified date,

E = the sum of all consumer contributions for the reference periods occurring before the specified date,

F = the sum of all net payments for the reference periods occurring before the specified date, and

G = the sum of all applied surpluses for each reference period occurring before the specified date.

FINANCE AMOUNT

Definitions

18. In sections 19, 20 and 21,

"funding costs" means the amount determined under section 21; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of a transferee by applying the net proceeds obtained by the transferee incurring one or more other funding obligations. ("French")

[OLC Note: In the Blakes document, this is the "refinancing" definition. *[NTD: Understood, thank you. Please maintain NTD.]*]

Finance amount

19. (1) For the purposes of this Act, the finance amount for a reference period shall be determined by calculating the sum of the following:

1. The sum of all payments made by a transferee [during the reference period? *[NTD: please maintain this reference to "reference period" for this draft and please maintain an NTD to confirm. Thanks!]*] to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the transferee under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

[OLC Note: Para. 1 is the definition of "repayment" from the Blakes doc. However, that definition include bracketed text that says: (*including making Finance Reserve Deposits).* I don't understand this because (1) Finance Reserve Deposit is listed as a separate line item in the definition of "finance amount" (see para. 4 below). In order to avoid duplication, can we exclude "finance reserve deposits" from para. 1?] *[NTD: Please maintain this as a NTD for the next draft – we'll try to confirm this for you then. Thanks!]*

2. The sum of all funding costs for the reference period.

3. The sum of all amounts payable by or on behalf of a transferee to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

[OLC Note: Para. 3 is the definition of "redemption amount" from the Blakes doc. *[NTD: Understood, thank you. Please maintain NTD.]*]

4. The balance of the finance reserve at the end of the reference period, as determined under section 20~~3~~. *[NTD: I'm hopeful there won't be 203 sections in this proposed bill – hope you were referring to s.20 – Thanks!]*

5. The sum of any other amounts payable by a transferee for the reference period that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

[OLC Note: Para. 5 is based on the definition of "additional funding charges". Since many of the items included in this definition are examples, I'm hoping we can focus our energy on getting the high level description in para. 5 right and then supplementing this by regulation with the examples if necessary. *[NTD:That seems like a fair approach.]* If it's essential to include the examples in the Bill then I will need to discuss what is meant by each of the different items in order to draft this. *[NTD: Understood. We'll confirm on our end.]*]

Finance reserve balance

20. (1) For the purposes of paragraph 4 of section 19, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

[OLC Note: This section is a modification of the definitions provided in the Blakes document for "Finance Reserve Deposits" and "Finance Reserve Withdrawals". The proposed definition of "FR deposit" involved a subtraction of the "FR withdrawal" so the term 'deposit' was not really descriptive of a pure deposit but rather the balance. ***[NTD: Understood, thank you. Please maintain NTD.]***]

1. Calculate the sum of all amounts deposited [to what account? *[NTD: we'll have to confirm this for you on next draft. Thanks!]* during the reference period ~~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.

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? *[NTD: Need to confirm.]* as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Funding costs

21. The funding costs for a reference period are determined by taking the following steps:

1. Calculate the aggregate of all interest and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of the transferee during the reference period in respect of all funding obligations, including the following:

    i. Standby commitment fees or charges paid to any lender.

    ii. Credit enhancement fees or charges paid to any credit enhancer.

    iii. Liquidity fees or charges paid to any liquidity provider.

    iv. Payments, including termination payments, made under derivatives.

    v. Deposits made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a funding obligation.

2. Calculate the aggregate of all amounts received by or on behalf of the transferees during the reference period in respect of a funding obligation, including reimbursement of any amounts referred to in subparagraphs 1 i to v.

[OLC Note: Para. 2 is the definition of "finance receipts" in the Blakes doc. *[NTD: Understood, thank you. Please maintain NTD.]*]

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

PART IV
THE REGULATORY ASSET

[OLC Note: The provisions in Articles 4 (9) and 5 (10) relating to the Regulatory Asset Owner having standing would perhaps fit best in the part dealing with the Regulatory Asset. I'm not sure why this provision would be needed in addition to what is already being stated below (if the statutory right is sold/assigned to the new owner then doesn't that bring with it the ability to enforce the right? *[ntd: Likely the plan is to belabour the point (belt & suspenders) for the benefit of the financibility of the plan.*) Please instruct.]

ESTABLISHMENT OF REGULATORY ASSET

Regulatory asset established

22. (1) The IESO has property rights and interests, which together constitute a regulatory asset, in the following:

[OLC Note: As a drafting matter, we would typically want each of the items in a list to be distinct from one another (no overlap between the items in the list). Could you please assist with reviewing the language to ensure that each item is distinct. *[NTD: We will and confirm on a future draft.*]

1. The right of the IESO to record its portion of the regulatory asset in its accounts.

[OLC Note: Should the "right" referred to in para. 1 be set out in the statute somewhere? Would the IESO have this "right" if the statute were silent on this matter? *[NTD: Perhaps in a clarification provision in directly under sub (1), such as a (1.1) For greater clarity, the IESO has the right to record amounts in its accounts which relate to the Regulatory Asset or its proportionate share thereof".*]

[OLC Note: For the paragraphs below where I have suggested a cross-reference, please take a look at the relevant sections and let me know if you think a cross-reference would work well. *[ntd: yes, we will.]* We could always put a parenthetical reference after the cross-reference to flag the topic for readers of the law, but this way we can be sure that we are lining up the rights with the actual rights that are being given under the statute. *[NTD: This bears further consideration, thanks.]*]

2. The rights of the IESO under sections [include cross reference to sections that authorize the IESO to impose, bill, invoice, collect and receive amounts and the right to determine the amounts? *NTD: Please work from that assumption. Thanks.*].

3. The right to enforce section [include cross-reference to the section that creates indebtedness of each specified consumer to pay the transition charges, together with all related late payment fees or interest charges]. *NTD: Please work from that assumption. Thanks.*].

4. The right to enforce section [include cross-reference to section that requires vendor to impose, bill, invoice, collect and receive transition charges, including amounts required to be remitted to the IESO and all collections and the proceeds of any enforcement action undertaken by the vendor to recover payments]. *NTD: Please work from that assumption. Thanks.*].

5. The right to enforce section [include cross-reference to section that sets out the duties of IESO to collect and receive remittances with respect to and to remit IESO Remittances to or to the accounts of the regulatory asset owner, each with respect to its Regulatory Asset, including all collections and the proceeds of any enforcement action undertaken by it…]. *NTD: Please work from that assumption. Thanks.*].

7. The right to receive and collect all transition charges under [include cross-reference]. *[NTD: We'll have to confirm for the next draft, thanks!]*

8. The right to all amounts and entitlements under each account created under sections [cross-ref to regulatory asset accounts sections *NTD: Please work from that assumption. Thanks.*]] and all amounts on deposit in those accounts.

[OLC Note: I believe those provisions refer to all of those amounts being held in trust for the regulatory asset owner. Is it necessary to layer this on top of that trust? *NTD: Please work from the assumption that it is for now, but we'll confirm for you on a future draft.*]

9. All rights of any kind, whether in tort, contract or otherwise, of the IESO that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset.

[OLC Note: Para. 9 is essentially a cut and paste of the Blake's definition of "Related Rights". NTD- Understood, thank you.]

10. The right to all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 9, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

[OLC Note: Please check to see if para. 10 is necessary or if any elements could be covered/addressed under one of the previous paragraphs.]NTD – we'll have to provide further instructions on a future draft, thank you.]

[OLC Note:
1. I wonder whether the proposal allows for double recovery in some cases (e.g. right to recover both amounts that the distributor has to remit AND the amounts that the consumers have to pay). *[ntd: Interesting point – we'll have to provide a safeguard of some kind for this - please provide an NTD in this regard.]* This would be addressed by ensuring each of the above items in the list is distinct from one another.
2. The "regulatory asset holder" would include the IESO for at least a bit of time at the beginning. But some of the items included in the list for the regulatory asset include *obligations of the IESO*. I understand that when the regulatory asset is sold/assigned, the IESO's obligation to accept remittances from distributors would be transferred to the

Financing Entity but I don't understand how this obligation could form part of the initial regulatory asset that the statute initially gives to the IESO itself. *[NTD: We'll have to consider a bit further – please maintain these notes but we hope to sort this out soon.]* Does the regulatory asset "grow" when it is assigned/sold to the financing entity and is no longer held by the IESO? *[NTD – great question but need to confirm – We would think that the regulatory asset is sold "as is" based on static amounts accrued "to date" but this needs to be confirmed.]* Is it necessary to handle rules relating to the IESO separately from other holders of the regulatory asset?] *[NTD: Needs confirmation – please maintain the NTD.]*

Same

(2) The establishment of the regulatory asset is not affected by failure to impose, attribute, invoice, accrue or collect transition charges.

No set-off, etc.

(3) The regulatory asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, the IESO, an agent of the regulatory asset owner or an owner of distribution system assets in the Province;

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

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

[OLC Note: Above is from Article 5 (12) of the instructions - I'm not sure if this is covered elsewhere in the draft. What do we mean by set off or reduced? *[NTD:appears to us to mean " cannot be changed in a manner which reduces its economic value to the owner of the regulatory asset by any of the listed events or circumstances, etc.]* Need to check how this provision lines up with other provisions dealing with set off and reduction (e.g. transition charges irrevocable).*[NTD – understood. We will as well on our end.]*]

TRANSFER OF REGULATORY ASSET

Transfer of regulatory asset

23. The IESO may transfer the regulatory asset to any entity.

[OLC Note: need to expand the rules in a subsequent draft to address other potential transferors an entity that receives the Regulatory Asset from the IESO may then go on to sell the Regulatory Asset to someone else. *[NTD: Yes, understood –please maintain this NTD. Thanks!]*]

Ownership of a portion of the regulatory asset

24. The regulatory asset owner may transfer ~~of~~ a portion of its rights and interests in the regulatory asset, including by way of a transfer of a divided or an undivided interest.

Validity of transfer

25. (1) A transfer of the regulatory asset is [final and binding? valid and enforceable?] *[ntd: ALL of the suggested phrases should be maintained for now, unless there are objections.]* and confers the regulatory asset upon the transferee in accordance with the terms of the transfer.

[OLC Note: I understand that the intention is to communicate the finality of the sale/transfer but some of the terminology included in the instructions relating to "validity of dispositions" seems to be redundant of what is drafted in subs. (1) above. *[NTD: understood, we'll review from this perspective.]*
The following terms do not appear in any current consolidated law (statutes and regulations) on e-Laws: "absolute transfer"; "true sale". I don't know what these terms mean or what they are adding beyond what we have already said in subs. (1). Please advise.]*[NTD: They likely appear as a function of the references to US law which we are forced to grapple with due to the nature of the exercise.]*

[OLC Note: Are there <u>any</u> circumstances under which the "transfer" should <u>not</u> be final and binding?] *[NTD: None known of at this point. Please maintain this NTD as its an important question/issue to confirm.]*

Same

(2) For greater certainty, subsection (1) applies despite the existence of any of the following:

1. Any provision of an Act, regulation or contract relating to the transfer.

[OLC Note: Given that we are including a conflict provision under the "Miscellaneous" part of the Bill, I'd think para. 1 could be removed and we could address any concerns in that conflict provision. Please advise. *[NTD: Not comfortable removing it yet. Please maintain with NTD for now. Thanks!]*]

2. Any consent that may be offered by a party to an agreement in respect of the transfer.

3. Any other circumstances, including the following:

[OLC Note: The risk with including the following list of circumstances in the statute is that someone might successfully argue (even though the list is drafted to be non-exhaustive) that because some other unforeseen circumstance is <u>not</u> listed, the transfer could be legitimately challenged on the basis of that other unforeseen circumstance.

[NTD: I acknowledge that the argument exists but find it specious – it seems to fly in the face of the clear meaning of "including" though I gather courts might look for ways to read flexibility into a statute – I'm not sure we can do anything to address this risk from a practical perspective.]

i. Revenues or other proceeds from transition charges have comingled with other amounts.

ii. Any interest (including any partial, residual or subordinated interest, whether direct or indirect) has been retained in the regulatory asset by the IESO.

iii. Any right to repurchase the regulatory asset in favour of the IESO has been retained.

iv. Any recourse that a transferee may have against the IESO is available. [OLC Note: What recourse would this be? *[NTD: We're not sure just yet - other than a cross-claim of some kind... we'll have to further consider.*]

v. Any indemnification rights or obligations are provided [to the transferee?] *[NTD: please leave as drafted for now – we'll consider for next draft.]* by the IESO.

vi. Any obligation [imposed on? [yes, imposed on]? By what mechanism? This Act or at common law] the IESO to collect and remit transition charges on behalf of a transferee, including but not limited to, any retention by the IESO to bare legal title for the purpose of collecting transition charges.

[OLC Note: Since the obligation referred to in vi above is an obligation that we are creating in the statute, I can't imagine that it would need to be included in this list. Do you agree? NTD: at this point, given the "belt and suspenders" approach that appears to be advocated, I'm not sure it can be removed just yet.] Or is this referring to a different obligation?] *[NTD Not sure – lets consider further for next draft.]*

vii. The ascribed or intended treatment of the transfer by the IESO or the transferee for tax, financial reporting or other purposes.

Deemed perfection, etc.

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

Priority of transfer, assignment, etc.

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

ADMINISTRATION OF REGULATORY ASSET

Administrative agent

26. (1) Unless the Financing Plan [provides for? Requires? NTD: "provides for" should work] another entity to administer the incurrence and payment of funding obligations by transferees, the Ontario Energy Board shall perform those functions as agent of the regulatory asset owner.

Application of amounts

(2) For the purposes of performing the functions mentioned in subsection (1), the Ontario Energy Board shall ensure that any amounts transferred to it as agent for the regulatory asset owner shall only be applied or used to pay finance amounts, as determined under section 19, when they are due and payable.

Regulatory asset owner may grant pledge

27. (1) The regulatory asset owner may, [in accordance with the Financing Plan?] grant a pledge to or in favour of a person in, to and over all or a specified portion of the regulatory asset. *[NTD: Not sure – please maintain the NTD – thought it wouldn't be tied to the FP at this point in the transaction so would have to confirm.]*
[OLC Note: The drafting of s. 27 is very rough. I will need to work on the drafting of this section further… just trying to understand the concepts for now. Please advise as to whether this is correct.] *[NTD: We'll try to provide more direction on the next draft.]*

Types of pledge

(2) A pledge may be a lien, mortgage, charge, right of set-off or security interest.

Validity

(3) Subject to subsections (4) and (5), despite any limitations or restriction on the pledge that may arise under an Act or a contract, the pledge may be made to secure a funding obligation and when granted shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the person to whom the pledge is granted a valid security interest in, to and in respect of the regulatory asset in accordance with the terms of the pledge.

Same

(4) Subsection (3) applies if the description of the regulatory asset in the agreement giving effect to the pledge expressly refers to this section.

Financing Plan may require consent

(5) If the Financing Plan requires the consent of any person before the pledge may be given effect, that consent must be obtained [in accordance with the regulations? The plan?] before the pledge takes effect. *[NTD: Fair question – please maintain NTD for now.]*

Deemed perfection and priority of pledges

(6) The pledge is deemed to have been and shall be perfected, valid and binding from the time when the Pledge is made and shall be valid and binding as against the regulatory asset owner and all other persons who have claims of any kind against the regulatory asset owner.

Same

(7) Subsection (6) applies regardless of whether the persons mentioned in that subsection have notice of the pledge and the security interests under the pledge shall have priority over any liens in favour of those persons.

Proceeds

(8) All proceeds of the regulatory asset that are subject to the pledge and that are received by the regulatory 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. NTD: Possibly, but given "belt and suspenders" approach being advocated, please maintain this for now and we'll have to review for conflicts/internal consistency.]

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 regulatory asset subject to the Pledge, subject to the written consent of the person to whom the pledge has been granted.

Same

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

[OLC Note: Is the following something you want to specify in the Bill? *A Pledgee shall cause a financing statement to be filed in respect of a Pledge for informational purposes*

only under the [PPSA]. [NTD:We'll have to check – thanks for maintaining this NTD for now.]

Collective action required

28. If the IESO or a transferee owns a right or interest in the regulatory asset that comprises less than the entire property right and interest constituted by the regulatory asset, the right or interest shall only be enforced by the regulatory asset owner collectively, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the regulatory asset owner as a collective in accordance with its terms.

[OLC Note: It seems that successors may need to be addressed here. Also Pledgees have not yet been addressed in this draft. *[NTD: Understood – please maintain this for the next draft.]*]

Exercise of rights

29. The rights of the regulatory asset owner to collect and enforce its rights and interests in, to and in respect of the regulatory asset shall be exercised in accordance with section [xx].

REGULATORY ASSET ACCOUNTS

Pro rating of payments

30. (1) This section applies if,

(a) an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices; and

(b) the amount paid is less than the total amount payable.

Same

(2) The electricity vendor shall distribute the payment on a pro rata basis in order to allocate a portion of the payment to the transition charges payable under the relevant invoices.

Deposit

(3) The electricity vendor shall deposit the portion of the payment allocated to transition charges into the account established under section 31.

Electricity v~~V~~endor

31. (1) Each electricity vendor shall establish and maintain an account into which the vendor deposits [or receives? *[NTD: May we have both "deposits" and "receives" for now please?*] only the following:

1. Payments by specified consumers for transition charges.

2. Portions of payments by specified consumers that are attributed to ~~be for~~ transition charges under subsection x (3).

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

Held in trust

(2) The amounts required to be deposited or received into the account referred to in subsection (1) are deemed to be held in trust for the regulatory asset owner.

IESO

32. (1) The IESO shall establish and maintain an account into which the IESO deposits [or receives?] [NTD: may we have both "deposits" and "receives" for now please?] only amounts remitted from accounts established under section 31.
[OLC Note - *These amounts remitted are meant to be what is referred to as "electricity distributor remittances" in the Blakes document, which I believes means remittance of the amounts mentioned in paras. 1-3 of the vendor's account section above. NTD – thanks, we'll have to consider this further.]*]

(2) The amounts required to be deposited or received into the account are deemed to be held in trust for the [regulatory asset holder].

Accounts held by agents

33. (1) If a person is appointed under section 34 or 35 and accepts the appointment in accordance with the applicable section, the person shall establish and maintain an account into which the person deposits or receives any of the amounts mentioned in sections 31 and 32 in respect of which the person has assumed obligations under section 34 or 35.

Held in trust

(2) The amounts required to be deposited or received into the account are deemed to be held in trust for the regulatory asset owner.

AGENTS

[OLC Note: My idea below is that if we can clearly provide for the circumstances in which "alternative invoicing agents" or "alternative collection agents" may be required to assume statutory obligations, then we don't need to repeat references to these entities throughout the Act whenever they may have to assume statutory obligations that would otherwise be the obligations of the IESO or a vendor. *[NTD: this seems like a sound way of centralizing the approach to agents (and replacement entities)?]* The goal is for this Part to ensure that when we impose obligations on the IESO or a vendor, that will be sufficient to transfer the requirement to an agent when necessary since this Part operates to deem the agent to be the IESO/vendor. *[NTD: understood, we'll have to consider a little further, though to ensure it works.]*]

[OLC Note: Consider whether you need to clarify status of any agents as non-Crown agents. *[NTD: Good point! I think in all cases the agents referred to here would be "not an agent of HMQ for any purpose, despite the Crown Agency Act" – see s. 8 of EA regarding the IESO as one example of this – we provide similar language for OPG and Hydro One, as I recall.]*]

Appointment of agent, invoicing

34. (1) If a prescribed circumstance applies, the regulatory asset owner may appoint a person to carry out some or all of the obligations of a vendor under this Act in the place of a vendor with respect to invoicing.

[OLC Note: I have used the phrase "prescribed circumstances" to capture the concept of a "replacement event". *[NTD: Understood and should work. We'll have to confirm.]* I'm not sure if this is something that you'd want to include in regulations or if it's something you'd like to provide for otherwise (e.g. in the Financing Plan?). Please instruct. *[NTD:We'll have to discuss and provide direction on the next or future draft.]*]

[OLC Note: This section (and the following section dealing with collections) is unusual because the statutory obligations of the parties are determined by a document that exists outside of the legislation and regulations and that is prepared by someone external (a written appointment prepared by the RA owner). So it is a very significant delegation of legislative power. *[NTD: Understood – please maintain these NTD's – thanks!]*

It's basically giving the RA owner the power to exempt an electricity vendor from specific provisions of the Act and to simultaneously impose statutory obligations on a party who would not otherwise be subject to the Act. *[NTD: I think we have to mull this over internally, please maintain this NTD for the next draft.]*

Would the appointment, once "accepted", be published somehow so that consumers would understand who has a legitimate obligation to issue the invoices or to collect? *[NTD: We have to confirm but this does sound like a very good idea.]*

What happens if the appointment needs to be cancelled or amended? *[NTD: I'm not sure what is meant by the question here – the power to appoint someone else to do the work has to revert to the RA owner. Notice of the new appointee should be provided to the public and on a timely basis (our thought –but does have to be confirmed).]*

I think we have to provide some mechanism for all affected parties to understand who has the statutory obligations at any given point in time.] *[NTD:I think the authority to appoint always has to reside with the RA owner (or at least in one place). Hence, the appointee may become bankrupt, may suddenly refuse to act, etc. in those circumstances, the appointment should be "revoked" by the RA owner and the power to appoint someone else should revert back to RA owner to be exercised afresh. This has to be confirmed with Blakes / others.]*

Appointment to be in writing

(2) An appointment under subsection (1) shall be in writing and shall specify the provisions of this Act that set out the obligations that the appointed person would be required to carry out.

Acceptance

(3) If the person appointed accepts the appointment in writing, that person is deemed to be the vendor for the purposes of the provisions specified in the appointment.

Notice to vendor

(4) Upon acceptance under subsection (3), the regulatory asset owner shall provide written notice to the vendor affected by the appointment of the details regarding the appointment.

Duties of vendor

(5) Upon receipt of a notice under subsection (4), the electricity vendor is no longer required to comply with the provisions specified in the appointment.

Same, regulations

(6) The Minister may make regulations specifying steps that an electricity vendor is required to take upon receipt of a notice under subsection (5), which may include the execution of instruments in order to allow the appointed person to carry out the obligations specified in the appointment.

Appointment of agent, collection, etc.

35. (1) If a prescribed circumstance applies, the regulatory asset owner may appoint a person to carry out some or all of the obligations relating to collection, segregation and remittance under this Act in the place of a vendor or the IESO, as the case may be.

Appointment to be in writing

(2) An appointment under subsection (1) shall be in writing and shall specify the provisions of this Act that set out the obligations that the appointed person would be required to carry out.

Acceptance

(3) If the person appointed accepts the appointment in writing, that person is deemed to be the electricity vendor for the purposes of the provisions specified in the appointment.

Notice to electricity vendor, IESO

(4) Upon acceptance under subsection (3), the regulatory asset owner shall provide written notice to the electricity vendor or the IESO, as the case may be, of the details regarding the appointment.

Duties of vendor, IESO

(5) Upon receipt of a notice under subsection (4), the electricity vendor is no longer required to comply with the provisions specified in the appointment.

Same, regulations

(6) The Minister may make regulations specifying steps that an electricity vendor or the IESO is required to take upon receipt of a notice under subsection (5), which may include the execution of instruments in order to allow the appointed person to carry out the obligations specified in the appointment.

PART V
MISCELLANEOUS

Enforcement

36. [OLC note - Article 9 of Blakes doc deals with "compliance matters" but more instructions are required in order to draft. What are the "regulatory sanctions"? [NTD: Fair points but we need to confirm this in a future draft. Thanks!] Perhaps this needs to be linked up with authority of the OEB under existing legislation? [NTD: You're thinking about OEBA ss. 112 and 125.1 et seq. I gather] Please instruct.] *[NTD: We will provide further direction on a future draft. Thanks very much!]*

[OLC Note: Are there to be any offences created under this Act? [NTD: we'll have to confirm one way or the other.] If so, what are they? [NTD: must confirm.] What are the penalties? [same] What is the liability of directors and officers of a corporation? [NTD: we'll have t confirm, great questions all!] Is there a limitation period on proceedings?] [NTD: same – must confirm.]

[OLC Note: I also believe that the following provision from Article 5 (13) of the Blakes document is an enforcement matter, so please consider this provision along with other compliance matters:[NTD: Will do.]\
[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.]*

Successors

37. [OLC Note: Articles 4 (6) and (7) and Articles 5 (7) and (8) are rules about successors to distributors and the IESO being bound by specific requirements. Still to be drafted.] *[NTD: Understood.]*

[OLC Note: I think that Article 5 (9) also relates to succession to some extent --- I think I need some more information in order to understand it. *[NTD: we'll try to help.]* I understand that this is included in anticipation of restructuring of the distribution system *[NTD: or the sale of a distributor to another party (as we read it).]*. But if we use the defined terms from the Electricity Act (distributor and distribution system) then this doesn't make any sense since a "distributor" is [in accordance with the EA you mean?] just someone who owns or operates a "distribution system".*[Correct as far as the EA goes.]* It also seems unusual to impose a legal requirement that would be triggered by the regulatory asset owner "requesting" that the new entities comply. Normally I think this kind of issue (new parties becoming part of the distribution system) would be handled through an amendment to the Act when the situation actually arose. Perhaps with more information I will better understand.*[NTD: we'll work on our end to get some more clarity as well for a future draft. Thanks, Tara!]*

Owners of Distribution Assets *- If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province, then such person shall, if requested by the Regulatory Asset Owner, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to Ratepayers in its applicable service area, including all consumers connected to the electricity distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by*

Ratepayers as provided in this Part; (c) terminate service to non-paying Ratepayers on the same basis as termination of service is permitted for non-payment of electricity transmission and distribution rates;-(d) exercise all enforcement rights of the Regulatory Asset Owner 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.]

[OLC Note re Article 12 (1) of the Blakes doc ("Choice of law") -- usually in legislation we don't have to specify that the laws of Ontario apply. Is this necessary?] [NTD: Agreed, its quite contractual – please maintain this NTD for now, and we'll clarify on the next draft.] Thanks!]

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.] [NTD: we'll work toward this end for the next draft, thanks..]

No further approvals, etc.

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

[OLC Note: This is to address Article 12 (3) of the Blakes doc. Could you please explain the intention behind this provision in order to ensure it achieves the intended goal? Is it to ensure that nothing like an Environmental Assessment is required with respect to a funding obligation? [NTD-we'll confirm for future draft.] Because it is so broad, it would also purport to cover things like consultation with Indigenous partners. Do you want to keep some reg-making power to allow for exceptions to this rule or do you want to narrow it somehow to address specific concerns that you have?] [NTD-we'll confirm for future draft.]

[OLC Note: Should the Bill address any issues relating to Immunity of the Crown, liability of various individuals, etc.?] **[NTD-we'll confirm for future draft.]**

Regulations

100x. The Lieutenant Governor in Council may make regulations,

(a) governing the inclusion of transition charges in invoices, which may include requiring notice to be provided by vendors to specified persons regarding the transition charges to be imposed over specified periods of time.

[OLC Note: Both of Articles 4 and 5 in the instructions included extremely broad regulation-making powers. I am deferring the issue of regulation-making authority until we have worked out more of the substance of the bill and have a better sense of what kind of reg-making power would be needed. Understood, seems like a very sensible approach.] Expansion of regulation-making powers may also be something that we deal with in more detail at the motions stage, if we are running short of time. [NTD: May not be very politically saleable but necessary – we always get push back from our Minister's office on attempting to amend a bill in Committee….]

Please advise if there are reg-making powers that you would like to give to the Minister vs. LGIC.] [NTD **[NTD-we'll confirm for future draft.]**

PART VI
CONSEQUENTIAL AMENDMENTS

Electricity Act, 1998

101x. [instructions required]
[NTD-we'll confirm for future draft.]

Ontario Energy Board Act, 1998

102x. [instructions required] **[NTD-we'll confirm for future draft.]**

PART VII
COMMENCEMENT AND SHORT TITLE

Commencement

103x. This Act comes into force on [NTD-we'll confirm for future draft.]~~[insert commencement rule]~~

Short title

104x. The short title of this Act is the *[TBD], 2017*.

Ontario

Equitable Allocation – Preliminary Analysis

Working Draft

April 10, 2017

CONFIDENTIAL

Ontario

Overview

This presentation describes preliminary analysis associated with Ontario's Fair Hydro Plan. The methodology for this analysis is described below.

1. For each generator with capacity greater than 10 MW that is under contract with the IESO, determine the annual cost of a refinanced contract that provides the same value as each generator's actual contract but is **extended for an additional 10 years**. Additionally consider the annual cost of financing the projected annual cost for conservation programs in any given year over **a 15 year financing period**.

2. For the years 2005-2050, calculate the annual difference between the total cost of the refinanced contracts and the total cost of existing contracts. The total annual cost of the refinanced contracts will be lower than the total cost of existing contracts in the short term but will be higher cost compared to existing contracts in the long term. Note that, for some scenarios, only a portion of the contract costs are considered relative to the portion of electricity consumption by consumers who will receive the benefit (roughly 50%).

3. Starting in 2017, calculate the total money that would need to be borrowed annually in the early term to effectively achieve the total refinanced contract savings relative to existing contract costs.

4. Calculate the schedule in which this money is paid back in the later term when refinanced contract costs are higher than existing contract costs (starting around 2028, depending on the option under consideration).

5. For the years 2005-2016, calculate the value in 2017 of potential savings that would have been realized had the refinanced IESO contract costs been incurred rather than the actual contract costs (assuming an annual interest rate). These potential savings will be applied as additional borrowing in the years 2017-2021 (that is, in addition to the borrowed money calculated in step 3) in order to achieve the residential electricity bill savings described by Ontario's Fair Hydro Plan (OFHP), starting with OFHP savings in 2017 and proceeding sequentially year-by-year until all of the value of the accumulated 2005-2016 "savings" have been exhausted.

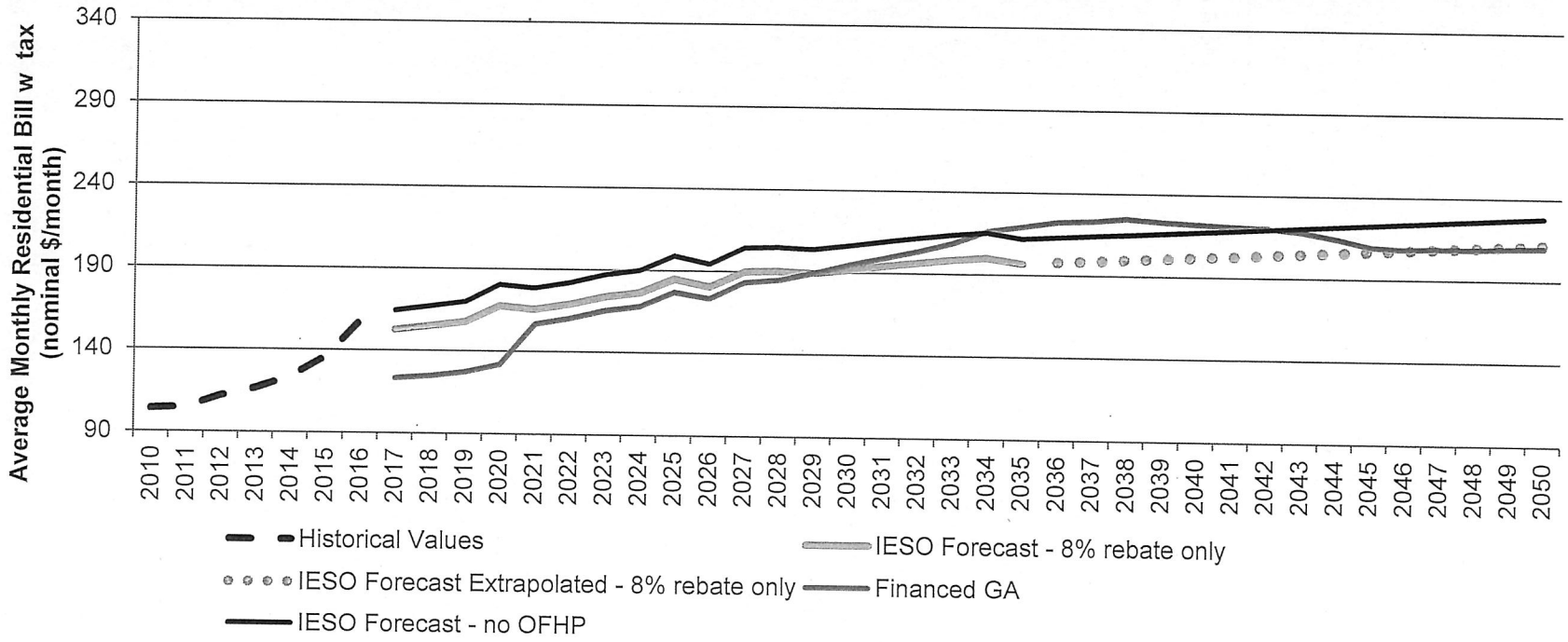
6. Calculate the accumulated debt and associated interest costs associated with this financing plan.

7. Determine the annual residential electricity bill impact of the financing plan described above assuming the money borrowed leads to savings only for those ratepayers who are eligible for the Regulated Payment Plan (RPP).

Several scenarios are examined as described in the following slides.

Ontario

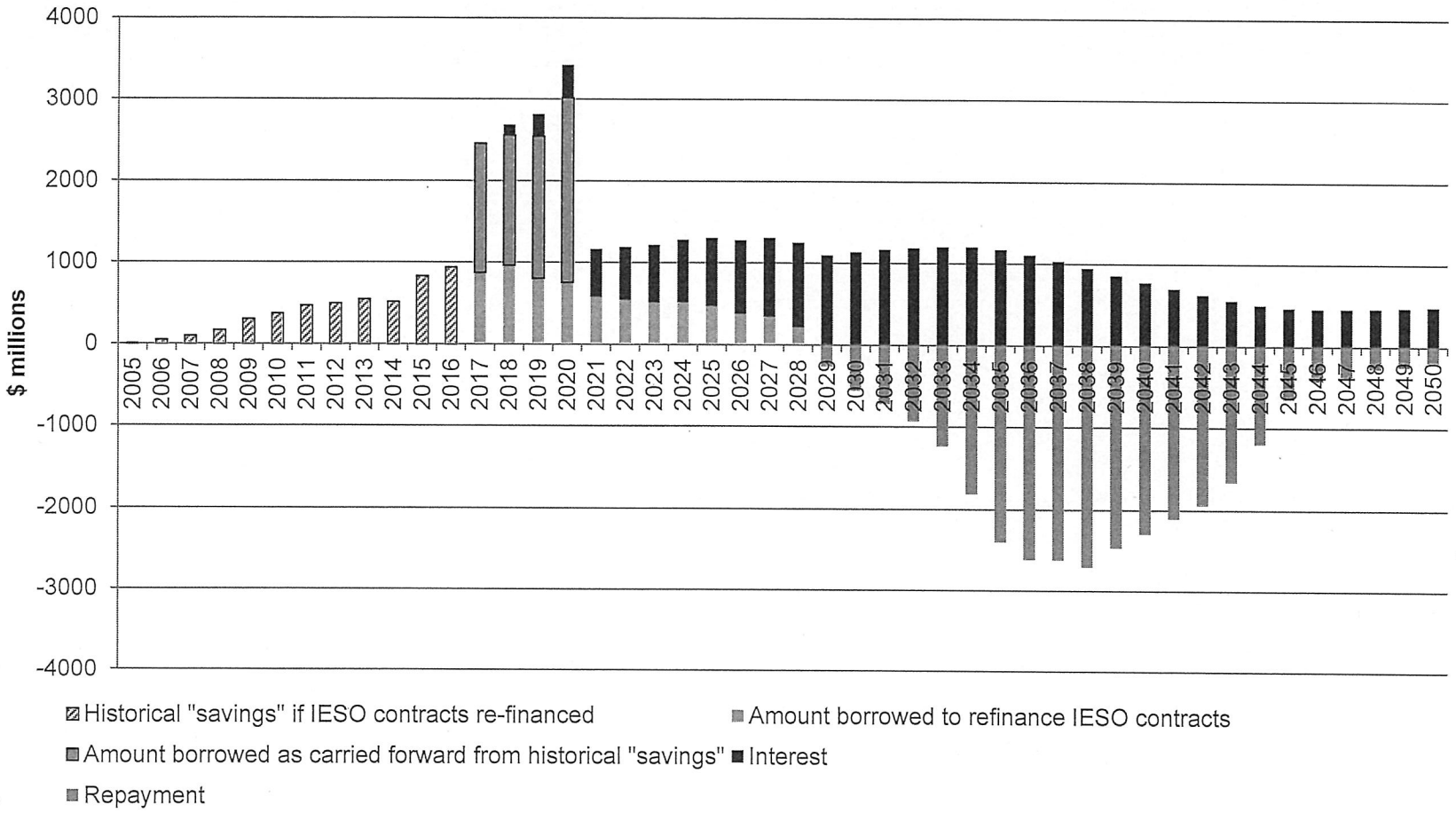
Option 1 – Finance full contract value, 5% interest on historical "savings"



- In this option, the full cost of each IESO contract and conservation costs are considered for refinancing and a 5% interest rate is applied to historical "savings" from such a financing plan.
- The bill savings of the OFHP are achieved in 2017-2020 but not achieved in 2021.
- $9.2 billion of accumulated debt remains in 2048.

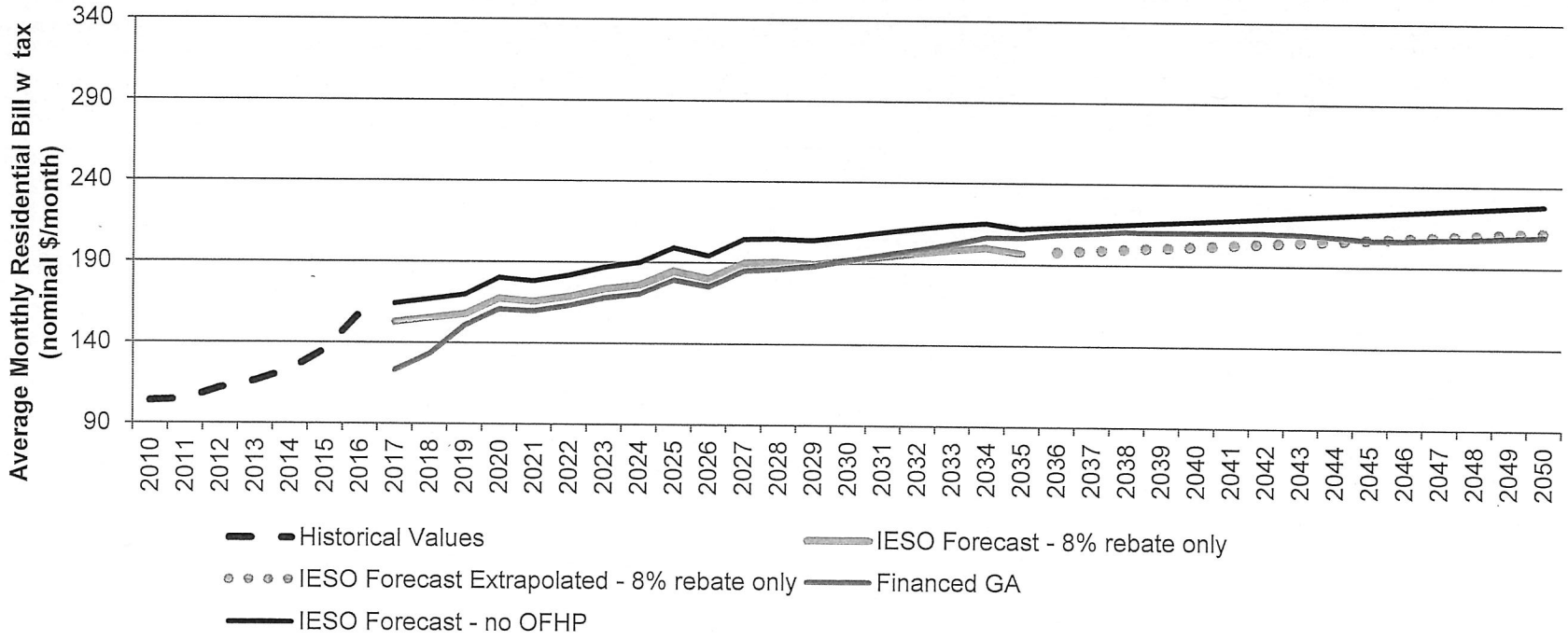
Ontario

Option 1 – Finance full contract value, 5% interest on historical "savings"



Ontario

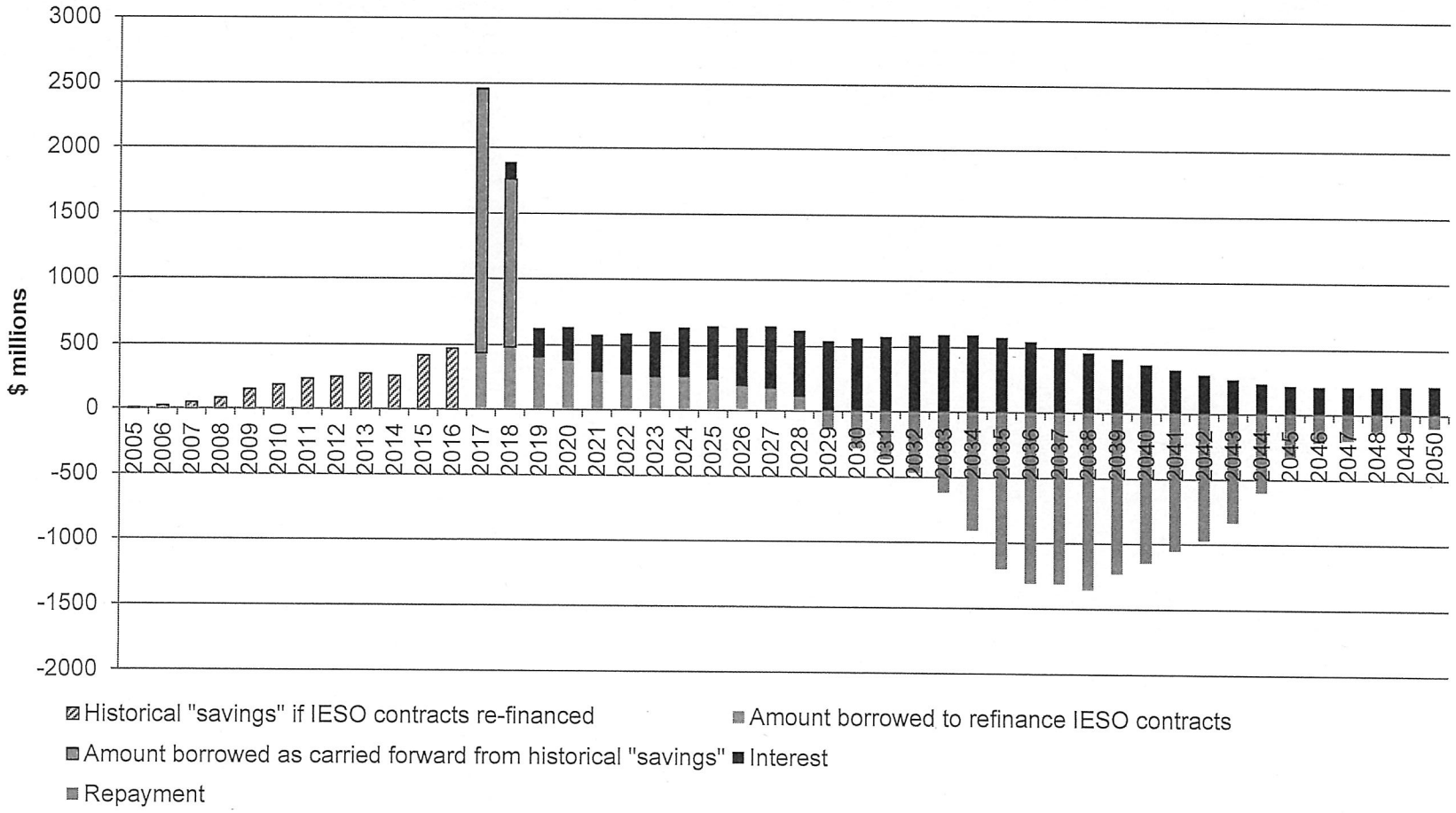
Option 2 – Finance half contract value, 5% interest on historical "savings"



- In this option, roughly half of the cost of each IESO contract and half of conservation costs are considered for refinancing to reflect the fact that only costumers representing roughly half of total consumption (i.e. RPP-eligible consumers) will receive the benefits and costs of this financing plan, and a 5% interest rate is applied to historical "savings" from such a financing plan.
- The bill savings of the OFHP are achieved only in 2017 and are not achieved in 2018-2021.
- $4.2 billion of accumulated debt remains in 2048.

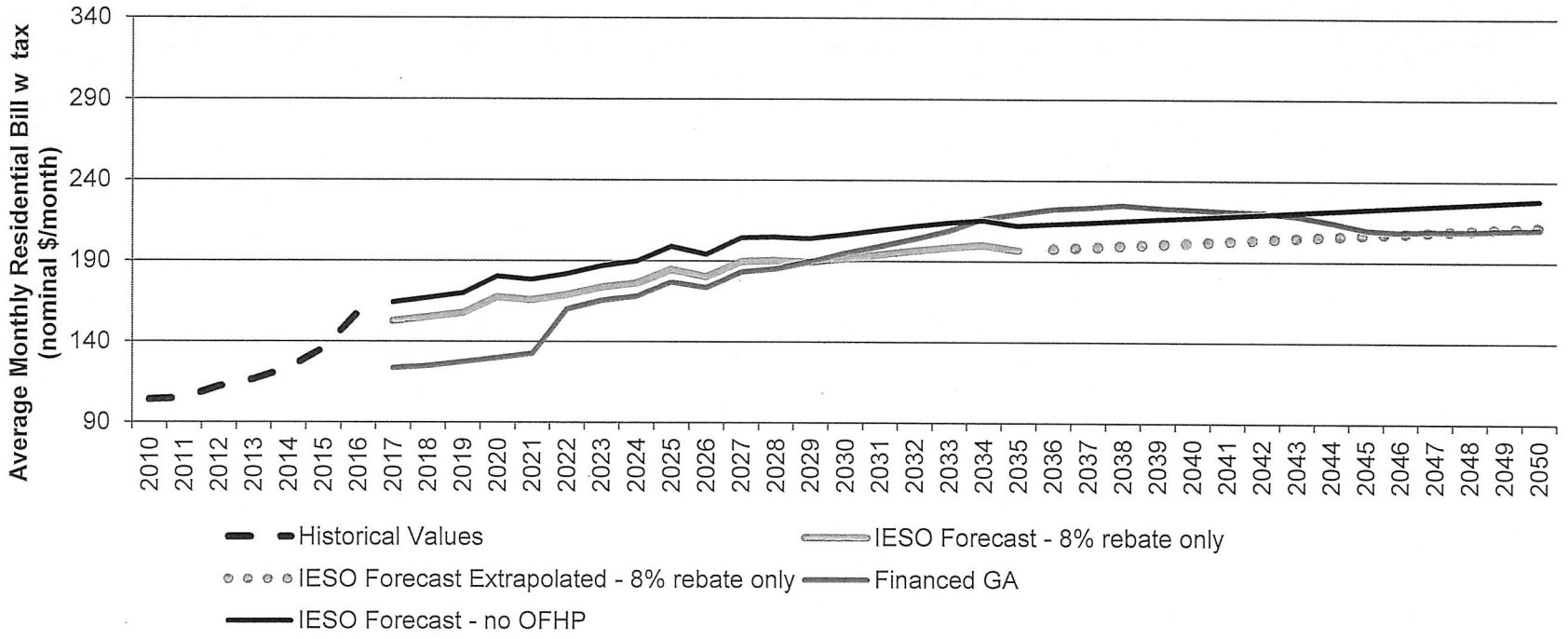
Ontario

Option 2 – Finance half contract value, 5% interest on historical "savings"



Ontario

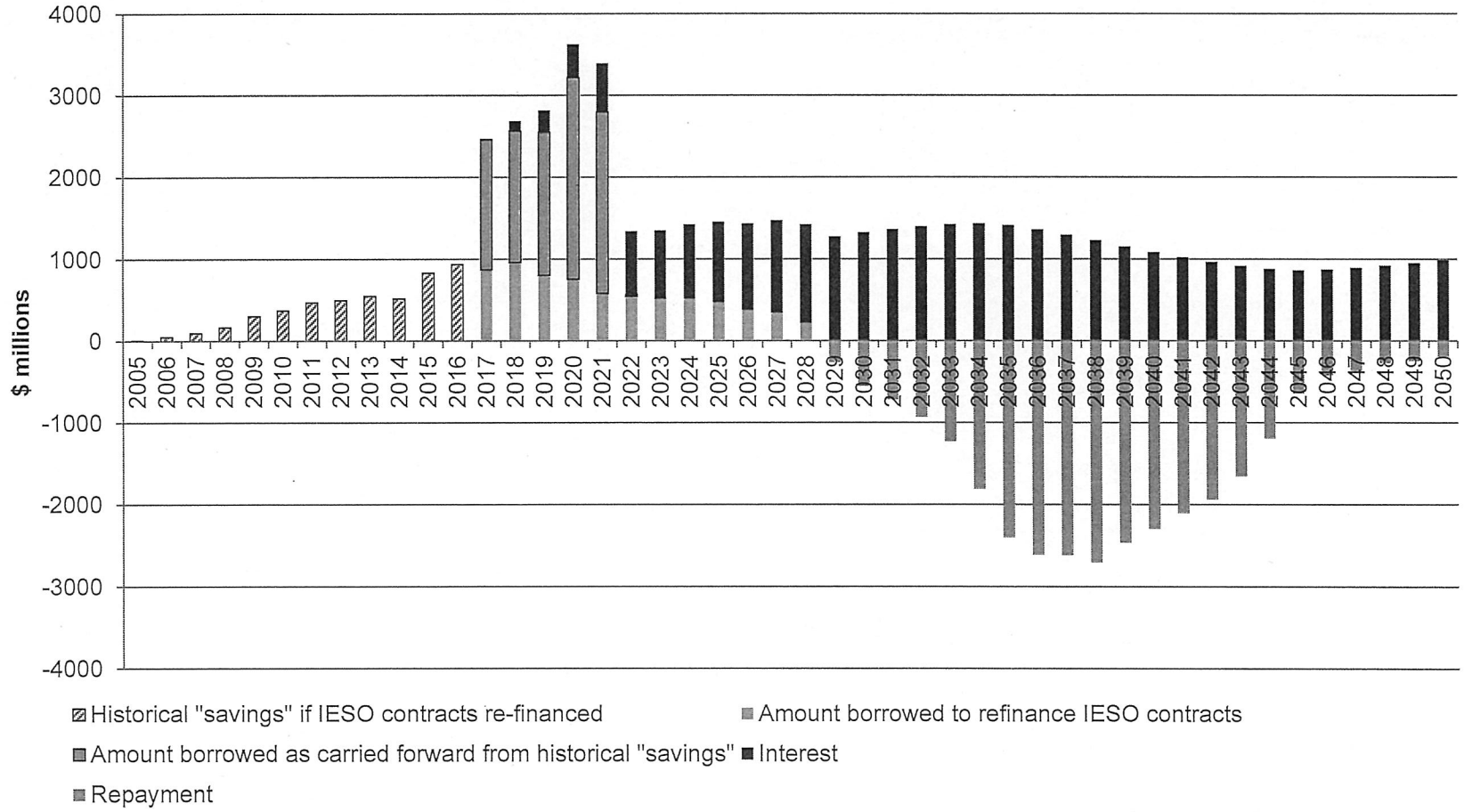
Option 3 – Finance full contract value, 9% interest on historical "savings"



- In this option, the full cost of each IESO contract and conservation costs are considered for refinancing and a 9% interest rate is applied to historical "savings" from such a financing plan. The value of 9% was determined as the minimum interest rate required under this option in order to achieve the stated goals of the OFHP in 2017-2021.
- The bill savings of the OFHP are achieved in 2017-2021.
- $19.6 billion of accumulated debt remains in 2048.

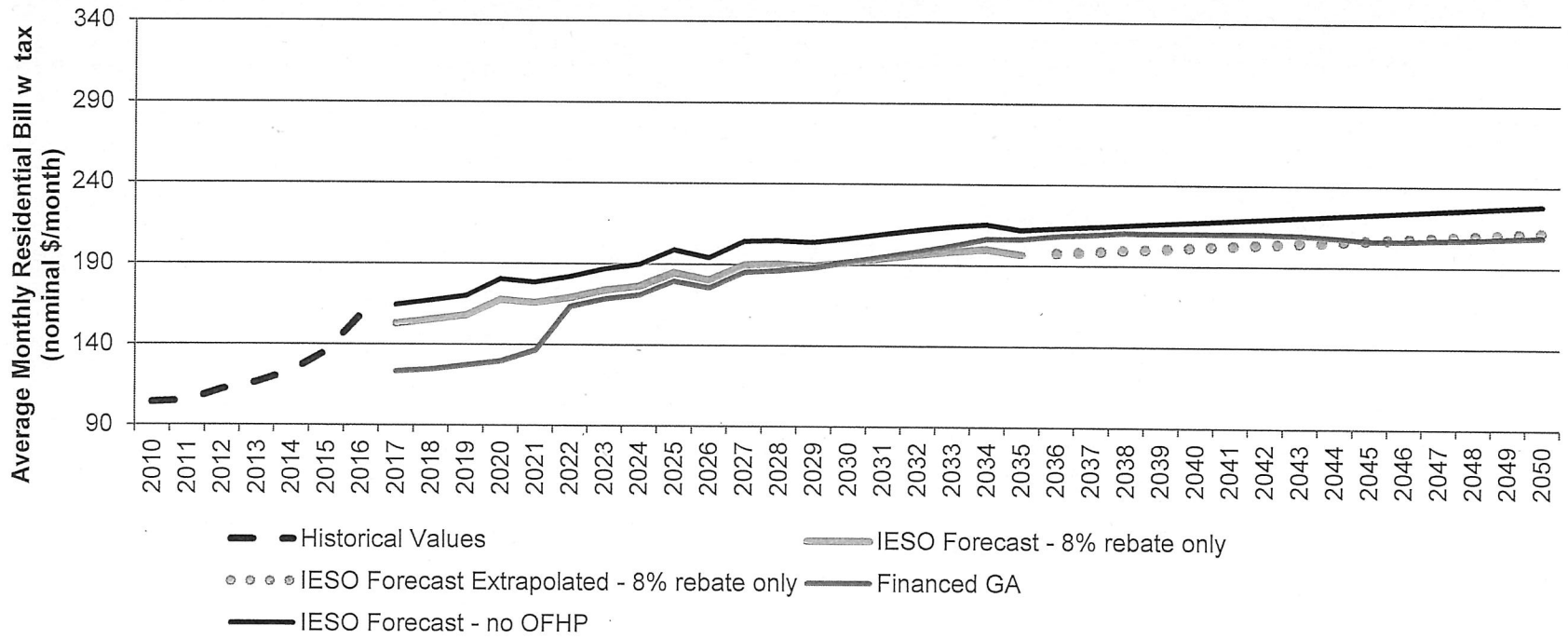
Ontario

Option 3 – Finance full contract value, 9% interest on historical "savings"



Ontario

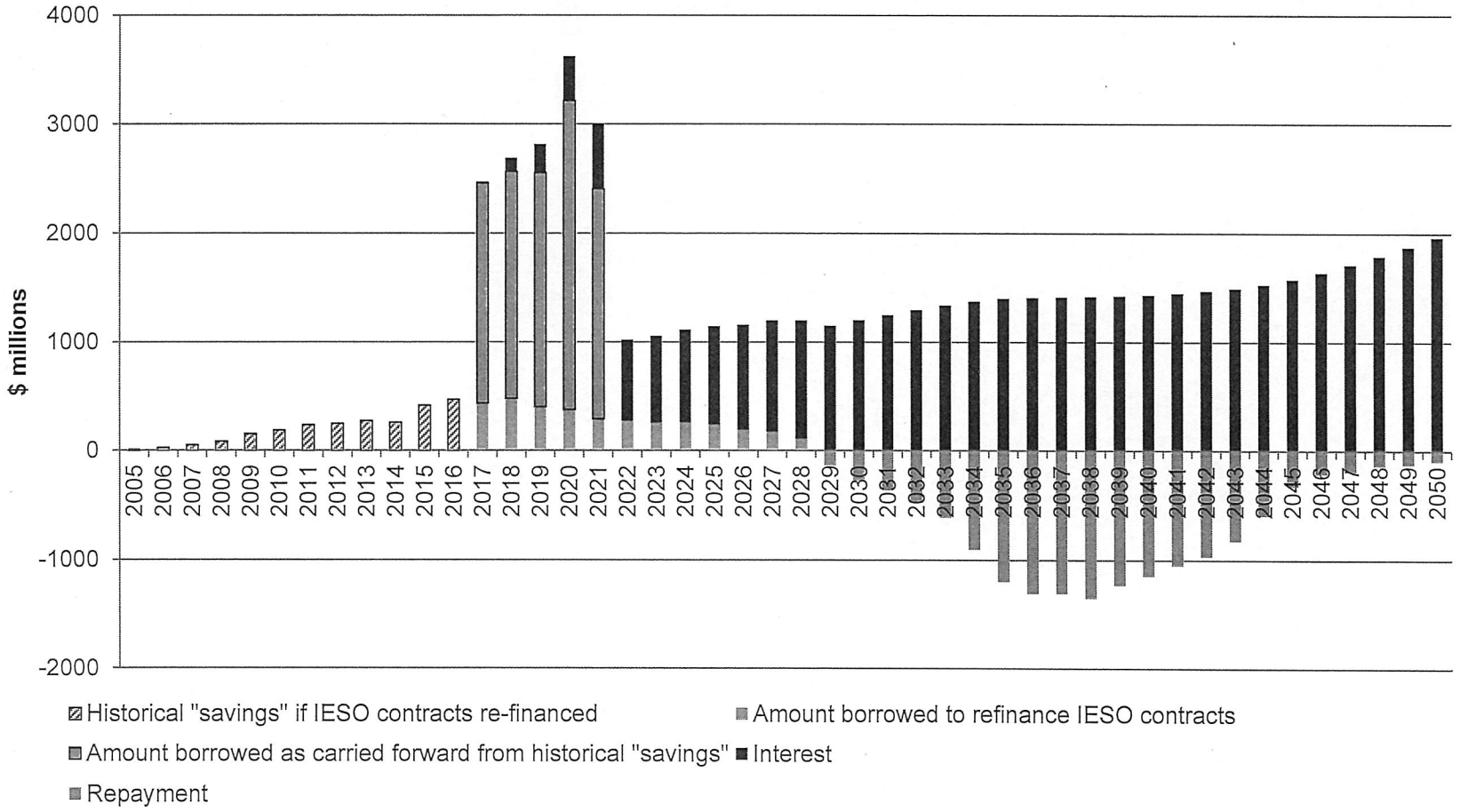
Option 4 – Finance half contract value, 23% interest on historical "savings"



- In this option, roughly half of the cost of each IESO contract and half of conservation costs are considered for refinancing to reflect the fact that only costumers representing roughly half of total consumption (i.e. RPP-eligible consumers) will receive the benefits and costs of this financing plan. The value of 23% was determined as the minimum interest rate required under this option in order to achieve the stated goals of the OFHP in 2017-2021.
- The bill savings of the OFHP are achieved in 2017-2021.
- $36.5 billion of accumulated debt remains in 2048.

Ontario

Option 4 – Finance half contract value, 23% interest on historical "savings"



Rate Mit

① Scope of amendment in second reading

② What is standard of care - (OSB mandated rules)
(applies to LDC's in collect. of $.

③ Consumer. piece
⇒.

Other.

④ CRED BN ⑥ letter
⑤ ECO quest.

CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act" ~~– Part V.2~~

Article 1 – Purpose[1]

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

The imputed costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment"). The Global Adjustment is included as a charge billed to electricity consumers in their monthly electricity invoices.

~~Each month, the IESO determines the Global Adjustment payable by consumers for the consumption~~The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province~~. A component of the Global Adjustment is the amount by which the reference prices in the Power Contracts~~ under the Green Generation Initiative, which may be higher than prevailing market price for electricity. These differences arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with long-term price certainty for electricity, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. In general, whenever amounts payable under these procurement contracts exceed the market price for electricity ~~for the quantities of electricity specified under the Power Contracts for the relevant period[2]. The relationship between the past, present and future benefits to Ratepayers from~~, the Green Costs Adjustment passes through the amount of such differences as part of the monthly charge to electricity consumers. Such amount then becomes available to IESO to meet its obligations under the procurement contracts. It has been determined that the useful lives of many of the assets encouraged by the Green Generation Initiative~~, on the one hand, and the costs of~~ will be well in

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

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

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

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

Article 2 - Definitions

In this ~~Part~~Act:

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

"Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the ~~Administrative~~Financial Services Agent whose records shall be determinative for the purposes of this ~~Part in~~Act except to the ~~absence~~extent of a manifest calculation error.

"Additional Funding Charges" means, for a Reference Period in respect of an Absolute Assignee, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by ~~the Regulatory Asset Owners~~or on behalf of the Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including (without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the ~~Administrative~~Financial Services Agent on behalf of, ~~a Regulatory Asset Owner~~the Absolute Assignee under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on ~~a Regulatory Asset Owner~~the Absolute Assignee or incurred by on behalf of ~~a Regulatory Asset Owner~~the Absolute Assignee under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the ~~Administrative~~Financial Services Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of ~~a Regulatory Asset Owner~~the Absolute Assignee; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager ~~of~~or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in

Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[73]

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

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

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

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

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

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

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

"Estimate" means~~,~~ (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the ~~Administrative Agent~~Financial Services Agent; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to any Retail Consumer Group, the estimated value (in current

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

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

Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]

"Financing Entity" means an entity established in accordance with the Financing Plan to acquire all or an interest in the Regulatory Asset as an Absolute Assignee and to enter into Funding Obligations to finance such acquisition.[8] under the Financing Plan.[6]

"Financing Plan" means the written plan [prepared by the Administrative Agent]Financial Services Agent on behalf of each Absolute Assignee in compliance with Article 89 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred in order to fund a Funding Shortfallby an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (ij) the cash flows arising from time to time or otherwise derived from the Regulatory Assetan Investment Interest may otherwise be applied, as the same may be amended, amended and restated or terminated by the Financial Services Agent in compliance with Article 9 from time to time.

"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Regulatory Asset OwnerAbsolute Assignee during the Reference Period in respect of allits Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to aits Funding ObligationObligations, exceeds (b) the aggregate of all Finance Receiptsamounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Absolute Assignee under derivatives and any Finance Reserve Withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the payment of the Funding Costs payable in respect of a Funding Obligation for the Reference Period.

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

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

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

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

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

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

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

"IESO ~~Power Contract Net Payment" means, for a Reference Period, the amount by which (a) the sum of amounts payable by IESO to the Generators under all Power Contracts for the Reference Period, exceeds (b) the sum of amounts payable by the Generators to IESO under all Power Contracts for the Reference Period.~~Recovery" means each amount remitted to IESO (including by IESO retaining such amount) in respect of the IESO Retained Interest pursuant to Section 5(6)(b), and "IESO Recoveries" means, collectively, all such amounts received by IESO.

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

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

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

~~Payments for Reference Periods occurring prior to the time, and (ii) all IESO Applied Surpluses for Reference Periods occurring prior to the time.~~ Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

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

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

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by ~~a Regulatory Asset Owner~~the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the ~~Regulatory Asset~~Investment Interest.

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

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

"Province" means the Province of Ontario.

~~"Ratepayer" means present and future [retail] consumers of electricity [in the Province] who are [RPP][or OREC-eligible] consumers, which shall include all such retail consumers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO.~~[15]

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

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

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

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

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in ~~relation to~~accordance with any Funding Obligation, then the Business Day preceding each Settlement Date.

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

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

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

"Retail Consumer" means:

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

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

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

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

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

(2) **Indebtedness of ~~Ratepayers~~Retail Consumers** – Until paid, a Transition Charge charged to a ~~Ratepayer~~Retail Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the ~~Ratepayer~~Retail Consumer to the Regulatory Asset Owners, ~~(~~each with respect to its respective interest in the Regulatory Asset~~)~~. Such indebtedness shall constitute a single and separate[8] debt obligation owing by the ~~Ratepayer~~Retail Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the ~~Ratepayer~~Retail Consumer under the Electricity Invoice or otherwise.[~~19~~9]

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

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

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred under the Financing Plan (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section ~~8~~9(3)) are deemed to be irrevocable, final and effective without any further action, ~~in~~except to the ~~absence~~extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period whether or not the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, whether or not the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

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

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

determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, ~~in~~except to the ~~absence~~extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

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

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

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

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

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

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

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

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

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[25][14], then such person shall, if requested by the ~~Regulatory Asset Owners~~Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to ~~Ratepayers~~Retail Consumers in its applicable service area, including all consumers connected to the electricity distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by ~~Ratepayers~~Retail Consumers as provided in this ~~Part; (c) terminate service to non-paying Ratepayers on the same basis as termination of service is permitted for non-payment of electricity transmission and distribution rates; (d~~Act; (c) exercise all enforcement rights of the ~~Regulatory Asset Owners or Pledgee~~Absolute Assignees for the benefit of ~~a Regulatory Asset Owner or Pledgee~~an Absolute Assignee; and (~~e~~d) remit any Transition Charge Collections to the ~~Regulatory Asset Owner or Pledgee~~Absolute Assignees or Pledgees, as applicable, each in accordance with its ~~Regulatory Asset~~Investment Interest.

(10) ~~**Regulatory Asset Owners**~~**Absolute Assignees have Standing** – The ~~Regulatory Asset Owners and any Pledgee~~Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Alternative ~~Servicer~~Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from ~~Ratepayers~~Retail Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5. Any court of the Province ~~[and the OEB]~~ shall have jurisdiction over any actions brought before it by the ~~Regulatory Asset Owners~~Absolute Assignees in relation to any such failure. [26]

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

[25][14] This is in anticipation of a possible future restructuring of the distribution system. ~~Also, this would cover any OREC-eligible customer (market participant) of IESO.~~

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

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

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

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

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

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

(4) **Validity of Pledges** – Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province ~~[~~or any consent requirement applicable to a Pledge that may arise by ~~contract or by~~ operation of any applicable law of the Province~~]~~, a Pledge by ~~a Regulatory Asset Owner~~an Absolute Assignee may be made to secure any related Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the ~~Regulatory Asset~~related Investment Interest in accordance with the terms of the Pledge. Other than as required by the Financing Plan, no consent of any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

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

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

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

[29][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.

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

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

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

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

7. ~~Backward-looking adjustments to a~~To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may ~~be made to achieve a fair distribution among Ratepayers of the benefits of the Green Generation Initiative.~~determine that an adjustment should fairly be made to rebate Retail Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such Retail Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more Retail Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) Attribution Methodology – The Fair Allocation Plan ~~[~~shall~~]~~ specify ~~an objective methodology (~~the "Attribution Methodology"~~)~~ for the purposes of allocating the Period

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

market terms and conditions and which are payable in arrears, in order to finance its ownership of the IESO Retained Interest from time to time.

(6) **IESO Recoveries** – IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) available to IESO under Section 5(6)(b).

Article 9 – The Financing Plan

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

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

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

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

as proceeds from ~~the Regulatory Asset~~an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose.[39]

(7) ~~(8)~~ **Non-Recourse** – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, ~~and~~any Alternative Collection Agent, the ~~Administrative~~Financial Services Agent, the OEB, the Province or the Lieutenant Governor in Council, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this ~~Part~~Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount. [All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]

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

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

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

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

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

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

[4019] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article ~~is~~and any potential role for the Auditor General is still under consideration.

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

would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder,

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

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, Successor IESO shall be established to perform such obligations.

(4) ~~[If IESO becomes insolvent or otherwise incapable of performing its obligations under this Part, an IESO Successor will be established that is capable of performing such obligations in order that the Regulatory Asset Owners may appoint the IESO Successor as an Alternative Servicer or Alternative Collection Agent. Regulatory Asset Owners shall be fully~~**Compensation for Failure** – Absolute Assignees shall be compensated for any losses suffered by them as a result of any failure by the Lieutenant Governor in Council to comply with its undertakings and agreements in this Article ~~10(2) for any loss suffered by the Regulatory Asset Owner as a result of such failure.~~[44]11.[22]~~]~~

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

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

Article ~~11~~12 – Regulations

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

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with ~~a Regulatory Asset Owner~~an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding ~~Costs~~Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

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

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

[44][22] Requested by Torys. For discussion.

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

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

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

(6) ~~the Administrative Agent, for and on behalf of each Regulatory Asset Owner, shall seek to~~ incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:

a. whether the ~~Regulatory Asset Owners~~Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not obligate ~~a Regulatory Asset Owner~~an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits to the applicable Reference Group under the Fair Allocation Plan;

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

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

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

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

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

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

~~**Schedule 4**~~

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

~~(1) **Powers and Abilities**:~~

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

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

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

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

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

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

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

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

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

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

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Padding cell	

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

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 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 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

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[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.

[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.

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]

"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

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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.

Retail Consumer Group, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

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

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

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

"Finance Amount" means, for a Reference Period in respect of an Absolute Assignee, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of the 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]

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

"Financing Entity" means an entity established in accordance with the Financing Plan to acquire all or an interest in the Regulatory Asset as an Absolute Assignee and to enter into Funding Obligations to finance such acquisition under the Financing Plan.[6]

"Financing Plan" means the written plan prepared by the Financial Services Agent on behalf of each Absolute Assignee in compliance with Article 9 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred by an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (j) the cash flows arising from time to time or otherwise derived from an Investment Interest may otherwise be applied, as the same may be amended, amended and restated or terminated by the Financial Services Agent in compliance with Article 9 from time to time.

"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve 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

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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.

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

[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.

estimates that were inaccurate, an adjustment shall be made in determining the amount of any subsequent shortfall for the month in which the inaccuracy is identified.

"IESO 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 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

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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.

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 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 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.

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

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

(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 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 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 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.

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

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

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

(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 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

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[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.

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 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

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

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 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.

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[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.

(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 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

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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).

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** - 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

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[19] 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.

consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][20]

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

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

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

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder,

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

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, Successor IESO shall be established to perform such obligations.

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[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.

[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.

(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 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]

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[22] Requested by Torys. For discussion.

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

(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 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 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

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

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.

Maksymuik, Amanda (ENERGY)

Subject:	Ontario Fair Hydro Plan
Location:	199 Bay St. - 40th Floor, Blakes
Start:	Mon 04/10/2017 10:00 AM
End:	Mon 04/10/2017 4:00 PM
Recurrence:	(none)
Meeting Status:	Accepted
Organizer:	Calwell, Carolyn (ENERGY/MEDEI/MRI)
Required Attendees:	Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); michael.boll@ieso.ca; Kim Marshall
Optional Attendees:	'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)

Update

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

Hi Everyone,

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

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

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

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

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

Toll-free dial-in number: 1-866-633-1033
Local dial-in number: 416-212-8013
Conference ID: 3164921#

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

Thanks,

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Location:	199 Bay St. - 40th Floor, Blakes
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Organizer:	Calwell, Carolyn (ENERGY/MEDEI/MRI)
Required Attendees:	Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); michael.boll@ieso.ca; Kim Marshall
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Thanks,

- Carolyn introductions. April 10/2017

- OPG →
  ↳ Trust - determ. of control.

Principles - white paper with table of accounting requirements
- key principles
  1. OPG can't be agent of province
  2. ↳ can't be admin direct from province

↳ consolid. of trust falls back - would negate purpose of accounting.

→ Some of terms may be seen as more agent of province

→ Eq. - helped develop terms for OPG to consolidate trust - requirement to consolidate: flow through acceptable

- Last, [illegible].

- Steve - area of [illegible] -
  - fatal flaw [illegible]
  - helpful to see what you see as fatal.
  - not typical [illegible].
  - very useful differences than [illegible].
  - accounting call.
  - huge [illegible] than this [illegible] typical [illegible] deal.
  - when you look at subsets [illegible] not to [illegible] [illegible] side & come to right [illegible]

OPG - not definitive - one is missing that is fail - need strength & offset somewhere else.

Steve - UE 2 GAP [illegible]
  - primary [illegible] -
  - who would it be other than OPG

TD - looks at agent approach

Tony - whether working can be incorp.
- solve accounting issue - if we can - go through sect. accounting points

CC -

Tony - many more comments - nominal to these -
- off balance sheet option - is past that -

SA - 3 specific work steams -
- minimal work up.
- elliot list from dealers,
- OEB issue

- Michaels work up.

Elliot

- critical issues for dealer.

① market disrupt.
- dealers view.
② prov. step in pay out debt
② right to recover from notepayer right away

CIBC - eg. warehouse facility
- structure for term takeout if
must do sell down back
- can't finance shortfall.
- need to

Cavalry - easier for province to step
in.

CIBC - don't want to be stuck for
15-20 yrs w/o getting paid
- flexibility in structure so that
not required to cap.

CL - in legis? or commercial terms?
- some could be dealt w/ through
commercial table
- on the table

Michael - maybe able to defer
nature of provincial backstop
- province needs to do what
necessary for accounting treatment

ORC - more protect province provides
harder to argue consolidated
by ORC

(3) D - present for [illegible] - federal.

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

#4 - Provincial Constitutes

- CC - understand need for undertaking - wondering will need to be settled.
- appearance of success
  - will address
- contractual guarantee.

#2 - FAP -

Stress - need goes to root of [illegible] mkt sound legis -
- take as given & recognize, will be as soft a [illegible] as can be reasonable [illegible]
- start w/ premise - work [illegible]
- service guarantee - raised by [illegible]

Steve – prescriptive path as guideline that I think can follow.

Barker – to extend can't apply???

Aaron – CPE go through line by line to ensure not coupled
– will don't want to be to prescriptive – its all in dec.

Steve – want to pared down vers of legis.
– whether legis as drafted invites attack.

John – legis for FAP – formulae & prescriptive

Steve – 2 levels – legis will prescrip FAP.
– leg will set out delegat.
– plan drafted.
– won't be a curve but will be principles & parameters will have range for decis makers
– ability to amend plan subj to wrt ellipt

OPG - who develops?
Steve - not there yet - tensions in
- FAP is policy document
must have expertise to
look at picture.
- if OPG did - manage constr
& costs.

FAP - Comp. / FP OPG puts out.

John - if ask OPG to force thing
which - trying to avoid
role which affect financing

Krista - turning - not laughing on
anything
- revising doc (?)

Steve - turned 2 doc - that deals
w/ comments
- lots of open issues
- most impt feedback is
detailed feedback.

Osleers

#3 - concern not too prescriptive
- want to ens
- less detailed & more flexible.

Steve - can you make more flexible
- set a bar recognizing everyone at table has view
- adds the aim of substance to what is fundamentally ground delegate
- nothing written in stone.

CC - hearing your view of what can go in legis vs. reg.

Steve - why would provide give unfettered ability to 3rd party to appoint disproportionate changes.

John OZG - can do that? -> but if one ready - see as acting as aim of provide

Steve - balance in how unfettered provide everything proportionate changes over time

14 Rocco
- you'll say you have regard to purchase price from assist.

SA - Sphere updated as wfo unfolds
- read to mean [illegible]
- should have regard to these things - that hold obly. to
- how detailed obligt rights
- who has approval.
- subj of approval

SA - Given obvious challenge to have funding arrangement - that it was approp. for legis to say -
- need to have it [illegible] back.
- use reserve funds
- not intended to be [illegible]

Steve -

ME - seller / buyer - who does what
- OPG has it plans.
- may or may not be accept. to province

- prov has to make decis.
- preset plan n. reqs, - if can sell in accordance just do it.

- prov. cannot tell OPG / financing entity to buy.

- buyers plan / sellers plan
- province cannot tell OPG to buy by their agent of govt

Steve - agree
- plan exists - plan has plan
see if any they there g

SA - nothing compels OPG to buy asset
- have to have corresponding plan.
- parameters drafted by Conway.
- what are obstacles.
- what is a responsible piece of leg.

SA - ~~company~~ comft. is brought delay to OPG to implement. funding
- level of review after plan

OPC - shall vs. it will be expected that.

#5 - limited on defaults under program -

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

OPG – quick - we recommend –

Stan – makable plan – look at inputs draw strategy
– once debt incurred it that is locked down –
– ability to fill in around it
– this is interplay than 2 things.

#6 OEB no role – understand for constitution reason –
– role needs to be signif link
– for trying to achieve – input sp
– no approval rights over ability
– once funding in place
– can't be someone who can say – don't like

LL - how to accept need that
aren't curbed

- trying to solve for scarcity
treatment
- don't want OEB to have to
approve something has no
control over

2 - Rocco
~ cost incurred deemed appr
- shortfall.
→ determining what practice

OEB - want to use existing
process as much
as possible

Cook - there a concept
basis - not detailed

OPG - LP

#18, only people when one
requested owner
- initially ope - no one else
permitted to own asset

Steve - IESO sells - perso IESO
sells to sells again
- legis would not embed
concept of SPV.
- legis - not determ of what
day - still have abil
to negotiate terms outs

- Sigle A equivalent

IESO sells right - & no right
& obligt.

Rocco - rights for assets.

Stu - creation of vehicle contemplated loosely
- won't get deal unless mkt

MF - OPG controls trust - OPG can't wind up legs
- until debt repaid OPG can't wind up
- not in their control unless Minister says ok

Ar Put in reg

CBC - rating agencies concerned in size of transition charge
- LESO able to fund funding shortfall through program

SA - Its regulatory asset billing rights associated in the consent [illegible]

- rating agencies downgrade
- if we are target rating beyond surveillance - have protocol.

SA - when do deal deal has concentrated pattern
- concentration of that sort - focused on AAA rating deal in the doc.
- if want to embed - LESO can't sell in situation - not sure what contains

Rocco - if shortfall - permit LESO to proceed
- connecting w LEO & other entities

7 - creation of asset is went

SA - key is or reg 8)

LESO - right now have variance
- forecast variance - carry from
period of time.
-

SA - way doc needs - LESO assist
reflected in their books
- can be booked by assist
shall not book by X
-

Tony sales aspect - LESO conf.
quarry covenant.

LESO - theoretical right to recover
from rate payers - has to be
some way to recover

SA - mechanic - after debt service
cash flow, per

Q - if IESO taking cash from Cutbank
does it navigate accounting issue

SA - take back

Lunch break

- resume Jenkins issues list.

LS
- ① underpayment for cutbank
② underpayment on x
remittance by LDC.

- SA - deemed collect.
- LDC has to put $ in bank,
~~to~~ creates right on
collect

→ can LDC track what
is billed to what is

VS - [illegible]
↳ aren't reunited - on daily basis through securitized.
- everyday through.
- daily reunitance.

OEB - monthly currently.
VS - is daily reunitances - reporting / tracking reasonable
- idea that can't be worse of - don't have some priority rights to colle
- will want to know have rights for this

SA - table this what is [illegible] possible

11- 2 Ditinty of court to order payment of transit ~~[illegible]~~ Chang

CC- agree on concept - mechanism is prob

12- who are class.

CC- OREC eligible - very defined - class of people - not unit.

13- True ups - every 6 with possib. more often

CC- understand need - provide language are long. indoc.

14 - month to month true-up.
- gap - cuends
- don't expect KESO - will
know
- follow month - true up down
preceding month
- mechanics baked into def'n
SA - current contemp.
- est for 6 mths - true up 2f
end -

Rocco - end of 2014 - part of
Shortfall
- concern in Lag -
& could be done in Reg

15 - agree on part.

16 what if shortfall in mth? -
- rocco - preface some other mechanism.

- no intent for this

- strong view on fundl. change

Mi - IESO no access to transit. changes

2 things
① IES has to create reg. asset by recording reg. balance in account

- as long as assurance from OEB

- no one plans for this has to be recovered

MF - LESO doesn't need access to transit changes.

SA - mechanics - look at next draft.
- inherent cost is creates discontin in asset
- test that.

OEB - quest.
- Leg. requires RPP done yearly
we do 6 mth
- is 6 mth critical?

US separate charge - separate true up
- every 6 mths - better from rating perspect

Rocco - portion of bill belongs
to someone else
- unsure it needs to be
tracked
- if LDC's can split out
how went.

MF - def'n of regulatory assets
def'n shortfall LESO recently
based on GA
- may be limiting - bc defined
not tied to GA

SA - orig. doc - tied to shortfall
from power contract
- to come up w/ #'s
- created structure to recalculate
benefits of plan from incept.
- tried to make clearer

MF - our asset fed to funding
obligt. - LESO creates
asset w/o liability.
- nature of asset depends
on liability creating
- buy deficiency - pay for it
- our asset is different from
LESO's once we buy it.

CL - draft legis circulated
Wed
⇒ standalone act
⇒

Post-Big Money:

CC - how to meet accuracy test
- tie into what already happening.
- aren't taken off bills in Many - creating shortfall for LESO

LESO - if RPP set lower by what ever set -
- below rate marking
- would create
- as long as legis refers to.

MB - some of discuss - right of recourse for LESO.

MB - transit change not LESO part of asset.

SA - ① sell you something arrives at your door - catering - whether tolerable

② RED inclus.

MB - creat. of defer. creates regulatory asset.

LESO - we have legis - right to recover.

prov (PD) - to be called regulatory asset.
Catmillan.

OPE - intangible asset.

[illegible] - what OCB market will

OEB -
2 - whether amend legis to allow
us to categorise
[illegible]

LESO in first several yrs - every
month shortfall
- us will be able to track
+ carry 2 variance accounts
① - RDP forecast
② GA defined } this is what
we sell.

- Tim - won't have to sell both?
- LESO don't want us to
sell forecast variance.

SA - to recover amt associated
w/ new legis basis

- Sm/LL - new input is correct
less
- if fall - OEB adjust
rates - less collect
choice

OEB - 2 prob to solve for.
- use RFP process -

Ardy - golden thread draft
impress from moody's.

OEB - could moody's be persuaded
that current infrastructure

SA - looking for right of act.
that's formula
to & flows

MB - 25.33 tells us to settle GA in short pond.
- If defined amount overruling 25.33 whether stop & put back in RTP.

SA - Principles only discuss - doesn't tie into trial.
- GA given which relates to green energy plan.
replacing green adjustment out what energy in there was subjection.
- then let's true up essentially extended.
- unless want to double charging pull that out of

OPG - overpaid in past. no total credit
these guys funding - drains
down credit

- if FPP set artificially low.
- program rolling under collecting
if selling to OPG firm
- if falls away will run out of
room on credit.
- if OPG stops buying assets
program falls apart.

regulatory asset - future right to
collect $.

- IESO right of recovery.

IESO - regulatory asset, [illegible]

LSSO - need right to recover.
SAC comes from transit. rights
- book entry
- makes a difference

OEB - legis should be sufficient,
- don't understand why not suff.
- accounting orders often.

MB -

OB - role on [illegible]
- not making decis - point to reg

- current PPP -

OPA - here is signal on balance sheet - OEB used when

SH - whether separately commented on
bill.
- [illegible] to be able to

(RPP elmgt)
4 variances

OEB - set RPP on 2 basis - what it
would have otherwise been [illegible]
smoothing - [illegible] 2 variances

SH - doing GA calcul. w/o regard to
form hydro?
- benchmark against which to
deduct.
- GA calcul. has regard to
body of rights - [illegible]
- if concerning [illegible] - take
[illegible] GA - calculation

CC - nuclear order - how does thing line up.

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

CC - legis
- reqs few days later
- KSO have authority to ask for cost of requiring assist

LESO variance account required to create their legislation.

- RPP - manual adjustment

OEB - fall in line w/ how 95/05 amended.

- KPMG wants OEB blessing

CC - practical reality - shortfall in June.

- could have order.

LESO - 1st shortfall - June 14

- incumbent on LDC's to tell us homeowners

- they tell us on mother delay.

OEB- recovery mechanism different -
not through OEB,
- its own mechanism

Lt DEB looking at costs incurred
- LESO - fee - model.
- how did you carry out - what did it cost you.
- OPG admin trust costs.
- OPG payment - not equity

Cindy - financing costs vs. admin. costs
- fact that asset created carries right to recover purchase

SH - that is financing plan
- scopes it out
- OPG does plan - no one, penalized in on top

financing plan - performance component build it.

OPG
① incompetent fee prec
② economic.

SA - when do theory plan - will be benchmarked against

FAP - e

- SA - explanat. for 4½ yrs - when will

LESO - should don't # show up in 6-7 yrs - when OEB sets RPP?

OPG - we envision straight line defn pictn.

SA - Popcl. in jumps or consump
gets bigger.
- curve too high - when do
you reset?

OPE - part of mech. - need re-fund
of what consup. looks like

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

OPE - FAP tied to how often
update forecast outlook
- need data + interest
price
- see curve tried to fill in

Kidy - cannot do anything adverse to interest in mkt,

CL - legis - you't will do FAP by these principles contain info as may be prescriptive

- Reg - prescribe - & then do plan
  → tomorrows curve.

- CL - didn't release curve at public amount

SA - can is instrument its formula or parameters
- upfront # presenting | Volume | interest rates

- ITSO has shortfall in early periods
(value variance)

SA someone has to run math -

~~ITSO~~

- you't sets FAP.
- OPG trust - tweaks FP.

- who tells OEB what to increase rates by?

→ reg

- repayment period
↳ OPG estimates through TP. having regard to Schedl

OEB - review?

- Tim - 10 yrs down - know volume
  - if this/that ≠ X.

- prob if sign w/ retailer.
- Tim
  - some volume rate feed into calculation seen.
    - might now pay retailer + GA
    - know average price - add on recovery out.
    - adder put into RPP

Tim
- comfort letter talks to RPP

SA - won't be transit. charge
for period of time

OEB - inflation
- no more than

SA - blended rate - expected
furacy costs -

Tim - flat charge → problem

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

SA - dealers wrong about bypass
risk
- stay connected.

SA - [illegible] to part of [illegible]
methodology

Maksymuik, Amanda (ENERGY)

Subject:	Ontario Fair Hydro Plan
Location:	199 Bay St. - 40th Floor, Blakes
Start:	Fri 04/07/2017 10:00 AM
End:	Fri 04/07/2017 2:00 PM
Recurrence:	(none)
Meeting Status:	Accepted
Organizer:	Calwell, Carolyn (ENERGY/MEDEI/MRI)
Required Attendees:	Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); 'Michael.Boll@IESO.com'; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; DICKS, LINDSAY (LINDSAY.DICKS@blakes.com); Michael.Boll@IESO.ca
Optional Attendees:	Mary Anne Aldred (MaryAnne.Aldred@oeb.ca); Martine.Band@ontarioenergyboard.ca; 'Martine Band'; 'Ramchandani, Rima'; 'Feldman, Michael'; 'Alan Hibben'; 'Mansoori, Nina'; 'Myers, Jonathan'; 'Hill, Krista'; 'Glenn Zacher'; 'Peter Hamilton'

Update

This meeting has been shortened from 4:00pm to 2:00pm.

Hi Everyone,

This will be a meeting to discuss the Ontario Fair Hydro Plan (OFHP) and will include Blakes, Torys, OPG, IESO, and Ministry Counsel.

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

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

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

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

Toll-free dial-in number: 1-866-633-1033
Local dial-in number: 416-212-8013
Conference ID: 3164921#

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

Thanks,

Meeting of Blakes re. Trusts

March 5/2017

Peter Hogg

- trust - relat. where one person holds legal title to property but not beneficial owner
  - analysis ~~for~~ is basic trust argument
  - settlor - person who creates trust
- trust is relationship - not just entity
- keep calling it a trust - ques impress.
  - everything trust does is in the name of trustee
- use of trusts in US presidential
- personification - of trusts by legislation.

(common) legal construct treated as person.

- tundit of trusts - continues in fashion
  - trustee has legal personality
- Tarrant evolves - from lending of [illegible] property
- capital rights - beneficial interest is novel.
  - in case of securitization -
  - if $100 trust property - $100 of debt obligation
  - being equal level of equity
  - $10,000 charitable interest
eg. - tundit. reason to differentiate is tax or accounting.
  - in first instance
  - not tundit. applicant of law of trust
  - at root, when go to court - bedrock - trustee is legal, person.

Trust vs. S.P.V. →
  - bankruptcy - isolate embodiment of global property - take away from owner - hold in [illegible]

- lots of securitization trusts
- trust deemed to ~~be~~ taxpayer so if you don't structure inflows & explains
- ~~trust~~ might have assumes will see trust,

Q - securitization trusts - designated held by names charity or group of charts
- very little equity value
- debt holders own property residual property owned by beneficiary
- to bolster prior claims - trustee wants priority interest?

Slide 3 - natural course of securitization - financing opinion
- trustee delegates authority to enterprise - sponsor for who benefit structure

- tension - can't delegate everything
- trustee enters into agreement w/ ODG - OPG can be replaced,

- trustee holds back power to make decision.

- trust asset - like a receivable.
- benefit of asset - owned by all of us - claim.

- if it was the gov't - if tried to cover contingency - that obligation is a weak link - below aggregate imperial quality

QR - more discount. gov't has - in terms of regulat. making authority vs. having different approach.
reduces question.

- attributes of receivable.

c.g. contemplated in legislation - Nature of obligat - quality of receivable
- further more favorable to GA better off in

- could be provis - contemplates 2 changes
deemed repugnant -

NY example - pro rata.

- you are creating recumbly
- market likes being ahead.

eg. First dollar to bucket A
vs bucket B
- rating methodology - moody's
- OEB role
- want to keep them out
- function on OEB - protect interest of bondholders to ensure commitments made by bondholders in force.

- after structure contract - implement & enforcement of contract
- implement of process
- many ways to bolster

- to extent you'd wrap around this - unforeseeable you'd wouldn't have covered

2 - anything could do w/r to LDC's
- whether could bolster.

A - assume LDC credit

- need to have adjustment mechanism to capture costs
- US deals have annual true-up
- ultimately investors trying claim against pay-on.
- investors necessarily bear risk
- entities (LDC's) will be part of credit

2 -

- first is STV.
- co-ownership structures/.

Activity
① de-recognition of assets
② consolidation of assets

- normal rules - if don't own entity can't consolidate
  - if true subs owned by someone else - controlling party has to consolidate.

- if what purely domestic vs. different mix

- what to protect OPG assets
- how to take legislative contract & sell.

- IESO has asset from its benefit
- OPG finances from - IESO.
↳

- we are selling regulatory asset to benefit

—

Leg 35.7. IESO may sell
- OPG ~~[illegible]~~ is empowered to create what CE need to buy.

—

- [illegible] housing facility - as banks

Q - If GA is obligat. created by statute - are we, [illegible]

-

DS -

What does mkt need to see

US Examples

1. whether MPV, less for mfg than what they would have to pay.

- issue - restructuring cost order.
- for $3.5 B. first
- autumn 2. creat. of rch
- road prop to get auto
- individuals could challenge bond w/ 30 days

- how property defined?
  - order had to be irrevocable
  - creation of changes | 2

non-bypassability of charges
- consumers can't come up
in ways of getting around
charges.

- even if fully self generate
- indicia of true sale.

state pledge - agrees will
not mess around by making
legis changes

& whether happened in NB - 15 yrs
ago.

Opt. ① legis - tinkering
② legis invalid.

- how much political noise is too much

Tax.
① Quantum
② Tying to useful life of asset.
↳ expert works

- principle of proportionality
how do we show rightly
some value

- in normal course - if fails
buy back asset at face value.
- obligat to back up reps
& warranties

- more than mere to chance, it's
a tax - need to get
structure rights

- need funny level opinions
its a good test.

- would have to be disclosed when selling bonds
  - risk factor that would be disclosed which would make hard to sell.
- if there is a way for Secret. to get people comfort.

- Goal - to structure not a tax.
  - if need a backstop so that doesn't create a problem

① initial constitutes
② turnkey in law.
  - if can get funding opinion not a tax - craft backstop on basis of that globally

Contr docs
① legis.
② contractor undertaking

- rating agencies already picked up whether
- interested in whether legis will understand
- wouldn't pass if can't determine
- US deemed - "true sale".
- if do analysis, then need to restrictive 2 seat to something else - that gives some disinfranchisement of property rights

April 9 - legis GA 2 committee

Deliverables

① entitlements to struct. } - [illegible] leading
② transact.
③ legislat. } → legislat checklist of what need to see

- sounds like amortizing value of property

eg M: - appropriate assets - say gov't leases SPV interest in portion of assets

- partial assignment of contract.

TR: - tie through commitment - so that [illegible]

- re-amortization of property

Mike - Steve advice - on

MOODY'S
INVESTORS SERVICE

RATING METHODOLOGY

Moody's Global Approach to Rating Securities Backed by Utility Cost Recovery Charges

Table of Contents:

1. SCOPE 1
2. EXECUTIVE SUMMARY 1
3. ANALYZING THE RISK FACTORS 3
4. MONITORING 6
MOODY'S RELATED RESEARCH 8

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1. Scope

This methodology describes our global approach to rating securities backed by utility cost recovery charges ("UCRC" bonds) that are established by special legislation and financing orders issued by utility regulatory bodies. The charges backing UCRC bonds rated by us have been established by state legislation and state utility regulatory bodies in the United States. For UCRC bonds backed by charges authorized by other jurisdictions, we will analyze the specifics of the securitization's legal framework and regulations – and their implications for the quality of the protections afforded to investors – within the general methodology described in this report.

Examples of cost recovery charges include those imposed to cover certain costs of utility companies that had been incurred in a regulated environment but could no longer be recovered because of a change to a more competitive regulatory regime (i.e., charges sometimes referred to as "stranded utility charges") and those imposed to pay for environmental cleanups, clean energy or for the replenishment of reserves established for repair of facilities damaged by natural calamities, such as hurricanes or tornados.

2. Executive Summary

A utility cost recovery charge bond is a bond typically issued by a special purpose entity of a utility, or by a special borrowing conduit, to recover specified costs as authorized by special legislation and a specific financing order issued by a public service utility regulatory body. The bonds are backed by a property right created by the legislation, which provides the right to impose and collect special charges on customers' monthly electric bills.

This credit rating methodology was republished on June 22, 2015 containing an updated monitoring section and minor other editorial updates in the body of the text and in certain footnotes. The content of this Credit Rating Methodology has not been changed.

applied (usually energy usage) and the servicing fee. To obtain a high rating, we would expect that even in a stressful environment, such as one in which energy usage declined dramatically, the charge per customer necessary to pay off the bonds would be reasonably low both in absolute terms and as a percentage of the customer's energy bill. The specific stresses that we place on the variables are issuer-specific and are determined on a case-by-case basis.

In addition, we analyze the implications of other structural features of the securitization that could affect the risk of investor loss. For example, we examine the risk implications of how the cash flows are allocated among the various classes of investors and the other participants in the transaction, and the extent to which any other sources of funds are likely to be sufficient to offset any remaining shortfalls to investors, whether the shortfalls are temporary ("liquidity") or permanent ("credit enhancement").

3. Analyzing the Risk Factors

Because of the unique characteristics of this highly regulated asset class, our credit analysis of UCRC securitizations focuses primarily on the legislation and the true-up mechanism. The degree of certainty that the fees generated through the legislation will be sufficient to pay off the securitizations in full is a complementary aspect of the analysis. .

Depending on the risks and mitigants in the relevant jurisdiction, transaction ratings will typically be positioned between the government rating and the country ceiling. Risks that could lead us to determine transaction ratings to be lower than the country ceiling include, for example, continued high levels of debt burden in a utility system. Such high levels of debt, if deemed unsustainable in the long term, may lead to political pressure to adjust the regulatory framework around the system deficit, with some potential negative impact on the related securitization transactions.

In the following sections, we describe the factors that typically lead to a high degree of certainty and thus high ratings on the bonds.

3.1 Protection against Future Impairment of the Right to Collect the Charges

Utility cost recovery charges are established by special legislation that authorizes the creation of a property right to collect future surcharges on customers' monthly electricity bills as the means to pay back the UCRC bonds. Consequently, we analyze the extent to which investors are protected against the enactment of future legislative changes that would weaken that right. For example, investor risk would be mitigated in a situation in which (1) the legislation contained a pledge by the jurisdiction not to impair the right to collect the special charges until the maturity of the bonds and (2) violation of that pledge would be a violation of law [3].

3.2 Irrevocability of the Financing Order

The legislation is typically accompanied by a financing order issued by the public service commission that authorizes the utilities to impose and collect the surcharges on the customer's monthly electric bill during the term of the bonds. Our analysis assesses whether the financing order is irrevocable, which would protect investors against future adverse changes that may reduce the charges backing the bonds.

3.3 Sufficiency of the Charges and the True-Up Mechanism

The charges are usually assessed as an amount linked to a customer's energy usage. Our analysis considers whether the financing order places any limits on charges – e.g., caps on the levels of charges or limits on the length of time that the charges can be imposed – that might cause the collections to be insufficient to provide for timely payment of the principal and interest on the UCRC bonds. In addition, we analyze whether the period over which the charges are allowed to be levied provides sufficient cushion to pay off the bonds by maturity in the event that collections come in more slowly than originally projected.

[3] Violation of the non-impairment pledge would be a violation of the Contract Clause and the Takings Clause under the Federal and State constitutions.

In addition, we analyze whether the bankruptcy of the utility could cause a disruption in the remittance of payments by the utility to bondholders. Such a disruption could occur if the remittances of the charges were "commingled" with the other funds of the utility and the bankruptcy court ordered a halt to payments until proper ownership of the funds could be sorted out. Our analysis includes an assessment of the ways in which the utility separates the cost recovery charges received from its other funds and the frequency with which it transfers the funds to the trust.

3.6 Bankruptcy of the Financing Vehicle

Another potential risk to investors in UCRC securitizations is a bankruptcy of the financing vehicle. That could expose investors to the risk that other creditors of the vehicle might make a claim on the cost recovery charges or that payments to investors might be delayed by the imposition of an automatic stay. Consequently, we analyze (1) the likelihood that a third-party creditor would be able to successfully petition the owner of the assets (i.e., the financing vehicle) into an involuntary bankruptcy proceeding or (2) the likelihood that the owner of the assets would voluntarily seek the protection of the bankruptcy courts.

To analyze the likelihood of an involuntary bankruptcy, we assess the characteristics that would mitigate that risk, such as if the financing vehicle had (1) no assets other than the right to the cost recovery charges, (2) no indebtedness other that the securitization debt, (3) limited activities that could give rise to contractual or other liabilities, and (4) agreements with the sponsor and other contracting parties not to petition for the dissolution, liquidation or bankruptcy of the securitization vehicle. Similarly, factors that would mitigate the risk of a voluntary bankruptcy would include (1) charter documents of the owner of the assets that require directors who are independent of the utility and (2) a unanimous vote of directors as a condition to filing a voluntary bankruptcy.

3.7 Economic Factors

Even if the financing order is irrevocable, the charges or the law that authorizes them could be subject to challenge in the courts or to future political pressure to rescind or change them through legislation. That is more likely the higher the charges, i.e., the more the economic incentive for a challenge or in circumstances where the financial imbalances in a utility system increase. Consequently, our economic analysis focuses on the size of the cost recovery charge, both in absolute terms and as a percentage of the customer's energy bill. Typically the percentage of a residential customer's monthly bill devoted to the cost recovery charge is less than 10%.

We typically also look at stressful collection scenarios. For example, in one scenario, we assume (1) that energy usage falls short of the utility's projections[9] by a progressively increasing amount each year (typically 5% per year), (2) that forecasted collections in peak usage months do not materialize (for example, 100% of the collections in the peak month and 50% of the collections in the second highest-usage month), and (3) that the servicing fee is considerably higher than the current, "normal," servicing fee, representing the fee that would be required if the original servicer needed to be replaced in a stressful environment. In another scenario, we typically assume that energy usage is lower than projected by a set amount throughout the life of the securitization (typically 25%). For highly rated transactions, we would expect that the cost recovery charge would remain relatively low even in those highly stressful scenarios.

While the specific stresses that we place on the variables have been quite similar to date, this reflects the fact that all rated transactions to date have involved requests for the highest ratings and been supported by highly diverse, broad-based service areas. However, in general, stresses are issuer-specific and are determined on a case-by-case basis. One of the factors that we use to determine the appropriate stress level for a transaction is the variability of the base against which the charge is applied, for example, the population in the service area or the energy usage in the service area. Customer bases that are less broad-based and diversified tend to be more variable; as a result, we would apply more severe stresses in those situations.

[9] We typically assess the reasonableness of the utility's projections by analyzing (1) the historical energy usage in the utility's service region and the variances between past projections and actual outcomes, and (2) the likely growth in electricity usage in the service area of the utility, taking into account the projected economic growth in the region and the possible competitive impact of technological advances, such as those in the development of solar energy.

Depending on the jurisdiction, we also follow the rating of the utility as a proxy to assess any changes to the economic health of the service region and the potential for changes in the size and composition of the ratepayer base. Furthermore, we monitor the rating of the utility collecting the charges (as an indicator of its financial condition) to track the risk, typically quite small, that a bankruptcy could lead to disruption in billing and collections and in the remittance of payments to the bondholders.

In other instances, we may be more concerned with the behavior of the regulator of the utility system and less with individual utility companies. This could lead to a lower rating in the space between the local currency ceiling and the sovereign rating or the utility rating.

Thus changes on our expectations and other analytical components could have an impact on the rating of the securities and may result in a reassessment of the rating.

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Report Number: SF404788

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MOODY'S
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Overview of Securitization

Presentation to the Ministry of Energy

March 7, 2017

Blakes

1. Securitization – Basic Parameters

ABS - "asset-backed securities"

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

Blakes

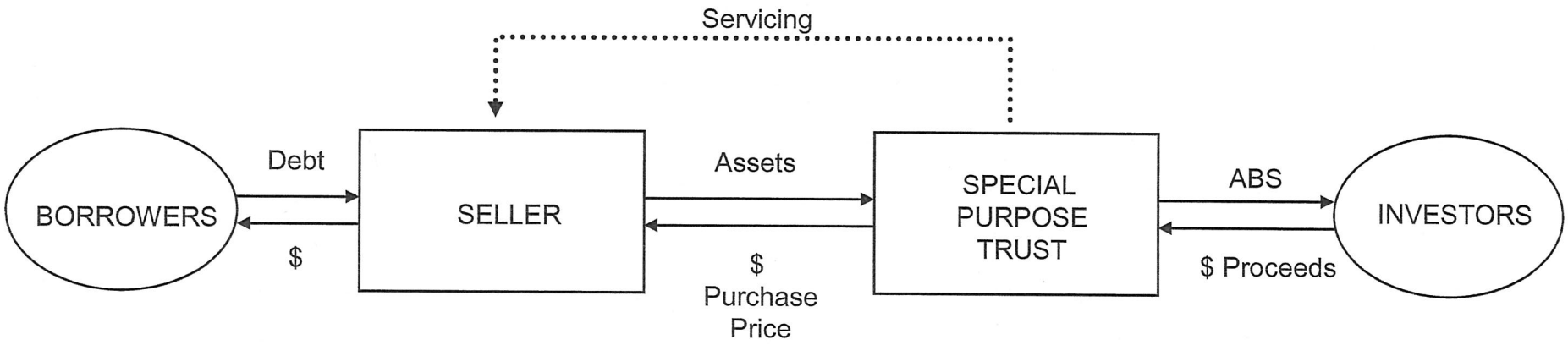
1. Securitization – Basic Parameters *(cont'd.)*

Use of SPVs

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

Blakes

Basic Model - Single Seller



Blakes

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

Ratings

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

Blakes

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

Approaches to Offerings

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

2. Underlying Asset

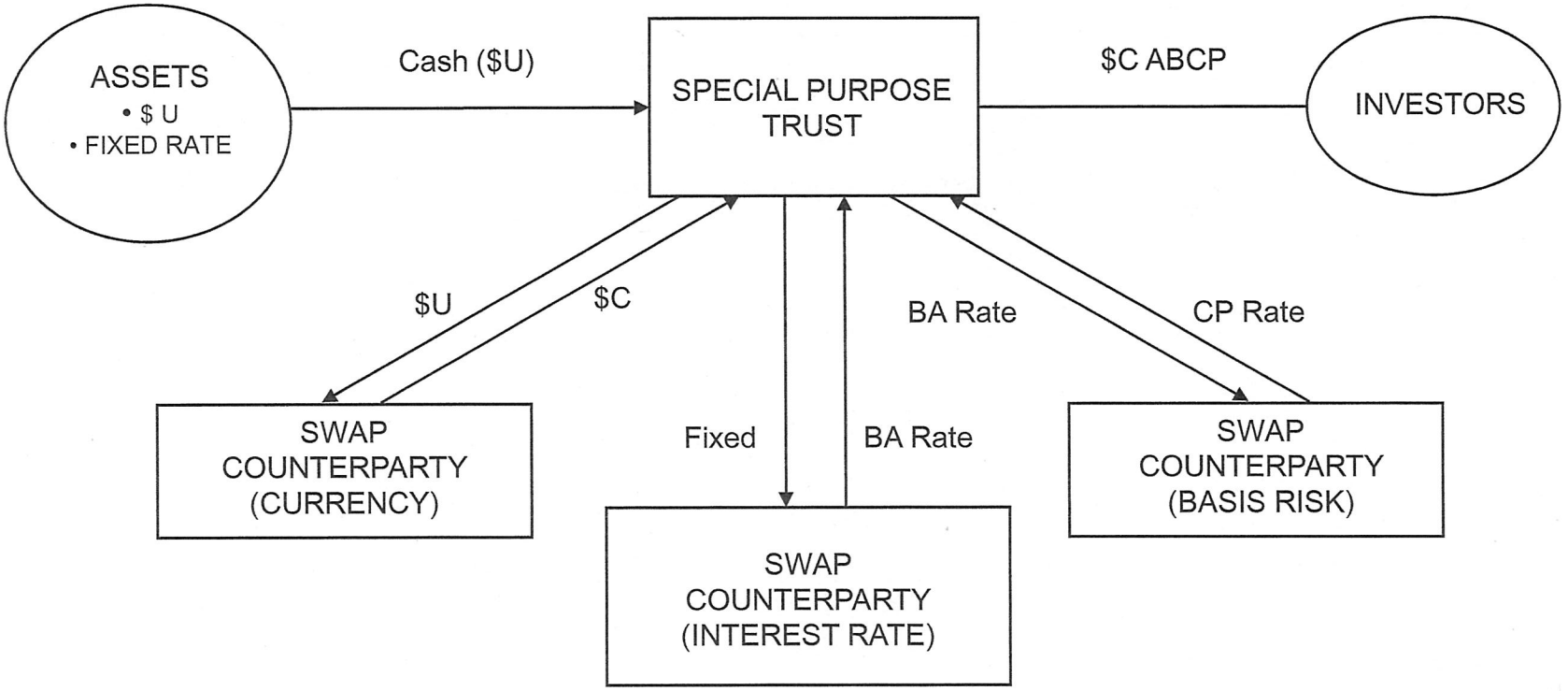
a. Statutory payment entitlements (defined class of payors; legislative authority)
b. Assignment (restrictions; prerequisites)
c. Allocation of "Global Adjustment" portion only; prioritization of receipts
d. Servicing (third party collections; transferability of systems)
e. Duration matching; sufficiency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

Blakes

3. Structural Features

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

Incidental Hedging Transactions



Blakes

4. Analogous (somewhat) Offering Formats

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

Maksymuik, Amanda (ENERGY)

Subject:	Ontario Fair Hydro Plan
Location:	199 Bay St. - 40th Floor, Blakes
Start:	Fri 04/07/2017 10:00 AM
End:	Fri 04/07/2017 2:00 PM
Recurrence:	(none)
Meeting Status:	Accepted
Organizer:	Calwell, Carolyn (ENERGY/MEDEI/MRI)
Required Attendees:	Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); 'Michael.Boll@IESO.com'; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; DICKS, LINDSAY (LINDSAY.DICKS@blakes.com); Michael.Boll@IESO.ca
Optional Attendees:	Mary Anne Aldred (MaryAnne.Aldred@oeb.ca); Martine.Band@ontarioenergyboard.ca; 'Martine Band'; 'Ramchandani, Rima'; 'Feldman, Michael'; 'Alan Hibben'; 'Mansoori, Nina'; 'Myers, Jonathan'; 'Hill, Krista'; 'Glenn Zacher'; 'Peter Hamilton'

Update

This meeting has been shortened from 4:00pm to 2:00pm.

Hi Everyone,

This will be a meeting to discuss the Ontario Fair Hydro Plan (OFHP) and will include Blakes, Torys, OPG, IESO, and Ministry Counsel.

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

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

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

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

Toll-free dial-in number: 1-866-633-1033
Local dial-in number: 416-212-8013
Conference ID: 3164921#

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

Thanks,

April 7/201

Meeting @ Tony's. re Fair hydro plan

Carolyn - thank you welcome
- [illegible] drafting
- what is critical in legislat.
& what can be dealt in elsewhere

Carolyn
Steve
B
TD Harold
Mary
Mike Bol.

OEB
Energy Policy.
Tony

Reena

Peter Hamilton - Stakeholders.
Glen Zacker - Stakeholders

_____ & Williams

Steve - out of time by this time next week
legislat.
- document is non-legis draft that
will be adapted & put into
legis form.
- legal constraints associated w/
imposing obligat. on ratepayers
- constit. validity
- gov't interrupt. flexibility
- YESO - funding shortfalls,
- point not to fixate on.

Fishing liscence vs. descrip. of
regulatory asset

- property interest created by
statute. - craft as see fit.
↳ don't want to fall to far
outside.

- why this draft does what it
does?
- constit. validity
c. whether ever by tax.
↳ not critical - wrong
order.

- we are going to create a scheme
we think is properly regulatory
change - if impaired as tax
want to fall back.

TD - credit rate - want understanding
ability to get bonds paid,
- essential stability pt

Steve - do not want this to be tax.
- ultimate vs. assets
changes reamortizing.
- shortfall created monthly
in ESO not directly
correlated to current
assets - will be input
into how things get put
in over time

- funding shortfall will be
what gov't determines

- we are identifying asset
created broadly in relat.
to prev. generat. unit.
- assets not only generat - ~~ass~~
could impute benefits to legacy

- bundle of assets - unrecovered transit charges.
- take bundle - gov't understands cannot amortization of that bundle may have short changed most recent group of ratepayers.
- taking time home for power cost - look at what went into GA - compare to charges that would have gone in
- figure whether - re-amortization whether by concerning that way can create enough value to spread benefits of
- best proxy is rate payers today.
- basic theory - take costs - amortize based on concept of EHP.
- assets & plan to spread them in time over curve.
- how fair allocation over time sep look - no government bears disprop. co

- we want this to be fair allocat-
  mechanis to transfer changes-
  Funding allocat.
- on July 1 - assuming passed.
  - large funding gap. e.g. $200M.
  - created liquidity requirt.
    for IESO w/ this transmit.
    figure out how to fill.
  - create absolutely enough funding
    plan for OPG - do a $200M.
    bond deals - that mature in
    period - such that doesn't
    go above curve.
  - as circum
  - populate area of funding
    curve.

TD - ① rate papers fair.
② constitution fair
③ capital units activities
if goes beyond portion
of bill affects rate

Steve - gov't made policy decis
to give abstract of elect.
changes

IESO - Q. we defer charges

Steve - IESO has an asset intrites it, to put forward costs - measure against funding shortfall
- implement of funding shortfall costs will flow through as part of transit. charges.

regulatory - bank account of assets
- gets drawn down.

T - what creates asset?

Steve - Equis.

E -

Cidy - total amt. paid to generat.
- abi
- entitlem to stream of future cash flows.

Tom - need to create a deficit amt.

Steve - try to create deficit, obligat. (fishing licence exists

Stan - come up w/ a dollar amt based on estimates
- dollar amt owned thing
legislation
- ability to invoice gives right to recover

MF - not unrestricted right to bill.

Stan - pre-step to invoicing vs step of incurring obligs
- yes - LESO creates champs

Cindy - regulatory asset.

TD - ~~[illegible]~~
right to change cust. in the future
- future flow deal.

MF - what is property - licence to recover funds in future.
- if you pay billion dollars give you licence to recover licence - of billion $.
- whether asset invested in LESO or entity - statutory right to recover from ratepayer in future

Stan - why different from US mkt -

Tony - gov't accounting problem - if turns out to be invalid.

Peter - intent that indoor mkt get rule apply.

CC - gov't made aware - that is next 4 yrs.
- gov't looking to have it adopt plan

ME - if funding obligt.

Peter FAP - no more than X interests in Y

Stan - KESO fills in - under curr sold blocks

Peter - neg. asset created under statute arises when create.

Day 1 - assume 1 yr to get sanctioned

KESO - I am going to have to get bank borrowing - not existing involvement of client creates obl

Tony's - 8(9) - once it's been funded, deem to be waived
- 2/00

Tony's - any discret. needs to happen before go to mkt,

Carolyn - way to begin OEB's role, given RPP,

MF - parallel group - how RPP set

Peter - how much cost - generate asset
- if don't know what asset is, don't have OEB approval only

OEB - order requires hearing

KSO -

- Tony - give OEB power to make decis. over regulat. assets

- Steve - it is regularity change not rate

Steve.

Alan - variables after first 4 yrs -
OEB can only look at once on
front end.
- from allocat plan - as long as stops in
2018

Steve - legis. wound over time - then
valued - don't have to get
contracts right.

Alan - if concepts don't add to ability
to finance delete

TD - more unavailable -
- funding plan is deficit - will
be wrong to finance
- needs to be amortizt. sched
what happens if Δ
- if shortfall - change people
more.

- more pre-proj. - less ability
to Δ things.

Sta - once trustee says - it's locked down
- inescapable co-mingling all coming through LESO's
- embodiment -
- legislat co-existing ie concepts that exist.
- If LESO fails - can only put in replacement agent

Thing - Rosset - right to recover those amounts
- to extend intention.

ance amt invoced.

TD - $ in structure held by non-fund parties - challenges to AAA rating.

belongs to sequential trust.

- trust look to prov.
all services & money done directly?
or
performance service guarantee

OPCD - not off balance sheet

- SPV - modified.
- KSO has its own credit rating

TD - ① performance guarantee or ② outcome as sub-servicer

Tony - ensure money flows through separate accounts

& legis - entitlement to transport charges is separate bill.
- separate attempt.
- to extent that shortfall - prop. regularity asset funds

Peter - sequestrat. practically happens when hit KSO

Steve FAP - set one time at the beginning.
- once legis set - not fundamentally subjection change.
- if plan sent today - nothing btw ugr. Lord Z accepted re-distribution.
- theoretical constant everyone reasonable if you go against - not fatal

common sense desc up - fairness over time - not intended to be reflect of current pound costs

- treasury plan - how finance over life of FAP.

Stan - FAP takes group of cost distributes costs over theoretical maxims say 30 yrs

- costs once set don't Δ.

Att. - aut discount bill to will Δ.

Stan - in yr 10 - demonstrable good coverage - by time issued debt have to be able to extend max amt. of debt.

→ original costs

- invest. in yr 10 knows someone can't Δ promise.

- if want to Δ plan over time

- if anyone makes curve too steep will impose

?.3 - Life Fun NY.

AN - in principle - you'd will review -
argument between - OPG & OPG Trust

Stan - Coding | solving for HRS version.

Steve - who has biggest variable interest

Steve - Issues

① how solve for bypass
- all encompassing rate payer def'n
- assuming people go off - grid
how do we assess them
- quantity & how calculate
- initial allocation →
problem is tension if have,
large hit in future,

TD - definition of rate payer - if you
are connected -

Stan - placeholder for bypass charge -
goes into methodology
- set down the road,

OD - 20% go off no change.

Hunter - question whether enforceable if not using grid.
- in reality - rating agency look at size of consumers.
- rating agencies model out.
↳ never seen anyone implement tool in legis.

OPG - question
→

Hunter - rating agency look at strength of true-up.

Slaughter - legis should contemplate idea of multiple security interests
← multiple pledges
- have to agree their rights enforceable to collect revenue.

Steve - treasury plan constrains who you can sell to.

Mike B - funding shortfall defin
- delta between LDC vs. payment to generate
- shortfall is just that
- power contracts relate to capacity

Steve - Sketched out principles that will be used to draft FAP,

- we need draft for Monday
- moving in parallel.

- trustee receives FAP docs - I need to come to that.

FAP: $\frac{\text{Assets}}{\text{number of yrs}}$ + cost of $ } (Steve) plug into formula

Maksymuik, Amanda (ENERGY)

Subject:	Ontario Fair Hydro Plan
Location:	199 Bay St. - Blakes
Start:	Wed 04/05/2017 10:00 AM
End:	Wed 04/05/2017 4:00 PM
Recurrence:	(none)
Meeting Status:	Accepted
Organizer:	Pau, Joseph (MEDG/MRIS)
Required Attendees:	Calwell, Carolyn (ENERGY/MEDEI/MRI); Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); Michael.Boll@IESO.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; DICKS, LINDSAY (LINDSAY.DICKS@blakes.com)

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Please review the attached Agenda and Fair Hydro document for this meeting.


Ontario Fair Hydro Plan - Ag...


23107566-v5-Part V.2 of the El...

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Conference ID: 3164921#

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Thanks,

Ontario Fair Hydro Plan Meeting April 5/2017

- Carolyn - review of timelines
- Steve - Building Blocks - review
  - ↳ yesterday - thanks ab
- purpose - to frame out legis. to respond to legal parameters - not go beyond what we need to say
- delegat. to Minister to establish fair allocat plan - tie into asset we are amortizing & allocating
- FAP - attachment of what funds can arrive
  - amt of funding returns to shortfall
  - fair alloc plan - maximum
  - treasury plan - method by which shortfalls pushed forward
  - [illegible] included [illegible] against rate base
- building blocks meant to create flexible

- impt Capt. mkts + several close cousins in US & Europe.
- expectation is measurement stick assuming goal to enter mkts in AAA rating
- this is something we all aspire to - may not get there.
- strength of legal opinion - whether under jurisprudence + cou'law can do everything
- delegat. have to be understood in context of gov't goal
- spent time in accountants to identify what they really need
- treatment as regulatory asset is important - impt
- these are parameters trying to work w/i.
- initial sense - what the burning / fatal flaw issue are

Issue identified → translating

Michael: Prop's ~~to~~ know dtc on treasury
- so that when discuss regulating asset - know what concepts are

- concern what happens if cont. finance deficit
  1. gov't admits mistake
  2. says can't force in capital markets - takes on it finances self
  3. IESO takes on debt

Steve
- once legis in place there will be TP - FAR
- legis. will allow gov't to pass through whatever is incurred
  - there will be asset concept
  - liquidity issue solvable if have right into collate
  - to achieve objective need liquidity. Don't know

- if we get it from out -
Michael working
- defeating exists - with there
no - one -

→ drafting - concerns with "skill":
- not acceptable from
banking perspective

- in everyone's interest to
figure out how to do capital
interest product that is settled
- more restrict / problems
reviews - when add up
bankers say uncertainty

Michael - process is fluid /
dynamic - can't solve for
100% certainty -

Steve - agree - don't want
to impose anything
- starting place was market
precedent
- provis. in statute that
create property rights
raising novel issues

Steve -
CC - instruct - to create most
Solution product -
- some of

Peter - areas in structure of
irreversible legal risk
- charact. of property
- chan of banking

- prospectus for Florida & New
York both say - huge risk
- very concerned not proceed
on risk three strip
- not a standard, opinion
securitization

Steve
federal bankruptcy law is paramount -
opinion given in 2 lines -

three areas
① constitutional issue - premise is
that this is not indirect tax
- so long as at point prop
property - statute sufficient
- s. 92(A)(4) - allows prov.
w/ to generate of electricity
indirect tax

- problem is raising tax issues for govt.
- accounting issue is deal killer for provinces

Krista - is prov. in posit. that won't use ever?

Steve - want to get deal done -
- if when challenged legis. could stand at 32(a)(4)
- if reasonably expect presumpt factual occurrence - that will be protected in legislation

Krista - quest. re - status of resolution life of equip.

Steve GA is period change -
- asset aggregating is definition amt.
- asking if we are capped at amt of GA - would be acceptable
- first 4½ yrs - concept is rebate current rate pays looked at bills paying too much
- recalculate having value of assets.

- - procurement. Report will tie to 23 yrs.

- Don't incentivize - to go out & create equipment.

Mike - sounds like shortfall to specific contracts - GA shortfall much larger.

- report - value of extending amortization. guess 25%

Lisa - will have some sort of quantifiable amt - may not match period to period

JR - GA - mechanism by way

Mark - aggregate amount for defaults may not exceed GA.

- if for construction reasons explain why reducing trills assets have longer.

Lisa

Judge ① we know that need facts
working hypothesis
② concept of fairness has elastic
need concept that rests on idea
of spreading costs over multiple
generat.

Krista - report -
CL - gov't accepts help.
resident consent

Steve - gov't create legis focus
on specific aspect to be
town
- others on different path

Tony's
① does eligible class cover ever

JR - REP eligible - who are paying GA
- those various classes of
consumers

② Glen - remembers & gas
small part of GA

JR - # of programs to analyze
- not sure footprint till
small.

Cooley - dates driving have to do in house rising at start of June
- a lot of things can follow that
- unless have legis - can't do any of this

Tony - report comes before debt incurred.

CC - bills reduced as pre.

LESO - ability to fund for short period of time
- talking w OPE about when
- but report also follows

Steve - scope out w brevity that deal w issues at some point

- tasoc premise of initiative what gov't has done
- look at moveable things built into structure

- construct for this purpose is one that need to drill down on.
- what to scope out broadly
- there will be gap - [illegible] focused on way to solve it.

MB - unrecovered transition def'n shortfall btwn what collects from LDC & pay gen'ct.

Steve - bank account - you can draw from over time.
- ties to GA.

- funding gap will be known. amended in subsequent months

period transit change - based on estimate of what costs will be - gets trued up -
- shortfall -
- ITSO has variance - that wont from
- 6 mth - come up with [illegible] via invoices to LDC's when amt is less than recovered true up

Michael – what we see as regulatory
difference than what have to
pay & what LESO billed –
aren't they will report as
deferred

Steve – funding shortfall –

OPG. today
concerns w/ financing entity funding
retroactive true-up

Streams from LESO,
① Variances
② OREC
③ additional LF under this program

– current RPP – forecasting variance

Steve

Michael – don't be logics. down to
specific structure.
have to separate these
things over with

Peter - [illegible] of doc titled - IESO key issues

Steve - whether inclusion of this [illegible] is such a fatal flaw)

[illegible] - put in [illegible] that its property [illegible]

Michael - asset is the right to bill right to collect.

Steve - right in respect of receivables
- want right to future obligations.

Michael - say its present property

what is this?
a bundle of rights
(licence)
- right to fish for as much you need to
- right that takes on charact. depends how much you need

Mark - 30 yr licence can't be taken away.

IESO/Stikeman - can't give opinion that have validly transfered rights (perfection opinion)

Peter - legal risk - whether present property right.

Michael - true sale opinion - have to give doesn't think can rely on statement

Peter - value of addit. deemed lanying - instructed to look at opinions from NY transa.

Steven

Bankruptcy - rate payer insolvency
- LDC's going bankrupt - cash flow
- IESO -
- SPV - itself - deal ie via comm arrangement

JR - d

Peter - doing long, doesn't make it in opinion

Michael - fishing Ascence example,
- this is personal pr

Stiteman - we called it intangible,

Steve - adopt. of what did in US
- react was not necessary
can do it in more visual way
- on drafting everyone have a go on it
- this wouldn't have to point on it

Stiteman (list - 7(b))
- accountants point to indent regulation
- how does this connect in what OEB doing on RPP price setting

Michael - Stanley point - no OEB mandate

~~[illegible]~~ JB - could be posit. as return
in expect. board offers recovery
- continuum of expectation.

MB - Accounting issue
① when defer amt first created
② been recovered

- recovery keep specific charge
on bill vs. input.
- if input into RPP - OEB
- role for Board in curve.

CL - get direct - on this for OEB

Peter - typically order in most
US cases

CL - rates established by
board empowered by statute

Steve - legal analysis that
this is regulatory charge

- how this will interfere
in SA calculation

Mich - estimate of amount owed to generators, estimate of amount owed to SPV.

(c) MB - regulatory asset created by LESO - purchased/sold to trust

(d) costs associated w/ funding deferral for a month.

Steve - LESO holds hot potato theory is it will have ability to pass through costs

Peter - if create issue into trust - all problems have go away

Steve - creating payment entitlement as a result of funding shortfall LESO incurs - to deem a payment away to trust for not consistent

retaining co-ownership interest (?)

MF - for financing entity to own 100% of regulatory assets

- qualified costs - financing entity interest changes
- in return for paying have 100%
- once saying buying co-inter w/ KSO (not buying 100%
- unnecessary complicat. don't need to expl. unless need it

Pima - Elec way we drafted dr'dn - Emit (two paper w/ defined term)

(f) quest for accounting

Peter - if do this in the US who's name on it?

1(e) MB - not limiting amt

MF - want two separate accounts -
so when LDC's sent $1 to IESO
- identify $ & risk.
-

Steve - if there is more suitable mech.
can draft in obligt to remit.
- otherwise putting all on IESO

MF - comment that there will always
be IESO -
- functional entity to perform
collection duty
- prov. will always be a
service
(~~replacement~~ service (B))
- don't comment to ensure
that comment cannot be
made for every LDC
- add obligt that LDC's
will remit to
entity

drafting

See Tony's memo

Bypass - OS examples -

OCB Bill reduct. May 1 - restrospective to May 1.

- where does shortfall go?

Stan - Minutes's order - regulation under it

OCB - is shortfall that is created on May 1 - is that shortfall in GA recovery - is the mechanism design so that shortfall period regulatory asset

- first neglect. period May 1
- concept created till first can

Stan - discuss about LESO confs how the fill gaps - whether LESO gap owner or SPV.

- cost applied have to tie to GA calcs

Tory's
- Stikeman's
- James & Dan draft.

- turn doc thurs - that doc might be ok to send.

Steve - will get mkup - can we get done faster simpler as well.
- if get good feedback on missing pieces
- then have doc that can reasonably give

DS - Started asking them to start drafting on regulatory plan

JR - instruct everyday on discrete issues
eg. tonight - collection medium

Steve
- comments by tomorrow afternoon
- friday meeting - grind by lawyers to produce meet for bankers.

- Bankers need a day or weekend to review.

- LESO shouldn't be near underwriters.

Dan Blake - By tom aft, review comments

(1) - in addit. to turn draft for friday morning
→ one page that is signif. diff. to current draft

(2) - at some point need to transit from your doc to a leg. draft

(5) amendments to RPP reg - which discusses how it will work

→ how to get rate payer bill

Steve asks James & Dan to create one page doc - which will turn into closing agenda

eg. Electricity Bill $100. / GA $10
you pay $75.

- there isn't enough GA - not limited to what GA in period is
- look to amortize of full amount & drawdown

DS - if have to put something in legis that puts limits on amort defer
1) unkept promises
2) no way to support in legis

JR - no way to create # stands support constitutionality

Steen - identify assets - put mkt value on assets
- inherent in calculation will be very large # - that is number assistance through VA bricks

DS - do we have to reflect limit
Sk on amt defend - limit is from allocat plan -
- dis. for alla plan over 30 yrs - if 0 for first yr ok
- if 4 yrs of hindsight would have been better

DS - nothing that will explicitly address

Sk - as create funding shortfall in period
- have to be able to look to come & figure out where put it
- you have allocated funding shortfall w/o power of province to figure out

DS - after yr 5 can dynamic be 10%
no more than 10% reflect.
- whatever rate has to apply
can set lower rate.

Judy - if we figure out cost of entering
into power contract over
20 yrs - measured by gap.
- our investment in that
- not just capital cost - power
paid
- if our investment is $100 gm
to change over 20 yrs.
↳ $5 a yr.

- if Δ denominat. to buy off -
first half of people accepted

DS - not going to put in legislat (??)
-

Steve
- legis will not allow you to revert
back
- it screen in legis.

Steam 2 dynamics.

① what legis says ② what than enforce

↓

cannot impure
absolutely to extent
from rate fees

Deal 1 requires legal opinion - on fact
need to demonstrate. - nexus
curve in compliance w legis.

↳ Lawyer says - looks good.

PB comes in

→ don't like curve - shallow now
steeper later.

Deal 3 → someone relies on it.

↳ Lawyer A says → bad, can't
rely.

↳ Lawyer B says → that ok
I can rely.

Deal 3 → someone attacks legis

- Deal 3 flawed.
- $ and all $ flows on KYB
- legis lives (dies on its validity in court

- if court doesn't like deal 3 - will they say don't like deal 1.

- if you tick in - they don't have regard - will affect deal 1

DS - so do deal 1 - $2.5B of hd
- 93 thru not a way to take that - hardware.
- as long as w/i band -
- once financing in place done deal.
- for that financing

Sk - can put in severability clause - can't separate out [illegible]

- Compartmentalized.

Stern - this is flow people will fixate on

- heard PPSA outside - is it valid cost of picking in legis

DS - JR - this that minister hasn't followed principles

JR - no legis. frame that is dumbst. to constit principles

- risk a little more highly

DS - ① your risk -

② this creates addit risk over and above on basis of admin law.

Hogg - bound scope from delegat. in Canada

Kirby - this guy going too detail.

Judge
→ bankers in early,
→ funding with Langner.

- Alan Hilton
→ comfort w/ OPG list
→ meeting LESO on what needs

- Judy - Call Kristen
- agree w/ bankers comm in Mrdy
- Send Steve's doc to bankers to mem

- Munston - comment have role in direct setting

- LESO develop - form allocat plan - be iff look at.

protect from rate payer - principles two 10%
- sending 2 written from amount of bills

① can't have more than 10% payback
② all in yr open yr can't be more than 10%

- only [illegible] — don't want to

Alan - mkt regimes - justified.
OPG's [illegible]
- all of it is subject to [illegible]

- IESO sets plan.

- Alan - mkt will not tolerate role for OEB
  - whether OEB needs to bless regulating asset.
  - comfortable w OEB reviewing asset of trust.
  - regulatory asset discussion will sort itself out.

JR - [illegible]

Steve - FAC - dollar value of bucket of assets
- book value - spread over period of time
  equality = equal.
- presumption - continue to [illegible]

CG only needs to be regulatory asset from LESO purpose.

- Province not willing to show as own debt.
- willing to show as part of LESO's debt.

Stan - create property interest that binds future people.
- gov't will Δ tax plan

CG whether concern w Munster setting?
Stan - as long as enforceable mech mkt wouldn't cover
- concern re - someone tinkering at deal?
- 4 corners describe - something Munster as long as doesn't recklessly disregard - ok
- but if he tinkers - huge risk.
- if weaken structure find you don't have structure

Peter Gally - property than GAA these calculations

Today: Article 4 & 5 - invoicing & collecting,
- definitions.

Blinkies
- turn for friday
- if things you can flag - can flag for OLC.

Maksymuik, Amanda (ENERGY)

Subject:	FW: Modernizing Procurement Practices
Location:	Victor's Office, 7th Floor, Hearst Block, 900 Bay// Teleconference: 416-212-8011 or 1-866-602-5461; passcode 1673470#
Start:	Thu 03/16/2017 10:00 AM
End:	Thu 03/16/2017 11:00 AM
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	Not yet responded
Organizer:	Severino, Victor. J. (MEDG/MRIS)

-----Original Appointment-----
From: Severino, Victor. J. (MEDG/MRIS)
Sent: Thursday, March 16, 2017 10:05 AM
To: Severino, Victor. J. (MEDG/MRIS); Carson, Cheryl (ENERGY/MEDEI/MRI); Barnes, David (MIT); Bartucci, Ernie (CAB); Macdonald, Marian (MGCS); Greenberg, Martha (CAB); Lawson, Shawn (TBS); Caine, Richard (MEDG/MRIS); Gordon, Matthew (MEDG/MRIS); Ciullo, Eric (MEDG/MRIS); Cameron, Hugo (MIT); Zoladek, Marta (MOI); Delamer, Ikka (MEDG/MRIS); Gaskell, David (MEDG/MRIS); Grieve, Andrew (MGCS); Hunter, Joshua (MAG); Setrakian, Aida (MIT); Solursh, Michael (MIT)
Cc: Wai, David (MIT); Gordon, Matthew (MIT); Brezer, David (CAB); Wittman, Nancy (CAB); Korecki, Jackie (MGCS); Wells, Kara (TBS); Pontikis, Maria (CAB); Deschamps, Angèle (CAB)
Subject: FW: Modernizing Procurement Practices
When: Thursday, March 16, 2017 10:00 AM-11:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: Victor's Office, 7th Floor, Hearst Block, 900 Bay// Teleconference: 416-212-8011 or 1-866-602-5461; passcode 1673470#

-----Original Appointment-----
From: Leung, Jacqueline (MEDG/MRIS) **On Behalf Of** Severino, Victor. J. (MEDG/MRIS)
Sent: March-16-17 9:18 AM
To: Severino, Victor. J. (MEDG/MRIS); Barnes, David (MIT); Bartucci, Ernie (CAB); Macdonald, Marian (MGCS); Greenberg, Martha (CAB); Lawson, Shawn (TBS); Caine, Richard (MEDG/MRIS); Gordon, Matthew (MEDG/MRIS); Ciullo, Eric (MEDG/MRIS); Cameron, Hugo (MIT)
Cc: Wai, David (MIT); Gordon, Matthew (MIT); Brezer, David (CAB); Wittman, Nancy (CAB); Korecki, Jackie (MGCS); Wells, Kara (TBS); Pontikis, Maria (CAB); Deschamps, Angèle (CAB)
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Cab Sub Deck - Fairness in Pro...



Cab Sub Deck - Fairness in Pro...

Maksymuik, Amanda (ENERGY)

Subject:	OEB Letter: GA Financing RPP and OESP
Location:	416-212-8010 or 1-866-602-5423 Conference ID 7156228
Start:	Thu 03/16/2017 4:30 PM
End:	Thu 03/16/2017 5:00 PM
Recurrence:	(none)
Meeting Status:	Accepted
Organizer:	O'Riordan, Eamon (ENERGY)
Required Attendees:	Rehob, James (ENERGY); Shear, Dan (ENERGY); Cayley, Daniel (ENERGY); Christie, Tim (ENERGY); Chander, Sunita (ENERGY); Kacaba, Jennifer (ENERGY)



Draft letter from Minister re ...

OESP exempt whether or not negotiated — [illegible] confidential from [illegible] purposes only 03/16/2017

Bosher - [illegible]

- RPP 12 months - that will

May 1 2016 · May 1 2017

- rate for this period - not RPP -
- part of rate is to
- so need to figure out all in after tax, w 8% rebate would have been for customer
- use toronto hydro customer as proxy
- this excludes - non-typical changes such as carry over
- OEB has to determine what customer would have seen - $167 a month

- now board says - for some tenant hydro customer
  - what do we have to establish as their rate (taking into account toronto hydro distrib charge assumption don't pay debt retirement)
- what does rate have to be?
- only variable is rate
  - distribution Δ
- what rate do we need to set to achieve reduct. in average monthly bill amt for consumer that is
  telem [illegible]

- we know end point
- know transmis, dist. changes

- rate only unknown
have to plug in rate
that gets you bill
reduct. of 25%

- that rate takes place
of RPP - for 2 m
2x 6 month

- Dom 2nd part
- if in all in after
tax am for cust
- can only increase
over next 4 yrs by
CPI
- for fictitious consum

- So if you are customer keeping bid on increases to rate of inflation
- first 5 years initial reduct then suppress

After 5 yrs
- year over year increase allow it to go up more but cont increase 10%

30 year rule

by April 30/2047 - entire amount been deferring
- has to be fully repaid
- if that means reduce 10%

- OEB needs to figure out rate to charge that get fictitious consumer to charge

---

WO RPP - eligible class

- everyone who is entitled to 8% rebate except customers of underp. power (they can
- bc not grid connect, not paying GA.
- that is broader class than RPP

Confidential OEB Advice to Government
For Discussion Purposes Only
March 16, 2017

I am writing to provide the Ontario Energy Board (OEB) with additional detail regarding certain elements of the government's proposed Fair Hydro Plan pending the introduction of new legislation and amendments to existing regulations that ~~will,~~would, if passed, give full effect to that Plan. Some of these proposed details are being ~~confirmed~~ set out for the OEB at this time so that they can be considered as inputs into the OEB's upcoming consideration of Regulated Price Plan (RPP) prices, which are normally scheduled to be reviewed and adjusted as required on May 1, 2017.

A. Reducing average residential electricity bills by 25%

The government's ~~stated intention~~ is to take steps to ~~that~~lower electricity bills ~~will be lowered~~ on an after-tax basis by 25% on average for ~~all~~ residential customers relative to what they would otherwise have been. This proposed 25% rate relief measure is inclusive of the 8% rebate that is already in effect under the *Ontario Rebate for Electricity Consumers Act, 2016* and the savings that are anticipated to result from shifting costs associated with the Ontario Electricity Support Program (OESP) and the Rural or Remote Electricity Rate Protection program (RRRP) from ratepayers to Provincial revenues. Savings for eligible customers resulting from the planned expansion of the RRRP are incremental to the 25% rate relief measure.

Comment [JK1]: What does this mean?

After accounting for savings associated with the 8% rebate and the shifting of costs to Provincial revenues, the 25% rate relief measure is intended to be achieved through the refinancing of the Global Adjustment (GA). Under current forecasts, we estimate that this will translate to an immediate reduction in the GA in the order of $2.5 billion for the benefit of all Ontario customers that are eligible for the RPP, including ~~those that have~~ opted out of the RPP in favour of market-based pricing or a retail contract. Under current forecasts, we also estimate that annual consumption by these RPP-eligible customers is in the order of ~~[XX]~~.
Using its own forecasts of consumption for customers that are on the RPP, the OEB will need to determine which portion of the estimated total GA reduction should be included as an input to RPP prices. The government anticipates that the rate relief intended for customers that are eligible for – but have opted out of – the RPP will be addressed separately through the Independent Electricity System Operator's settlement processes.

The government understands that the OEB will review RPP prices again in the fall, and will make such further adjustments effective November 1 as required so that RPP customers receive the full benefit of the 25% rate relief measure in accordance with such legislation as may be in place at that time.

B. Keeping rate increases at the rate of inflation

The government's stated intention is to hold increases in the after-tax total bill for electricity consumers to the rate of inflation for the next four years, starting **[XX]**. This measure is also intended to be achieved through the refinancing of the GA and given effect through RPP prices for consumers that pay those prices.

C. Ontario Electricity Support Program

On March 9, 2017, the government posted a proposal on the Regulatory Registry to increase the level of benefits under the OESP by 50% and to expand eligibility for the program by modifying the current household income and size categories. The government also intends to introduce legislation that would shift all of the funding and administration costs of this program from ratepayers to Provincial revenues.

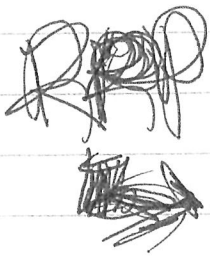
Costs recovered from ratepayers to date to fund OESP credits for eligible customers are currently sufficient to enable funding to continue for a number of months even with the enhancements proposed on March 9, 2017. I understand that the OEB has determined that it is appropriate to remove the OESP funding charge from customer bills in favour of using amounts already recovered from ratepayers for the time being, , and that a decision giving effect to the removal of the charge effective May 1, 2017 will be issued in the near term.

As noted above, the Fair Hydro Plan rate relief measures are intended to be achieved through a combination of the refinancing of the GA and the shifting of costs to Provincial revenues. As such, the Plan does not limit the OEB's mandate to set just and reasonable rates for transmission and distribution or to set just and reasonable payment amounts for Ontario Power Generation Inc. The government fully expects that the OEB will continue exercising that mandate in the public interest as it does today.

The government will rely heavily on the OEB's expertise in moving forward with the Fair Hydro Plan, and anticipates that the OEB will want to focus its immediate efforts on the elements of the Plan described above before turning in greater earnest to consideration of any cost efficiency initiatives that it may wish to implement in due course for the further benefit of Ontario electricity customers.

DRAFT

- neighborhood price plan.



RPP - rate + their share of GA - average out over 6 mth

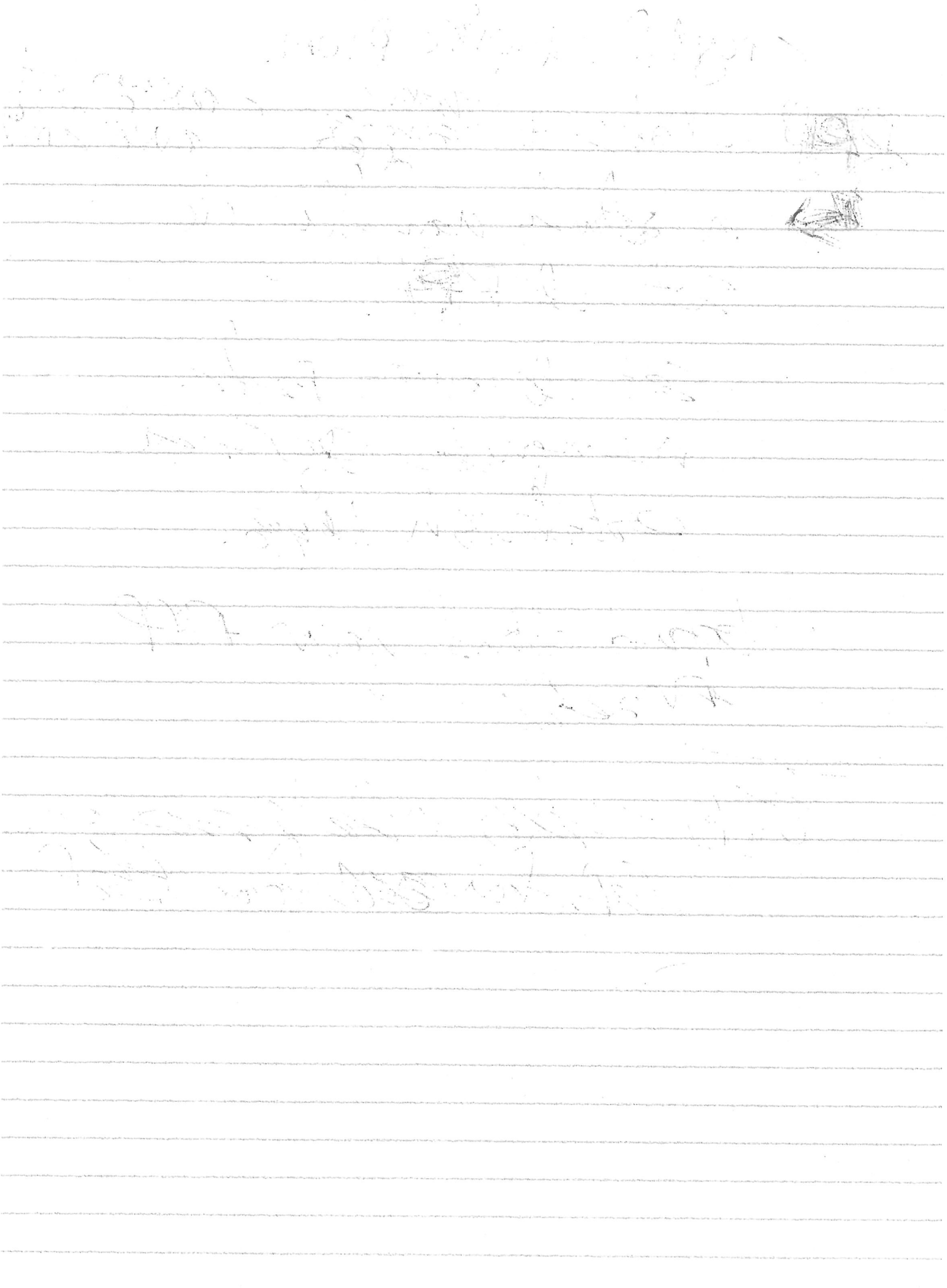
in activity usually do set at RPP.

- set at lower rate recognize gov't to establish legs.

- board start your RPP tracks

OFB - sets rate based on GA forecast from KSQ

-



OESP
→ want to keep up letter
no Reg(??)
→ working on Ontworks
ODSP

JR: if just adding new
classes
- removing change
Fig. 2 →

Sentry
- put language about
working together.

- would if approved.

Meeting in Maritime & Dam.

Quest. from deck.
1. including OPECA around.

- normal way set RPP prices only applies if people in RPP not in OPECA.

Quest 5 yrs
- set transition higher price.

Differences between deck & dam ft very

- RPA = supply costs
- prices set to recover RPA.

who calculates 25%

Q- whether instead of baking in profits - tap to residing
- who board at relevant time uses for purpose of determining bill impacts

OEB - comments on month before & after

- month preceding comment?

2. whether OEB can actually do what is set out in E.3?

- who gets data, how collected

-

- Somewhere in Ministry have data

- OEB would take & back out

- DS for ORECA purposes report into the MAR

MB - ESO gets settlement data (not metered)

DS - if ORECA is RPP plus - why would need to set RPP

- [illegible] to admit new approach for setting [illegible]

- Say we expand class of RPP consumers.
- results in supply costs covered every 12 mths.

MB - rationale for why expand?
- if ORECA have forced out of RPP - now kick in

DS - maybe necessary to allow consumers to opt out of default
- all people who get 8% can further reduce their bills

Comfort letter.
- purpose - to allow OEB to do respectable calculation that will bring everyone's rates down 25%

- in Nov reset prices so get benefit.
- don't want to engage in LDC's having to figure out
- no basis on May 1 to set d
(RPP prices [illegible] not)

Maksymuik, Amanda (ENERGY)

Subject:	Rate Mitigation - OPG, Torys, Blakes, MOE - LSB
Location:	77 Grenville St. - 7th Floor, Boardroom 7A
Start:	Thu 03/09/2017 11:00 AM
End:	Thu 03/09/2017 12:00 PM
Recurrence:	(none)
Meeting Status:	Accepted
Organizer:	Calwell, Carolyn (ENERGY/MEDEI/MRI)
Required Attendees:	JUDY.WILSON@blakes.com; Bryson.Stokes@blakes.com; Tim.Andison@blakes.com; Kate.Mcgilvray@blakes.com; DICKS, LINDSAY (LINDSAY.DICKS@blakes.com); Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Schachtschneider, Michelle (ENERGY); Ranalli, David (ENERGY); Leslie.Wong@opg.com

Hi,

This meeting will be to discuss the Rate Mitigation file between Ontario Power Generation (OPG), Torys, Blakes, and the Legal Services Branch for the Ministry of Energy (MOE).

This meeting will be held at 77 Grenville St. – 7th Floor, Boardroom 7A. Please contact Joseph (416-326-1018) when you arrive in the 7th Floor elevator lobby and he will lead you to the boardroom.

Please contact Joseph if there are any further scheduling requirements.

Thanks,

Pete Mitempel. March 9/201

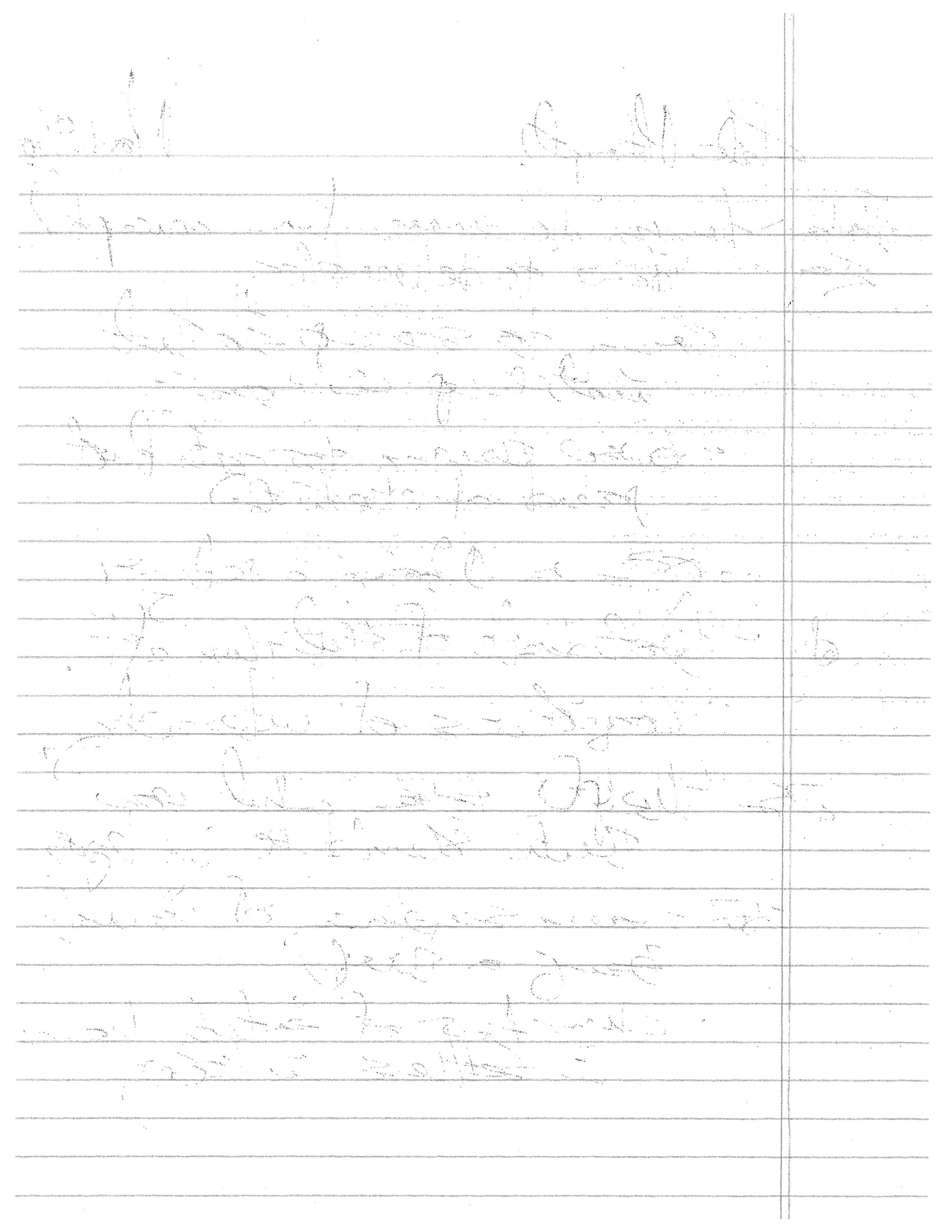
Bob → trying to move from conceptual idea to deliverables

Jay

- trying to set up so that match up w/ Tony's
- busy trying to get first round of checklist
- OPG vs Moody's ratings
- first draft of that this aft.
- Logistics of interacting

DS - "helpful to know what you think should be in logs

JR - any sentence of it not being a twist
- character of entity how it settles w/ KGO



Blakes -

① legislative parameters doc
second amend

② getting to informed / shared
view on role of OEB

- in either-risk mit. role,
or of keeping OEB actually
out of market forces

① OPG.

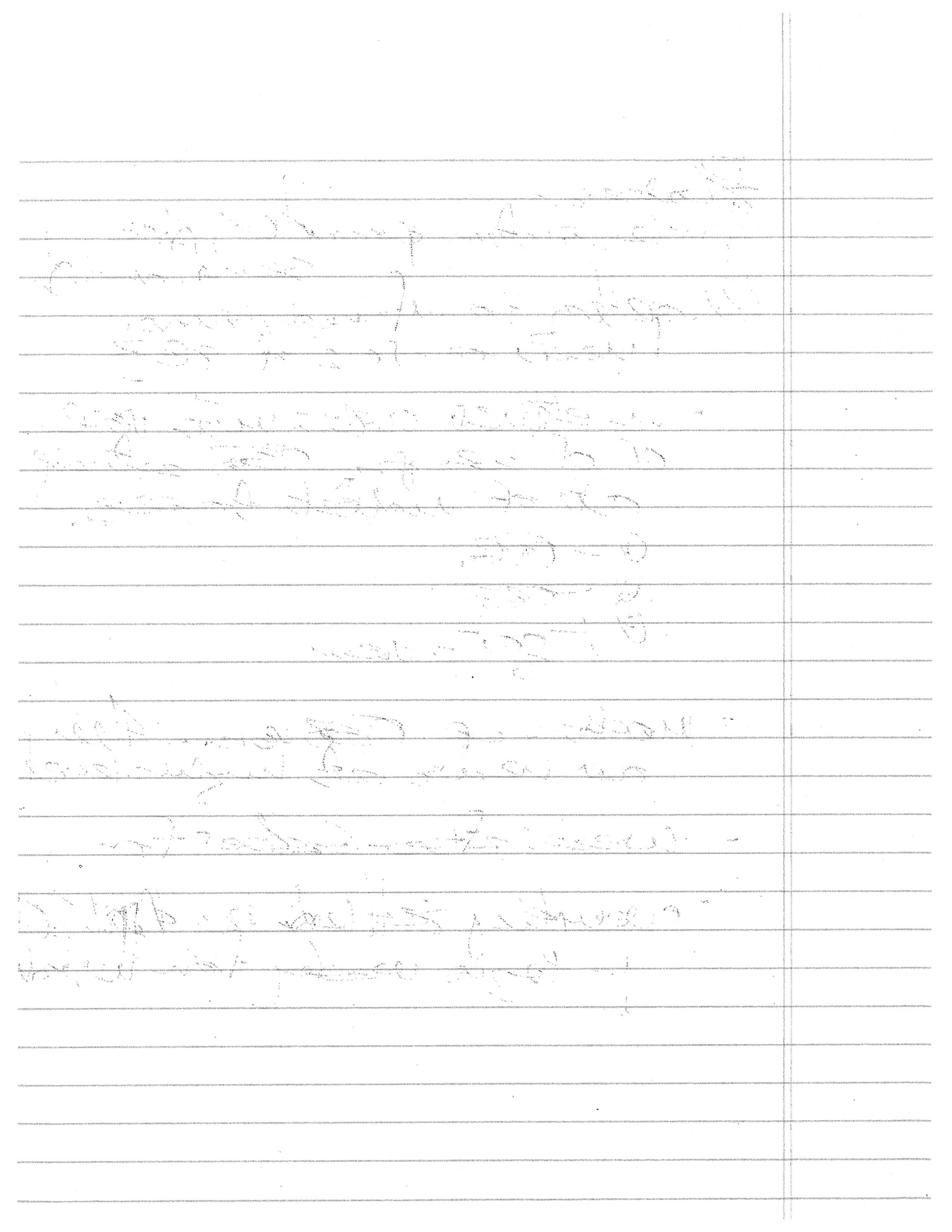
② OEB

③ gov't view

- mock-up OEB role - they
our views at higher level

- week after Easter from

- everything settled by April 20th
legis ready from introduc



→ Streams
- ① entity – OPG have authority to engage in transfer

② flows of money / creation of asset

③ OEB

- OPG retaining lead bank –
- cleanup owed to LA – to allow for OPG to do its own financing

OPG – financing trust – raising funds in market –
- subordinated debt from OPG
- OPG own money at risk
- $7 of GA
- OPG have to go to market to raise funding
- flexibility of just financing hydro assets gets better

- not lack of legal authority - contrast btwn fact that [illegible] [illegible] & OFG does not

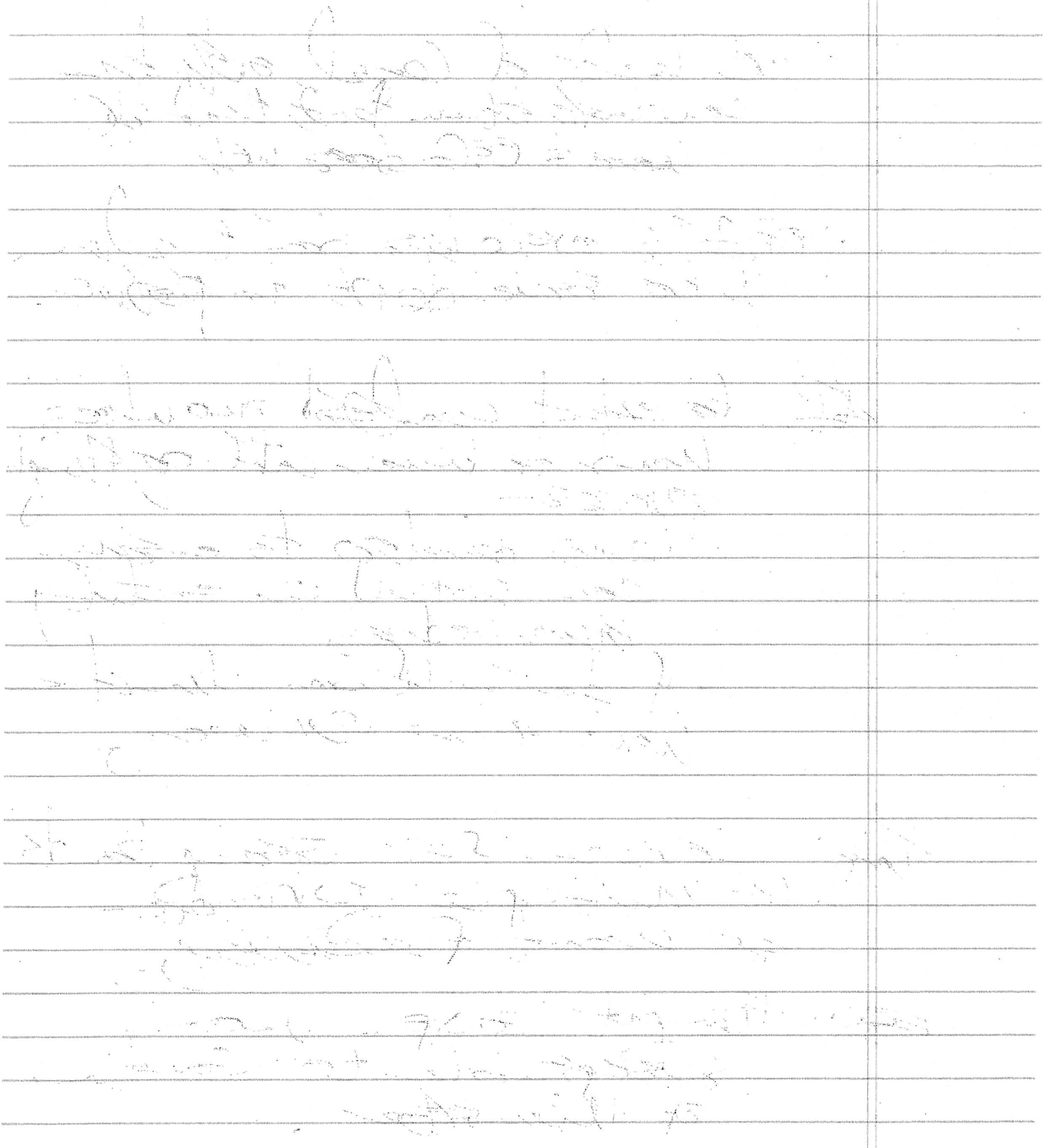
- OFG's articles don't allow it to issue debt to [illegible].

[illegible] - to extent [illegible] anomalies hard to know until [illegible] through process -
- legis develop to ensure [illegible] settled in entity btwn edges
- if don't know [illegible] have short [illegible].

Tong - concern re - issuing bonds in multiple jurisdic - so want flexibility.

[illegible] - thought corp. more susceptible to [illegible] of [illegible].

-



Tony: from foreseeable future trusts
right vehicle - if want to
issue into US/Europe.
→ may need to estb.
something else.

→ may want to have
flexibility of putting in
other entity

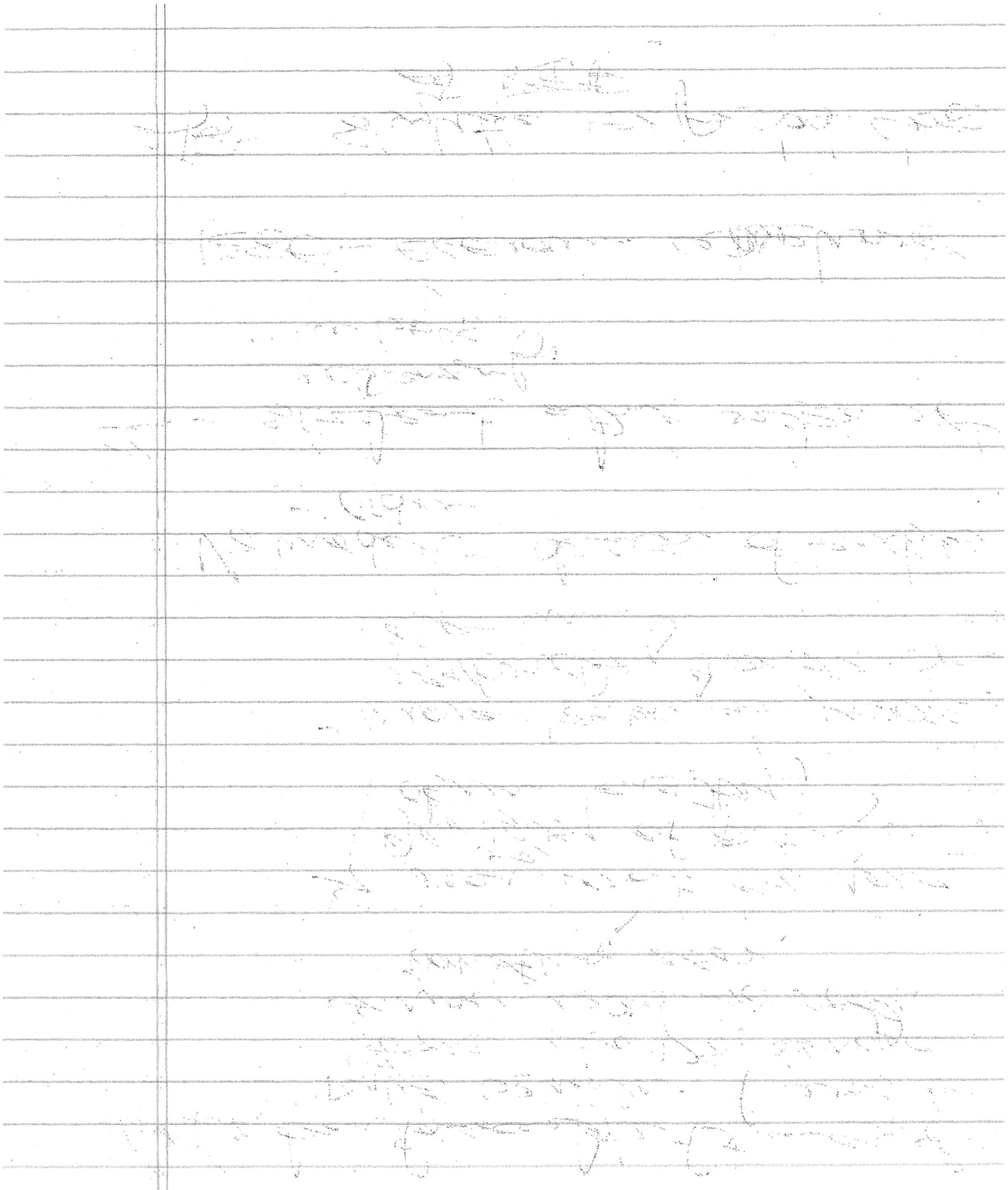
- more back in - unless
restricting flexibility from
the lin

US model - decis. of entity
- order

CC - statement about rates not
necessary
- in legis.

- IESO - economic warehouse

JB - slightly expanded class
of RFP.



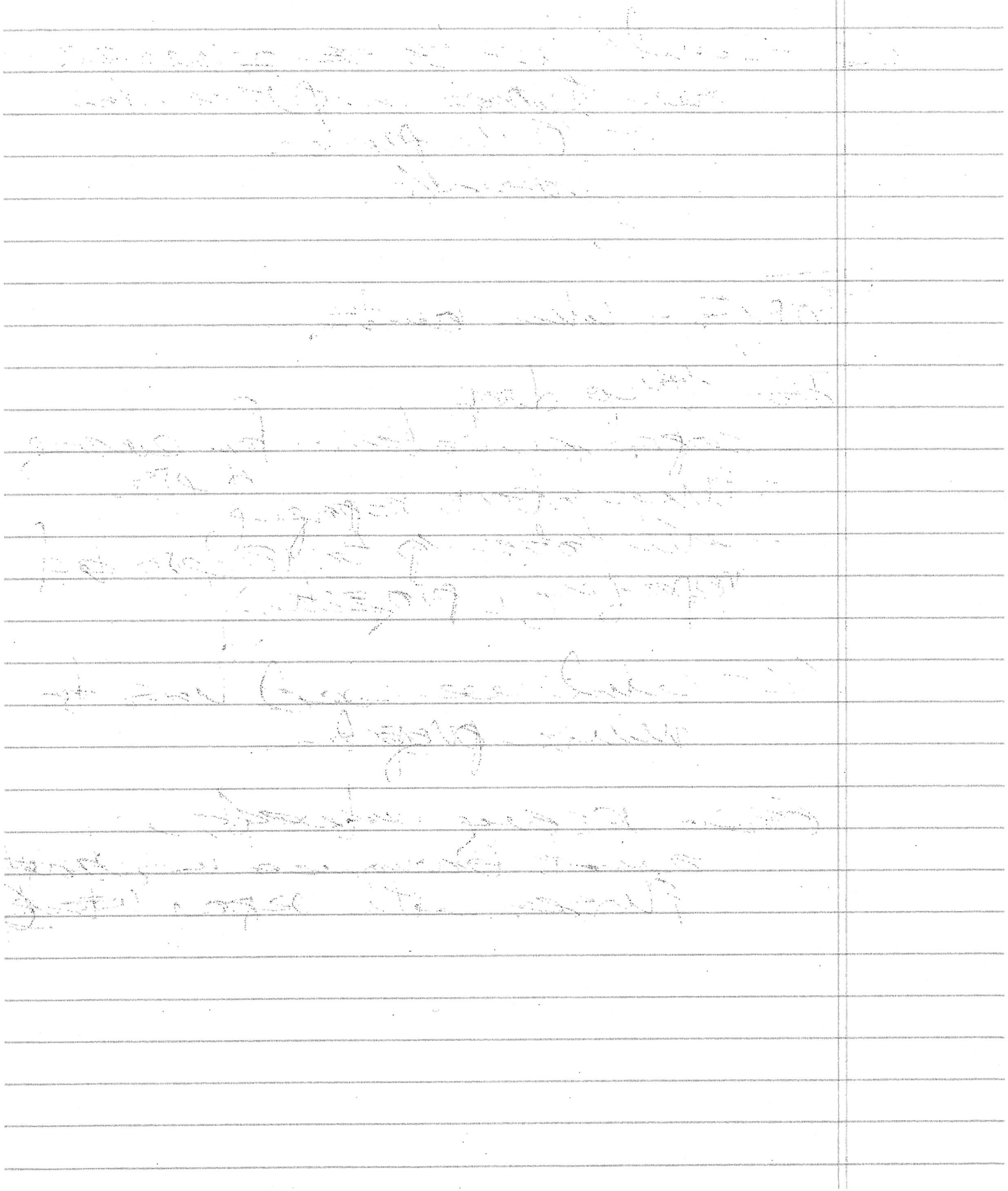
CC - what has to be achieved
are things in public domain
- 10 yr period
- interest.
-

Tory's - when wants

DS - 1st yr drop
- caps on rates - for existing 4 yrs.
- then start re-paying
- will take up to 10 yrs before
repaying (projection)

CC - what we want has to
mimic projection

OPC - recovery interest,
amount borrowed in subsequent
phases will repay interest



Tampa - changes with include
- interest goes into GA
- have to figure out how to
change amts

Reema capital mkts

Nima - bonds, trust,
dollars.

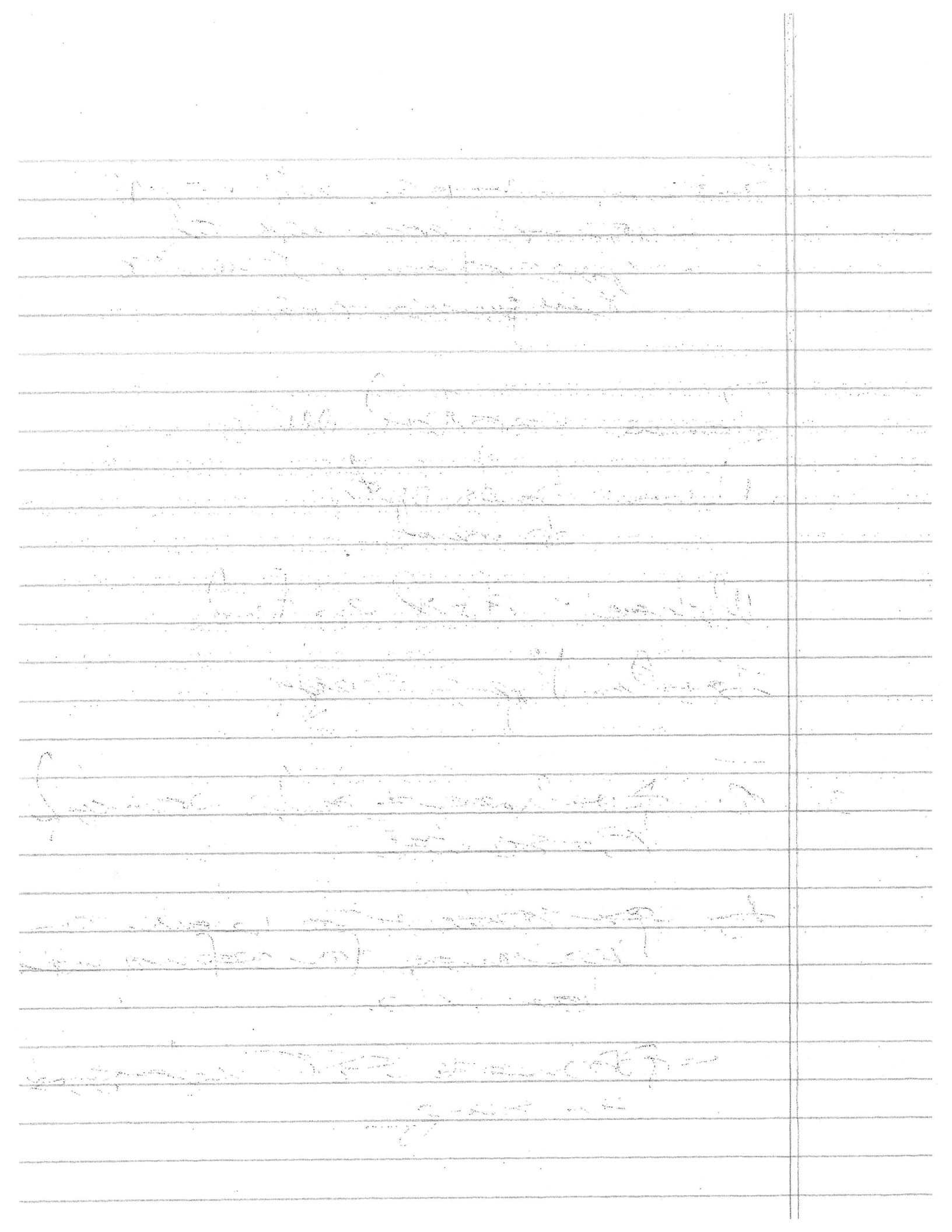
Michael - structured fund.

Jonathan Myer - energy

cc Q - purchase & sale documents
OG started?

A - yes started to work on
mechanics for defining asset
how sold

- Province & ESO understood
in sing

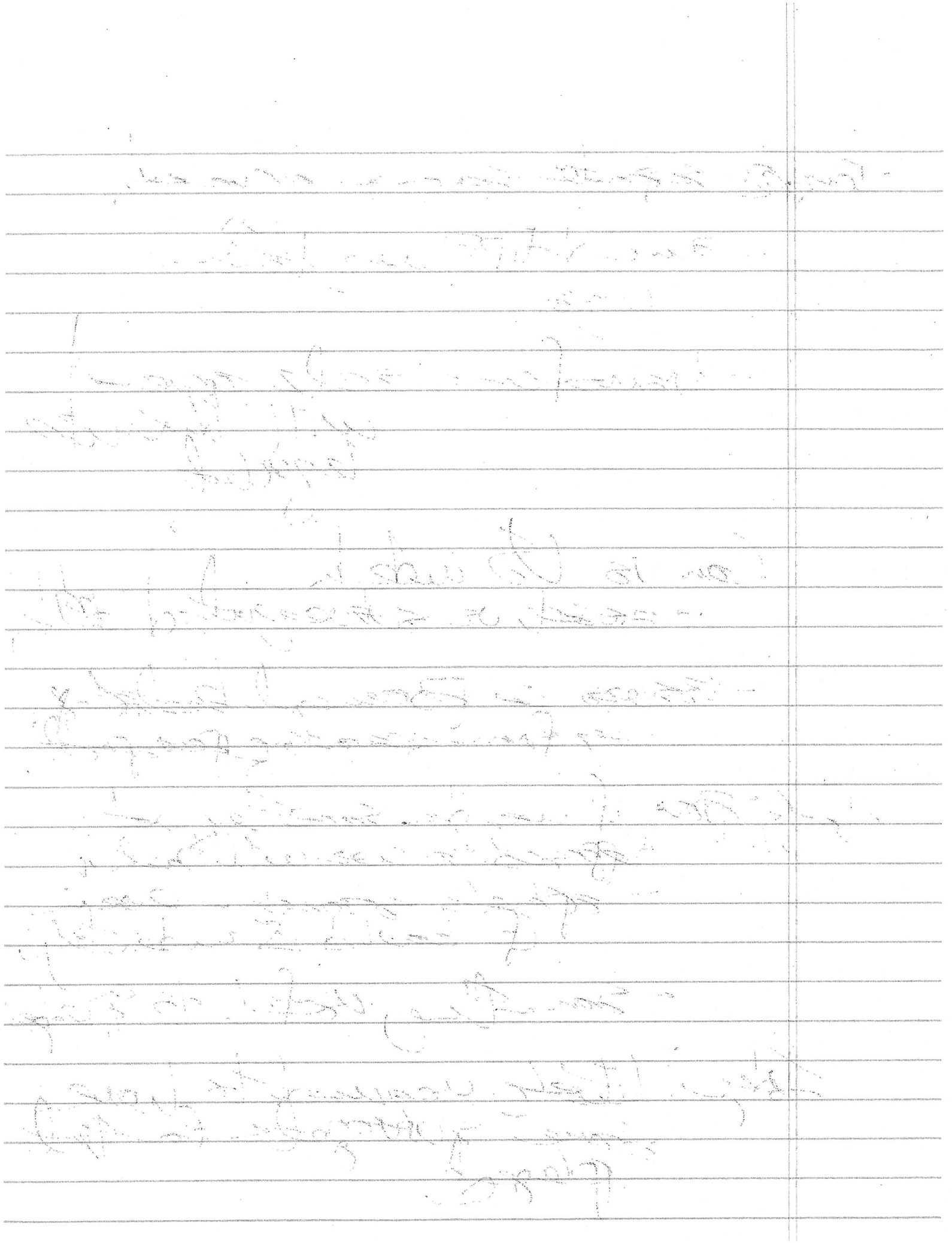


Tony (2) - separate service agreement.
- amend RPP very before
legis.
- transfer - sale agreement
will link into
legislation

Can vs US model.
- asset vs. subrequalized debt.
- Issues in Bonneval backstop
→ from accounting perspect.

Tony (5) - Prov if we do something not
supposed to we will back it.
- optically stronger - even
if could Δ indentify.
- something useful to "pledge".

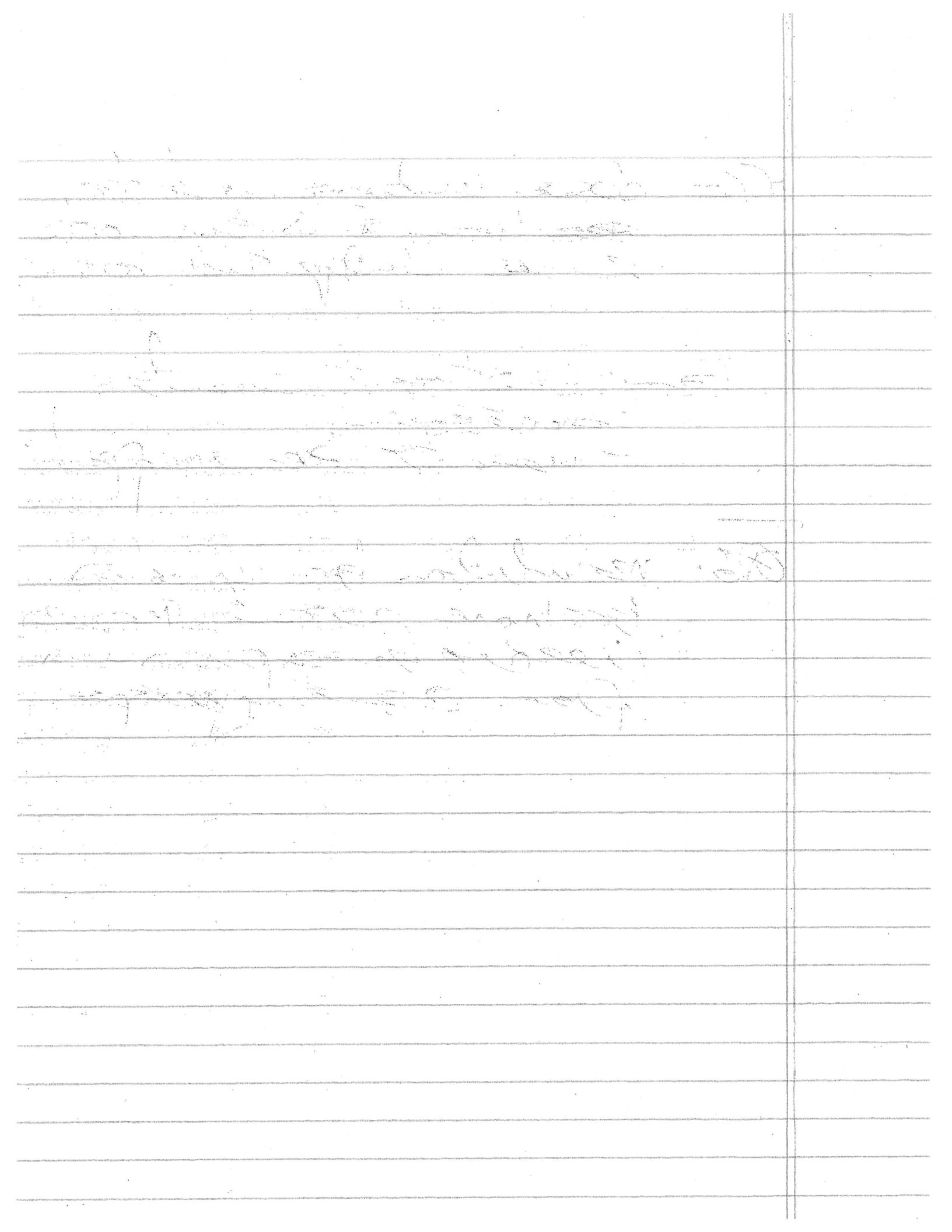
Today - likely required to have
some surrogate for that
pledge



CC – decision makers want to see how if Δ this costs x vs. changing that costs y

– Tony – instrument counters antitendent
– has to be mapped

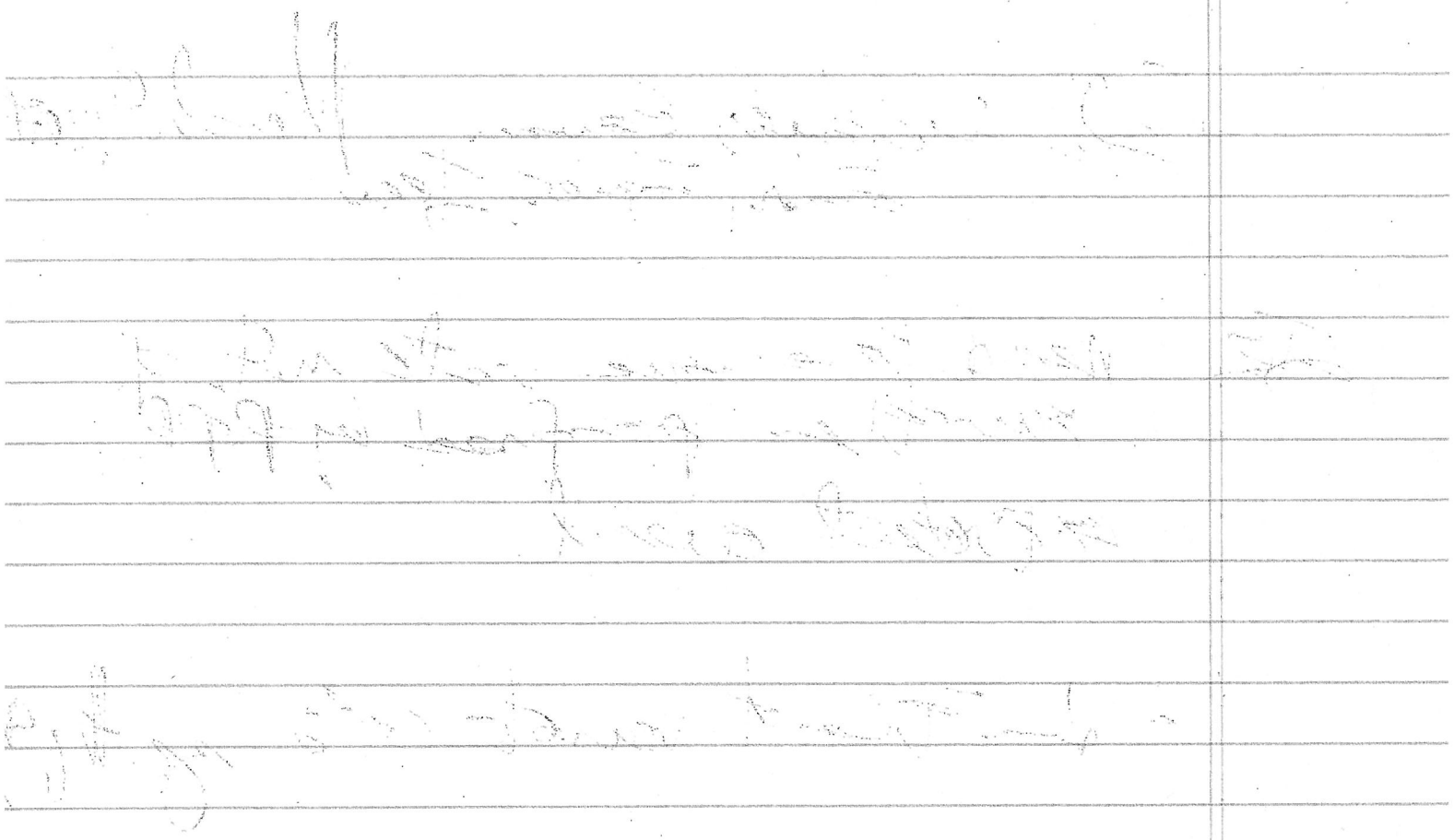
OG – regulation be modeled to have assent required (need to be explained from accounting perspect)



Call w/ David, Eamon, Dan, James, Jeff March 9/2017

JR - need to ensure rate mit. of smartlen performed by RPP, & protect overall

- don't want remote co's rejecting?



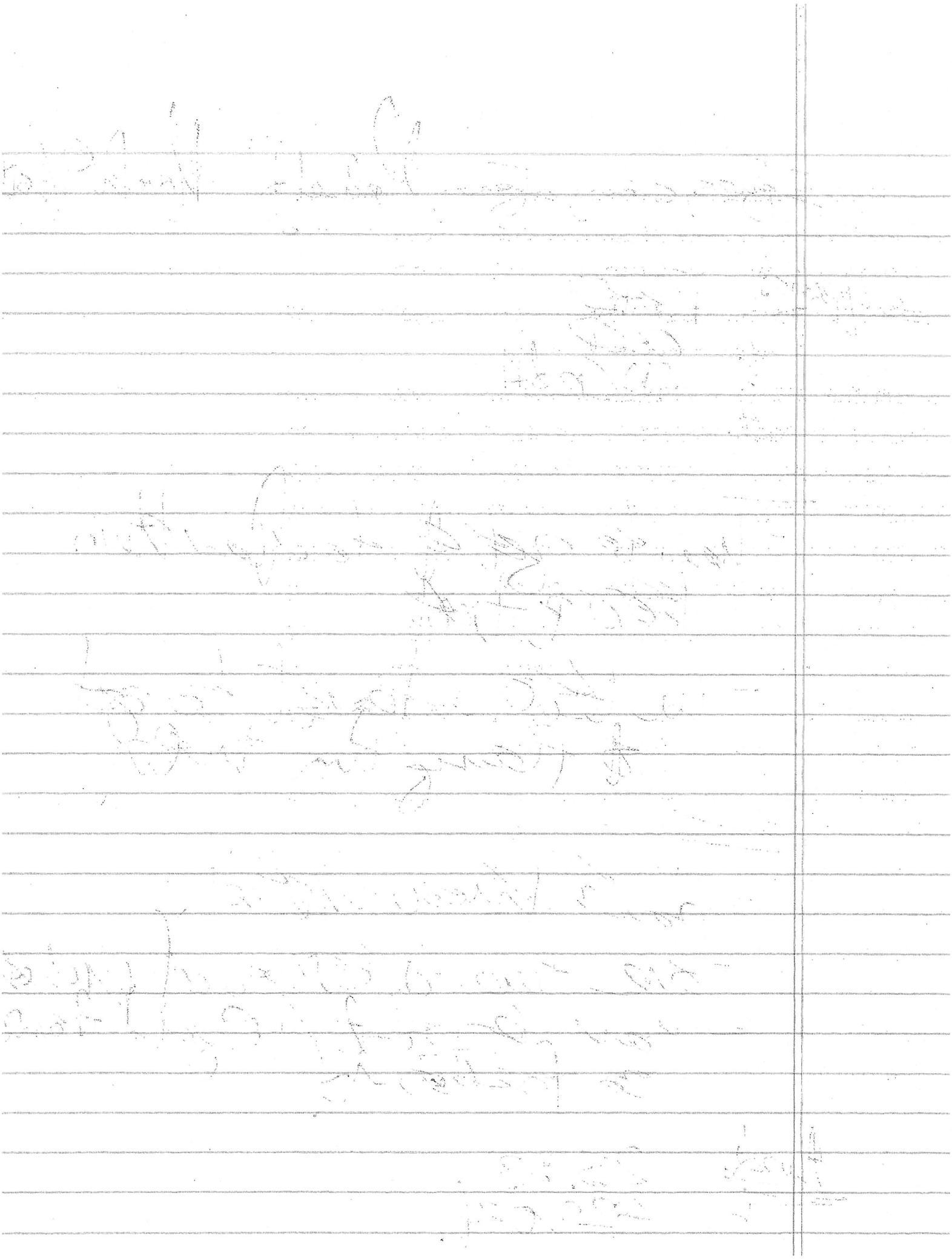
Jones, Dan, Jean, Michael B March 9/2011

⇒ 4 prongs:
1. RRRD
2. OESD
3. FW Credit
4.

- how to get $ to flow thru KSO & trust
- in KSO interest to get $ flowing from trust

- don't know whether
- one time or series of purchase
- how legislat / regul. frame to facilitate

Amend 25.33
429.024.





Regs - Fam hydro.

Social Programs - (1) OESP - David

(4) Amendy 3K.

June 20 (Cabinet)

(2) RRRP.

May 9/2014.

- effective on filing
- flow $ July

(3) two new regs

↳ (1) distribut. rate protection

↳ high cost distributors

(2) indigenous / FN reg.

---

2 Regs

(1) Pam Pratt - early June.

↳ Amed. O. Reg. Q24 (?)

(2) General Reg.

↳ def'n

→ next level of detail under Acts

(?) (3) Invoicing Reg.

Confidential – Solicitor & Client Privileged – Draft for Discussion Purposes Only
Updated May 5, 2017

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

Section Reference (Version 21)	Description of Matters to be Prescribed	Notes
s. 1 (1) "clean energy costs"	(a)(v): natural gas generation and capacity contracts excluded from definition (c): Additional clean energy costs	
s. 1(1) "electricity vendor"	Additional persons as "electricity vendor"	
s. 1(1) "funding obligation"	Criteria for additional funding obligations	
s. 1(1) "reference period"	Shorter reference periods between November 1, 2017 and April 30, 2047	
s. 1(1) "refinancing"	The terms of refinancing funding obligations	See rider (item #1)
s. 1(1) "specified consumers" s. 1(2)	s. 1(1): Additional persons as "specified consumer" s. 1(2): Criteria for "specified consumers"	
s. 7(1)	Prescribing the criteria for a hypothetical regulated rate consumer referred to in subsection 7 (1)	See rider (item #4)PART II
s. 7(3)	Prescribing the manner in which each invoice amount mentioned in subsection 7(1) is to be determined	PART II
s. 8(2)	Prescribing classes of specified consumers for the purposes of subsection 8(2) Prescribing the adjustments to be determined by the Board in subsection 8(2)	Part II
s. 8(3)	Prescribing the method or methods mentioned in subsection 8(3), including prescribing different methods for different classes of specified consumers Prescribing different classes of specified consumers for the purposes of subsection 8(3)	Part II

s. 10(2)	Prescribing the means by which a specified consumer receives the difference between the amounts shown on the invoice and the amounts reflecting the Board's determinations under subsection 10(2)	PART II
s. 11(1)	Prescribing the methodology to be applied by the Board for the purposes of subsection 11(1)	PART II
s. 11(2)	Prescribing other matters for the purposes of subsection 11(2)	Part II
s. 12(2)	Prescribing the determination of the amount payable under subsection 12(1)	Part II
s. 13(6)	How a specified consumer who provides electricity through a sub-meter may collect the clean energy adjustment	
s. 15(2)	Principles to determine the estimated finance amount and true-up amount	See rider (item #3)
s. 15(3)	Information that the FSM shares with OEB, related to the determination of clean energy adjustment	
s. 15(4)	OEB's determination of rates to recover clean energy adjustment	
s. 16(1)	Payment of clean energy adjustment received by IESO from electricity vendors	
s. 16(4)	Remittance by IESO to the investment asset owners	
s. 17(1) and (2)	Invoice from electricity vendors to specified consumers and information reporting to IESO	
s. 17(3)	Collection of clean energy adjustment by electricity vendor	
s. 17(6)	Remittance by electricity vendors to IESO	
s. 19(2)	Activities related to administration of the investment asset	
s. 19(3) and (4)	Limitation on fees charged by the Financial	

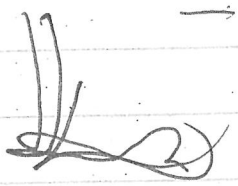
	6. Invoice and notice requirements 7. Right of compensation for investment interest owner 8. Time limits 9. Other matters LGIC considers advisable	

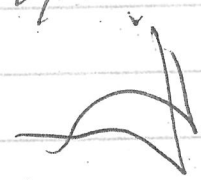
	Services Manager	
s. 20(1) paragraph 4	Additional amounts included in the fair allocation amount	
s. 20(2) and (3) paragraph 4	Additional principles and assumptions in calculating the fair allocation amount	
s. 20(5) and (7)	Process and requirements for recalculating the fair allocation amount, including information required to be shared by different entities	
s. 21(3) paragraph 3	Principles in preparing the Financing Plan	See rider (item #2)
s. 21(4)(b)	Limit on funding obligations incurred	
s. 23(1) and (2)	Determining the IESO deferral, including retrospective amounts	
s. 23(3)	Information shared with IESO by electricity vendors	
s. 24(2) paragraph 3	Additional adjustments to the IESO deferral to be recorded in variance account	
s. 25(1)	IESO's right to recover the IESO deferral	
s. 25(2)	Rates set by OEB to allow IESO to recover the IESO deferral	
s. 26(1)	Transfer of regulatory asset	
s. 29(1)	Investment Asset: Right to collect from prescribed parties (para.2) and rights under prescribed accounts (para.3)	
s. 33	"Replacement Event" for invoicing or collection agent	
s. 40	Requirements for marketing materials and offering documents	
s. 41	Regulation making power for: 1. Anything required to be prescribed in the Act 2. Definitions 3. Incurrence of debt for "refinancing" 4. Information on or with invoices 5. Invoicing of clean energy adjustment	

invoicing

- Minister's Reg deal w/ → repeal GREG req
envelope presentment.

- Reg to exempt HO





Maksymuik, Amanda (ENERGY)

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

The meeting at noon is in person here.

-----Original Appointment-----
From: WILSON, JUDY [mailto:JUDY.WILSON@blakes.com]
Sent: March-16-17 11:36 AM
To: WILSON, JUDY; Calwell, Carolyn (ENERGY/MEDEI/MRI); Shear, Dan (ENERGY); Rehob, James (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); STOKES, BRYSON
Subject: Regular Legislative Check-Ins
When: March-28-17 11:00 AM-11:30 AM (UTC-04:00) Caracas.
Where: Teleconference: 1 855 318 4202 8635820#

Please forward if I have left anyone off the invitation.

Meeting in Energy, KSO, OEB, OPG March 28/2017

- if you are on condn - for less than 25%
  if one electric heat - from more than 25%

OPG - getting debt to force it
- want to see certain things
- goal is to have debt rated as high as (AAA) possible so get cheapest rate
- interested in support from modeling from KSO
- don't believe KSO does this related to any consumers

OEB doesn't break out class B data

- OEB has
RPP actuals - IESO has submitted
very on accuracy of
what submitted

- at some point IESO to be
contracted by rating agency

OPG - who decides how much GA
reduced in a year
- how RPP translates to
LDCs.

IESO - amt will borrow will be
real dollars vs. amt pay off
- key is how debt gets paid off
- IESO only forecasts 20 yrs
from today

Tim - 10% overpayment is included
in tables

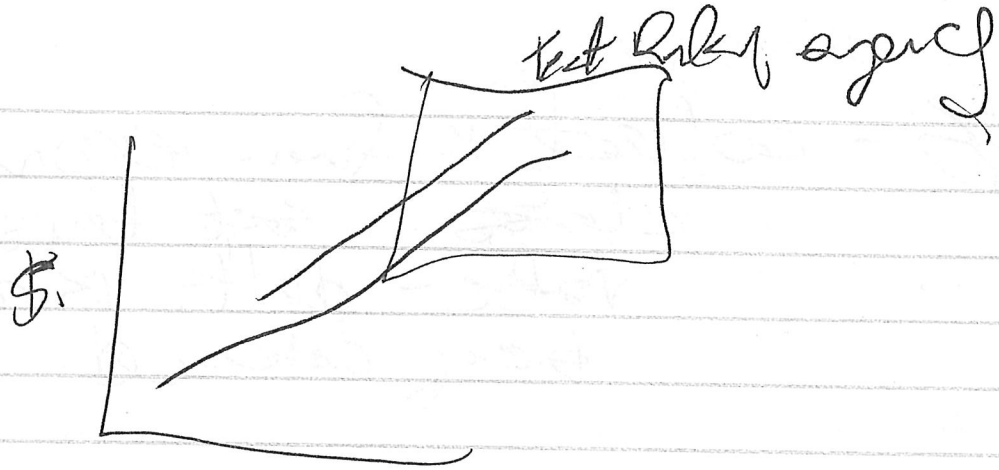
OPG - want to go to markets
every year to borrow
- who setting amts to be
bounded

- LESO - we don't have LDC forecasts what you ask for is gross metering
  - bill LDC's based on their consumption at whole level.
  - none of forecasts do it at that level.

LESO - ~~to~~ ~~ask~~ for historical against actuals
  - bc modelling is forward looking
  - doesn't change OEB discount, right now too new. RRD

OEG ① flexibility upon G-10.
  - 10% you over you change needs flexibility from jus G-10.

② 10% - does it apply to yr 11.



OPG

- OEB sets RPP - which results in income collect of market is what is owed
- settling to [illegible]
- $ out differences sent to IESO as income

- in short term demand won't be that far off
- in short term income offset which would be sold to OPG as deficit.

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

Kim -

IESO - wants for LDC to tell them how much short
- have $
- has nothing to do w RPR
- so LDC's can bd short
may on shortfalls for a few yrs

2 - what if settling on different class B rate?
- expecting to be short

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

OPG - when it must repond if shortfall & over collect
who no DS

GA Modifier

- some info in first year - what happens in subsequent years?
  - some reporting of how much volume being settled

Letter

energy can share model to help calculate.

① ~~estimated~~ GA for this year.

② your ~~estimate~~
- of consumption by total format

OSB - until legs in place can't set RPP,
- need input
- this gives ball park
- trying to get closer but not all the way to 25%.

- write out as annual average over 4 yrs

79.16 is issue
- setting rates not in accordance w/ legislation today
- approach monitors integrity of home set. RPP prices
  - on the order of 2½ billion
OEB would rather decrease RPP.
- rather have home reduc. of 23% than 26%
- after Nov 1 - will follow for higher plan.
- legis. will have guidance on how to calculate CPI.
- Toronto Hydro rates increase [illegible] decis covers next 2 rate settings

3% BU
6% over.

every yr set prices in Nov
rates go up then back down,

— baking May 1 RPP into base
point - need to be constrained
by inflat - otherwise have
another increase

OEB — yr 1 vs. anything else after
— can't do w/o contemplating
2 price settings.

— what do we have to do
for typical tomato higher
systems to do X?

PRRP - neither necessary to letter
— fact that
— if opportunity to message
other [illegible]

- RRRP [illegible] at [illegible]
- FN - expect second letter
  - statement [illegible] letter -
  - [illegible] [illegible] to [illegible]
  - expect to get separate letter from Minister on that point.
- to indicate -
  ↳ conflicting w/ letter

March 28/20[illegible]

Theory of Legislat.

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

2) enabling OPE

3) enabling fiscal entity

Part 5 of Legis - global descrip of scheme not yet flushed out

- last page of sketch - in part 5

- gaps of scheme in part 5 -

4. role of OEB

Vision of regulating scheme.

1) IESO [illegible] into long term power contracts
- [illegible] difference [illegible]

2) reason prices were guaranteed based on vision of policy developing construct under new policy framework

- Covering gap - policy decay
- benefit of new government BC intended to get off coal - that will benefit future ratepayers

Entity Mandate

Comment [DS1]: I assume this is not the place to discuss the nature of the entity itself, but rather its mandate? There are a number of additional points we could include about the nature of the entity if desired.

- The Following table depicts either a prescriptive or flexible mandate for a new entity established to manage Global Adjustment (GA) smoothing.
- This mandate could be established through legislation or through a combination of legislation and the constating documents of the organization ~~(e.g. articles of incorporation, trust indenture) or a combination of both~~.
- The focus of the governance principles would be to reinforce the distance and independence the entity has from Government.
- OEB role (level of supervision) can be small or moderate depending upon need for oversight by an independent energy regulator versus risk perception of financiers.

Element	Prescriptive Mandate	Flexible Mandate
Objective	- Smooth impacts of the Global Adjustment Mechanism (GAM) in order to allocate costs to ratepayers across a [25 / 30] year time horizon, in accordance with the following parameters - Legislated loan and interest repayment mechanism with recourse to rate-payers only (cost of capital and financing costs) - OEB oversight (annually) but no licensing or rate-order. - Could have OEB set overall cap for collection each year, allowing entity to recover according to prescribed rules within specified range.	- Smooth impacts of the Global Adjustment Mechanism (GAM) in order to allocate costs to ratepayers across a 25-35 year time horizon, guided by the following parameters - All decisions to balance the interests of current and future ratepayers, taking into account factors including but not limited to: o Current and expected future demand for electricity o Current and future expected number and composition of ratepayers o Total cost of electricity and expected future changes to the cost of electricity - Legislated loan and interest repayment mechanism with recourse to rate-payers only (cost of capital and financing costs) - OEB oversight (annually) but no licensing or rate-order. o Could have OEB set overall cap for collection each year, allowing entity to recover at will within specified range. o Could accommodate

		moderate role for OEB to manage/supervise entity's (and IESOs) collection schedule. o Ambit of OEB role could be constrained by reg. - Current and expected future interest expenses
Sources of Financing	- Borrow via the Ontario Financing Authority (OFA) under commercial terms	- Seek lowest cost of financing either from the OFA or 3rd party lenders in order to balance cost and risk to ratepayers - Develop and deploy borrowing strategies to minimize cost and mitigate risk to ratepayers, considering factors above
GAM Payment & Financing Approach	- In year 1 provide $X billion to finance the cost of GAM (hereafter known as "Annual Financed GAM Payment"), offset by a deferral account to be recovered from ratepayers - Over years 2 to x, reduce Annual Financed GAM Payment amounts, relative to the year 1 total ($x billion), such that the decrease is not greater than 2% of the total annual cost of GAM from the prior year - Starting in year 1, recover, on a monthly basis, interest expenses related to accumulated debt from electricity ratepayers - Reduce Annual Financed GAM Payment amounts to $0 or less (once less than $0, this becomes a charge to ratepayers) in 12 to 15 years - In years a to b, Recover accumulated debt via a charge to ratepayers over remaining 10 to 13 years (25 years total), provided that the annual increase in the charge to ratepayers is not greater than 2% of the total annual cost of GAM from the prior year	- In year 1 provide $X billion to finance the cost of GAM (hereafter known as "Annual Financed GAM Payment"), offset by a deferral account to be recovered from ratepayers - Each year, the New Entity will submit plans for approval to the OEB that propose a rolling [5 yr / 10 yr] declining Annual Financed GAM Payment schedule , such that the annual decrease is not greater than 3% of the total annual cost of GAM from the prior year. - Prescribe criteria OEB to apply in approving or requiring changes to such schedule. - Manage the recovery of interest expenses and administrative costs related to accumulated debt from electricity ratepayers - Manage the recovery of accumulated debt over a 25-35 year period - Financed Annual GAM Payment schedules and recovery of accumulated debt should take into account the interests of both current and future ratepayers, while ensuring long term financial stability for the

Comment [DS2]: It would also be possible to require the entity to seek lowest cost of financing from the OFA or 3rd party under the "Prescriptive Mandate".

Comment [DS3]: Any prudency test for admin costs?

		new entity.
Mechanism for Recovery from Ratepayers	- Legislation would provide the entity with the right to recover debt, interest and administrative costs from rate payers. - Prescriptive mandate: legislation prescribes who pays and in what proportions - Broad mandate: Board has discretion to determine recovery. **Amendments to Electricity Act, 1998** could specify: - Amendments to IESO mandate (objects) and GAM provisions to authorize IESO to receive and pay amounts from and to entity; - monthly amounts to be settled (separately) with IESO, distributors/retailers then collected from consumers and settle with IESO. IESO makes payments to entity. Separate reporting can be explicitly mandated. - IESO to report annually to OEB about these settlements separately. - Variance accounts established within entity, IESO, distributors to track payment flows and variances. OEB oversight of accounts (reporting only) - **Optional:** OEB could set overall cap for annual recovery and/or manage repayment schedule or could be prescribed. - **Amendments to OEBA:** "Rate mitigation" added to Board's objectives re electricity; - **Entity:** OEB could receive and review annual report from entity. - No OEB license or rate-order for entity (light touch) versus overseeing repayment schedule or even fixing / approving same (closer to rate-making). - IESO specifically required to make payments to entity: - Regulations prescribing criteria and rules re. payments as required. - **Optional:** Can further circumscribe OEB role re. setting cap or repayment schedule via reg. **or** - **OEB could fix entity's rate:** OEB's approval of internal/operating costs together with approval of schedule and setting hard cap.	
Ontario Energy Board Oversight	- New Entity to submit to the OEB on an [annual] basis its rolling 5 year declining Annual Financed GAM Payment schedule and / or charge ratepayers to demonstrate that the plan aligns with its mandate and maximizes benefit to both current and future ratepayers, while mitigating risks - New Entity to submit annual business plans to the OEB for review and approval. This review would exclude any pre-existing debt obligations and would ensure that all associated debt covenants are respected	
Contract with IESO	- New Entity to enter into a commercial, contractual arrangement with IESO whereby IESO will collect a portion of GAM to service debt (see cost-recovery amendments above) - Once the GAM payment switches to a charge (as described in "GAM Payment & Financing Approach"), the New Entity will contract collection from ratepayers to the IESO, while retaining all rights and obligations associated with collection of this charge - The contract between the New Entity and IESO will establish an annual (monthly?) mechanism to reset payment and recovery amounts, as	

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Comment [DS4]: What do you mean by this?

Comment [DS5]: Why do we need this? We can wrap this up in the overall settlements work performed by the IESO, with leg/reg support as needed.

	established by through the Ontario Energy Board review process described above

Clean energy adjustment = transition charges

↓

specified consumers will be invoiced as part of repayments of amts deferred

- four adjustments = amendments to EAP

① not for next 5 yrs (until 2022)

② No CPI - 2018

[advance coaches
we basket 4
laundry list

[speech, auth
too do each
thing

Rogers
015955

Bell
085079

$781
$5499

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:

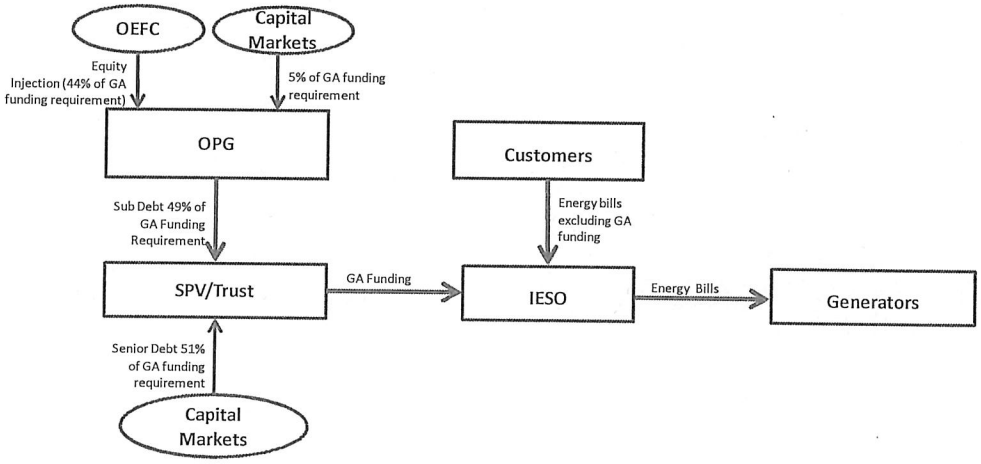
- restrict the risk to OPG;

- 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.

Ontario

MINISTRY OF
ENERGY

Rate Mitigation Plan Options

Working Draft (Tracked)

February 8, 2017

CONFIDENTIAL DRAFT

Context

- Electricity costs are increasing as the necessary investments are made to decarbonize and modernize the province's electricity infrastructure (i.e., $35 billion+ investment in cleaner generation and $15.5 billion investment in Hydro One transmission and distribution systems).

- Ontario has taken a number of actions to lower electricity costs for all consumers by:
  - Deferring investments in generation (e.g., new build nuclear), improving market efficiency (e.g., wind dispatch) and decreasing the cost of renewable procurements (e.g., GEIA renegotiation, decreasing FIT prices).
  - Increasing cost effectiveness and improving efficiency by adopting new electricity market approaches (e.g., competitive LRP, no new NUG contracting).

- Following the 2016 Throne Speech, actions were announced to further reduce electricity costs by:
  - Providing an 8% rebate ($11/month savings), updating RRRP ($45/month savings), expanding ICI (up to one-third savings for participants) and suspending the LRP II and the EFWSOP (up to $3.8 billion in cost savings).

- On November 28, 2016, the Minister of Energy announced the need for changes in how electricity resources are procured, the need for wholesale market renewal and greater electricity consumer choice.

- The Ministry of Energy is currently updating its Long-Term Energy Plan (LTEP), which provides an opportunity to consider a range of policy changes to how the Ontario energy sector operates.

Options

- In recognition of the costs borne by ratepayers related to decarbonizing and modernizing the province's electricity sector, options for further rate mitigation include:

1. Global Adjustment (GA) Smoothing – Provide significant and immediate rate relief through cost deferral of the GA.

2. Electricity Support Programs to Help the Most Vulnerable – Provide a greater focus on vulnerable consumers:
   - Rural or Remote Electricity Rate Protection (RRRP) Enhancement (Delivery Charge Relief);
   - Ontario Electricity Support Program (OESP) Expansion;
   - LDC Affordability Fund; and
   - First Nations Rate.
   - ~~Low-Income Conservation /~~

3. Ontario Energy Board (OEB) – Identify opportunities for OEB red-tape reduction and future LDC efficiencies and rates.

4. Ontario Power Generation (OPG) – Find further efficiencies in operations and pass on savings to ratepayers.

5. Independent Electricity System Operator (IESO) – Modernize Ontario's electricity market through electricity Market Renewal initiatives.

GA Smoothing – Options

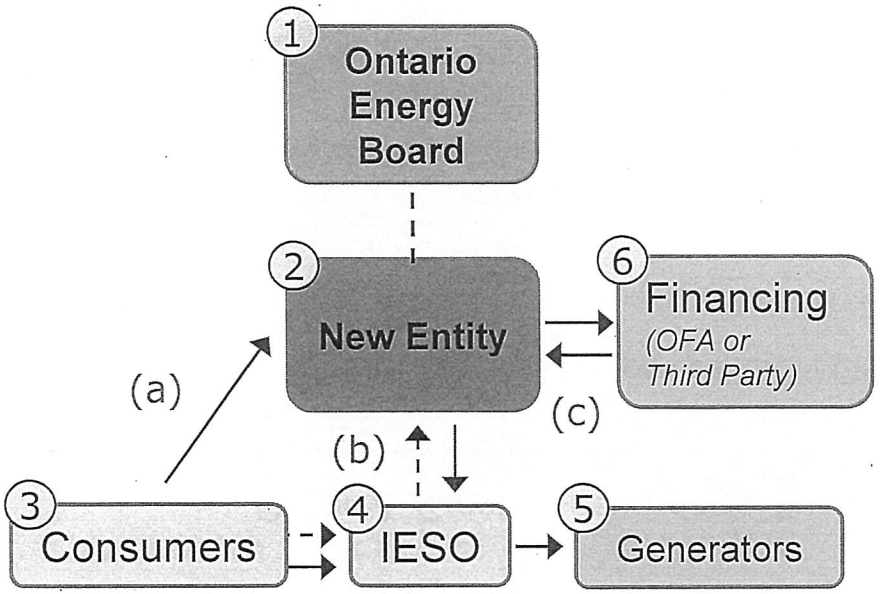
- Place holder

1. GA Smoothing – Implementation Models (UPDATE)

- The Province continues to consider mechanisms to finance and administer GA smoothing.
- Two leading options are under consideration:
  - Option A: Create a new special purpose entity, independent from the Province that would be dedicated to GA smoothing; and
  - Option B: Make changes to IESO / OPG in order to enable it to assume responsibility for GA smoothing.

1. GA Smoothing – Option A: New Entity

- The diagram outlines a implementation approach that includes a new entity, which would hold the debt and the receivable from ratepayers.



1. The OEB oversees the new entity, as well as the GA smoothing mechanism on an ongoing basis.
2. The New Entity funds part of the GA and (a) would have a legislative right to recover associated principle, interest and administrative costs from customers (settled via service agreement with IESO).
3. Electricity Consumers pay IESO a portion of the GA in early years. In the future, the New Entity recovers principle, interest and administrative costs fro consumers. Customers bill presentation remains unchanged (costs should diminish in early years).
4. The IESO pays generators (in early years), partially from consumers and partially financed by the New Entity. (b) The IESO provides collection services to New Entity under a service contract.
5. Generators continue to receive payments from IESO according to existing contract / regulatory structures.
6. The OFA or a 3rd party lender funds the GA shortfall in early years and receives payments from the New Entity as debt is repaid. (c) Debt is subject to a contract between the New Entity and the lender.

1. GA Smoothing – Option A: New Entity

Framework and Oversight

- Legislative framework to establish constraints and limit authority of the new entity taking either a prescriptive or flexible approach.
- Ontario Energy Board could be empowered to approve GA smoothing schedule and oversee operations of the New Entity (compensation etc.).

Governance

- To achieve the desired accounting treatment, the entity would have to be structured as follows:
  - While the Province would choose the first board of directors or trustees, future directors or trustees would be selected in accordance with a mechanism created at the time the entity is created. The Province would have no ongoing role in appointments or in selection of key personnel, including the CEO.
  - The Province would not have a determining vote in the entity's business decisions.
  - The Province would have no recourse to the entity's assets and would not be responsible for the debt.
  - The Province could not dissolve the entity and having access to its assets and obligations.
  - The Province would not be able to change the mission or mandate of the entity, once it is created.
  - The Province would have no right to approve business plans or budgets or to require amendments to them.
  - The Province would not be able to alter the terms of the entity's debt arrangements.
  - The Province would not be able to affect the debt by controlling the entity's financial and operating policies.
  - The Province would not have input into the operational and financial policies of the entity, including accounting, personnel, compensation, collective bargaining or deployment of resources. For example, legislation like the *Broader Public Sector Executive Compensation Act, 2014* would not apply.
- As a result:
  - Staff would not be OPS employees.
  - Oversight would not be provided by Offices of the Legislature (AG, FAO etc.).
  - The *Freedom of Information and Protection of Privacy Act* would not apply.

1. GA Smoothing – Option B: IESO

- Make changes to IESO in order to enable it to assume responsibility for GA Smoothing.
- Need to determine whether it is likely that IESO could be sufficiently transformed in order to meet the following accounting tests:
  - Government Business Enterprise (GBE) Treatment: consistent with OPG and Hydro One, this treatment would require consolidation of only net income and equity (as opposed to line-by-line consolidations currently applied to IESO). This test includes the following components:
    - Separate entity;
    - Power to contract in own name;
    - Sue and be sued;
    - Delegated financial / operational authority to carry out a business;
    - Sells goods and services to individuals and organizations outside of the government reporting entity as its principal activity; and
    - Can, in the normal course of its operations, maintain its operations and meet its liabilities from revenues received from sources outside of the government reporting entity.
- Legislative changes would be required in order for IESO to take on an expanded mandate, and deal with substantial financial assets and liabilities.
- Enhancements to the OEB would also be necessary in order to ensure proper oversight of the GA Smoothing mechanism.
  - For example, ability to review and approve rolling 5 year smoothing schedules submitted by IESO.

1. GA Smoothing – Other Considerations

- **Recovery Mechanism**
  - Province will need to explore different recovery/ administrative options.
  - DRC/RRP/Tax Rebate.
  - Consider whether a one-time, exit payment would be charged to ratepayers that are leaving the electricity system in order to recover foregone deferred charges.
- **Financing**
  - While 3rd party financing would help to meet accounting control tests, the cost may be high
    - The Province may need to internally test the market to determine potential cost of 3rd party financing / securitization.
  - Potential risks that 3rd parties will likely consider when determining cost of capital include:
    - Legislative framework (recovery mechanism);
    - Interest rate changes; and
    - Future electricity demand / customers.
- **Contractual / Legislative Agreements**
  - Either the New Entity or IESO would need a legislative right to recover the principle, interest and administrative costs from customers.
  - Form of an IESO collection services agreement would need to work within IESO's legislative framework, while providing sufficient comfort to the New Entity / 3rd party.
  - We need to consider whether the Province's ability to change legislation undermines the governance choices that we make to achieve the accounting control analysis

2a. RRRP Enhancement – Accelerating Fixed Rate Benefit

- Currently, LDCs recover their costs through a combination of a fixed monthly charge and a volumetric charge based on kilowatt hours used. As a result, customers of the same LDC will be charged different amounts for distribution based on their consumption level.
- However, the OEB has made a determination to establish fixed distribution rates for residential consumers, in recognition that the majority of distribution costs are irrespective of the volume of consumption. The OEB believes moving to fixed rates will:
  - Enable residential customers to leverage new technologies, manage costs through conservation, and better understand the value of distribution services.
  - Establish a fairer way to recover the costs of providing distribution service.
  - Provide greater revenue stability for distributors, which will position them for technological change in the sector, remove any disincentive to promote conservation, and help with their investment planning.
- Fixed rates will be set at the average consumption level for a rate class in order to recover the same amount of revenue as the mix of fixed and variable charges does today. As a result, below-average volume consumers will experience cost increases and above-average volume consumers will experience cost decreases.
- The OEB is gradually phasing-in the move to fixed rates in order to mitigate the impact of these increases to below-average volume consumers. Most LDCs will receive fully fixed rates in 2019. Hydro One will be transitioned over a longer timeframe (2022-2023).
  - Hydro One's density-based rate classes and recent re-allocation of costs between the classes results in significant impacts for Hydro One low volume consumers. Providing the longer timeframe allows for the impact of the change to be held at less than 10% for low volume customers at the 10th percentile of consumption.

2a. RRRP Enhancement – Accelerating Fixed Rate Benefit Impacts

- Hydro One has estimated that if it accelerated the move to fixed rates effective 2017, the rates would be as follows:
  - R1: $55.70/month – the same cost as a customer who consumes 955kWh/month today.
  - R2: $64.64/month, when factoring in the $60.50 RRRP support – the same cost as a customer who consumes 1200kWh/month today.
- Using sample customer data provided by Hydro One, it is estimated that approximately 2/3^{rds} of Hydro One R1 and R2 customers would experience cost increases if this was implemented:
  - R1: ~146k customers would see cost decreases, and ~298k customers would see cost increases.
  - R2: ~117k customers would see cost decreases, and ~217k customers would see cost increases.
- However, support from the fiscal plan can be used to accelerate the move to fixed rates for those high volume consumers who benefit – leaving low volume consumers to experience no change.
  - Hydro One estimates this would cost $64 million. If the move was expanded to include Hydro One Urban (UR rate class) and Seasonal customers, the cost would be ~$90 million.
  - When layering on the current RRRP support of $242 million, program costs are between $306-$332 million.
  - As the move to fixed rates was completed, fiscal plan support for these customers could be withdrawn.

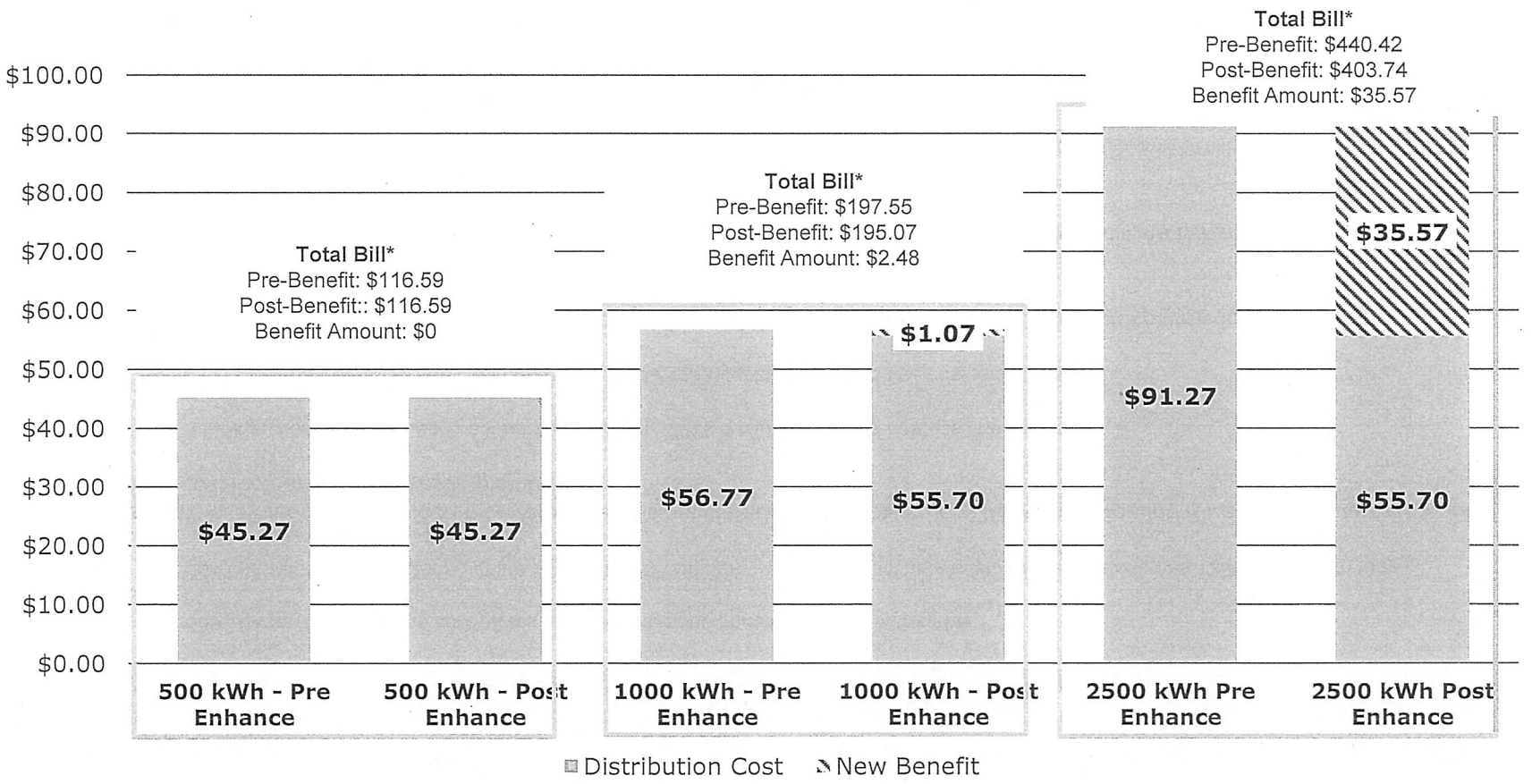
Accelerated Fixed Rate Benefit Fiscal Impact						
	2018	**2019**	**2020**	**2021**	**2022**	**2023**
Fixed Rate Enhancement*	$64M-$90M	$52-$72M	$38M-$54M	$26M-$36M	$13M-$18M	$0
Total RRRP** (inclusive fixed rate enhancement, excluding Algoma Power & Hydro One Remotes)	$306-$332M	$300-$320M	$293-$309M	$287-$297M	$281M-$286M	$275M

**Range depends on if just R1 & R2 or all rate classes. Cost decrease is estimated evenly, which could change based on Hydro One future rate impacts.*

*** Assumes 2.6% annual increase as estimate of average distribution rate increase*

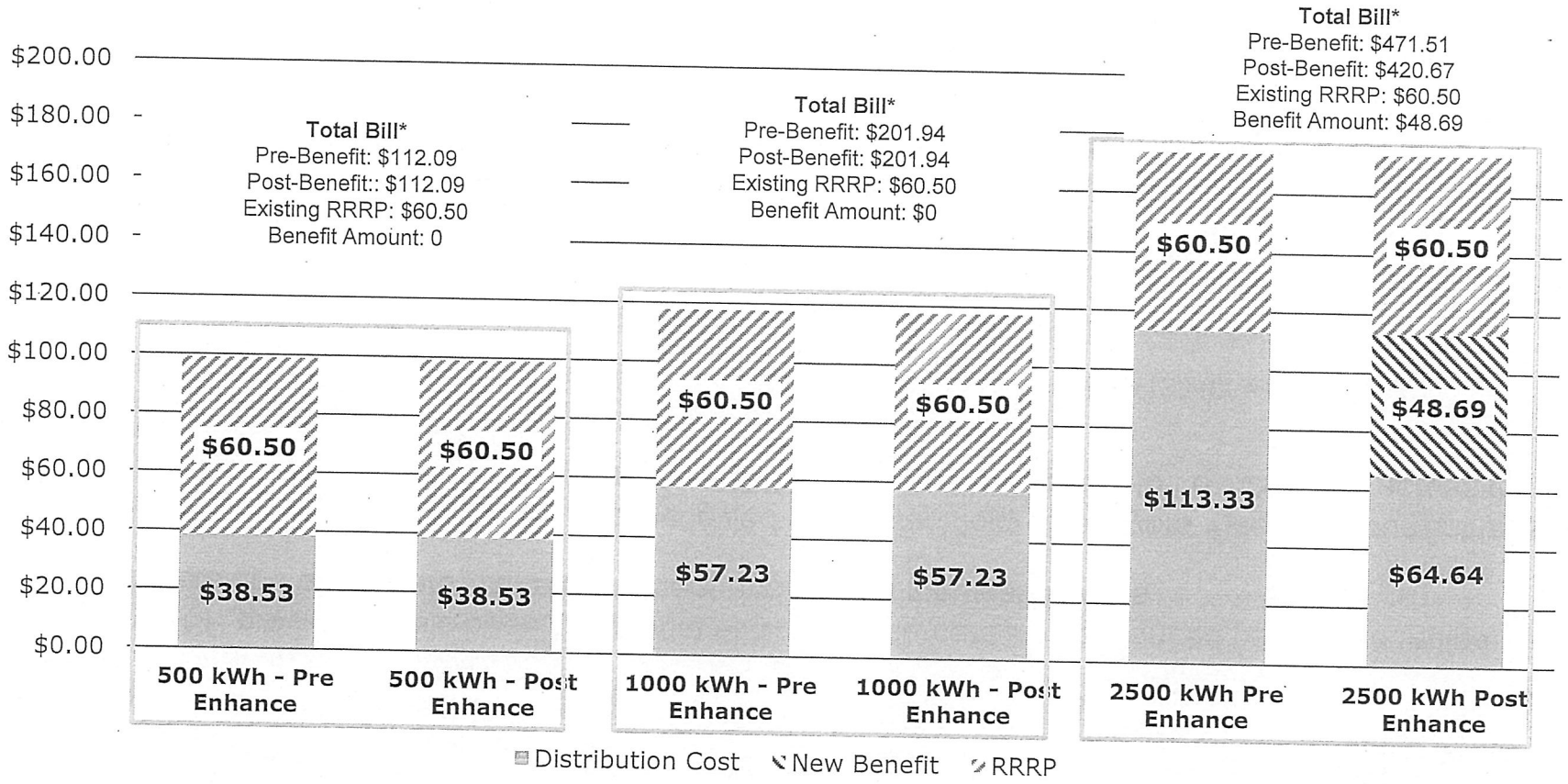
2a. RRRP Enhancement – Hydro One Mid-Density (R1) Ratepayer Impacts

- Under this option, R1 customers will not pay more than $55.70 for distribution service. Customers with costs below this threshold experience no change.



2a. RRRP Enhancement – Hydro One Low-Density (R2) Ratepayer Impacts

- Under this option, R2 customers will not pay more than $64.64, after accounting for the original $60.50 RRRP subsidy. Customers with costs below this threshold experience no change.



2b. Ontario Electricity Support Program (OESP) Expansion

- The OESP is an income-tested, application based program that lowers the electricity costs of the most vulnerable consumers by providing a rebate directly on their electricity bills.
- The OESP provides basic benefits to most eligible consumers and enhanced benefits to Indigenous customers and customers with electric heat and certain medical devices.
- OESP funding is collected from a charge levied on all electricity ratepayers. Based on current level of program up-take and funding collection, OESP program benefits could be increased across the board by 50%. This would mean:
  - Single low income consumers would see an increase from $30 to $45/ month ($540/year);
  - Families of four with electric heat could see an increase from $55 to $82.50/month ($990/year); and
  - Indigenous, Métis, and Inuit consumers would also see benefit increases at the same level as those with electric heat and medical devices. These benefits could range from $67 to $113/month.
    - The Ministry is also considering options to support a "Delivery" line credit for Indigenous consumers. This would cost ~$18 million/year and would save Indigenous consumers between $75 and $100/month (see slide 25 for more detail).
- Greater focus and support can be placed on lower income Ontarians by funding OESP through the tax base. This would also reduce costs for all consumers as a result of eliminating the OESP charge.
  - Average residential customer savings: $0.83/month; and
  - Average industrial customer savings: $1.10/MWh.

2b. OESP Expansion (cont'd)

- Potential changes to the OESP income thresholds was also considered, however, changes to the income thresholds at this point could potentially bring the OESP out of alignment with other existing social programs.
  - An OESP income threshold change could result in individuals and households that receive OESP, which is targeted to low-income individuals, not being eligible for other social assistance programs offered by the Province targeted to low income individuals/households.
- The credit and income threshold amounts for the OESP program were guided by other social assistance programs that are delivered within the Province, and the Province's Poverty Reduction Strategy, which has an underlying principle to measures poverty consistently in programs across government. One of the key measurement tools this Strategy uses is the Low Income Measure (LIM).
  - Feedback OEB received was that LIM is the method preferred by the Ministry of Finance and the preferred tool of low-income advocates.
  - OESP consequently adopted LIM as the income threshold to determine eligibility for OESP, and recommended its use for all energy assistance programs. It is also used for the OEB's Low Income Energy Assistance Program (LEAP).
- ~~In the design of the OESP, the Ontario Energy Board and ENERGY worked with other ministries that deliver social assistance programs across the Province to ensure the OESP was broadly consistent with existing social programs, including the OESP income thresholds.~~
  - ~~The OESP income thresholds are based on the LIM (Low Income Measure) a measure published by Statistics Canada that takes into account total household income as well as total household size.~~
- Rather than changing the OESP income thresholds at this point, several measures could be taken that include:
  - The "LDC Affordability Fund" may help a segment of the population that do not qualify directly as low income but are struggling to pay their utility bills.
  - The OEB could be asked to explore whether the OESP income thresholds need to be updated as part of a regular program review.

2b. OESP Expansion – Fiscal Impacts

- 2017 program costs assume the ~~are based at~~ current program sign-up rate of 30% of eligible consumers increases to 45%. Cost projections assume the program grows to 100% of eligible consumers by 2022 and remains at that level.
- At the time of program design, it was estimated that 40-50% participation would be high for an application-based program delivered through electricity bills. However OESP can be enhanced by working to ensure the program uptake is as close as possible to 100%:
  - Streamlining the application process to make it easier and quicker to get through;
  - Putting in place a more aggressive communications strategy to make sure people are aware of the program;
  - Increasing funding for key partner agencies to work directly with individuals who are applying; and
  - Exploring automatic OESP qualification for those who receive provincial programs (e.g., ODSP).
- OEB is currently exploring options for simplifying the OESP process, including exploring options with MCSS on auto-enrollment options, discussing options to provide online alternative options to the ~~eliminate~~ wet signature consent forms with the federal government, and working with partners to do open houses to better reach vulnerable consumers.
- Table below shows estimate of program costs up to 2022:

Year	OESP Status Quo ($M)	+50% ($M)	TOTAL ($M)
2017	$108	$54	$162
2018	$150	$75	$225
2019	$186	$93	$279
2020	$215	$108	$323
2021	$243	$122	$365
2022	$272	$136	$408

2b. OESP Expansion – Considerations

Considerations

- **Framework:** ~~New legislation would be~~ Changes to legislation / regulation may be required to establish and define the ability to use tax funding for the ~~parameters of a tax-based~~ OESP. The scope of changes would depend on the implementation / delivery mechanisms. ~~This may reveal additional considerations, including possible assessment as a tax credit.~~

- **Implementation:** If the OEB continues to deliver program, financial flow-through mechanisms would need to be considered in consultation with IESO and LDCs. Likely to be modeled after processes used for the Ontario Rebate for Electricity Consumers (OREC).

- ~~**Alternative Delivery:** If the OESP was funded by the tax-base, it could also be explored whether the OESP could be better delivered as a provincial program via the tax system. This may help ensure that the program's participation rate is as high as possible, and could expand coverage to the estimated 142,000 low-income households that do not receive an electricity bill.~~

- ~~**Transition to Social Assistance:** Moving OESP to the tax base can be a transitional step in folding this program into a reform of social and disability assistance programs and enhancement of MCSS' Social Assistance Management System moving forward.~~

- **Additional Enhancements:** The enhanced credit could be expanded to include additional eligibility categories of customers. For example, a new "Low Density Consumer" category could be introduced that provides Hydro One R2 and/or R1 customers (highest distribution rates) who are already OESP eligible with the enhanced credit.

- **Variance Account:** The OEB has been collecting program funding in excess of program costs and has accrued a positive balance. This balance must be addressed when moving to the tax base.

- **Treatment as Income:** If OESP amounts are increased, it will need to be confirmed that the credit is not treated as taxable income. This was addressed in the current iteration of the OESP.

2c. Low Income Conservation Benefit Program – Home Assistance Program Enhancement

- Existing low-income programs delivered by LDCs and IESO help qualified residential customers and social and/or assisted housing providers improve their energy efficiency.
  - Programs include the Home Assistance Program and the Retrofit Program (Social Housing stream).
  - $500 million is planned under the Climate Change Action Plan (CCAP) to retrofit social housing.
- ENERGY is currently working with IESO to explore options to enhance and/or expand the existing Home Assistance Program or residential customers:
  - Participants could receive incentives for improved weatherization measures, appliances and lighting controls (e.g., new or upgraded furnace and central AC; windows/doors; washer/dryers, heat pumps (for electrically-heated residential customers).
  - The incremental funds would enable deeper measures and reach additional customers.
  - The new program would be delivered through LDCs and/or IESO and could include education and awareness initiatives.
- The budget estimate below is illustrative and reflects a doubling of the 2015 spending for the Home Assistance Program, which was $20 million.

Calendar Year	**2017**	**2018**	**2019**	**2020**	**2021***	**2022***
Current Budget ($Million)	10	10	10	10	-	-
Fiscal Year	**2017/ 18**	**2018/19**	**2019/20**	**2020/21**		
Proposed New Budget ($ Million)	22.5	40	40	32.5	-	-

***Note:** The Conservation First Framework extends to 2020.

2c. Establishing a New LDC Affordability Fund

- Electricity customers who meet the definition of low-income are eligible for energy efficiency incentives through the Home Assistance Program, delivered by LDCs under the Conservation First Framework.

- Some electricity customers who struggle to pay their utility bills do not meet the definition of a low-income household and therefore are not eligible for the Home Assistance Program.

- Establishing an "Affordability Fund" for LDCs could provide a means to help struggling customers who do not qualify for low income programs and cannot upgrade their homes without financial assistance.
  - Over time the Fund could help these customers get back on track with their bills and also save on disconnection costs.
  - The Fund would be targeted to customers on an as-needed basis (vs. marketed as an open-intake program).

- ENERGY is currently in discussions with the Electricity Distributors Association and several LDCs to determine the feasibility of establishing a Fund and to identify a willing funding partner(s).

- To allow for funds to flow in ~~2017/18~~ 2016/17, ENERGY would sign a Transfer Payment Agreement (TPA) with a qualified third party/ies to administer the Fund.
  - LDCs would apply for funding and redistribute support to those customers that meet the targeted eligibility criteria.

- Recipients could receive measures similar to those available in the Home Assistance Program (weatherization, energy efficient appliances and lighting controls).
  - As an illustration, with $200 million, the estimated reach of the fund could be 15,000 to 65,000 households, depending on measures and uptake.

2d. First Nations Rate – Context

- In June 2016, pursuant to s.35 of the OEB Act, the Minister issued a letter directing the OEB to prepare a report providing "*advice on options for an appropriate electricity rate (or rate assistance) for on-reserve First Nations electricity consumers.*"
  - In order to inform its report, the OEB engaged with First Nations, including remote communities, the distributors serving them, and consumer groups such as the Low Income Energy Network, in a series of meetings across the province. It also established an Advisory Committee with the Chiefs of Ontario's Grievance Committee.
  - 48 First Nations attended meetings held in the Fall of 2016 in London, Couchiching First Nation, Sudbury, Toronto and Thunder Bay. The OEB also held sessions with Local Distribution Companies (LDCs) and consumer groups.
- The OEB provided its report to the minister on December 29, 2016.
- The OEB report recommended:
  - Eliminate the delivery charge for all on-reserve First Nations residential customers and eliminate the monthly service charge for customers of licensed distributors which charge a bundled rate;
    - The OEB estimates this would provide residential customers an average monthly benefit of $85 at a total annual cost of $13 to $20 million or 11 cents a month for a typical residential electricity consumer.
  - Automatically qualify on-reserve First Nations residential customers (~21,500 customers).
  - Enable greater information sharing between distributors and band councils to identify all on-reserve First Nations customers.
  - Continue to provide assistance through OESP and LEAP to eligible on-reserve First Nations customers.
- The OEB suggested the program should be funded from the tax base as it is targeted to a particular segment of the provincial population, or, if rate based, to use a province-wide charge.

3. OEB – Red-Tape Reductions / LDC Efficiencies and Rates

Leveraging the OEB

- The Ontario Energy Board (OEB) has a mandate to regulate the electricity distribution sector in the public interest, ensuring the financial viability of the sector while promoting reliable service to customers at just and reasonable rates.
- The OEB, through the Renewed Regulatory Framework for Energy (RRFE), has since 2012 attempted to move the distribution sector towards a performance/outcomes-based regulatory framework.
  - While new reporting requirements such as the LDC performance scorecard are positive developments, RRFE does not tie these system performance expectations to LDC financial performance.
- ~~Performance-based options have the potential to indirectly incent consolidation (in a manner that returns benefits to consumers), improve customer experience, and potentially reduce Return On Equity (ROE) in an equitable manner in the event performance expectations are not met.~~
- Encouraging shared partnerships on services between utilities will help reduce costs in the back end and encourage further innovation for small to medium sized utilities.

Opportunities

- ENERGY could help promote or accelerate these efforts by asking the OEB to look at opportunities to further drive LDC efficiencies and productivity.
- In parallel, the OEB could be instructed to review business cases behind its own regulatory requirements to reduce "red tape" and eliminate costs that LDCs indicate are creating pressures on operating expenses.
- This could be done through the Minister's letter, the LTEP Implementation Directive, s. 35 of the *Ontario Energy Board Act, 1998*, and/or the 2017 Mandate Letter and other agency business planning processes.

3. OEB – LDC Efficiencies and Rates (Performance Incentives) (cont'd)

Considerations

Sector:

- Exact bill reduction levels are unknown, but real OM&A and some capital cost avoidance can reasonably be expected.
- Could indirectly incent consolidation if LDCs feel they are unable to adequately manage their assets in light of tightening requirements.
- Any initiatives that have a direct impact on LDC profitability could affect the value of Hydro One.
- There is a tension between requiring productivity enhancements and creating firm performance standards. LDCs have to invest to maintain system levels, but also finding cost efficiencies, which is an incentive for innovation. The Ministry and the OEB may have to also explore reducing regulatory burden/barriers on LDCs so they have the tools available to satisfy new performance expectations.

Regulatory:

- The OEB is the electricity distribution sector's independent regulator and as such is responsible for establishing rate-setting mechanisms in line with its statutory objectives.
  - The Ministry would engage with OEB to align on approach, and provide only high-level direction so as to respect OEB's role in determining implementation specifics.
  - The OEB would likely need to conduct policy hearings and stakeholder consultations on these initiatives, though Ministry could request new rules be in place for next major LDC rate cycle.
- LDCs are resistant to peer comparison for a variety of historical and service territory issues. OEB econometric analysis has generally supported limiting peer comparisons. As comparisons would be an important component of benchmarking performance standards, the Ministry may experience sector pushback.
- Updating rate-setting mechanisms and regulatory processes could create regulatory uncertainty and limit LDC activity. The OEB has revised its processes multiple times over the past 15 years.

4. OPG – Operational Efficiencies

- Provide expectation that OPG meet more aggressive cost targets, improving efficiency by ~$3/Megawatt hour (MWh).

Considerations

- OPG recently submitted its 2017-19 business plan to the Province for concurrence. That plan includes the following:
  - Enterprise total generating cost increasing from $48/MWh in 2016 to an average of $55/MWh over the plan period.
  - An average residential monthly bill increases of $1.05/month annually from 2017-2021.
- Much of this increase is due to the Darlington refurbishment project, which increases costs and reduces OPG's generation over the planning period.
- OPG has also shared its stretch targets for total cost of generation, which average $52/MWh over the 2017-19 plan, a ~$3/MWh reduction (5-6%) relative to its $55/MWh business plan targets.
- The Province could provide instructions to OPG to focus on its stretch target as part of the Minister's Concurrence letter. This is a public document that OEB would likely review and incorporate as part of OPG's current rate application.
- Consistent with regulations under the *Ontario Energy Board Act*, OPG is seeking smoothed rates for nuclear as part of its 2017-2021 rate application.
  - As a result, the benefit to ratepayers of reducing generation costs is uncertain.
  - Given that the application extends beyond the business plan period, and to ensure OPG does not delay costs beyond the planning horizon, the Province may want to provide additional direction for out year expenditures.
- If OPG is unable to meet more aggressive cost targets, this could impact net income, and the Province's fiscal plan.
  - The total cost of $3/MWh based on OPG's forecast production of 74 TWh/yr is about $240 million per year.
- The Province could work with OPG to craft language in the concurrence letter in order to avoid setting unintended precedents for future rate application processes.

5. IESO – Market Renewal

- Continue to move forward with Independent Electricity System Operator's (IESO) Market Renewal initiatives:
  - Market Renewal encompasses projects such as a single-schedule system (from the current two-schedule system), more frequent intertie scheduling to better align with other jurisdictions and a day-ahead market. There will be up front capital costs to enable the initiative. IESO is currently assessing these costs.
  - Moving to "technology-agnostic" procurements will provide new opportunities for innovation and modernization and ensure ratepayers receive the best prices possible.

Considerations

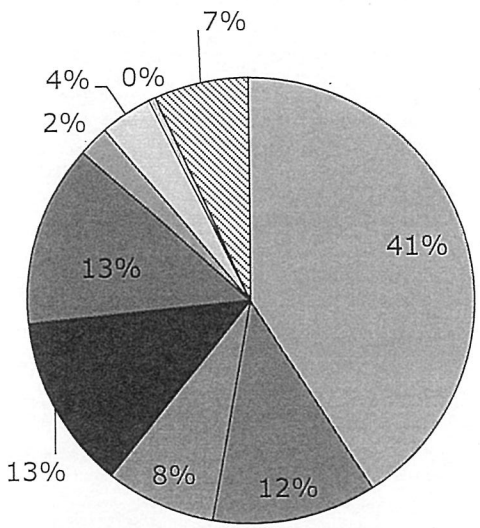
- Changes related to IESO's Market Renewal initiatives, reflected in HOEP and uplifts, are estimated to save up to $300 million per year, starting in 2021, leading to a reduction of:
  - About $1/month or less than 1% at current retail prices for a typical residential bill; and
  - About $1.30/MWh at current all-in prices for industrial and SME electricity consumers.
- The IESO's Market Renewal is a broad initiative that will impact all aspects of Ontario's electricity market. Ontario has had a uniform price since market opening.
- Adopting a technology-agnostic stance will lower the overall cost of providing electricity service by selecting the most cost-effective resources to fulfill various system needs.
- The IESO estimates that the total implementation cost – including a 15% contingency and net of avoided costs – will be $150 million. The bulk of the costs (capital) would only be recovered once the project has been implemented and as the benefits are being realized.

Appendix

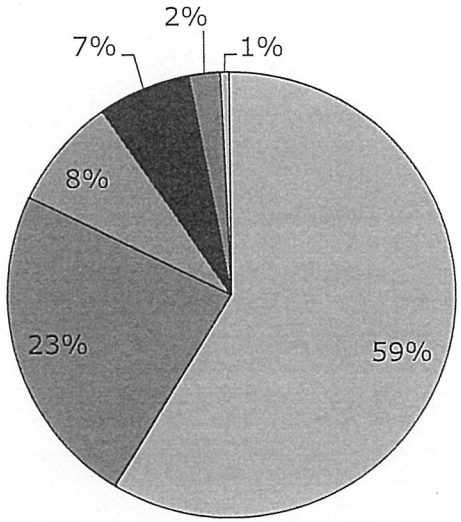
GA Smoothing – Cost Breakout

- The allocation of GA costs in 2016 is compared to the proportion of generation in the graph below.
- This cost breakdown will evolve over time as 2,181 MW of contracted generation comes online in the coming years.

2016 GA Cost: $12.3 billion



2016 Generation: 155 TWh



	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.

GA Smoothing – Residential Bills Lowered 25% (with Tax-Base Funded 8% Rebate and Social Programs)

- Total bill below is based on a revised IESO forecast. See footnotes for more information.

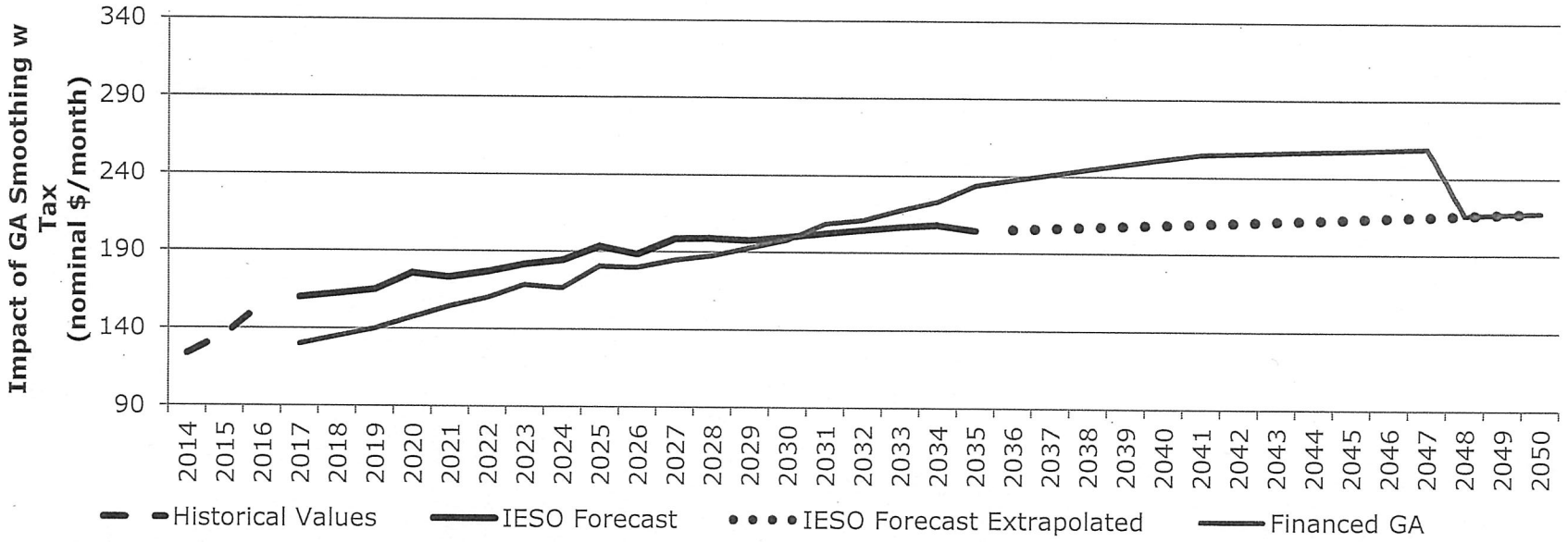
Residential (750 kWh/month)	Actual 2016	2017	2018	2019	2020	2021
Total Bill (includes HST)	**163**	**172**	**175**	**178**	**189**	**187**
Total Bill (excludes HST)	145	153	155	158	168	165
Impact of GA Financing		-27	-25	-22	-25	-17
Impact of Tax-Basing Social Programs		-2	-2	-2	-3	-3
Subtotal		123	128	133	140	146
8% rebate		-10	-10	-11	-11	-12
HST		16	17	17	18	19
Revised Bill (includes HST)	**163**	**129**	**134**	**139**	**147**	**153**
Change from Total Bill (includes HST)		-43	-41	-39	-42	-34
Year-over-Year Change		-21%	4%	4%	6%	4%
Change from Forecast		**-25%**	**-23%**	**-22%**	**-22%**	**-18%**

Average Class A ($/MWh)	Actual 2016	2017	2018	2019	2020	2021
Total (excludes HST)	**90**	**91**	**93**	**88**	**95**	**96**
Impact of GA Financing		-22	-20	-19	-21	-14
Impact of Tax-Basing Social Programs		-3	-3	-3	-3	-3
Revised Total (excludes HST)	**90**	**65**	**69**	**66**	**71**	**79**
Change from Total Bill (excludes HST)		-26	-24	-22	-24	-17
Year-over-Year Change		-27%	6%	-5%	8%	11%
Change from Forecast		**-28%**	**-26%**	**-25%**	**-25%**	**-18%**

Fiscal Impact ($M)	17-18	18-19	19-20	20-21
Tax-Basing Social Programs	362	409	450	485

Notes: Based on IESO's revised OPO forecast as of December 2016. Includes the cancellation of LRP II and EFW, expansion of ICI. Does not include smoothed OPG rates. Above residential bill is based on a 750 kWh per month Toronto Hydro customer. "Social programs" refers to existing RRRP and OESP. While initiatives would take several months to implement, the above estimate for 2017 reflects a full-year impact. The 8% rebate above represents savings compared to status quo due to the reduction in the sub-total from GA financing. Fiscal savings as result of GA Smoothing.

GA Smoothing (Borrow $5 billion in 2017)



	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048
Average Monthly Residential Bill Impact of GA Smoothing, pre-tax *($/month)*	-27	-25	-22	-25	-17	-15	-11	-16	-11	-8	-12	-10	-4	-2	5	6	10	14	26	28	31	33	35	38	40	40	40	40	39	39	39	0
Total Accumulated Debt *($ billion)*	5	9	14	19	23	27	30	34	38	41	46	50	53	56	58	60	61	62	60	58	55	52	48	43	38	33	27	20	14	7	0	0
Total Change in Accumulated Debt *($ billion)*	5	5	4	5	4	4	3	4	4	3	4	4	3	3	2	2	1	1	-2	-2	-3	-3	-4	-5	-5	-6	-6	-6	-6	-7	-7	0

Notes: Assumes 30 year financing period and a nominal interest rate of 5.12% per year (compounded annually). Ratepayer GA payments increase annually beyond 2017 at inflation with GA over-payments capped at $7.5 billion above the true cost of GA in any given year. IESO forecast is based on IESO's revised OPO forecast as of December 2016. Includes the cancellation of LRP II and EFW, expansion of ICI. Does not include smoothed OPG rates. Above residential bill is based on a 750 kWh per month Toronto Hydro customer.

GA Smoothing – Residential Bills Lowered 33% (with Tax-Base Funded 8% Rebate and Social Programs)

- Total bill below is based on a revised IESO forecast. See footnotes for more information.

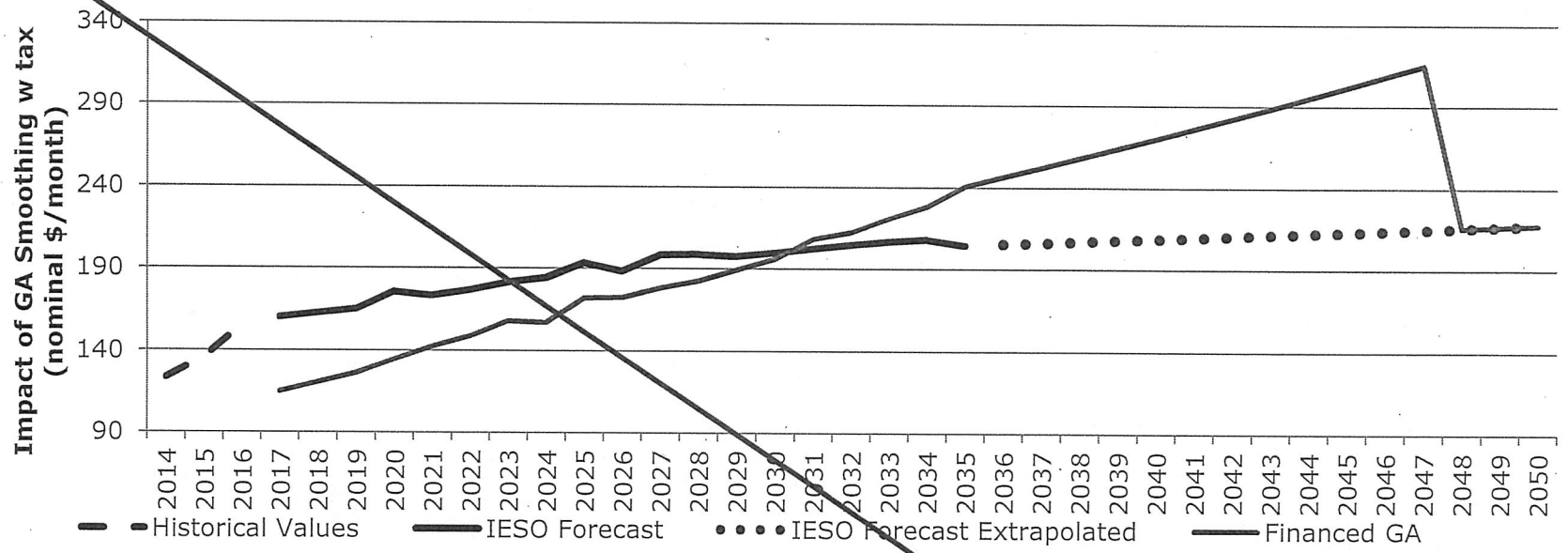
Residential (750 kWh/month)	Actual 2016	2017	2018	2019	2020	2021
Total Bill (includes HST)	**163**	**172**	**175**	**178**	**189**	**187**
Total Bill (excludes HST)	145	153	155	158	168	165
Impact of GA Financing		-40	-37	-35	-37	-28
Impact of Tax-Basing Social Programs		-2	-2	-2	-3	-3
Subtotal		110	115	120	128	135
8% rebate		-9	-9	-10	-10	-11
HST		14	15	16	17	18
Revised Bill (includes HST)	**163**	**116**	**121**	**126**	**135**	**142**
Change from Total Bill (includes HST)		-56	-54	-52	-54	-45
Year-over-Year Change		-29%	5%	5%	7%	5%
Change from Forecast		**-33%**	**-31%**	**-29%**	**-29%**	**-24%**

Average Class A ($/MWh)	Actual 2016	2017	2018	2019	2020	2021
Total (excludes HST)	**90**	**91**	**93**	**88**	**95**	**96**
Impact of GA Financing		-33	-31	-29	-30	-23
Impact of Tax-Basing Social Programs		-3	-3	-3	-3	-3
Revised Total (excludes HST)	**90**	**54**	**59**	**56**	**61**	**70**
Change from Total Bill (includes HST)		-37	-34	-32	-34	-26
Year-over-Year Change		-39%	8%	-5%	10%	14%
Change from Forecast		**-40%**	**-37%**	**-36%**	**-35%**	**-27%**

Fiscal Impact ($M)	17-18	18-19	19-20	20-21
Tax-Basing Social Programs	362	409	450	485

Notes: Based on IESO's revised OPO forecast as of December 2016. Includes the cancellation of LRP II and EFW, expansion of ICI. Does not include smoothed OPG rates. Above residential bill is based on a 750 kWh per month Toronto Hydro customer. "Social programs" refers to existing RRRP and OESP. While initiatives would take several months to implement, the above estimate for 2017 reflects a full-year impact. The 8% rebate above represents savings compared to status quo due to the reduction in the sub-total from GA financing. Fiscal savings as result of GA Smoothing.

GA Smoothing (Borrow $7 billion in 2017)



	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048
Average Monthly Residential Bill Impact of GA Smoothing, pre-tax *($/month)*	-40	-37	-35	-37	-28	-25	-21	-24	-19	-14	-18	-14	-7	-3	5	7	13	18	32	36	41	45	50	54	59	63	68	73	78	83	89	0
Total Accumulated Debt *($ billion)*	7	14	21	28	35	41	47	53	59	65	71	77	83	88	91	95	97	99	98	96	94	90	85	80	73	64	55	44	31	16	0	0
Total Change in Accumulated Debt *($ billion)*	7	7	7	8	6	6	6	7	6	6	6	6	5	5	4	3	3	2	-1	-2	-3	-4	-5	-6	-7	-8	-10	-11	-13	-14	-16	0

Notes: Assumes 30 year financing period and a nominal interest rate of 5.12% per year (compounded annually). Ratepayer GA payments increase annually beyond 2017 at 2.7 percentage points above inflation with no limit on GA over-payments. IESO forecast is based on IESO's revised OPO forecast as of December 2016. Includes the cancellation of LRP II and EFW, expansion of ICI. Does not include smoothed OPG rates. Above residential bill is based on a 750 kWh per month Toronto Hydro customer.

GA Smoothing – Residential Bills Lowered 25% (with Tax-Base Funded 15% Rebate)

- Total bill below is based on a revised IESO forecast and is adjusted by the Ministry to reflect the proposed expansion of RRRP and OESP. See footnotes for more information.

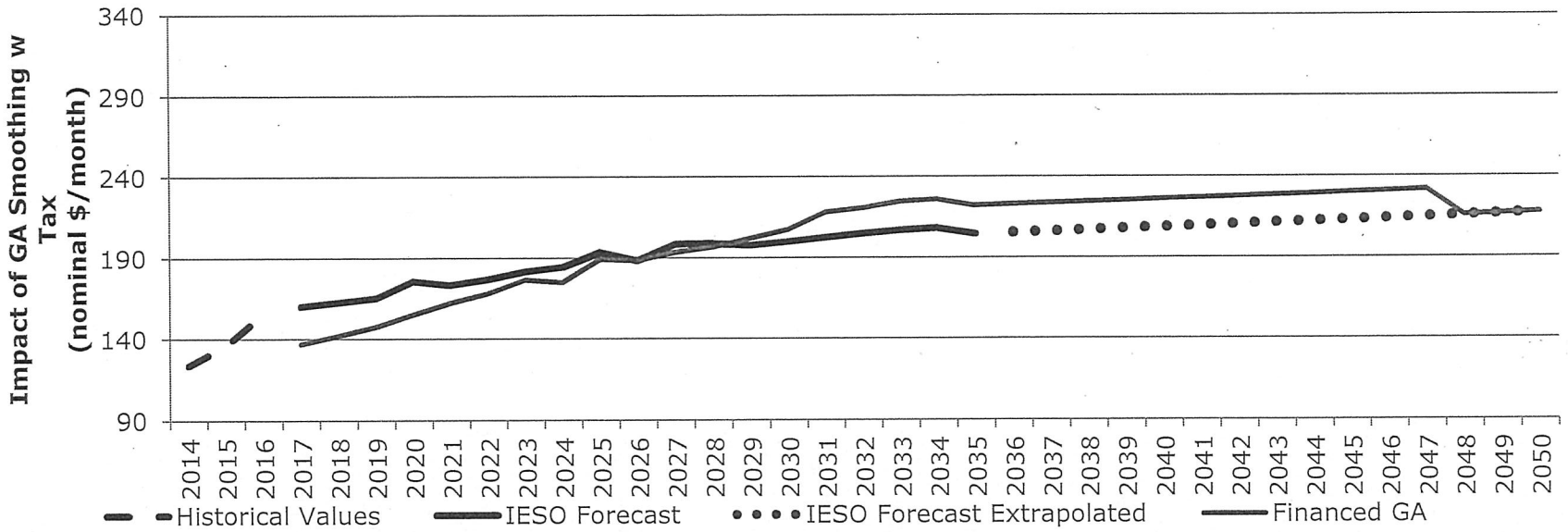
Residential (750 kWh/month)	Actual 2016	2017	2018	2019	2020	2021
Social Programs Expansion		0.5	0.7	0.9	1.1	1.2
Total Bill (includes HST)	**163**	**173**	**176**	**179**	**191**	**188**
Total Bill (excludes HST)	145	153	156	158	169	167
Impact of GA Financing		-21	-18	-16	-18	-10
Subtotal		132	137	143	150	157
15% rebate		-20	-21	-21	-23	-24
HST		17	18	19	20	20
Revised Bill (includes HST)	**163**	**130**	**135**	**140**	**147**	**154**
Change from Total Bill (includes HST)		-43	-41	-39	-44	-34
Year-over-Year Change		-20%	4%	4%	5%	4%
Change from Forecast		**-25%**	**-23%**	**-22%**	**-23%**	**-18%**

Average Class A ($/MWh)	Actual 2016	2017	2018	2019	2020	2021
Social Programs Expansion		0.7	1.0	1.3	1.4	1.6
Total (excludes HST)	**90**	**92**	**94**	**89**	**96**	**98**
Impact of GA Financing		-17	-15	-13	-15	-8
Revised Total (excludes HST)	**90**	**74**	**79**	**76**	**81**	**89**
Change from Total Bill (includes HST)		-18	-15	-13	-15	-9
Year-over-Year Change		-17%	6%	-4%	7%	10%
Change from Forecast		**-19%**	**-16%**	**-15%**	**-16%**	**-8%**

Fiscal Impact ($M)	17-18	18-19	19-20	20-21
Incremental Rebate (15%)	875	871	1,002	901

Notes: Based on IESO's revised OPO forecast as of December 2016 and adjusted by the Ministry to estimate a 1,500 kWh consumer connected to Toronto Hydro. Includes the cancellation of LRP II and EFW, expansion of ICI. Does not include smoothed OPG rates. Above residential bill is based on a 750 kWh per month Toronto Hydro customer. "Social programs" refers to existing RRRP and OESP. While initiatives would take several months to implement, the above estimate for 2017 reflects a full-year impact. The 8% rebate above represents savings compared to status quo due to the reduction in the sub-total from GA financing.

GA Smoothing (Borrow $4 billion in 2017)



	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048
Average Monthly Residential Bill Impact of GA Smoothing, pre-tax *($/month)*	-21	-18	-16	-18	-10	-8	-4	-8	-4	0	-4	-2	4	7	14	14	16	16	15	15	15	15	15	15	15	15	15	15	15	15	15	0
Total Accumulated Debt *($ billion)*	4	7	10	14	16	19	20	23	25	26	28	30	31	31	30	29	28	27	25	23	22	20	18	16	14	12	10	8	5	3	0	0
Total Change in Accumulated Debt *($ billion)*	4	3	3	4	2	2	2	3	2	1	2	2	1	0	-1	-1	-1	-1	-1	-2	-2	-2	-2	-2	-2	-2	-2	-2	-2	-3	-3	0

Notes: Assumes 30 year financing period and a nominal interest rate of 5.12% per year (compounded annually). Ratepayer GA payments increase annually beyond 2017 at inflation with a limit of $2.8 billion above the true cost of GA in any given year. IESO forecast is based on IESO's revised OPO forecast as of December 2016. Includes the cancellation of LRP II and EFW, expansion of ICI. Does not include smoothed OPG rates. Above residential bill is based on a 750 kWh per month Toronto Hydro customer.

GA Smoothing – Considerations (*Accounting Treatment: Does Province Control Entity?)*

Defining the Government Reporting Entity

- The government reporting entity should comprise government components and those organizations that are controlled by the government.

Determining Whether Control Exists

- Control is the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organization's activities.
- Whether a government controls an organization is a question of fact that must be determined by reference to the definition of control described in the prior paragraph and the particular circumstances of each case.
- Requires the application of professional judgment based on the definition of control and the substance of the relationship.
- It is the preponderance of evidence that would be considered in assessing whether a government controls an organization.

GA Smoothing – Considerations (*Accounting Treatment: Does Province Control Entity?*) (cont'd)

Indicators of Control

- There are certain indicators that provide more persuasive evidence of control:
  - Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization;
  - Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses;
  - Government holds the majority of the voting shares or a "golden share" 1(1) that confers the power to govern the financial and operating policies of the organization; and
  - Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations.

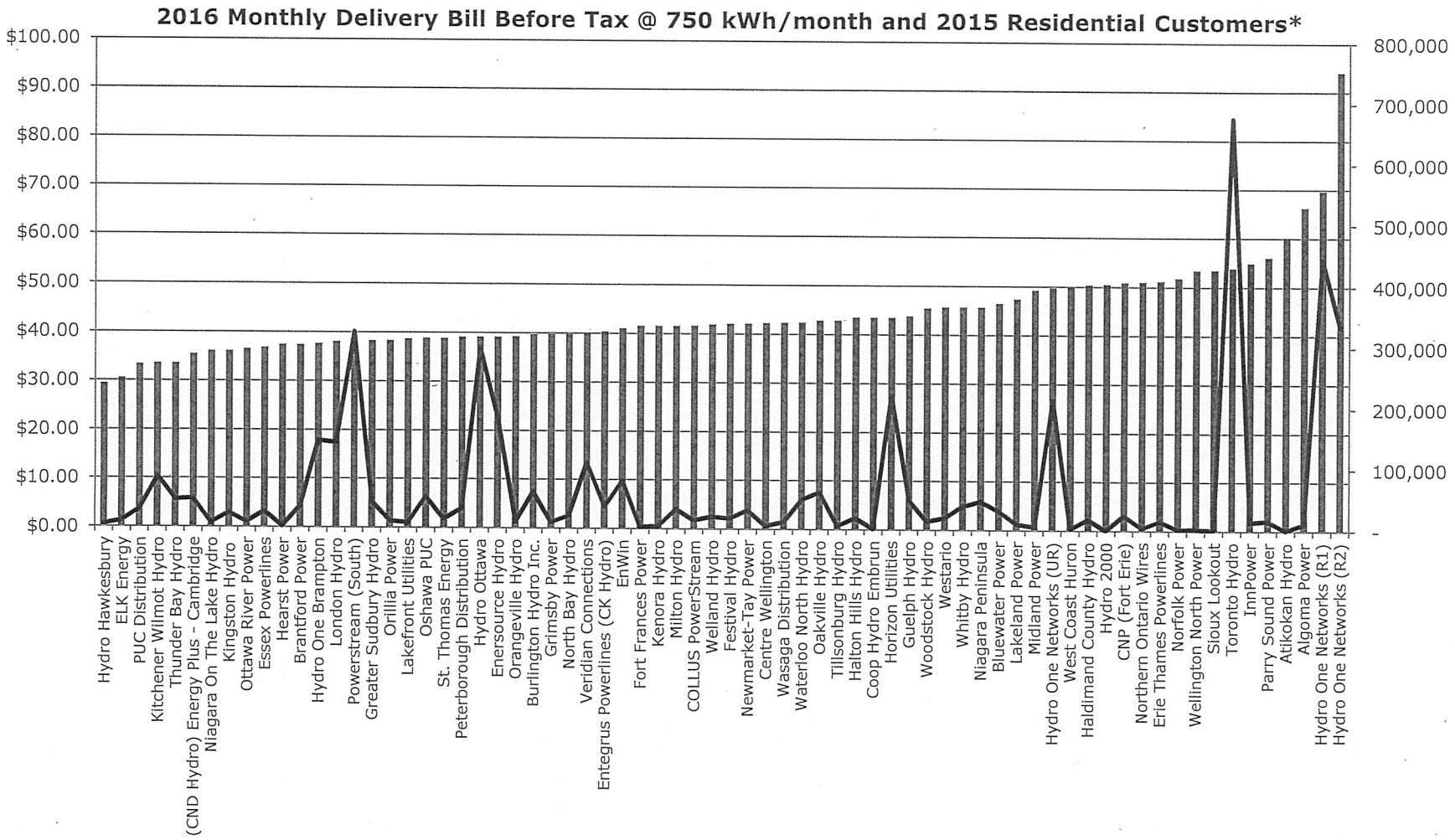
- Other indicators that may provide evidence of control exist when the government has the power to:
  - Provide significant input into the appointment of members of the governing body of the organization;
  - Appoint or remove the CEO or other key personnel;
  - Establish or amend the mission or mandate of the organization;
  - Approve the business plans or budgets for the organization and require amendments;
  - Establish borrowing or investment limits or restrict the organization's investments;
  - Restrict the revenue-generating capacity of the organization, notably the sources of revenue; and
  - Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources.

Overview of RRRP Enhancement – Options

	Program Envelope for H1 ($M)*	Monthly Rebate for R2:low density consumers (+/- from status quo)	Monthly Rebate for R1: medium-density customers	Monthly cost to ratepayers**
(Status Quo) RRRP program for R1 and R2 customers of Hydro One (as of January 2017)	$242M	$60.50/month	$0	$1.58/month
(1) Accelerates move to fixed distribution rates for those customers expected to see a reduction in costs.* **	$306-$332M	Distribution costs capped at $64.64/month. Benefit begins at 1,200kWh/month	Distribution costs capped at $55.70. Benefit begins at 955kWh/month.	$2.07/month
(2) Increase total RRRP envelope to reduce R2 and R1 distribution costs at 1000kWh/month to Algoma Power costs at 1000kWh/month	$292M	$66.61/month (+$6.11/month)	$4.91/month	$1.90/month
(3) Change RRRP program to a volumetric-based tiered benefit program where rebate will be dependent on customer consumption levels				
(3a) • Assume total RRRP program envelope of $300M and distribute to R2 & R1 based on tiered-benefit levels. • Tiered-benefit levels: divide customer base into 3 equal buckets. Allocate $300M to each bucket in proportion to contribution of H1 distribution revenues. • Assume fixed current $60.50 rebate no longer applies equally to all R2 customers.	$300M	750kWh or less: $37.65 (-$22.85) 750 to 1,200 kWh: $44.74 (-$15.76) 1,200 kWh or more: $60.69 (+$0.49)	600Kwh or less: $16.05 600kwh to 1,000Kwh: $19.22 1,000kwh or more: $25.67	$1.90/month
(3b) • Expand RRRP program envelope and distribute to both R2 & R1 customers based on tiered-benefit levels. • Tiered-benefit levels determined in same manner as 3(a). • Assume fixed current $60.50 still applies to all R2 customers	$542M	750kWh or less: $81.66 (+$21.16) 750kwh to 1,200 kWh:$91.90 (+$31.40) 1,200 kWh or more: $114.95 (+$54.45)	600 kWh or less: $23.19 600kwh to 1,000 kWh: $27.76 1,000 kWh or more: $37.09	$3.20/month

*All option costs are inclusive of status quo RRRP, except 3(a) which assumes a phaseout of the program.
**Only if left on ratebase. Will increase based on yearly expansion.
***Based on Hydro One estimates. Consumer benefit is total costs subtract the cap amount.
Note: figures do not include ~$50M in RRRP costs currently supporting Algoma Power and Hydro One Remotes

Wide Variation in Delivery Rates Across the Province



* Hydro One customer numbers are for 2016 and divided by rate class. Hydro One R2 does not reflect RRRP enhancement.

All RRRP Options – Fiscal Considerations

Ratepayer Impacts

- Some consumers with low consumption may still have proportional higher distribution rates. These customers will experience bill pressures both from the transition to fixed rates and from expected general rate increases (for which they are responsible for an increasing proportion).
- Hydro One distribution rates are expected to climb in coming years. The projected 2017 fixed rates of $64.64 (R2) and $55.70 (R1) will rise through the transition period. Therefore customers who receive a benefit will still experience bill increases.

Fiscal Impacts

- Having the original RRRP subsidy remain on the rate-base allows for program expansion from the fiscal plan while avoiding an additional $242M tax-base impact.
- Hydro One is expected to submit its cost of service application for 2018 and beyond (3-5 years) in spring 2017. The rate increases requested in this application could potentially increase the proposed fixed rate significantly, which would have significant impact on fiscal requirements and ratepayer impacts.
- Cost for Hydro One to implement and to upgrade customer billing systems is likely material. Those costs would ultimately be passed back to the customers of those LDCs.
- The Ministry will need to consider how consumption thresholds and/or benefit levels rise alongside the expected rise in distribution rates.
- There is a high risk of entrenching external subsidies, as there is no clear path to transition away from subsidies and toward a more sustainable, cost-based rate framework.

All RRRP Options – Implementation Considerations

- LDCs would track credit variances in a variance account and settle amounts with the IESO, which receives taxpayer funding from ENERGY/MoF in the same manner as the 8% rebate happens today.
  - While this new program would build on exiting transfer payment protocols in use under the ORECA, it would be complex for Hydro On to implement, as CIS upgrades are likely needed.
  - Depending on the option chose, OEB estimates that the implementation would take at least 6 months or more, following finalized regulations, given need to change customer billing systems and determine settlement procedures.
- RRRP focuses on ameliorating differences in distribution costs, not the entire Delivery line of the residential bill which also includes transmission and line loss costs.
- Eligibility for RRRP is currently determined by LDC density levels. Hydro One R1 has similar density levels to some other LDCs (e.g., InnPower). Thus if the intention is to limit expansion to just Hydro One R1, a new eligibility criteria would have to be developed (legal and regulatory risks would need to be explored).
- New legislation would be required to establish this program. Legal and regulatory risks (particularly with regards to legal authority and to the Ontario Energy Board's role in setting rates and incenting efficiencies) require further analysis.
  - Some options may impact OEB rate-setting processes and create disincentives towards Hydro One productivity and performance improvements.
- Providing a tax-based subsidy outside of exiting rate setting mechanism reduces incentives for customers and distributors to engage on operating costs and capital planning.
- The development of an appropriate program can be initiated through a letter to the Ontario Energy Board via s. 35 of the *Ontario Energy Board Act, 1998*.

First Nations Rate Assistance – Context

- On-reserve First Nations customers face unique challenges that impact electricity affordability, such as the poor quality of the housing stock on-reserve. These challenges result in significantly higher electricity consumption levels and costs.
- First Nations living on reserve are particularly vulnerable low-income consumers: the average income is considerably lower compared to First Nations living off reserve and compared to non-Indigenous populations*:
  - Average income of First Nations on reserve in Ontario: $21,100
  - Average income of First Nations off reserve in Ontario: $31,527
  - Average income of Non-Indigenous people in Ontario: $42,506*
  - Median incomes on smaller reserves can fall below $10,000 (e.g., Cat Lake FN).
- Employment rates also differ between on-reserve First Nations, off-reserve First Nations and Non-Indigenous individuals, as well as other indices of social vulnerability**:
  - 54% of Indigenous people over 15 years old and living on-reserve in Ontario are unemployed or not in the labour force.
  - The on-reserve unemployment rate is 18.3% compared to 6.4% in Ontario generally.
  - 67% of families residing on-reserve are single parent families, compared to the Canadian equivalent of 19%.

***Note:** Average income for those aged 15 and older in 2010
**** Note:** 2006 Census data

OEB First Nations Rate Report – Background

- Through the First Nations-Ontario Political Accord and Canada's Truth and Reconciliation Commission's Calls to Action, there is a renewed spirit to work together on issues of mutual interest, including resource benefits sharing, the treaty relationship, and jurisdiction.
- First Nation and Political-Territorial Organization leaders have advocated for the review of delivery charges associated with transmission and distribution assets within the context of historical grievances and the need for electricity rate relief for on-reserve customers.
- The Minister committed to consider options for addressing the issue at the Apr. 18, 2016 First Nations-Ontario Energy Table meeting.
- In June 2016, pursuant to s.35 of the OEB Act, the Minister issued a letter directing the OEB to prepare a report providing "*advice on options for an appropriate electricity rate (or rate assistance) for on-reserve First Nations electricity consumers.*"
- In order to inform its report, the OEB engaged with First Nations, including remote communities, the distributors serving them, and consumer groups such as the Low Income Energy Network, in a series of meetings across the province. It also established an Advisory Committee with the Chiefs of Ontario's Grievance Committee.
- 48 First Nations attended meetings held in the Fall of 2016 in London, Couchiching First Nation, Sudbury, Toronto and Thunder Bay. The OEB also held sessions with Local Distribution Companies (LDCs) and consumer groups.
- The OEB provided its report to the minister on December 29, 2016.

The Proposed Fair Hydro Act

May 3, 2017

Purpose

- Purpose is to walkthrough the main elements of the legislation.
- The Act consists of two components:
  - Part 1: Legislation to provide for the fair allocation of costs of electricity over time \
  - Part 2: Legislative amendments for social programs
- The proposed *Fair Hydro Act, 2017* would be an omnibus bill with 2 schedules: the *Ontario Fair Hydro Plan Act, 2017* and amendments to the *Ontario Energy Board Act, 1998*

2

Part 1 – Overview of Legislation to Provide for the Fair Allocation of Costs of Electricity Over Time

1. Ontario Fair Hydro Plan Act – Fundamental Principles
2. Brief Overview of the Legislation
3. Stakeholder Consultation and the Process to Prepare the Legislation
4. Building Blocks of the Legislation
   - What costs are part of the program?
   - How are the costs allocated fairly amount ratepayers now and in the future?
   - What consumers does the program apply to?
   - How is the program financed?
4. How the Legislation Works
   - Clean Energy Initiative
   - Clean Energy Costs and Benefits
   - Clean Energy Adjustments
   - Fair Adjustment
   - Fair Allocation Amount
   - Regulatory Asset and the Investment Asset
   - Issuance and Payment of Debt
   - Financing Plan
5. Who Does What
   - Minister of Energy
   - Role of OPG
   - Role of IESO
   - Role of LDCs
   - Role of OEB

3

Ontario Fair Hydro Plan Act – Fundamental Principles

- The actions taken by the Government of Ontario to achieve a clean, modern, and reliable electricity system have resulted in significant costs. The burden of financing the electricity system improvements and funding key programs has unfairly fallen on the shoulders of today's consumers.
- The proposed Ontario Fair Hydro Plan Act (OFPA) is founded on the principle that costs related to the development of a clean, modern and reliable electricity system (with a diverse supply mix) ought to be charged to those consumers, today and in the future, who will be the beneficiaries of those costs.
- The Government of Ontario is committed to ensuring that the costs of financing these investments are allocated fairly among present and future generations of consumers.
- The challenge inherent in the development of the legislation was the need to balance several key factors: the fundamental principles of the program, the program's desired accounting treatment, ratepayer interests, expectations of the financial markets, financeability, and legal considerations.

4

Stakeholder Consultation and the Process to Prepare the Legislation

- The development of the Ontario Fair Hydro Plan Act was preceded by extensive consultation, on an ongoing basis, with representatives from the Ontario Energy Board (OEB), IESO, Ontario Power Generation (OPG), the Ontario Provincial Controller's Office Division (OPCD), the Ministry of Energy, the Ministry of Finance, dealers, investment advisors and Canadian (and in some cases U.S.) counsel for each of the involved parties.
- As appropriate, other Ministries were circulated with drafts of the legislation and consulted on particular issues.
- Several drafts of the legislation were circulated among stakeholders and several mark-ups of draft legislation were received in response.
- Lengthy face to face meetings also took place with stakeholders and their counsel both as a group and individually.
- Legislative counsel were involved on a daily basis and produced multiple versions of the legislation.
- A steering committee chaired by the Deputy Minister met and were briefed weekly on the status of the legislation (i.e., the "Rate Mitigation Implementation Group" consisting of senior executives of the Ministry of Energy, Cabinet Office, Ministry of Finance, Treasury Board Secretariat, OFA, OPCD, OPG, OEB and IESO.

5

Brief Overview of the Legislation – Fair Allocation

- Legislation is based on the principle that the costs incurred to move to a clean, modern and reliable electricity system creates benefits that will be experienced by multiple generations of Ontario ratepayers and, therefore, in the interest of fairness, those costs should be shared by those multiple generations.
- The legislation does two things: (i) it establishes the fundamental elements of the fair allocation program, and, (ii) it puts the mechanisms in place to permit the financing of periodic shortfalls in revenue that are created by the fair allocation of electricity costs over multiple generations.
- With respect to the "fair allocation", the legislation identifies:
  - What costs ought to be more fairly allocated ("clean energy costs");
  - Mechanisms to allocate costs fairly among generations of consumers ("fair adjustment" and "fair allocation");
  - The consumers to whom the program applies ("specified consumers");
  - How the program is funded (borrowing on the strength of the revenue stream from consumers); and
  - The roles of various provincial entities in the program (i.e., Minister of Energy, Ontario Energy Board, IESO and OPG).

6

Brief Overview of the Legislation – Financeability

- In order to ensure the financeability of the program, considerable portions of the legislation are devoted to dealing with the "nuts and bolts" of what is required for successful financing including,
  - The quantification of the value of the regulatory asset;
  - The transfer of the regulatory asset to the (OPG) financing entity (which creates the "investment asset");
  - The establishment of the "invoicing" process that ensures the investor's "line of sight" to the investment asset;
  - The establishment of an OPG financing plan to ensure, among other things, an appropriate program of financing the shortfalls that are created by the deferred collection of revenues; and
  - Provisions setting out the way in which the financings are backed by amounts payable by specified consumers.

7

Building Blocks of the Legislation – What Costs are Part of the Program?

- In order to achieve its purpose, the legislation establishes the following "building blocks":
  - Clean Energy Initiative – This is the term used to describe the Government of Ontario's policies to foster growth and investment in and remove barriers and promote opportunities for clean and renewable energy sources and technologies and promoting conservation and demand management. The "clean energy costs" under the legislation arise from the "clean energy initiative".
  - Clean Energy Costs – These are costs (attributable to the "clean energy initiative") that are to be more fairly distributed among generations of consumers.
  - Clean Energy Benefits – These are the value of the benefits derived by the "specified consumers" (including the clean energy costs).
  - Clean Energy Adjustments – This is adjustment to a consumer invoice on a monthly basis to repay principal, interest and other financing.

8

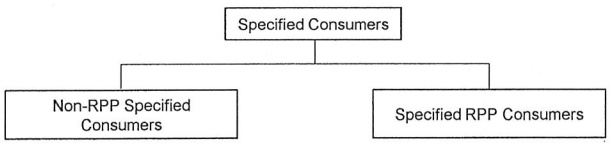
Building Blocks of the Legislation – How are the Costs to be Allocated?

- Fair Adjustment – This is the adjustment that gives the "relief" to certain specified consumers during the period from July 1, 2017 to June 30, 2021 (including this program's portion of the 25 per cent reduction).
- Fair Allocation Amount – This is the concept/mechanism by which the fair distribution of "clean energy costs" (including, for example, financing costs, the cost of the power contracts, and the costs of the fair adjustment) is calculated and implemented.

9

Building Blocks of the Legislation – What Groups of Consumers Does the Program Apply To?

- Specified Consumers – This is the defined group of consumers to whom the legislative program applies. These consumers are persons who have an account with an electricity vendor for the supply of electricity in Ontario and,
  - Have a demand for electricity of 50 kilowatts or less (or as otherwise prescribed);
  - Annually use not more than 250,000 kilowatt hours of electricity (or as otherwise prescribed);
  - Carry on a farming business (basically pursuant to the *Farm Registration and Farm Organizations Funding Act*);
  - Have an account with an electricity vendor that is for a "dwelling", condominium property, residential complex or co-operative housing; or
  - Are otherwise prescribed.



10

Building Blocks of the Legislation – How is the Program Financed?

- The ability to engage in the fair distribution of clean energy costs among the specified consumers requires financing during periods where the collection of the clean energy costs is, as part of the fair allocation, deferred to later years (thereby creating a revenue shortfall). A series of complex provisions are required to:
  - (i) Enable the financing, and
  - (ii) Meet requirements known to be important to rating agencies and investors.
- Regulatory Asset – This is fundamentally IESO's right to recover the revenues that it has deferred collecting because the clean electricity costs are being allocated across generations of ratepayers.
- Investment Asset – This is the asset that results when the regulatory asset is transferred to the (OPG) financing entities.
- The (OPG) financing entities will fund the acquisition (transfer) of the investment asset in the capital markets.

11

How the Legislation Works – Clean Energy Initiative

- The "clean energy initiative" concept is set out by definition. Its purpose is to establish the fundamental basis for the legislation.
- The definition is self-explanatory and is as follows:

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

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

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

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

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

12

How the Legislation Works – Clean Energy Costs and Benefits

- "Clean energy costs" are those costs that arise from the "clean energy initiative" and are allocated to the specified consumers for past, present and expected costs.
- The costs included in the "clean energy costs" include estimated amounts to be paid by IESO in adjustments made under section 25.33 of the *Electricity Act* (basically, the Global Adjustment provisions) which relate to contracts for,
  - Renewable energy generation or capacity;
  - Conservation and demand management, including shortage;
  - Energy efficiency; and
  - Natural gas generation and capacity (excluding certain contracts under section 78.2 of the *Ontario Energy Board Act* or as prescribed); and
  - Payments made under section 78.5 of the *Ontario Energy Board Act.*
- Other such costs to be included in "clean energy costs" may be prescribed
- These are the costs to be distributed fairly among the specified consumers through the "fair allocation amount".

13

How the Legislation Works – Fair Allocation Adjustment

- The fair adjustment provisions are set out in Part II of the legislation.
- Part II establishes that the rate that will be payable by "specified RPP consumers" from May 1, 2017 to April 30, 2018 for the first fair adjustment is the rate that would be required from this program to contribute to that consumer to receiving a total a monthly invoice amount that is 25 per cent lower than the monthly invoice amount for that consumer under the "comparison rate". The comparison rate is a rate to be determined by the OEB using the method prescribed by regulation under s 79.16(1)(b) of the OEB Act.
- Part II includes a transition provision in circumstances where for technical or operational reasons invoices cannot be adapted in time for the issuance of the first invoices under the program (i.e., adaptation of invoices must be implemented by August 1, 2017 followed by a subsequent lump sum credit to the consumer once the invoice is adapted).
- The Lieutenant General in Council is given the authority after April 30, 2018 to make regulations prescribing the rate for electricity (and therefore prescribing the "fair adjustment" until June 30, 2021). After June 30, 2021, regulations will have regard to the fair allocation amount and clean energy adjustments.

14

How the Legislation Works – Fair Allocation Amount

- The Minister sets the fair allocation amount.
- The establishment of the "fair allocation amount" is required to,
  - Fairly measure and allocate the estimated clean energy costs (and the clean energy benefits) among the "specified consumers" for applicable "reference periods"; and
  - Take into account (in the fair allocation) funding obligations (financing) that have been incurred (largely arising from the redistribution of cost across generations of consumers).
- The "fair allocation amount" is to have regard to:
  - Clean energy costs and allocating the appropriate proportionate amount of the clean energy benefits to the "specified consumers" (in the applicable "reference periods");
  - Reasonable assumptions regarding the time value of money, the number of consumers in the "reference period"; and
  - Expected electricity consumption for the reference period.

15

How the Legislation Works – Regulatory Asset and Investment Asset

- IESO will have a funding deferral resulting from the reduction in amounts collected from specified consumers during the first 4 years because of the fair adjustment. The IESO's funding deferral will be financed indirectly through the debt capital markets.
- The Act enables the financing of this IESO funding deferral, on an ongoing basis, by establishing the funding deferral as a "regulatory asset". In simple terms, the regulatory asset is IESO's right to recover the revenues that it has deferred collecting.
- IESO will then legally transfer portions of this right to recover revenues to the (OPG) financing entities.
- The (OPG) financing entity that receives the transfer of the right to recover revenues acquires a right to impose, invoice and collect those regulatory charges (called the "clean energy adjustments"). This is generally described in the legislation as the "investment asset".
- The (OPG) financing entity will need to finance its acquisition (from IESO) of the investment asset, and it will do so in the capital markets.

16

How the Legislation Works – Issuance and Payment of Debt

- Debt securities and related funding obligations will be incurred by one or more (OPG) financing entities. These entities will be managed by OPG, as the financial services manager.
- The financings will be backed primarily by the "clean energy adjustments" payable by specified consumers. The "clean energy adjustments" will track the actual payment obligations incurred by the financing entities when they become due and payable. To ensure intergenerational fairness, these amounts will be managed by OPG to align with the "fair allocation amounts" ascribed to each of the next 60 six month periods ending in 2047 (or such later period as prescribed).
- IESO and each electricity distributor will act as agent for the financing entities to impose, invoice and collect the clean energy adjustments, which will be channeled through to pay each financing entity's related funding obligations.
- To support the program, the Government of Ontario will be expected to provide certain performance guarantees, indemnities and bond-purchase covenants. The terms of these obligations will be worked out over time in connection with the marketing of financings through OPG. The goal will be achieve highest rated securities, although that will largely depend on issues such as the strength of the Government of Ontario's undertakings not to adversely affect the program through subsequent legislation.

17

How the Legislation Works – Financing Plan

- The Financing Plan is prepared by the Financial Services Manager (OPG).
- The Financing Plan is the plan which is intended to set out when a "funding obligation" (financing) should be incurred so that the (OPG) financing entity can raise money to acquire the "investment interest" from IESO.
- There are rules that apply to the Financing Plan:
  - It must align with the "estimated finance amount" that will become due and payable during a "reference period";
  - It must take into account the "fair allocation" and any "fair adjustment";
  - It must plan to implement the financing in a reasonable and cost effective manner that reflects prevailing market terms and conditions; and
  - It must be based on certain reasonable assumptions set out in regulations (for example, related to anticipated IESO shortfalls, maturity of funding obligations, availability of refinancings, redemption opportunities and liquidity, and similar assumptions).

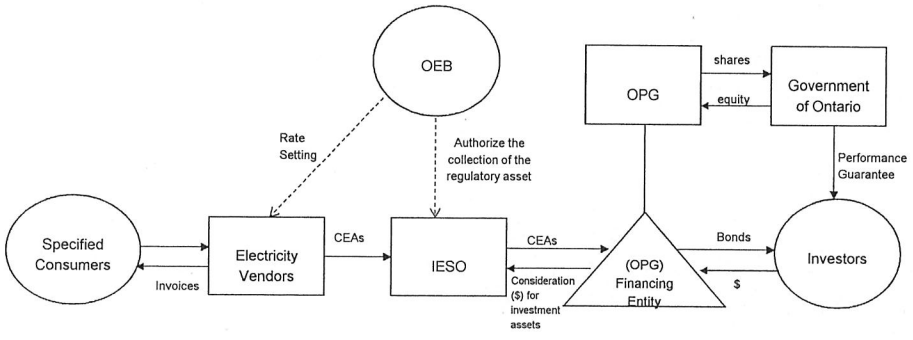
18

How the Legislation Works – Financing Plan (Continued)

- The (OPG) Financial Services Manager must incur funding obligations in conformity with the applicable Financing Plan.
- The Financing Plan will guide OPG's decisions regarding the repayment terms of the debt securities to be issued by financing entities. The Financing Plan will also deal with fundamental issues, such as the alignment (using derivatives) of any foreign currency obligations incurred by financing entities with the Canadian dollar cash flows arising through the clean energy adjustments.

19

How the Financing Structure Works



Note: CEAs are "clean energy adjustments"

20

Who Does What – Role of the Minister of Energy

- Determine the "fair allocation amount" applicable for each reference period. The fair allocation amounts will be set for all reference periods at the beginning of the program, based on reasonable expectations and forecasts at that time.

21

Who Does What – Role of the OPG

- As financial services manager, OPG will be responsible for the following under the Act:
  - Prepare and implement Financing Plan.
  - Establish and administer the financing entities.
  - Capitalize the financing entities by acquiring subordinated debt and equity, as required to achieve OPG's accounting and capital markets objectives.
  - Estimate and "true up" periodic finance amounts, to be passed through as regulatory charges in the form of Clean Energy Adjustments.

22

Who Does What – Role of IESO

- Calculate and record IESO funding shortfalls from time to time in a variance account, giving rise to a right of recovery from specified consumers to the extent not funded through the financings.
- Transfer the IESO's rights of recovery to (OPG) financing entities, in consideration for cash payments made by the financing entities from the proceeds of their financings.
- Coordinates the collection of "clean energy adjustments" from Electricity Distributors.
- Remit "clean energy adjustments" to (OPG) financing entity, for payment of financing entity funding obligations.
- Fund initial interest costs and expenses during the first 4 years.

23

Who Does What – Role of LDCs

- Obligation to invoice specified consumers.
- Collect, as agent of the investment interest owners, "clean energy adjustments" from specified consumers.
- Hold money received for clean energy adjustments in trust until remittance to the IESO.

24

Who Does What – Role of the OEB

- Determine and set rates to account for fair adjustments, fair allocations and clean energy adjustments (monthly adjustments).
- Determine and set rates and process to allow IESO to recover funding shortfalls (to the extent such amounts are not transferred to an (OPG) financing entity and financed in the capital markets).
- Review the administrative costs of OPG in connection with the administration of the program.

25

Part 2 – Overview of Legislative Amendments for Social Programs

- As part of the proposed Ontario Fair Hydro Plan, the Ministry of Energy is proposing amendments the *Ontario Energy Board Act, 1998* (OEBA) to enable the following measures:
  - Enhancing and providing tax-based funding for Rural or Remote Electricity Rate Protection (RRRP) through new enhanced rate protection for residential customers with high distribution rates;
  - Enhancing and providing tax-based funding for the Ontario Electricity Support Program (OESP); and
  - Creating a new First Nation On-Reserve Delivery Credit and providing for tax-based funding.

26

Overview of RRRP and Broadened Distribution Rate Protection

- Section 79 of the *Ontario Energy Board Act* would be amended to provide the Ministry the authority to prescribe, through regulation, classes of consumers whose cost would be transferred from the rate-base to the tax-base.
- If the proposed legislative amendments are approved, the government intends to propose regulatory amendments that would prescribe Hydro One's R2 customers as receiving RRRP from appropriated funds effective July 1, 2017. This would fulfill the government's intention to transfer the majority of the costs of administering the RRRP program to the tax-base.
- In addition, Energy is proposing legislative amendments that would broaden rate protection by creating a new distribution rate protection program to complement RRRP. This new program would be funded through tax payers.
- Distribution rate protection would be extended to eligible residential customers served by LDCs with the highest distribution costs.
  - Proposed legislative amendments would enable a maximum monthly base distribution charge to established through regulations.
- If the proposed legislative amendments are approved, the government intends to prescribe by regulation both program details and the residential customers eligible for broadened distribution rate protection served by the following LDCs:
  - Hydro One (R1 and R2 rate classes), Algoma Power, Atikokan Hydro, InnPower, Chapleau Public Utilities Commission, Sioux Lookout Hydro, Lakeland Power (Parry Sound service territory) and Northern Ontario Wires Inc.

27

Ontario Electricity Support Program

- Proposed legislation related to the Ontario Electricity Support Program (OESP) would shift program funding from the rate base to the tax base.
  - Tax-based funding would only kick in once the existing OESP variance account is depleted, which is expected to happen in the fall of 2017.
- To allow for the existing program structure to stay in place until tax-based funding kicks in, proposed new legislation would only come into force via a proclamation Order in Council, on a date to be determined.
  - This would ensure that existing OEB authorities remain in place while ratepayer funding is being used.
- In addition, a new authority to allow the OEB and the Ministry of Community and Social Services (MCSS) to share data on customers to support increased participation in the OESP program among Ontario Works and Ontario Disability and Support Program clients would be put in place.
  - Information Privacy Commissioner (IPC) staff were consulted, and customer consent is reflected.
  - This information sharing component will come into force at Royal Assent, allowing OEB and MCSS to begin this process quickly, and support increasing OESP participation levels.

28

First Nations Delivery Credit

- Energy is proposing legislative amendments that would establish a first Nation Delivery Credit for On-Reserve Consumers. This new program would be funded through tax payers.
- The proposed First Nation Delivery Credit would provide:
  - All prescribed on-reserve consumers with a credit for the entirety of their delivery line or with a credit for the monthly service charge.
  - The costs that are covered by the delivery credit are also described in legislation.
- If the proposed legislative amendments are approved, the government intends to propose regulatory amendments that would:
  - Establish the class of customers eligible;
  - Determine what is considered on-reserve; and
  - Determine the method of calculating the delivery credit.

29

Ontario

Ontario's Fair Hydro Plan:
Providing Relief for Consumers

Technical Briefing
Ontario Ministry of Energy

March 2, 2017

Outline of Technical Briefing

1. Overview of Ontario's Electricity Market

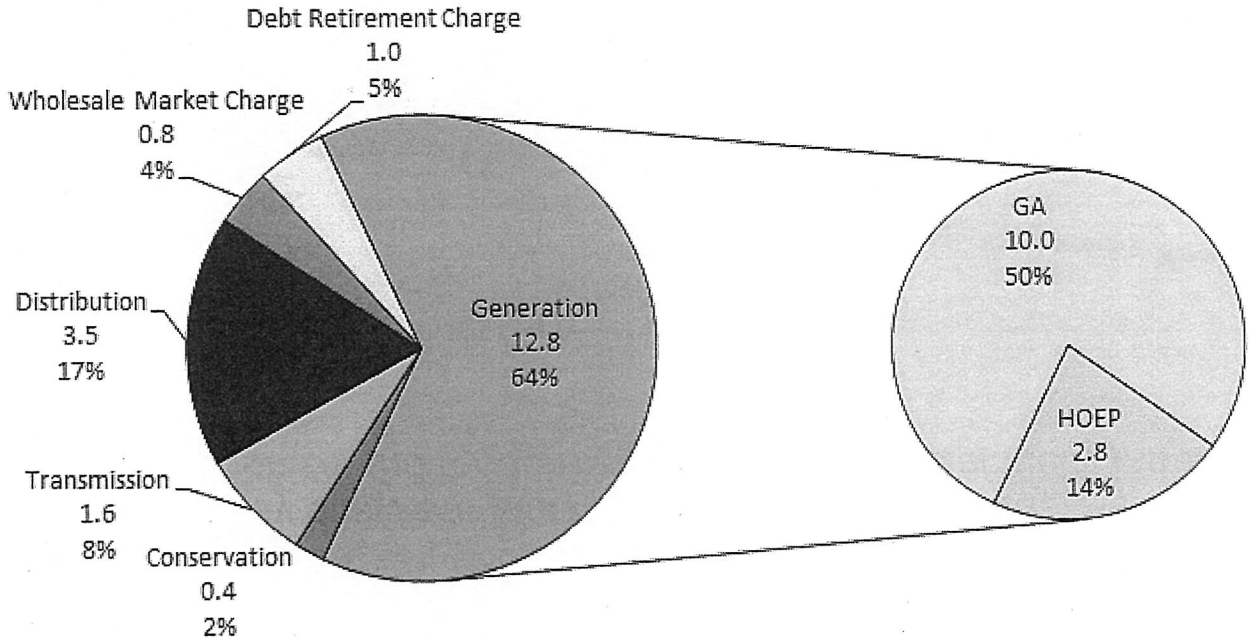
2. Ontario's Fair Hydro Plan – Providing Relief for Consumers

3. Questions

Ontario's Electricity Market

- In 2015, generation accounted for 64% of total electricity system costs. Total system costs in 2015 were $20 billion.

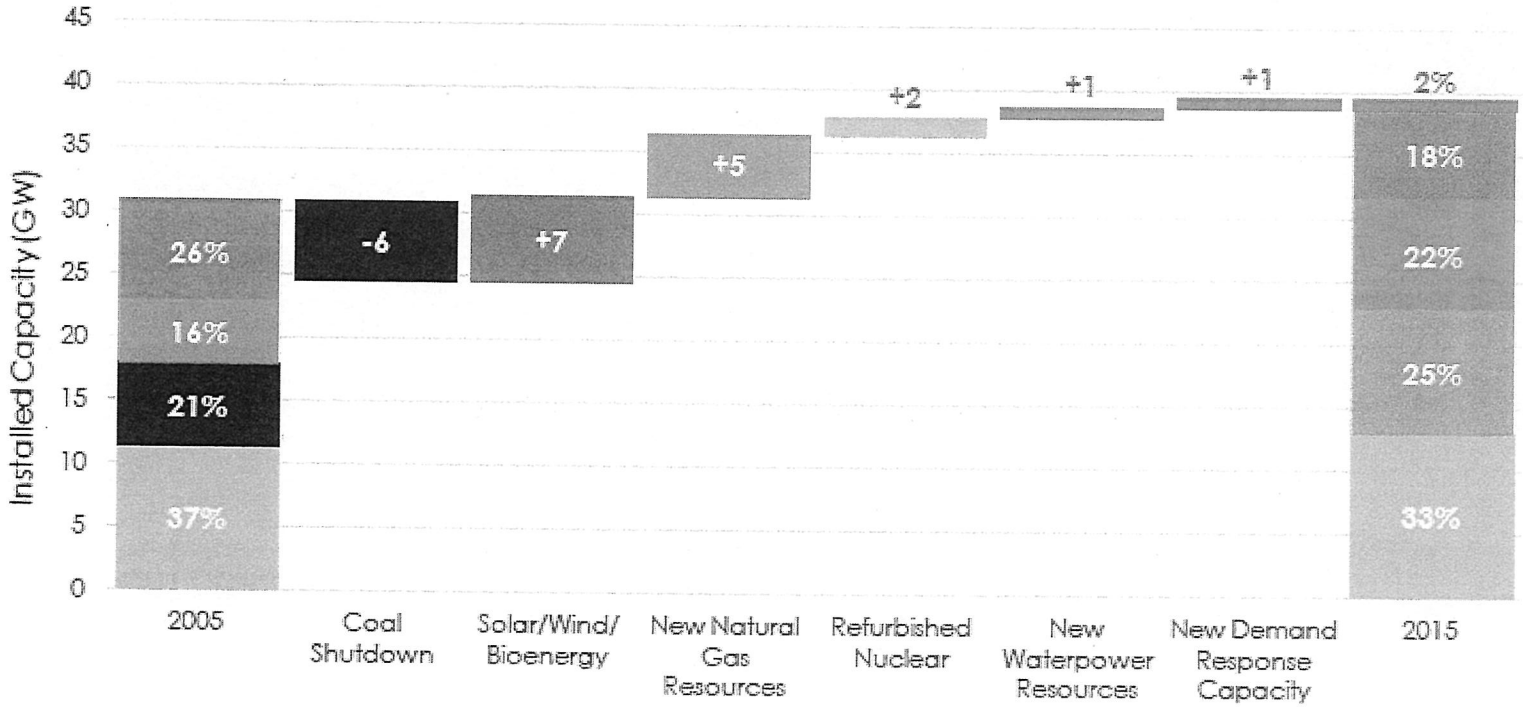
2015 Electricity System Cost
$ billion



Source: IESO

Significant Change in Supply Mix

- Between 2005 and 2015, government invested more than $50 billion in the electricity system, including $35 billion in electricity generation to restore reliability, replace coal and meet environmental objectives.
  - Electricity costs are increasing as necessary investments are made to decarbonize and modernize the province's electricity infrastructure.

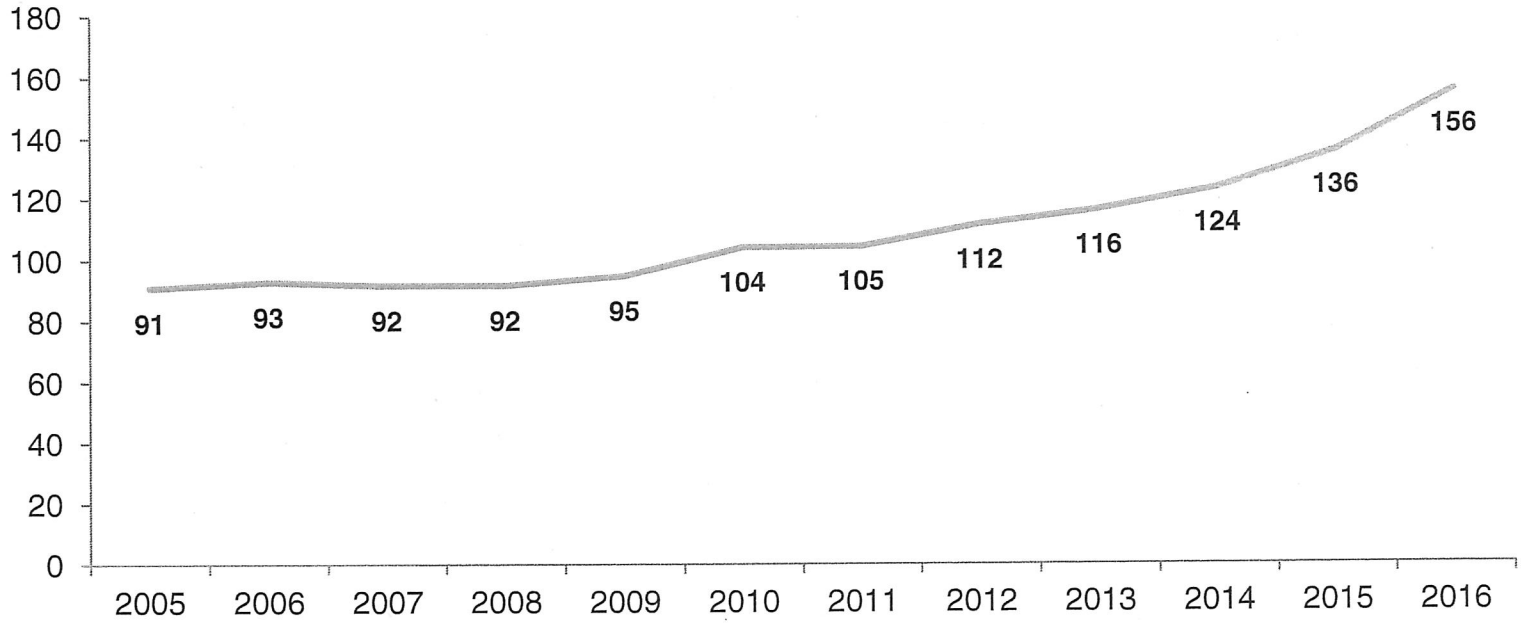


Source: *IESO*

Electricity Prices Have Increased

- Since 2010, electricity prices have increased at a rate higher than the Consumer Price Index (CPI).

Typical Residential Electricity Bills
in $ per month, 750 kWh consumption



Source: *Ministry of Energy*

Recent Actions To Mitigate Electricity Rates

- Following the 2016 Throne Speech, several actions were announced to further reduce electricity costs.
  - As of January 1, 2017, Ontario is rebating an amount equal to the provincial portion of the HST to reduce eligible residential, small business and farm electricity bills by 8%.
  - Expanded support available to eligible rural ratepayers by updating Rural or Remote Rate Protection (RRRP) with additional relief, decreasing total electricity bills by an average of $45 each month when combined with the 8% rebate.
  - Expanding the Industrial Conservation Initiative (ICI) – up to one-third savings for participants.
  - Suspending the LRP II and the Energy from Waste Standard Offer Program (EFWSOP) – up to $3.8 billion in cost savings.
  - Limiting the Feed-In Tariff (FIT) 5 procurement target to 150 MW and suspending future FIT procurements – up to $129 million in cost savings.

Ontario's Fair Hydro Plan

Ontario's Fair Hydro Plan

- Ontario is lowering electricity bills by 25 per cent for the typical residential customer and holding rate increases to the rate of inflation for four years. Small businesses and farms would also benefit from this initiative.

- People with low incomes, those served by local distribution companies (LDCs) with the highest distribution costs, OESP recipients and On-Reserve First Nation households would benefit from even greater reductions to their electricity bills.

- These new measures will cost the government up to $2.5 billion over the next three years.

- Government intends to introduce legislation to enable Ontario's Fair Hydro Plan.

1. Refinancing Global Adjustment

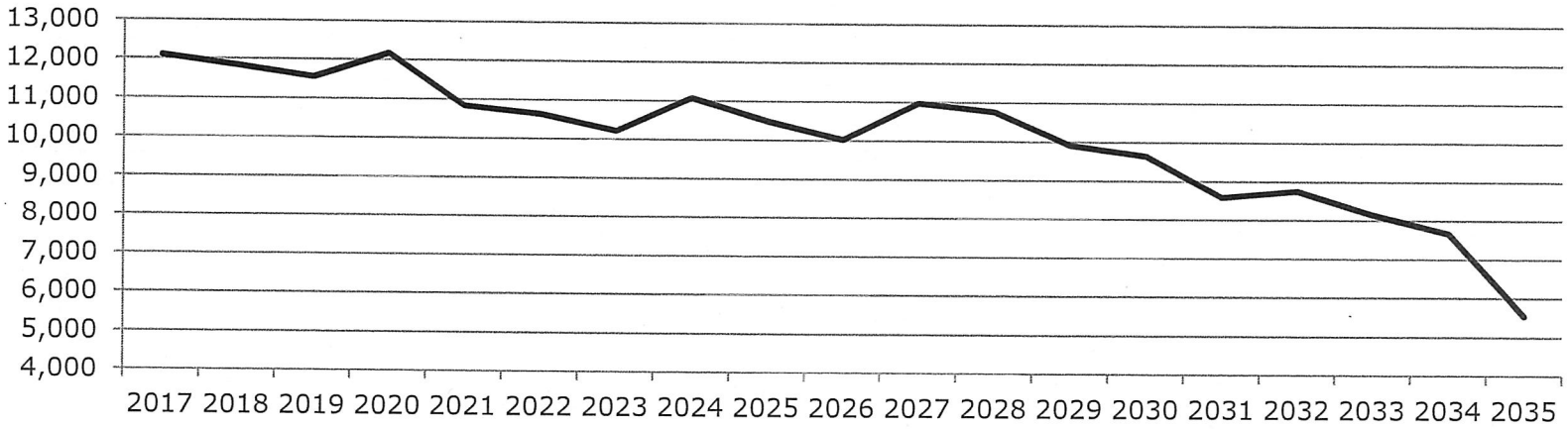
Refinancing the Global Adjustment

- Refinancing the Global Adjustment (GA) would provide significant and immediate rate relief by spreading the cost of electricity investments over a longer period of time.
  - 25% reduction on average for the typical residential customer and rates would follow inflation for the next 4 years.

- Under current forecasts, the immediate reduction (i.e., the financed portion) in the GA would be about $2.5 billion per year on average over the first ten years, with a maximum annual interest cost of $1.4 billion.

- This measure would share the associated costs more fairly. The chart below shows how Global Adjustment (GA) cost is front-end loaded and forecast to decline over time.

Forecast Global Adjustment Cost (nominal $ million)



Source: IESO

Policy Rationale

- The majority of the province's electricity generators are under 20-year contracts. Many of these generators will be able to operate past their contract term.

- By recognizing that generation assets are expected to continue to provide benefit to future ratepayers, beyond the term of current contracts, future ratepayers are expected to be able to utilize these assets and reduce the need to finance the development of new generation assets.

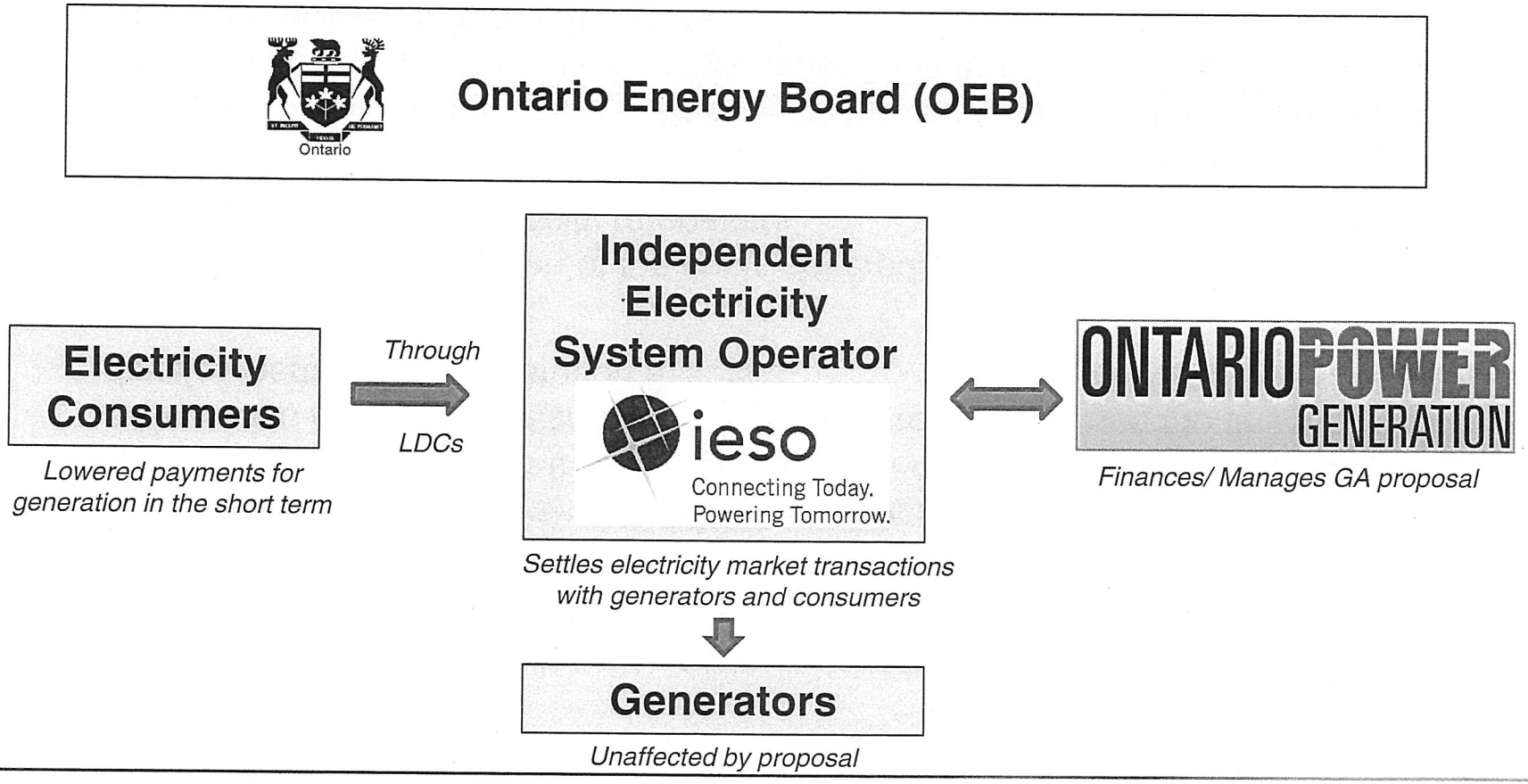
- In the early years, a portion of the costs covered by the GA would be financed to reduce pressure on electricity ratepayers.

- In the later years, when some system costs are expected to be reduced due to continued operation of existing assets under 20-year contracts, the cost of financing would be recovered from ratepayers.

"The amount consumers pay today could be reduced by stretching capital amortization periods to match the expected productive lives of the assets. In this way, the costs of generation charged to households would more closely reflect the true economic costs of the assets."
Globe and Mail Op-Ed (February 28, 2017) – Ivey Business School

Implementation

- The following entities would implement the proposed Global Adjustment (GA) refinancing mechanism.
  - The government intends to introduce legislation that would, if passed, enable IESO and OPG to work together to refinance the GA over a longer period of time. The legislation would also outline the role for the OEB, as it relates to the financing proposal.



2. Helping Vulnerable Consumers

Helping Vulnerable Electricity Consumers

- Fair Hydro Plan initiatives to help vulnerable consumers include:
  - Broadening Rural or Remote Rate Protection (RRRP) program to provide distribution charge relief for the customers of the costliest local distribution companies (LDCs).
  - Enhancing the Ontario Electricity Support Program (OESP) and working to ensure the program uptake is as close as possible to 100%.
  - Establishing a new First Nations On-Reserve Delivery Credit.
  - Establishing a new Affordability Fund which would support Ontarians who have difficulty paying their electricity bills to be able to access energy efficiency improvements.

- All of these initiatives would provide benefits to eligible consumers on top of the benefits they would receive from Global Adjustment (GA) refinancing.

- As part of the Fair Hydro Plan, these programs would be funded by provincial revenues, reducing regulatory charges for all Ontario ratepayers.
  - These programs would be funded by provincial revenues because they all provide targeted benefits to vulnerable consumers.

Broadening Rural or Remote Electricity Rate Protection (RRRP)

- Rural or Remote Rate Protection (RRRP) provides a rate subsidy to rural or remote residential customers who are faced with higher distribution costs compared to urban areas.
  - The RRRP is currently provided to approximately 350,000 Hydro One R2 residential customers in Ontario.

- The Province would expand the RRRP to provide distribution charge relief to additional hydro customers served by local distribution companies (LDCs) with the highest distribution rates, including: Hydro One R1, Northern Ontario Wires Inc., Lakeland Parry Sound, Chapleau PUC, Sioux Lookout Hydro, InnPower, Atikokan Hydro and Algoma Power. This would extend RRRP availability to about 800,000 customers.

- The new benefits would vary from LDC to LDC. For example:
  - A Hydro One R2 customer consuming 2,500kWh a month would see distribution cost reductions of around $75 a month.
  - A Hydro One R1 customer consuming 1,000kWh a month would see distribution cost reductions of around $18 a month.
  - An InnPower customer consuming 1,000kWh a month would see distribution cost reductions of around $12 a month.

- The government intends to introduce legislation to broaden the RRRP and to move forward in having RRRP costs be funded by provincial revenues, reducing regulatory charges for all Ontario ratepayers.

Enhancing the Ontario Electricity Support Program (OESP)

- The OESP would be enhanced by increasing its monthly credits by 50%, expanded to cover more low-income Ontarians, and increasing uptake to as close to 100% as possible.
  - Sliding Scale #1 outlines basic program benefits, and Sliding Scale #2 outlines enhanced benefits for Indigenous households, electrically heated households, and households with certain medically intensive medical equipment.
- The government intends to introduce legislation to enhance the OESP and to move forward in having OESP costs be funded by provincial revenues, reducing regulatory charges for all Ontario ratepayers.

Existing OESP Credit Scales

Sliding Scale #1	Household Size						
Income Bracket	1	2	3	4	5	6	7 +
< $28,000	$30	$30	$34	$38	$42	$50	$50
$28,001 - $39,000			$30	$34	$38	$42	$50
$39,001 - $48,000					$30	$34	$38
$48,001 - $52,000							$30

Sliding Scale #2	Household Size						
Income Bracket	1	2	3	4	5	6	7 +
< $28,000	$45	$45	$50	$55	$60	$75	$75
$28,001 - $39,000			$45	$50	$55	$60	$75
$39,001 - $48,000					$45	$50	$55
$48,001 - $52,000							$45

Proposed +50% OESP Credit Increase*

Sliding Scale #1	Household Size						
Income Bracket	1	2	3	4	5	6	7 +
< $28,000	$45	$45	$51	$57	$63	$75	$75
$28,001 - $39,000		($40)	$45	$51	$57	$63	$75
$39,001 - $48,000			($35)	($40)	$45	$51	$57
$48,001 - $52,000					($35)	($40)	$45

Sliding Scale #2	Household Size						
Income Bracket	1	2	3	4	5	6	7 +
< $28,000	$68	$68	$75	$83	$90	$113	$113
$28,001 - $39,000		($60)	$68	$75	$83	$90	$113
$39,001 - $48,000			($52)	($60)	$68	$75	$83
$48,001 - $52,000					($52)	($60)	$68

*Note: The proposed higher scale, including the amounts in circles are proposed and will be refined in consultation with the OEB.

First Nations On-Reserve Delivery Credit

- In 2016, the Minister of Energy asked the Ontario Energy Board (OEB) to develop options for a First Nation delivery credit for households.

- The OEB, engaging with First Nations, including remote communities, the distributors serving them, and consumer groups, developed the following recommendations:
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  - Automatically qualify on-reserve First Nations households (~21,500 customers).

- The government intends to introduce legislation to create the First Nations On-Reserve Delivery Credit and to move forward in having its costs be funded by provincial revenues, reducing regulatory charges for all Ontario ratepayers.

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- The Affordability Fund would provide LDCs with an additional tool to help customers in need. LDCs would use the Fund to provide support to customers for energy efficiency improvements to help reduce their future electricity bills.

- Measures supported by the Fund are expected to be similar to those available under the existing low-income conservation program, such as energy efficient lighting and appliances and, for electrically heated homes, insulation and weather stripping. Cold climate air source heat pumps would also be an eligible measure.

- The Province intends to work with Hydro One, in consultation with all other LDCs, to establish an independent Trust to serve as the administrator of the Affordability Fund.

- The Province would pay for the Fund through provincial revenues.

3. Enhancing Competitiveness for Small Manufacturers and Industrials

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- Small manufacturers would also benefit from funding social programs through provincial revenues.

- In addition, the Ministry would assist small manufacturers and industrials' participation in ICI through a targeted outreach campaign delivered by the Ontario Chamber of Commerce (OCC).

4. Market Efficiencies / Bending the Cost Curve

Ongoing Efforts To Bend The Cost Curve of Ontario's Electricity System

- Since 2010, the government has taken a number of important actions to reduce electricity system costs, including:

  - Renegotiating the Green Energy Investment Agreement to reduce contract costs by $3.7 billion.

  - Reducing Feed-In Tariff (FIT) prices saving ratepayers at least $1.9 billion.

  - Introducing a competitive Large Renewable Procurement (LRP) process to drive down costs approximately $1.5 billion lower than the 2013 LTEP forecast.

  - Deferring the construction of two new nuclear reactors at Darlington, avoiding an estimated $15 billion in new construction costs.

  - Maximizing the value of our existing nuclear fleet by starting Bruce refurbishments in 2020 instead of 2016, thus helping to achieve $1.7 billion in savings and by continuing to operate Pickering up to 2024, pending regulatory approvals, which could save ratepayers about $600 million.

Improving Electricity Sector Efficiency

The Ontario Energy Board (OEB)

- The Ontario Energy Board (OEB) regulates and licences more than 70 Local Distribution Companies (LDCs) in the province. The OEB would identify opportunities for cost efficiencies by:
  - Encouraging shared partnerships on services between utilities, which will help reduce costs and encourage further innovation for small to medium sized utilities;
  - Reviewing regulatory requirements to reduce "red tape" and eliminate unnecessary costs on LDCs; and
  - Looking at opportunities to further drive transmitter and LDC efficiencies and productivity improvements, including the use of innovative technologies and business processes.

Independent Electricity System Operator

- The IESO plans for the province's electricity needs, balances the supply and demand for electricity in Ontario in real time and administers conservation programs.

- The IESO's Market Renewal includes such initiatives as developing a capacity auction process, introducing a day-ahead energy market, etc.

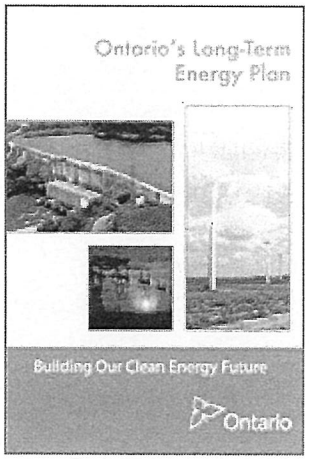
- Changes related to IESO's Market Renewal initiatives are estimated to save at least $200 million per year, starting in 2021.

2017 Long-Term Energy Plan

- The Ministry of Energy is developing the next Long-Term Energy Plan (LTEP) after receiving feedback from the public, stakeholders and indigenous communities during the engagement process that took place from October to January 2017.

- The LTEP process is designed to be iterative and flexible and only commit resources as demand needs become clearer.

- The Ministry of Energy anticipates that the next LTEP will be published in spring 2017.





Ontario

Ontario's Fair Hydro Plan:
Providing Relief for Consumers

Technical Briefing
Ontario Ministry of Energy

March 2, 2017

Outline of Technical Briefing

1. Overview of Ontario's Electricity Market

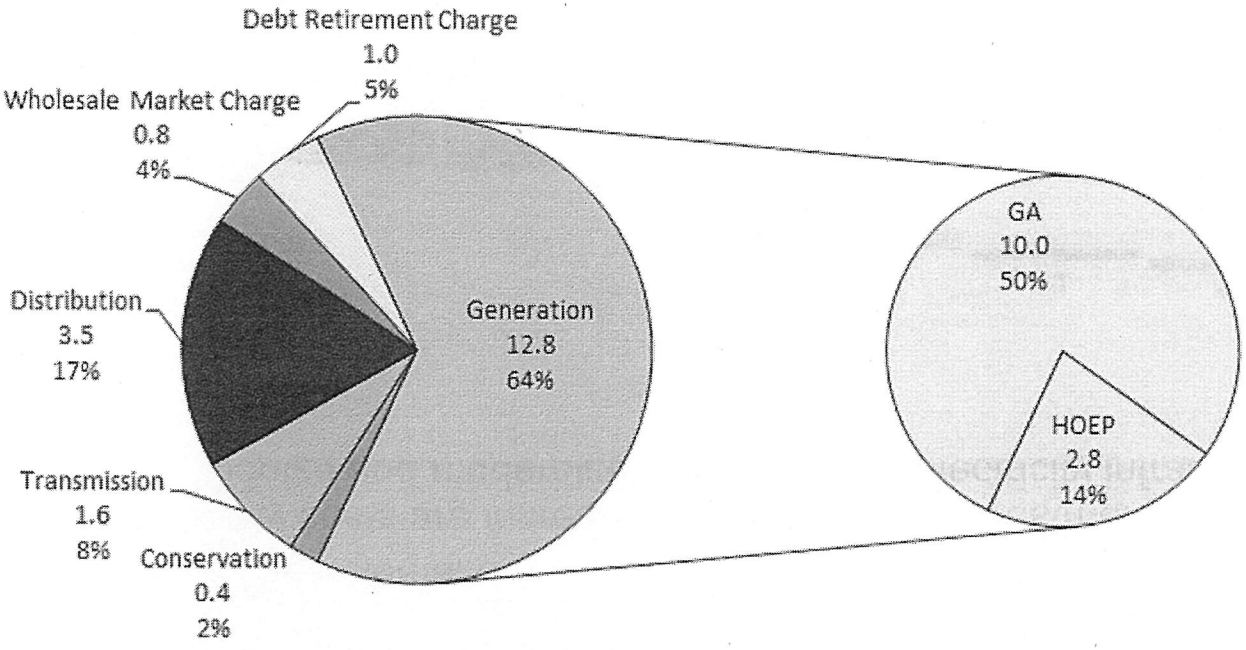
2. Ontario's Fair Hydro Plan – Providing Relief for Consumers

3. Questions

Ontario's Electricity Market

- In 2015, generation accounted for 64% of total electricity system costs. Total system costs in 2015 were $20 billion.

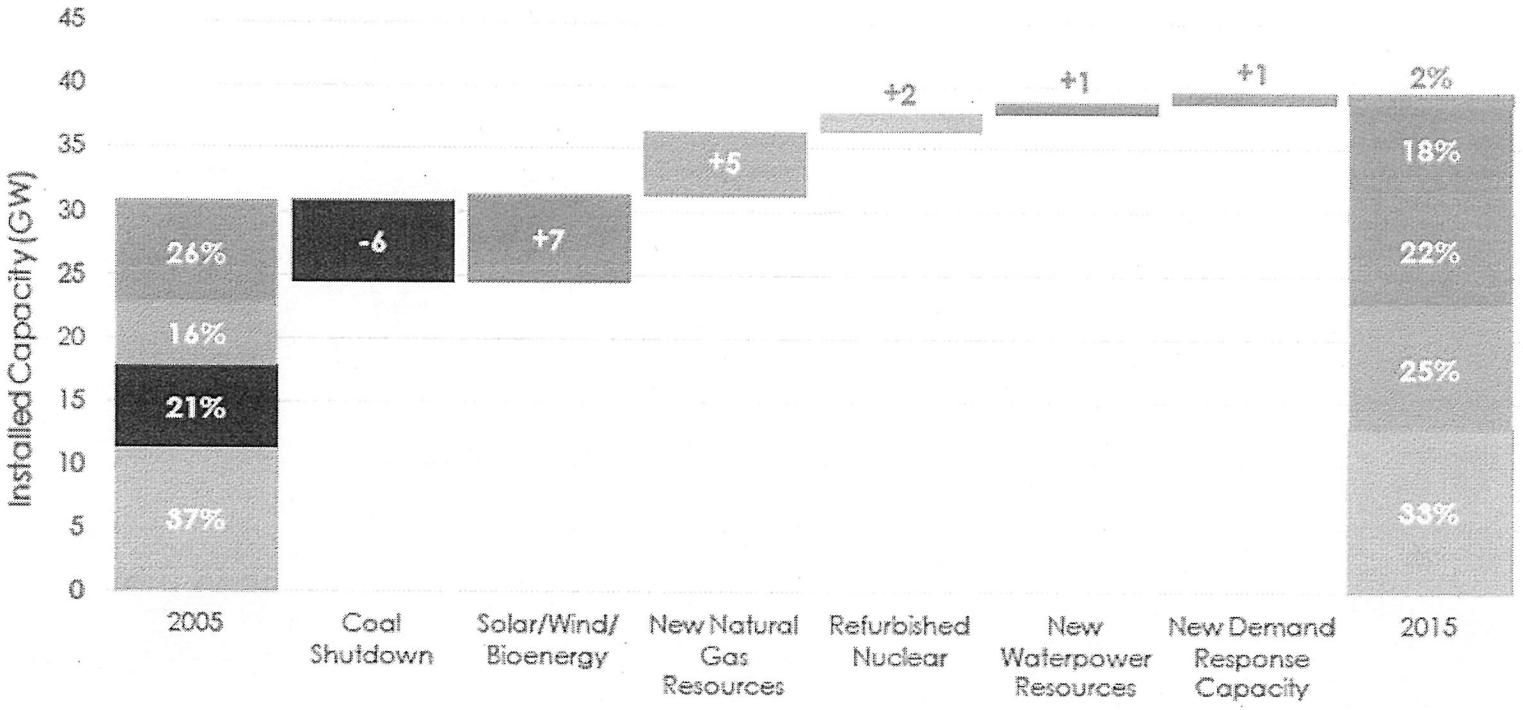
2015 Electricity System Cost
$ billion



***Source*:** IESO

Significant Change in Supply Mix

- Between 2005 and 2015, government invested more than $50 billion in the electricity system, including $35 billion in electricity generation to restore reliability, replace coal and meet environmental objectives.
  - Electricity costs are increasing as necessary investments are made to decarbonize and modernize the province's electricity infrastructure.

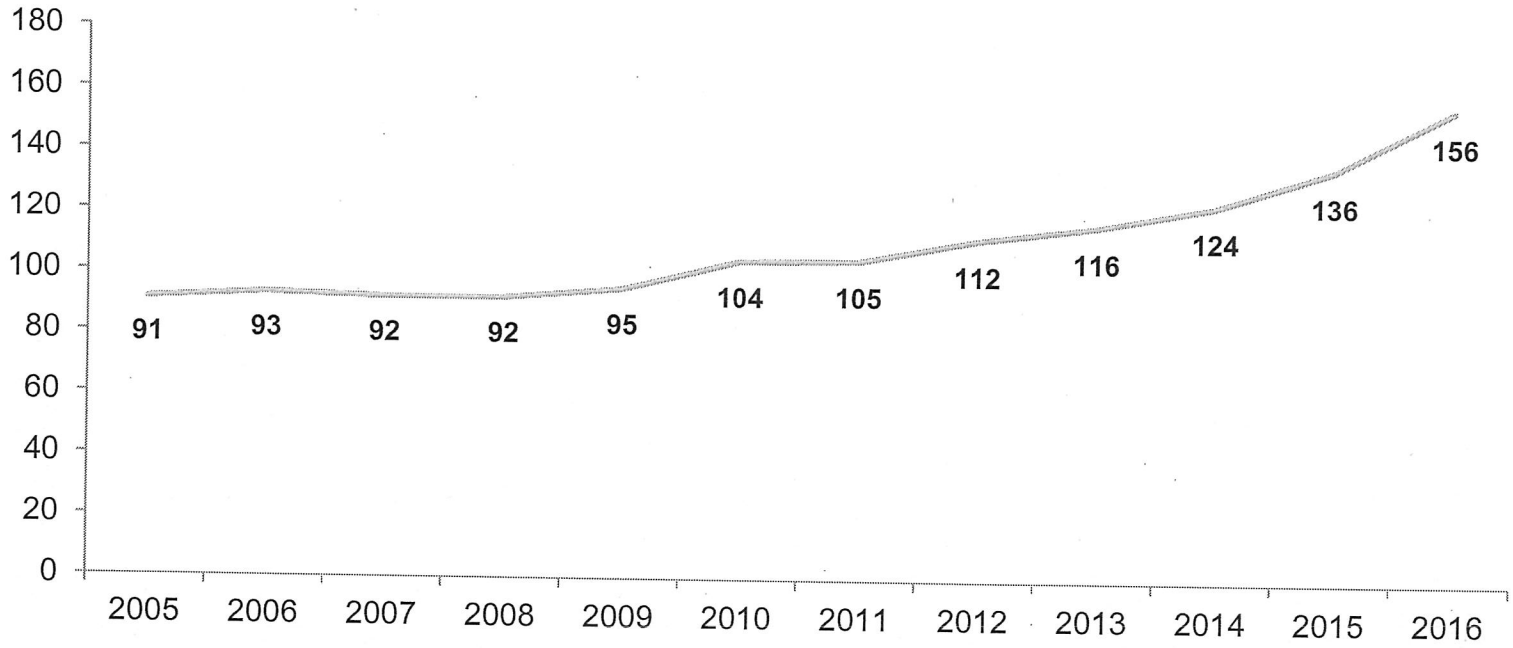


Source: *IESO*

Electricity Prices Have Increased

- Since 2010, electricity prices have increased at a rate higher than the Consumer Price Index (CPI).

Typical Residential Electricity Bills
in $ per month, 750 kWh consumption



Source: *Ministry of Energy*

Recent Actions To Mitigate Electricity Rates

- Following the 2016 Throne Speech, several actions were announced to further reduce electricity costs.
  - As of January 1, 2017, Ontario is rebating an amount equal to the provincial portion of the HST to reduce eligible residential, small business and farm electricity bills by 8%.
  - Expanded support available to eligible rural ratepayers by updating Rural or Remote Rate Protection (RRRP) with additional relief, decreasing total electricity bills by an average of $45 each month when combined with the 8% rebate.
  - Expanding the Industrial Conservation Initiative (ICI) – up to one-third savings for participants.
  - Suspending the LRP II and the Energy from Waste Standard Offer Program (EFWSOP) – up to $3.8 billion in cost savings.
  - Limiting the Feed-In Tariff (FIT) 5 procurement target to 150 MW and suspending future FIT procurements – up to $129 million in cost savings.

Ontario's Fair Hydro Plan

Ontario's Fair Hydro Plan

- Ontario is lowering electricity bills by 25 per cent for the typical residential customer and holding rate increases to the rate of inflation for four years. Small businesses and farms would also benefit from this initiative.

- People with low incomes, those served by local distribution companies (LDCs) with the highest distribution costs, OESP recipients and On-Reserve First Nation households would benefit from even greater reductions to their electricity bills.

- These new measures will cost the government up to $2.5 billion over the next three years.

- Government intends to introduce legislation to enable Ontario's Fair Hydro Plan.

1. Refinancing Global Adjustment

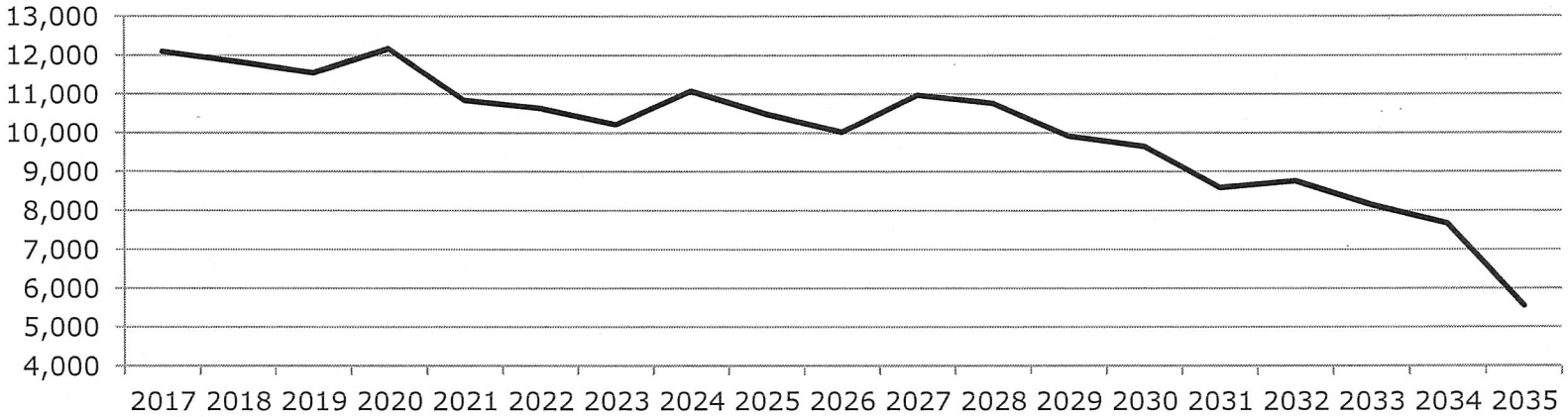
Refinancing the Global Adjustment

- Refinancing the Global Adjustment (GA) would provide significant and immediate rate relief by spreading the cost of electricity investments over a longer period of time.
  - 25% reduction on average for the typical residential customer and rates would follow inflation for the next 4 years.

- Under current forecasts, the immediate reduction (i.e., the financed portion) in the GA would be about $2.5 billion per year on average over the first ten years, with a maximum annual interest cost of $1.4 billion.

- This measure would share the associated costs more fairly. The chart below shows how Global Adjustment (GA) cost is front-end loaded and forecast to decline over time.

Forecast Global Adjustment Cost (nominal $ million)



Source: IESO

Policy Rationale

- The majority of the province's electricity generators are under 20-year contracts. Many of these generators will be able to operate past their contract term.

- By recognizing that generation assets are expected to continue to provide benefit to future ratepayers, beyond the term of current contracts, future ratepayers are expected to be able to utilize these assets and reduce the need to finance the development of new generation assets.

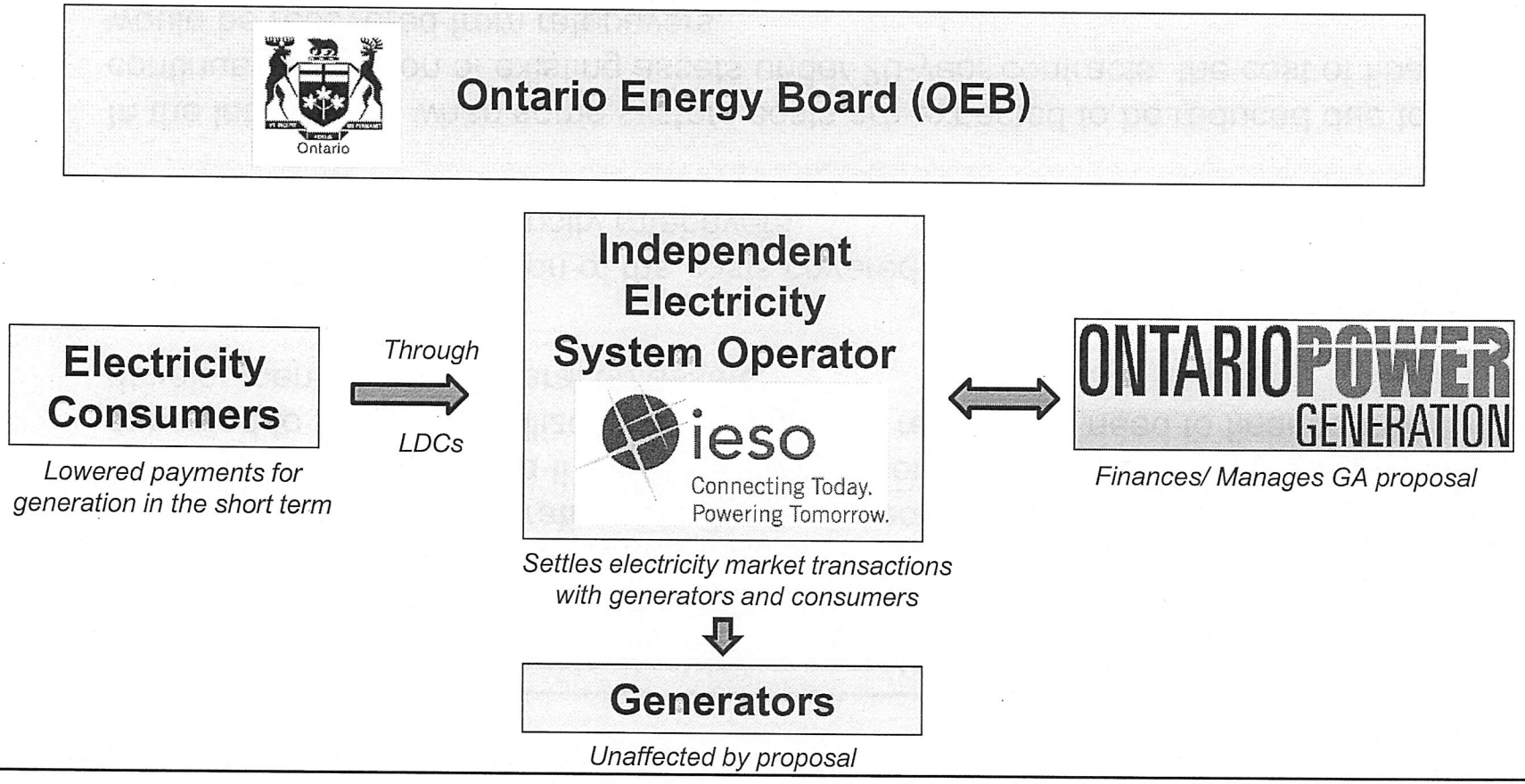
- In the early years, a portion of the costs covered by the GA would be financed to reduce pressure on electricity ratepayers.

- In the later years, when some system costs are expected to be reduced due to continued operation of existing assets under 20-year contracts, the cost of financing would be recovered from ratepayers.

"The amount consumers pay today could be reduced by stretching capital amortization periods to match the expected productive lives of the assets. In this way, the costs of generation charged to households would more closely reflect the true economic costs of the assets."
Globe and Mail Op-Ed (February 28, 2017) – Ivey Business School

Implementation

- The following entities would implement the proposed Global Adjustment (GA) refinancing mechanism.
  - The government intends to introduce legislation that would, if passed, enable IESO and OPG to work together to refinance the GA over a longer period of time. The legislation would also outline the role for the OEB, as it relates to the financing proposal.



2. Helping Vulnerable Consumers

Helping Vulnerable Electricity Consumers

- Fair Hydro Plan initiatives to help vulnerable consumers include:
  - Broadening Rural or Remote Rate Protection (RRRP) program to provide distribution charge relief for the customers of the costliest local distribution companies (LDCs).
  - Enhancing the Ontario Electricity Support Program (OESP) and working to ensure the program uptake is as close as possible to 100%.
  - Establishing a new First Nations On-Reserve Delivery Credit.
  - Establishing a new Affordability Fund which would support Ontarians who have difficulty paying their electricity bills to be able to access energy efficiency improvements.

- All of these initiatives would provide benefits to eligible consumers on top of the benefits they would receive from Global Adjustment (GA) refinancing.

- As part of the Fair Hydro Plan, these programs would be funded by provincial revenues, reducing regulatory charges for all Ontario ratepayers.
  - These programs would be funded by provincial revenues because they all provide targeted benefits to vulnerable consumers.

Broadening Rural or Remote Electricity Rate Protection (RRRP)

- Rural or Remote Rate Protection (RRRP) provides a rate subsidy to rural or remote residential customers who are faced with higher distribution costs compared to urban areas.
  - The RRRP is currently provided to approximately 350,000 Hydro One R2 residential customers in Ontario.

- The Province would expand the RRRP to provide distribution charge relief to additional hydro customers served by local distribution companies (LDCs) with the highest distribution rates, including: Hydro One R1, Northern Ontario Wires Inc., Lakeland Parry Sound, Chapleau PUC, Sioux Lookout Hydro, InnPower, Atikokan Hydro and Algoma Power. This would extend RRRP availability to about 800,000 customers.

- The new benefits would vary from LDC to LDC. For example:
  - A Hydro One R2 customer consuming 2,500kWh a month would see distribution cost reductions of around $75 a month.
  - A Hydro One R1 customer consuming 1,000kWh a month would see distribution cost reductions of around $18 a month.
  - An InnPower customer consuming 1,000kWh a month would see distribution cost reductions of around $12 a month.

- The government intends to introduce legislation to broaden the RRRP and to move forward in having RRRP costs be funded by provincial revenues, reducing regulatory charges for all Ontario ratepayers.

Enhancing the Ontario Electricity Support Program (OESP)

- The OESP would be enhanced by increasing its monthly credits by 50%, expanded to cover more low-income Ontarians, and increasing uptake to as close to 100% as possible.
  - Sliding Scale #1 outlines basic program benefits, and Sliding Scale #2 outlines enhanced benefits for Indigenous households, electrically heated households, and households with certain medically intensive medical equipment.
- The government intends to introduce legislation to enhance the OESP and to move forward in having OESP costs be funded by provincial revenues, reducing regulatory charges for all Ontario ratepayers.

Existing OESP Credit Scales

Sliding Scale #1		Household Size						
		1	2	3	4	5	6	7+
Income Bracket	< $28,000	$30	$30	$34	$38	$42	$50	$50
	$28,001 - $39,000			$30	$34	$38	$42	$50
	$39,001 - $48,000					$30	$34	$38
	$48,001 - $52,000							$30

Sliding Scale #2		Household Size						
		1	2	3	4	5	6	7+
Income Bracket	< $28,000	$45	$45	$50	$55	$60	$75	$75
	$28,001 - $39,000			$45	$50	$55	$60	$75
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Proposed +50% OESP Credit Increase*

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Income Bracket	< $28,000	$68	$68	$75	$83	$90	$113	$113
	$28,001 - $39,000		$60	$68	$75	$83	$90	$113
	$39,001 - $48,000			$52	$60	$68	$75	$83
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Ontario

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MINISTRY OF ENERGY

First Nations On-Reserve Delivery Credit

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Ongoing Efforts To Bend The Cost Curve of Ontario's Electricity System

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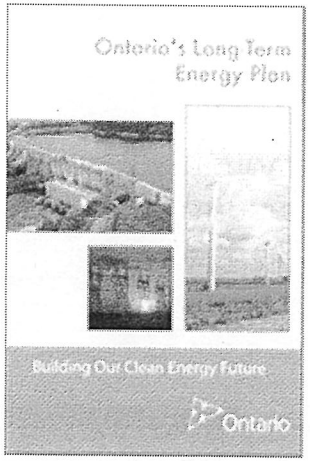



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JPR Instructs 4 A (March 13-17) based on

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A proposal to create Legislation.

Fair Hydro Plan Act, 2017, if enacted

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

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

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

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[Insert explanatory note.]

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

ELECTRICITY ACT, 1998

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

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

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

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

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

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

-Whether language of "deferral" is appropriate – instead, consider "intergenerational"
"mitigate" – think "intergenerational" → an overarching theme - fair and equitable allocation of prices.
-fair distribution of the costs of the system of the whole across generations of consumers

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

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

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

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(a.2) to engage in activities related the making and receiving of payments from, the Fair Hydro Financing Trust, or the entity designated under Part X, as required under this Act, and to engage in related settlement activities;

(a.3) to engage in activities related to the sale or disposition of regulatory assets referred to in section 25.33 for the purposes of assisting the Government of Ontario with its policies related to rate mitigation;

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

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

Interpretation

(0.1) For the purposes of this Part,

(a) "deferral amount" refers to the total amount borrowed by the Fair Hydro Financing Trust or designated entity during the deferral period;

(b) "deferral period" means the period which commences on *[January 1, 2017]* and ends on *[December 31, 2046]* or at such earlier time as may be prescribed;

(c) "financing directive" means the directive referred to in section 25.34;

(d) "recovery period" refers to the period prescribed by the regulations and which commences not later than January 1, 2027.

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Electricity pricing adjustments
Adjustments by IESO

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

(a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the *Ontario Energy Board Act, 1998*;

(b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract;

(c) amounts received by the IESO, directly or indirectly, from the Greenhouse Gas Reduction Account established under section 71 of the *Climate Change Mitigation and Low-Carbon Economy Act, 2016* for the funding of greenhouse gas reduction initiatives under this Act or the *Ontario Energy Board Act, 1998* for which the costs would otherwise be borne in whole or in part by consumers;

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

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

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

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

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

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

(ii) subsection (1.1). ~~[authority requiring payment back to TBD of operating costs]~~.

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Consultation Draft

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

Payments, Fair Hydro Financing Trust, etc.

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

(a) The payment in full of the amounts borrowed by the Trust or the entity for the purposes of providing near-term relief to prescribed electricity consumers; *[ntd-jpr: Should we express this as IESO making payments on a monthly basis?]*

(b) The full amount of any interest costs or charges incurred by the trust or entity in relation to (a); *[ntd-jpr: Should we express this as IESO making payments on a monthly basis?]*

(c) The full amount of any costs relating to the operation or management of the trust, as are approved by the Board; *[ntd-jpr: Should we express this as IESO making payments on a monthly basis?]*

(d) Any other amounts as may be prescribed or as may be approved by the Board.

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

GAM IN REVERSE – WHETHER WE CAN GIVE TRUST THE LINE INTO THE GENERATORS INCOME.
-THEN: OPG THOUGHT ABOUT A "WAREHOUSING" – IESO'S PRE-BORROWING ACTIVITY – IESO WOULD DRAW ON ITS LINE OF CRED (LOC) – IESO WOULD –
-WANT TO ENSURE THAT IESO HAS THE POWER TO ACT THE COLLECTION AGENT ON BEHALF OF THE TRUST. DO WE NEED AN EXPRESS AUTHORITY TO TAKE ON THE WAREHOUSING
-PRECURSER ACTIVITIES

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Regulatory Assets,

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

(a) Any and all amounts referred to in clause (1.1) (a) which are borrowed by the Trust or the entity during the deferral period and payable for the month for the purposes of providing near-term relief to prescribed electricity consumers;

(b) Any and all amounts referred to in clause (1.1) (b) of any interest costs or charges incurred by the trust or entity during the deferral period, payable in the month, in relation to amounts referred to in clause (a);

(c) Any and all amounts of any costs or charges referred to in clause (1.1) (c) relating to the operation or management of the trust, as approved by the Board;

(d) The full amount of any and all other costs or true-ups which may be prescribed by the regulations.

Confidential Draft

[OLC Counsel, the instruction is that we need to ensure absolute certainty (or as much certainty as we can provide) around the "pay back" provisions (right of trust to recover). This has to be "baked in" with as much detail around the pay back obligations / liability of consumers as possible.
The other overarching principle is that those who benefit are required to pay back, -- Thus, putting these two principles together, then our intention is that as far as we can do, we must nsure that with absolute clarity that the full amount borrowed, interest, operating/etc costs have to be paid no matter what from the IESO, distributors and ultimately those consumers who benefit. [NTD-I'm not quite sure whether references to "distributors" will stay in. For now, lets keep them in the places I've referenced them. The concern is that by referencing them we create credit and other financial risks for distributors due to the obligations (debt owing to the Trust or entity) including the enduring nature of those obligations.]
WHETHER THERE IS ENOUGH REFERENCE IN REG. ASSET SECTION TO THE REVENUE STREAM FROM THE PARTICULAR GROUP OF CONSUMERS: SHOULD THE INTRO LANGUAGE THAT THE REG. ASSET IS THAT PORTION OF THE REV STREAM REPRESENTING A, B, C, D. (Judy not sure we neeed to go that far – the importance of that link could be strengthened – making reference to that revenue stream – that portion of the revenue stream that relates to customers/consumers – amount equal to a,b,c. and d.)

Right of recovery,

(1.3) The Fair Hydro Financing Trust or designated entity shall have the right to recover in full all amounts provided for in this Part *[ntd-jpr: alternative: referred to in subsection (1.1)]* from the IESO, distributors and prescribed consumers; *[consumers referred to in clause (2.1)(a)]; [ntd-jpr: "distributors" may be removed depending upon assessment of or impact on credit risk of LDC's.]*

(1.4) The Fair Hydro Financing Trust or designated entity shall, in addition to the amounts referred to in subsection (1.3), have the right to recover in full any and all interest costs, charges and expenditures incurred by the Trust or the Entity in relation to its activities;

(1.5) The Fair Hydro Financing Trust or designated entity shall, in addition to the amounts referred to in subsection (1.3) and (1.4), have the right to recover in full any and all operating and management costs and expenditures which are incurred by the Trust or the Entity in relation to its activities and which are approved by the Board;

(1.6) For greater certainty, the amounts referred to in subsections (1.3), (1.4) and (1.5) are deemed to be debts owing to the Fair Hydro Financial Trust or the Entity by the IESO, distributors and consumers until such amounts have been fully paid and fully discharged ***[ntd-jpr: I toyed with "fully discharged" but I'm not sure if it works – can we have it as an NTD for clients (and others) to consider?].***

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Preliminary Draft for Discussion Purposes Only

"Fair Hydro" – Part V.2

Article 1 – Purpose

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

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

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

required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs will be incurred and may become payable in one or more other periods.

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

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

Article 2 - Definitions

In this Part:

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

"Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Administrative Agent whose records shall be determinative for the purposes of this Part in the absence of a manifest calculation error.

"Additional Funding Charges" means, for a Reference Period, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by the Regulated Asset Owner during the Reference Period and that were incurred or committed to directly or indirectly in connection with the incurrence of Funding Obligations under the Treasury Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including (without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the Administrative Agent on behalf of, the Regulatory Asset Owner under the Treasury Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on the Regulatory Asset Owner or incurred by on behalf of the

Regulatory Asset Owner under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Administrative Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Treasury Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Invoicing Agent, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of the Regulatory Asset Owner; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any placement fees, underwriting fees, fees and related issuing expenses; (m) any rating agency fees; and (n) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith for recovery and payment under the Treasury Plan.

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

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

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

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

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

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

[1] A key question will be how the overall costs will be spread across the rate base. For simplicity, overall costs could be spread across the rate base based on a *per capita* (ratepayer) concept. This would generally mean that all consumers who are invoiced in a month would pay the same Transition Charge, and to the extent that the invoiced amounts (i.e., the Transition Charges billed for a month) are higher or lower than the actual costs, due to a change in the Consumer Base, that difference should (among other things) be reflected in the True-Up calculation for the relevant reference period (see "Collected Amount Adjustment"). To the extent that a different allocation method is adopted (such as based on actual electricity use by individual consumers), the divisor for the Transition Charge will need to be modified.

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

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

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

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

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

"Estimate" means, in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Administrative Agent having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Part in the absence of a manifest calculation error.

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

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

"Finance Receipts" means, for a Reference Period, all amounts received by or on behalf of the Regulatory Asset Owner during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Regulatory Asset Owner under derivatives and any withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a Funding Obligation.

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

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

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

"Funding Obligation" means each payment obligation (including indebtedness, payment obligations arising under or in respect of derivatives, payment obligations owing to service providers, administrative agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies) incurred by or on behalf of the Regulatory Asset Owner under the Treasury Plan in order to fund a Funding Shortfall for a Reference Period, including any Refinancing of another such payment obligation.

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

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

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

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

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

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

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

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

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

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

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

"Pledge" means a lien, mortgage, charge, right of set-off or security interest granted to or in favour of a Pledgee by a Regulatory Asset Owner in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Regulatory Asset.

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

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

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

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

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

~~Ontario~~the Province, whether or not such retail consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or IESO.[4]

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

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

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

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

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

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

"Regulatory Asset Owner" means, collectively, (a) IESO, to the extent that it has retained any ownership interest in, to or under the Regulatory Asset and (b) each Absolute Assignee, to the extent that it has acquired and owns any ownership interest (including a specified portion on a divided basis or by way of an undivided interest) in, to or under the Regulatory Asset, which together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

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

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

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO or if applicable the Alternative Collection Agent in accordance with any Funding Obligation or, if no such

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

day is specified in relation to any Funding Obligation, then the Business Day preceding each Settlement Date.

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

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

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

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

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

"Treasury Plan" means the written plan prepared by the Administrative Agent in compliance with Article 8 to set forth the basis upon which, among other things: (a) any Disposition may be made or effected; (b) any Funding Obligations may be incurred in order to fund a Funding Shortfall, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; and (h) the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied.

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

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

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

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

[5] See footnote 1, above.

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

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

Article 3 – Transition Charges

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

(2) **Indebtedness of Ratepayers** – Until paid, a Transition Charge attributed to a Ratepayer and recorded in an Electricity Invoice shall~~[~~, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge,~~]~~ constitute indebtedness of the Ratepayer to the Regulatory Asset Owner. Such indebtedness shall constitute a single and separate debt obligation owing by the Ratepayer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Ratepayer under the Electricity Invoice or otherwise.

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

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

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred ~~in compliance with~~under the Treasury Plan (including any adjustments based on modifications to such Funding Obligations made in compliance with the Treasury Plan or as a result of amendments to the Treasury Plan made in accordance with Section 8(3)) are deemed to be irrevocable, final and effective without any further action. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period whether or not the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable whether or not the related Funding Obligation was properly incurred ~~in accordance with~~under the Treasury Plan. In no case shall a Funding Obligation incurred under the Treasury Plan be affected by a subsequent amendment to the Fair Allocation Plan.

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

Article 4 – Invoicing of Transition Charges

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Invoicing Agent shall, as an agent of the Regulatory Asset Owner, specify the Transition Charge to be attributed to a Ratepayer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued by the Electricity Distributor or if applicable by the Alternative Invoicing Agent to the Ratepayer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be deemed to have been imposed on and billed to the applicable Ratepayer.

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

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

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

(5) **Adjustments** – The amount of any Transition Charge attributed to a Ratepayer by [IESO] and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, in the absence of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, bill and invoice the Transition Charges.

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

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

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

in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Invoicing Agent** – If a Replacement Event occurs in respect of any Electricity Distributor, the Regulatory Asset Owner shall be permitted, by an instrument in writing, to appoint an Alternative Invoicing Agent to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Invoicing Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Invoicing Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Invoicing Agent to perform such obligations and duties on behalf of the Regulatory Asset Owner.

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

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

Article 5 – Collections and Remittances

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owner, undertake [diligent efforts] to collect amounts owing by Ratepayers in respect of Transition Charges attributed to such Ratepayers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent.

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

(3) **Electricity Distributor Remittances** – On each [applicable Remittance Date], an Electricity Distributor shall remit all Transition Charge Collections received by it from Ratepayers in respect of the related Reference Period to or to the account of IESO or if applicable the Alternative Collection Agent.

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

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

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

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

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

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in ~~Ontario~~the Province or invoices or collects electricity distribution rates in ~~Ontario~~the Province[8], then such person shall, if requested by the Regulatory Asset Owner, be obligated to act diligently to (a) facilitate the invoicing and collect of any Transition Charges applicable to Ratepayers in its applicable service area, including all consumers connected to the electricity distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by Ratepayers as provided in this Part; (c) terminate service to non-paying Ratepayers on the same basis as termination of service is permitted for non-payment of electricity transmission and distribution rates; (d) exercise all enforcement rights of the Regulatory Asset Owner or Pledgee for the benefit of the Regulatory Asset Owner or Pledgee; and (e) remit any Transition Charge Collections to the Regulatory Asset Owner or Pledgee, as applicable.

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

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

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

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of the Regulatory Asset Owner, any Absolute Assignee and any Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense~~0~~ by any Ratepayer, any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province [or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.]

(13) **[Sequestration** – If any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in ~~Ontario~~the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by a Regulatory Asset Owner or Pledgee and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Regulatory Asset Owner or Pledgee.] [Such order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or other person or entity authorized to collect Transition Charges, as applicable.]

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

Article 6 – The Regulatory Asset

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

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

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

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

d. the present and future obligations of IESO and if applicable the Alternative Collection Agent to accept Electricity Distributor Remittances and to remit IESO Remittances to or to the account of the Regulatory Asset Owner, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 4;

e. all Transition Charge Collections;

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

g. all Related Rights; and

h. all proceeds of or derived from the foregoing.

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

(2) **Validity of Dispositions** – Despite any limitations or restrictions on a Disposition that may arise by contract or by operation of any applicable law of the Province [or any consent requirement applicable to a Disposition that may arise by contract or by operation of any applicable law of the Province], a Disposition by a Regulatory Asset Owner made under the Treasury Plan shall be permitted and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Absolute Assignee a valid property right and interest in, to and under the Regulatory Asset (or relevant portion thereof) in accordance with the terms of such Disposition [, provided that the description of Regulatory Asset in the agreement giving effect to the Disposition expressly refers to this Part]. [Other than as required by the Treasury Plan, no consent of any person shall be required to give effect to a Disposition.] Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of

the Regulatory Asset Owner's applicable right, title, and interest in, to and under the Regulatory Asset (or relevant portion thereof), and not merely as a Pledge thereof. A Disposition shall not be subject to recharacterization or challenge on any other basis and the validity of a Disposition shall not be affected or impaired by: (a) the commingling of ~~revenues~~Transition Charge Collections or other proceeds from Transition Charges with other amounts; (b) the retention of any interest (including any partial, residual or subordinated interest, whether direct or indirect) in the Regulatory Asset by the transferring Regulatory Asset Owner; (c) any right to repurchase the Regulatory Asset in favour of the transferring Regulatory Asset Owner; (d) any recourse that an Absolute Assignee may have against the transferring Regulatory Asset Owner; (e) any indemnification rights or obligations provided by the transferring Regulatory Asset Owner; (f) any obligation of the transferring Regulatory Asset Owner to collect and remit Transition Charge Collections on behalf of an Absolute Assignee, including but not limited to, any retention by the transferring Regulatory Asset Owner to bare legal title for the purpose of collecting Transition Charges; or (g) the ascribed or intended treatment of the Disposition by the transferring Regulatory Asset Owner or the Absolute Assignee on any different basis including for tax, financial reporting or other purposes.

(3) **Deemed Perfection and Priority of Dispositions** – At the time a Disposition is made, the absolute assignment of the property rights and interest in the Regulatory Asset subject to the Disposition shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferring Regulatory Asset Owner and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the transferring Regulatory Asset Owner, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall have priority over any liens in favour of such other persons.

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

(5) **Deemed Perfection and Priority of Pledges** - Any Pledge made by a Regulatory Asset Owner in ~~accordance with~~respect of a Funding Obligation incurred under the Treasury Plan shall be deemed to have been and shall be perfected, valid and binding from the time when the Pledge is made and shall be valid and binding as against the Regulatory Asset Owner making the Pledge and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the pledging Regulatory Asset Owner, irrespective of whether such persons have notice of the Pledge and the security interests of the Pledgee under such Pledge shall have priority over any liens in favour of such other persons. All proceeds of the Regulatory Asset that are subject to such a Pledge that are received by the Regulatory Asset Owner shall immediately be subject to the such Pledge, and such proceeds shall be perfected, without any physical delivery

thereof, registration of any financing statement with respect thereto pursuant to the [PPSA] or any other further act. A Pledge shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the Regulatory Asset subject to the Pledge unless the Pledgee has otherwise agreed in writing. Any Pledgee shall have a perfected security interest in ~~revenues~~Transition Charge Collections or other related proceeds that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such ~~revenues or~~Transition Charge Collections or such other proceeds with other funds. [A Pledgee shall cause a financing statement to be filed in respect of a Pledge for informational purposes only under the [PPSA].

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

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

Article 7 – Establishment of the Fair Allocation Plan

(1) **Adoption of the Fair Allocation Plan** – The Minister of Energy may by written order designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Part, except if amended, amended and restated or terminated by a further written order issued by the Minister of Energy [in compliance with Section •].

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Unrecovered Transition Costs across present and future Ratepayer Groups on a basis that the Minister of Energy, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters[9]:

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

2. The Fair Allocation Plan should specify the Reference Periods (e.g., 6 month periods), for the purpose of identifying applicable Ratepayer Groups and

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

allocating among them responsibility to bear the Unrecovered Transition Costs on a relative basis over time.

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

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

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

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

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

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

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

Article 8 – The Treasury Plan

(1) **Power to Prepare and Implement the Treasury Plan** – ~~The~~In compliance with a [written order][***MOE to confirm process.***] of the Minister of Energy, the Administrative Agent shall prepare and propose the adoption of a Treasury Plan~~ that is consistent with the principles, parameters, requirements and conditions set forth in Schedule 3,~~

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

~~together with and subject to such conditions and requirements as may be specified in a further written order of the Minister of Energy or in accordance with the Regulation.~~. If the Administrative Agent is unwilling or unable to prepare and propose the adoption of a Treasury Plan, the Minister of Energy may by written order designate one or more other persons to prepare and implement such a Treasury Plan.

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

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

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

(5) ~~(4)~~ **Consistency with the Fair Allocation Plan** - Funding Obligations should only be incurred if Repayments and Funding Costs would be borne by present and future Designated Ratepayers on a basis that is [generally] consistent with their respective allocations of the costs and benefits of the Green Generation Initiative contemplated in the Fair Allocation Plan. In that regard, at the time of setting the Fair Allocation Plan for any particular period, the aggregate amount payable during future Reference Periods on account of Funding Obligations incurred on or before the date on which a new Funding Obligation is incurred should not exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Ratepayer Group contemplated in the Fair Allocation Plan. If, despite the foregoing, the Administrative Agent determines that the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the

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

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

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

(8) ~~(6)~~ **Non-Recourse** – The Treasury Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Invoicing Agent, and Alternative Collection Agent, the Administrative Agent, the OEB ~~or~~, the Province or the Lieutenant Governor in Council, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Part or expressly pursuant to any Funding Obligation or obligation in relation to a Finance Amount. [All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]

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

Article 9 – Compliance Matters

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

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

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

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

Article 10 – Undertaking of the ~~Province~~Lieutenant Governor in Council

(1) **No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections** – The ~~Province~~Lieutenant Governor in Council may not in any way take or permit any action to reduce, impair, postpone or terminate the obligation of Ratepayers to pay Transition Charges or impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, either directly or indirectly. The ~~Province~~Lieutenant Governor in Council undertakes that the amount of Transition Charges determined hereunder shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by the ~~Province~~Lieutenant Governor in Council.

(2) **Undertaking and Agreement** – The ~~Province~~Lieutenant Governor in Council undertakes to and agrees with the Regulatory Asset Owner, including any Absolute Assignee from time to time, and any Pledgee from time to time, that the ~~Province~~Lieutenant Governor in Council will not in any way take or permit any action that limits, alters or impairs the value of the Regulatory Asset or, except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, collected and remitted for the benefit of the Regulatory Asset Owner, including any Absolute Assignee from time to time, and any Pledgee from time to time.

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

Article 11 – Regulations

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

(a) to set standards and measures regarding the commercially reasonable expectations of the Province associated with any Regulated Asset Owner incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Costs; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Treasury Plan that is consistent in its effect with the Fair Allocation Plan;

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

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

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

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by the Regulatory Asset Owner of any Funding Obligation or obligation to pay any Finance Amount; and

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

Article 12- Miscellaneous

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

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

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Part shall be required with respect to the actions to be taken in compliance with this Part, including under the Treasury Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Part or the Treasury Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Treasury Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Part, if any provision of this Part is

held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Part that is taken by any person who is or may become obligated or have duties that arise under this Part [or under any Funding Obligation] and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Part or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Part are intended to be severable and that the Legislature would have enacted this Part even if any Article, Section, paragraph or subparagraph of this Part held to be unconstitutional or invalid had not been included in this Part.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3

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

~~**Section [X] – Procedure to Adopt a**~~

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

(1) ~~**Submission of Treasury Plan** – The person(s) designated by written order of the Minister of Energy under Section 8(1) shall prepare a Treasury Plan and submit it to the Minister of Energy and any person designed by the Minister of Energy under Section 8(2) to review such Treasury Plan [within the time period specified in such written order]/[within [•] days of such written order]. Such person(s) shall implement any changes proposed under Section [X](3) and submit the revised Treasury Plan to the [OEB] for approval within [within the time period specified in such written order]/[within [•] days of such written order].~~the Treasury Plan shall, in respect of each Reference Period, describe the allocations of Unrecovered Transition Costs to each Reference Group as contemplated by the Fair Allocation Plan;

(2) ~~**Content of Treasury Plan** – Any Treasury Plan shall have regard to the following specifications:~~the Administrative Agent shall make a good faith estimate of the Funding Shortfalls for each Reference Period, based on the terms of the Power Contracts and assumptions considered to be reasonable respecting forward market prices for electricity;

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

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

(5) the Treasury Plan shall reflect the outcome of a financial model that incorporates the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges attributed to a hypothetical Ratepayer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation having regard to the application of the Allocation Methodology); [***Consider what outputs from OPG will be tested by the OEB and when. The modelling in the Treasury Plan may permit the OEB to check progress against the model from time to time, which may provide a basis for the MoE/OEB to require a review/amendment to the Treasury***

Plan if the ongoing operation of the program results in significant deviation from the model. Consider whether this flexibility is desirable.]

(6) the Administrative Agent, for and on behalf of each Regulatory Asset Owner, shall seek to incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:

a. whether the Regulatory Asset Owner[s] will require committed access to short term liquidity to cover estimated Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not obligate a Regulatory Asset Owner to repay an amount in relation to a Reference Period that would have the effect of the Treasury Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Unrecovered Transition Costs to the applicable Reference Group under the Fair Allocation Plan;

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

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

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

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

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

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

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

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

(7) ~~a. A description of how the incurrence of Funding Obligations by present and future Designated Ratepayers will be~~the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the Funding Shortfall from time to time on a basis that is consistent with ~~their respective~~the allocations of ~~costs and benefits as contemplated in~~Unrecovered Transition Costs to applicable Reference Groups under the Fair Allocation Plan;

~~b. The form, amount and timing of Funding Obligations under the Treasury Plan; and~~

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

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

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

(11) ~~c. the entities involved in the incurrence of Funding Obligations and execution of the Treasury Plan.~~basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

~~(3) **Review of Treasury Plan** – The Minister of Energy, or the person(s) designated by written order of the Minister of Energy under Section 8(2), shall review the Treasury Plan submitted in accordance with Section [X](1) and propose any changes to such Treasury Plan that are necessary or desirable to align the Treasury Plan with the requirements set out the [Minister's Order].~~

~~(4) **Approval of Treasury Plan** – The **[OEB]** shall have the power to and shall approve or disapprove of the Treasury Plan based solely on whether the Treasury Plan includes the specifications contemplated under Section [X](2) and whether those specifications [accord with] the assumptions, conditions, requirements and standards set out in the Treasury Plan and the order(s) of the Minister of Energy issued under Section 8(1) and 8(2). If the **[OEB]** fails to approve or disapprove any Treasury Plan within [30] days of [receiving such Treasury Plan],[12] the Treasury Plan is deemed to have been approved.~~

~~[12] Consider whether the Minister's order should set out timelines for each of steps contemplates by this Section [X], or whether these time periods should be hard-coded into the legislation.~~

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

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

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

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

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

~~**Section [X]**~~

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Preliminary Draft for Discussion Purposes Only

Schedule 4

Creation of ~~the [OPG Financing Entity~~any Special Purpose Entity to become a Regulatory Asset Owner~~]~~

(1) ~~**Creation of the [OPG Financing Entity]** – The person(s) designated by written order of the Minister of Energy under Section 8(1) to implement a Treasury Plan may [create] one or many entities, each known as a "OPG Financing Entity" having regard to the following principles:~~**Powers and Abilities**:

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

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

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

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

iii. pledge the Regulatory Asset to secure ~~bonds contemplated by a Treasury Plan.~~the Funding Obligations incurred by the Regulatory Asset Owner;

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

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

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

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

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

a. **[Number of trustees]**

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

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

d. **[Quorum and meetings]**

e. **[Fiduciary duty]**

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

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

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

Document comparison by Workshare Compare on Wednesday, April 05, 2017 9:13:18 AM

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Ontario Fair Hydro Plan Act, 2017

EXPLANATORY NOTE

Explanatory note TBD once contents of the Bill are settled.

Bill **2017**

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

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly 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 [certain?] consumers. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of those consumers.
[OLC Note: Please see my comment in the purpose section about the references to "consumers" in the Preamble and whether this may be too broad. Need to consider all references to "consumers"… in some cases it may be appropriate to use the broader term but perhaps not always.]

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

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

CONTENTS

PART I
GENERAL

1. Interpretation
2. Effect of invalidity, etc.
3. Purpose
4. Crown bound
5. Protection and assurances

PART II
FAIR ADJUSTMENT

6. Definitions
6.01 Determination of invoice amount
6.1 Regulated rate consumer, first fair adjustment
6.2 Other specified consumers, first fair adjustment
6.3 Determination by Board
6.4 Implementation of rates
6.5 Effective date
6.6 Transition
7. Subsequent fair adjustments
7.1 Sub-metering

PART III
CLEAN ENERGY ADJUSTMENT

8. Specified consumers to pay
9. Irrevocability of amount
10. Determination of clean energy adjustment
11. IESO to receive amounts
12. Electricity vendor to invoice specified consumers

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

13. Appointment
14. Duties and powers

FAIR ALLOCATION AMOUNT

15. Financial Services Manager to calculate fair allocation amount

FINANCING PLAN

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

PART V
THE REGULATORY ASSET

20. IESO funding deferral
20.1 Variance account to be established, maintained
21. Regulatory asset established
22. Transfer of regulatory asset
23. Validity of transfer

PART VI
THE INVESTMENT ASSET

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

PART VI
MISCELLANEOUS

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

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998
AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998
PART VII
COMMENCEMENT AND SHORT TITLE
103. Commencement
104. Short title

PART I
GENERAL

Interpretation
Definitions
1xx. (1) In this Act,

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

"clean energy adjustment" means the amount determined under section 10xx; ("French")

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

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

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

[OLC Note: Need to clarify what we mean by the underlined phrase -- do we mean "the estimated amounts to be paid… by the IESO which relate to contracts for…."?]

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed,

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

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

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

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

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

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

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

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

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

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

"fair allocation amount" means the amount determined under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

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

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

---

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

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

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

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

"investment asset" means the rights and interests described in section 24xx; ("French")

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

"investment interest" means,

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

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

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

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

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

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

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on July 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

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

"transfer" includes, when used in relation to an investment interest, the assignment, conveyance, disposition or sale of the investment interest; ("French")
[OLC Note: see subs. (3) below for drafting related to "transfer" of RA.]

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

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

Specified consumers

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

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

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

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

Transfer of regulatory asset

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

1. A reduction in the balance in the variance account to reflect the transfer.

2. The adjustment of the regulatory asset to reflect the transfer.

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

[OLC Note: The above subsection is an attempt to address the proposed definition of "transfer" in relation to a RA. I am proposing to address this by way of this interpretive provision instead of a definition because as a drafting practice we avoid defining commonly used terms in a way that does not reflect normal usage of the term. The items in paras. 1 to 3 are not what would normally be considered a "transfer".

I'm assuming that what you want to achieve is for the references to "transfer of a RA" throughout the Bill to be read as including the outcomes listed in paras. 1 to 3. In other

words, if one of the outcomes in paras. 1 to 3 has not occurred (e.g. the balance in the variance account has not been reduced) then the transfer of the RA has not in fact happened.

You should consider what the implications are of this provision existing along with the definition of "transfer" in the context of an IA. Do you want "transfer" in the context of a RA to also include the types of transactions listed in that definition? If so, it is odd not to say so and may result in unintended consequences if a court had to interpret these terms.

You'll want to check each use of the word "transfer" to ensure that this is what you want in each case.]

Effect of invalidity, etc.[3]

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

Same, funding obligation

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

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province; and

[OLC Note: The purpose clause no longer refers to the "allocation" of clean energy *benefits* but later in the draft (e.g. see s. 15xx (1)) we do still refer to the benefits being allocated. Need to be consistent in order to avoid confusion. Please instruct.]

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

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

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

[OLC Note - for consideration… the above refers to "consumers", not "specified consumers". Do you want to refer to "specified consumers"? I suppose you could argue that the government's proposed way to achieve fairness for all consumers is through focussing on "specified consumers" but I'm just wondering if the reference to "consumers" might create some problems for you.

I suppose we could also consider whether the references to "consumers" in the Preamble should be qualified by something like "certain" so that it is signalling that the fairness is being addressed only within a subset of all consumers.]

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

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

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

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

Agreements

(3) The Minister and the Minister of Finance may together, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

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

(a) authorize the Minister and the Minister of Finance, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister and the Minister of Finance may agree to guarantee or indemnify as described in subclause (a) (ii); and

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

PART II
FAIR ADJUSTMENT

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"regulated rate consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is invoiced the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*. ("French")

Determination of invoice amount

6.01xx. (1) For the purposes of this Part, the invoice amount in respect of a specified consumer is the amount charged to the consumer in relation to the provision of electricity during a month in Ontario and shall be determined in accordance with this section.

Electricity provided by licensed distributor, retailer

(2) In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the invoice amount shall be determined as follows:

1. Calculate the sum of the following:

    i. The commodity price of the electricity used.

ii. Unless excluded by the regulations and subject to subsection (3), the charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998.*

iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998.*

iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii.

v. Any other amounts as may be prescribed.

2. Subtract, from the amount determined under paragraph 1,

i. the amount of the financial assistance provided to the consumer under the *Ontario Rebate for Electricity Consumers Act, 2016* in respect of the amounts mentioned in subparagraphs 1 i, ii and iii, and

ii. such other amounts as may be prescribed, which may include amounts of the financial assistance referred to in subparagraph i in respect of the amounts mentioned in subparagraphs 1 iv and v.

Same, rate order

(3) For the purposes of subparagraph 1 ii of subsection (2), in respect of charges that relate to any compensation required under subsection 79.2 (10) of the *Ontario Energy Board Act, 1998*, the applicable rate order is the rate order in effect on April 30, 2017.

Electricity provided by IESO, prescribed person

(4) In circumstances where the electricity is provided by IESO or a person prescribed as an electricity vendor, the invoice amount shall be determined in accordance with the regulations.

Invoice amount, exclusions

(5) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

    iii. A rate rider, other than a rate rider that has been prescribed.

5. Any other prescribed amounts.

Regulated rate consumer, first fair adjustment

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

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, without regard to any other provisions of this Act.

Other specified consumers, first fair adjustment

6.2xx (1) For the period beginning on the effective date and ending on April 30, 2018, the monthly global adjustment rate payable under section 25.33 of the *Electricity Act, 1998* by a specified consumer who is not a regulated rate consumer is the rate determined by applying the following steps:

1. Determine the monthly global adjustment rate that would be effective May 1, 2017 under section 25.33 of the *Electricity Act, 1998* for the specified consumer, determined solely based on that provision and the regulations and without regard to any other provisions of this Act.

2. Subtract the following from the rate determined under paragraph 1:

i. The comparison rate referred to in subsection 6.1xx (2).

ii. The rate determined under subsection 6.1xx (1).

Determination by Board

6.3xx The Board shall determine the rates mentioned in section 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor shall, no later than fifteen business days after the day on which the Board makes its determination under section 6.3xx, adapt its invoices accordingly.

Effective date

6.5xx The Board's determination under section 6.3xx is effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven business days referred to in section 6.4xx.

2. July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven business days between the day of the Board's determination under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor shall adapt its invoices as soon as possible and, in any event, no later than August 1, 2017.
[OLC Note: ENE LSB advises the following - *if there are less than 7 business days between the determination of the new rates and August 1, 2017, electricity vendors may not be able to adapt their invoices in time.*]

Same

(3) The electricity vendor shall ensure that, if any of its specified consumers have been invoiced in a manner that does not reflect the Board's determination under section 6.3xx as a result of the failure to comply with section 6.4xx, the specified consumer receives,

(a) in the case of a specified RPP consumer, the difference between the rates shown on the invoice for electricity consumed on or after the effective date and the applicable rate; or

(b) in the case of a specified consumer who is not a specified RPP consumer, the difference between the monthly global adjustment rate shown on the invoice and the applicable monthly global adjustment rate.

Same

(4) Any amount that a specified consumer is eligible to receive under subsection (3) shall be provided as a lump sum credit on the first invoice received after the electricity vendor has adapted its invoices or by such other means as may be prescribed.

Subsequent fair adjustments

7xx. (1) Subject to subsection (2), the Lieutenant Governor in Council may prescribe the methodology to be applied by the Board to determine rates for electricity payable by prescribed classes of specified consumers after April 30, 2018.

Limitation, fair adjustments after April 30, 2021

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

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

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

3. Such other matters as may be prescribed.

[OLC note: Other reg-making powers to address in relation to s. 7xx - please advise:
(b) require the Board to determine the rates mentioned in subsection (1) within a specified time period and provide for the date upon which the determination is effective;
(c) require electricity vendors to adapt invoices to address the Board's determination under clause (b) within a specified time period;
(d) provide for transitional matters relating to the implementation of the methodology mentioned in subsection (1).]

Sub-metering

7.1xx (1) This section applies if a specified consumer provides to another person electricity in respect of which the specified consumer is entitled to a reduction under section 6.1xx, 6.2xx or 7xx.

Same

(2) If an invoice for the electricity is issued to the person by the specified consumer, an agent of the specified consumer or a unit sub-meter provider providing unit sub-metering for the specified consumer, the rate for the electricity that is payable by the person who is liable to pay the invoice is the rate that reflects the applicable reduction. [OLC Note: Why did you include reference to an agent here but nowhere else? Is it necessary?]

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

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

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.

Indebtedness of specified consumer

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

Same

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

Recovery from sub-meter consumers

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

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

[OLC Note: Is subs. (6) really about "recovery" or should it be about "collection" or "invoicing"? Just want to make sure we are using terminology consistently. It seems to me that 'recovery" is being used in the context of rights under the RA and IA so perhaps we don't want to use that term here?]

Irrevocability of amount

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

Exception

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

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

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

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

    i. differences between the estimated and actual finance amount for the applicable reference period,

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

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

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment in respect of a reference period and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) Without changing the clean energy adjustment, the Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

11xx. (2) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

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

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

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

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

Same, held in trust

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

IESO to remit

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

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

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

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers and all proceeds of the payments shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Duties and powers

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

Same

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

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

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

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred by a financing entity during the reference period.

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

[OLC Note: As noted in the purpose clause (s. 3xx), are clean energy *benefits* being "allocated"? Or is it just the clean energy *costs* that are being allocated?]

[OLC Note: The above needs some work… in particular we would need to say more than just "in the absence of this Act" because I think we would also need to specify that under the proposed scenario, the current Global Adjustment rules would continue to be in place. We also need to be clear what we mean by global adjustment etc.]

2. A portion of the value of any reduction that has been made under Part II in respect of the rate for electricity or the global adjustment rate in respect of any previous reference period.

[OLC Note: Not sure if para. 2 is quite right yet. I didn't have time to deal with Dan's instruction that "the value of any fair adjustment" is supposed to capture the dollar amount of any funding shortfall from previous reference periods that is created by the fair adjustments and not previously captured by section 15xx. May need to revisit this.]

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall have regard to the following principles:

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

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.

[OLC Note: Para. 2 really doesn't seem to be a "principle". Should this just be set out as a separate requirement to comply with regs when allocating (as per proposed language above in opening flush)? Also this seems to conflict with subs. (3) below. Are we talking about the same thing in both places?]

3. The fair allocation calculation should include reasonable assumptions regarding the following:

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

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

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

4. Such other principles as may be prescribed.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

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

Publication

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

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

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

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

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

1. Funding obligations should be incurred such that, along with any funding obligations already incurred, the estimated finance amounts that would, subject to any refinancing, become due and payable during a reference period will reasonable align with the fair allocation amount determined in respect of the reference period, in each case after reducing the fair allocation amount to reflect any reduction made under Part II reduction in respect of the rate for electricity or the global adjustment rate in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

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

Limitation

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

(a) no reduction has been made under Part II in respect of the rate for electricity or the global adjustment rate in respect of the reference period; or

(b) if a reduction referred to in clause (a) has been made in respect of the reference period, the funding obligations incurred would not result in amounts payable in respect of the clean energy adjustment during the reference period in an amount that exceeds the difference between the fair allocation amount in respect of the reference period and the amount of the reduction in respect of the reference period.

Other reports

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

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall ensure that funding obligations incurred for the purposes of this Act are incurred in a manner that is consistent with the applicable Financing Plan.

Same

(2) For greater certainty, subsection xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

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

Prohibition

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

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and to provide for the reasonable alignment of the estimated finance amount with the fair allocation amount.
[OLC Note: I tracked the language from 16xx (2).]

PART V
THE REGULATORY ASSET

IESO funding deferral

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

Same, retrospective amounts

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

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO deferral under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

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

1. The amount of the IESO funding deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

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

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (2), the Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Same, limitations

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

Transfer of regulatory asset

22xx. (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

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; and

(c) the financing entity shall acquire a corresponding investment interest.

Validity of transfer

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

Same

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

Deemed perfection, etc.

(3) At the time a transfer of the regulatory asset is made under section 22xx, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

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

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) Each transfer of a specified portion of the regulatory asset under section 22x creates an investment asset or adds to the investment asset.
[OLC Note: Would any transfer other than the first transfer create an investment asset?]

Same

(1.1) Upon transfer of a specified portion of the regulatory asset under section 22xx to a financing entity the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim.

[OLC Note: I deleted former clause (a) because it seems to repeat clause 22xx (3) (c): "the financing entity shall acquire a corresponding investment interest."]

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right and interest to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors, IESO and other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor and IESO to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by any electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest, including any rights to receive funding rebates.

[OLC Note: This is the only place where "funding rebate" is used. The definition you provided is "an obligation assumed by IESO as part of the transfer of the regulatory asset". Does this work here? (e.g. can you have a right to receive *an obligation assumed by the IESO?)* Since we don't use the term anywhere else I would suggest that we just say what we mean here instead of relying on a defined term.]

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

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

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, IESO, an agent of the investment interest owner or an owner of a distribution system, within the meaning of the *Electricity Act, 1998*, in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

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

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

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

Transfer of investment interest

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

Validity of transfer

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

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute

transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

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

Priority of transfer, assignment, etc.

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

Investment interest owner may grant security interest

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

Validity

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

Perfection and priority of security interests

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

Proceeds

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

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may

subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

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

Notice required

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

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

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

Not Crown agent

30xx. For greater certainty, [a financing entity?] is not an agent of the Crown for any purpose, despite the *Crown Agency Act*.

[OLC Note: Probably it would be good to get CLOC to review this section once you determine what it is you want to say. I'm not sure if it is necessary given the nature of the financing entities and the language of the CAA.]

Sequestration

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

Same

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

Choice of law

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

Conflict

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

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

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

Same

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

References in marketing materials and offering documents

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

Regulations

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

1. [5]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[6];

x. prescribing the time within which any action required by this Act may be required to be done;

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

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

PART VII[7]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

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

---

[5] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.
[6] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*
[7] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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

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

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer under section 22x and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

[OLC Note: Why is "creation" listed above? Isn't that fully accomplished through the statute?]

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset under section 22x for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

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

(1.1) Subsection 25.33 (2) of the Act 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) prescribed amounts that are paid or incurred by the IESO in relation to the *Ontario Fair Hydro Plan Act, 2017*;

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

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

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

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

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

Same, *Ontario Fair Hydro Plan Act, 2017*

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

[OLC Note: See subs. 14xx (3) of the main Bill above -- do you want to move this to become a consequential amendment or should it stay where it is? ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.*** ***]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

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

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

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

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

Same, limitation re Ontario Power Generation Inc.

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

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

Same

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

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

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

PART VII
COMMENCEMENT AND SHORT TITLE

Commencement

103x. This Act comes into force on the day it receives Royal Assent.

[OLC Note: ENE LSB - please confirm that no regulations need to be in place in order for the legislative scheme to function on Royal Assent. I don't think so but we want to be sure that no lag time is needed.]

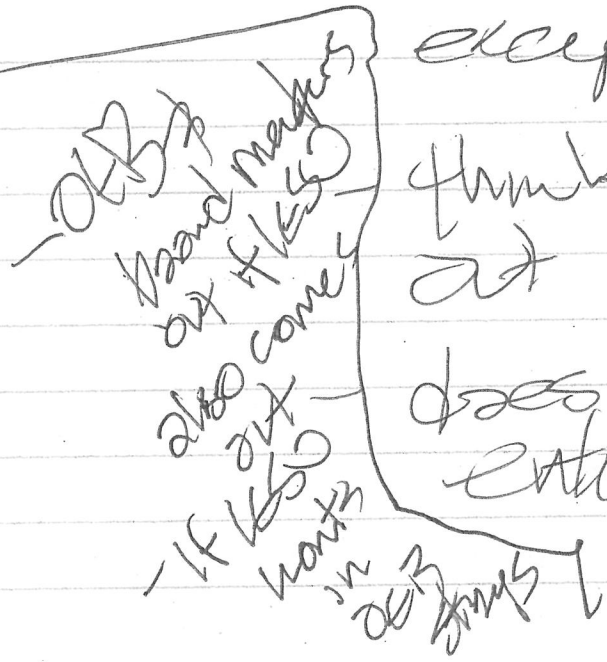
Short title

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

- s. 11 - power or duty under any Act
  - aware of overlap
  - not forget - to add Board Members

- Sections pretty clear
- "other proceedings for damages"
  vs
  "other civil"

Mantra - a bit of a mantra except if taken out
- think ok if take out
- does any other entity?



- OEB's board members out if LESO also comes out
- If LESO wants in OEB stays

s.Pl - seems broader.

1) Montana - 2 new things — Information Shows

2) Paul

3) Jenn.

Regulations – RIDER

Regulations

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

1. [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. Prescribing types of payment obligations that constitute funding obligations.

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

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

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

7. Governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on or with invoices issued to specified consumers, including the form that the information must take and the form of the invoices and the form of any notice to be provided to the specified consumer under this Act[2];

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

---

[1] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.
[2] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

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

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

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

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

Limitation

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

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NTD: we believe the following sections do not have sufficient or appropriate regulation making power in s. 38:

- Governing the incurrence of debt for purposes of refinancing [see s. 1(1) definition of "refinancing"] [Note to Carolyn: we are not totally sure how a regulation under this section would operate]
- Prescribing the manner that the Financial Services Manager is to notify the Board of the clean energy adjustment under s. 10xx(4): [Note: this may fall under s. 38(5). but we are not sure.]
- S. 12xx(2): S. 11xx(2) and 12xx(5): 11xx(5): the process of how the money is to flow from specified consumers to electricity vendors to the IESO to the investment interest owners
- S. 14xx(2): provide for activities related to administration of the investment asset
- S. 15xx(2) and (3): create additional principles and assumptions that the Minister will have regard to in calculating the fair allocation amount, including a regulation making power to allow for the calculation of the fair allocation amount to be changed by a prescribed person in accordance with prescribed requirements
- S. 15xx(7): prescribe information to be provided by the different entities to change the fair allocation amount
- S. 16xx(2) paragraph 3: prescribe assumptions/matters that the Financial Services Manager shall have regard to in preparing the Financing Plan
- S. 16xx(4)(b): Prescribe limits on funding obligations incurred during reference periods
- S. 20xx(1) and (1.1): prescribe amounts the IESO can defer each month

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- S. 20xx(2): governing information provided by electricity vendors to the IESO for the purposes of IESO calculating the IESO deferral each month
- S. 20.1xx(2) paragraph 3: prescribe additional adjustments to the IESO variance account
- S. 21xx(1) and (4): governing the IESO's right to recover the balance recorded in the variance account from specified consumers and the Board's powers to determine and set rates
- S. 22xx(1): governing how the regulatory asset is transferred by the IESO to a financing entity
- S. 29xx: Prescribing circumstances under which LGIC may appoint persons under s. 29xx
- Prescribing requirements related to matters contained in s. 36xx

NTD: For the revised Part II of the Act, we believe the following reg making powers are required:

- Prescribing the criteria for a fictional regulated rate consumer referred to in subsection 6.1xx (1)
- Prescribing the manner in which each invoice amount mentioned in subsection 6.1xx (1) is to be determined
- Prescribing classes of specified consumers for the purposes of subsection 6.2xx (2)
- Prescribing the adjustments to be determined by the Board in subsection 6.2xx (2)
- Prescribing the method or methods mentioned in subsection 6.2xx (3), including prescribing different methods for different classes of specified consumers
- Prescribing different classes of specified consumers for the purposes of subsection 6.2xx (3)
- Prescribing the means by which a specified consumer receives the difference between the amounts shown on the invoice and the amounts reflecting the Board's determinations under subsection 6.4xx (2)
- Prescribing the methodology to be applied by the Board for the purposes of subsection 7.1xx (1)
- Prescribing other matters for the purposes of subsection 7xx (2)
- Prescribing the determination of the amount payable under subsection 7.1xx (1)

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- Principles trying to achieve
- language for debating
- can't just have something high level.

① US often executive improvinces
② you sense provision

Tom not clear what trying to achieve.
- interpretation prob.
- not saying LGIC can't do anything
- how do you interpret

- won't create legis or regn. vehicle ...
- if exercise is dumb
- encumbrance [illegible] to restrict.

- any power in any other statute should be [illegible].

- not a question of conflict
  - didn't intend to bin provisions in this way
  - if LGIC can [illegible] amts payable under s. 8 would [illegible]

- any act shall
- can't say any future statute - can't bind legis

- TR - in

- Paramount role tony

- what kinds of things might happen that would undermine exchange

Call w Blanks/CLOC. Apr. 26/2018

JA - what type of interference are w

- certainty of market - once buy as protected as possible

- stop you't act.

Tom - yet that

- when talking about [illegible] action,

(statutes, regs) contracts

- you're trying to do something that would change

- can't do that

- shall not do anything

worry about if being broader than imagine

- main worry execution could do something by reg.
- unless specific authority to do that - not possible
↳ can't override.
- a lot of rights of imp

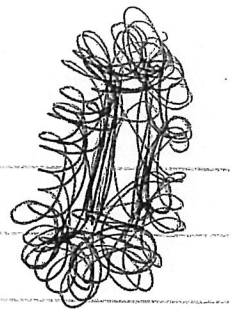
- statute, invs
① specific language in statutes
① types of interference proceeding from
② if we ∆ dramatically how much useful for tick boxes

Ist - curtail reg. making power
put something in general
reg making section
Tom - yes - tighter & deeper

GA - power of Minister -

Tom - normal interpretation rules
- normally can't interfere in vested rights
- out of abundance of caution.
- little word
- accompany amendments introduction.

- If not give LGIC the power not sure - need.



- Rakhans - Dan
- Preamble Purpose - Jane
- Kristin amount - James
- FAP - Carolyn.
- (3) $ Flows/LESO/Blankes Draft - Dan.
- OEB comments - Dan
  - outset of regulation asst process

CONFIDENTIAL
GOV2016.146.e
~~16~~17-TP

Ontario Fair Hydro Plan Act, 2017

EXPLANATORY NOTE

Explanatory note TBD once contents of the Bill are settled.

Bill

2017

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

Preamble

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

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

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

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

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

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

CONTENTS

PART I
GENERAL

1. Interpretation
2. Effect of invalidity, etc.
3. Purpose
4. Crown bound
5. Protection and assurances

PART II
FAIR ADJUSTMENT

6. Definitions
6.01 Determination of invoice amount
6.1 Regulated rate consumer, first ~~fair~~ adjustments
6.2 Other specified consumers, first ~~fair~~ adjustment
6.3 Determination by Board
6.4 Implementation of rates
6.5 Effective date
6.6 Transition
7. Subsequent ~~fair~~ adjustments
7.1 Sub-metering

PART III
CLEAN ENERGY ADJUSTMENT

8. Specified consumers to pay
9. Irrevocability of amount
10. Determination of clean energy adjustment
11. IESO to receive amounts
12. Electricity vendor to invoice specified consumers

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

13. Appointment
14. Duties and powers

FAIR ALLOCATION AMOUNT

15. Minister to calculate fair allocation amount

FINANCING PLAN

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

PART V
THE REGULATORY ASSET

20. IESO deferral
20.1 Variance account to be established, maintained
21. Regulatory asset established
22. Transfer of regulatory asset
23. Validity of transfer

PART VI
THE INVESTMENT ASSET

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

PART VI
MISCELLANEOUS

29. Appointment of agent, invoicing or collection
30. Not Crown agent
30.1 Board's authority
31. Sequestration
32. Choice of law
33. Conflict
34. No further approvals, etc.
35. Liability
36. References in marketing materials and offering documents
38. Regulations

PART VII

AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

PART VII
COMMENCEMENT AND SHORT TITLE

103. Commencement
104. Short title

PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

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

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

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

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

(a) the amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts or amounts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed,

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

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

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

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

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

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

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

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

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

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

"fair allocation amount" means, in respect of a reference period, an amount determined under section 15xx; ("French")

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

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

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

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

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

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

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

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

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

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

"investment asset" means the rights and interests described in section 24xx; ("French")

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

"investment interest" means,

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

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

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

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

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

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

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

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on July 1, 2017 and ending on October 31, 2017, and

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

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

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

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

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

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

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

Specified consumers

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

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

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

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Transfer of regulatory asset

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

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

2. The adjustment of the regulatory asset.

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

Effect of invalidity, etc.[3]

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

Same, funding obligation

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

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs and clean energy benefits are fairly allocated among present and future specified consumers; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province; and

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

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

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

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

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

Agreements

(2) The Minister and the Minister of Finance may together, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

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

(a) authorize the Minister and the Minister of Finance, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister and the Minister of Finance may agree to guarantee or indemnify as described in subclause (a) (ii); and

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

PART II
FAIR ADJUSTMENT

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"regulated rate consumer" means a fictional specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

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

3. Such other criteria as may be prescribed. ("French")

Determination of invoice amount
Electricity provided by licensed distributor, retailer

6.01xx. (1) For the purposes of this Part, in circumstances where electricity would be provided to a regulated rate consumer by a licensed distributor or a licensed retailer, the invoice amount in respect of that consumer shall be determined as follows:

1. Calculate the sum of the following:

    i. The commodity price of the electricity.

    ii. Unless excluded by the regulations and subject to subsection (3), the charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998.*

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998.*

    iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii.

    v. Any other amounts as may be prescribed.

2. Subtract, from the amount determined under paragraph 1,

    i. the amount of the financial assistance provided to the consumer under the *Ontario Rebate for Electricity Consumers Act, 2016* in respect of the amounts mentioned in subparagraphs 1 i, ii and iii, and

    ii. such other amounts as may be prescribed, which may include amounts of the financial assistance referred to in subparagraph i in respect of the amounts mentioned in subparagraphs 1 iv and v.

Same, rate order

(2) For the purposes of subparagraph 1 ii of subsection (2), in respect of charges that relate to any compensation required under subsection 79.2 (10) of the *Ontario Energy Board Act, 1998*, the applicable rate order is the rate order in effect on April 30, 2017.

Invoice amount, exclusions

(3) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

    iii. A rate rider, other than a rate rider that has been prescribed.

5. Any other prescribed amounts.

Regulated rate consumer, first ~~fair~~ adjustments

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

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, without regard to any other provisions of this Act.

Other specified consumers, first ~~fair~~ adjustment

6.2xx (1) For the period beginning on the effective date and ending on April 30, 2018, the monthly global adjustment rate for a specified consumer who is not a regulated rate consumer is the rate determined by applying the following steps:

1. Determine the monthly global adjustment rate that would be payable effective May 1, 2017 by the specified consumer, determined without regard to any other provisions of this Act.

2. Subtract the following from the rate determined under paragraph 1:

    i. The comparison rate referred to in subsection 6.1xx (2).

    ii. The rate determined under subsection 6.1xx (1).

Determination by Board

6.3xx The Board shall determine rates mentioned in section 6.1xx and 6.2xx no later than fifteen business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor shall, no later than seven business days after the day on which the Board determines rates under section 6.3xx, adapt its invoices accordingly.

Effective date

6.5xx The Board's determination under section 6.3xx is effective on July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven business days between the day of the Board's determination under section 6.3xx and July 1, 2017.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor shall adapt its invoices as soon as possible and, in any event, no later than August 1, 2017.

Same

(3) The electricity vendor shall ensure that, if any of its specified consumers have been invoiced in a manner that does not reflect the rates determined under section 6.3xx as a result of the failure to comply with section 6.4xx, the specified consumer receives the difference between the amounts shown on the invoice and the amounts payable under the rates.

Same

(4) Any amount that a specified consumer is eligible to receive under subsection (3) shall be provided as a lump sum credit on the first invoice received after the electricity vendor has adapted its invoices or by such other means as may be prescribed.

Subsequent ~~fair~~ adjustments

7xx. (1) Subject to subsection (2), the Lieutenant Governor in Council may prescribe the methodology to be applied by the Board to determine electricity rates payable by prescribed classes of specified consumers after April 30, 2018.

Limitation, ~~fair~~ adjustments after April 30, 2021

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

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

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

3. Such other matters as may be prescribed.

Sub-metering

7.1xx (1) This section applies if a specified consumer provides to another person electricity in respect of which a rate is determined under this Part.

Same

(2) If an invoice for the electricity is issued to the person by the specified consumer or a unit sub-meter provider providing unit sub-metering for the specified consumer, the rate for the electricity that is payable by the person who is liable to pay the invoice is the rate that reflects the rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

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

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan, including any failure to provide for the reasonable alignment of the estimated finance amount with the fair allocation amount.

Indebtedness of specified consumer

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

Same

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

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may collect amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis in accordance with the regulations.

Irrevocability of amount

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

Exception

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

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by taking the following steps:

1. Calculate the sum of the following:

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

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

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

Regulations re true up amount

(3) The Lieutenant Governor in Council shall, in making regulations with respect to the determination of the true up amount, have regard to the following principles:

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

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

   i. differences between the estimated and actual finance amount for the applicable reference period,

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

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

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment in respect of a reference period and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) Without changing the clean energy adjustment, the Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

11xx. (2) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

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

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

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

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

Same, held in trust

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

IESO to remit

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

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (5) and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is

less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same invoice period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers in respect of the clean energy adjustment and all proceeds of the payments shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts in respect of the clean energy adjustment to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Duties and powers

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

Same

(2) The administration of the investment asset may include providing information to the IESO in respect of obligations under Part III and such other activities as may be prescribed.

Fees, etc.

(3) Subject to any prescribed limitations, the Financial Services Manager may establish and charge fees to recover,

(a) the costs of doing anything the Financial Services Manager is required or permitted to do under this or any other Act; and

(b) any other type of expenditure, the recovery of which is permitted by the regulations.

Same, Board approval

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

FAIR ALLOCATION AMOUNT

Minister to calculate fair allocation amount

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

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

2. Determine the estimated reduction in the amounts payable by specified consumers as a result of rates determined under Part II in respect of all previous reference periods, including the estimated reduction in amounts that would have been payable by specified consumers in respect of clean energy costs under the monthly global adjustment rate in the absence of this Act being enacted.

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

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

Principles

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

1. The purpose of calculating ~~a~~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 ~~each~~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 ~~amounts~~amount under this Part may be changed by such person as may be prescribed in accordance 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 xx or any funding obligations that have already been incurred before the change.

Information

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

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring and financing an

investment asset in accordance with this Act or for the purposes of refinancing a funding obligation.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

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

1. Funding obligations should be incurred such that, along with any funding obligations already incurred, the estimated finance amount that would, subject to any refinancing, become due and payable during a reference period will reasonable align with the fair allocation amount determined in respect of the reference period, in each case after reducing the fair allocation amount to reflect rates determined under Part II in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

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

Limitation

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

(a) no rates determined under Part II have been applied in respect of the reference period; or

(b) if a rate has been determined under Part II in respect of the reference period, the funding obligations incurred would not result in amounts payable in respect of the clean energy adjustment during the reference period in an amount that exceeds the difference between the fair allocation amount in respect of the reference period and the amount of the reduction in the amount payable by specified consumers in respect of the reference period as a result of the determination under Part II.

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the

Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall ensure that funding obligations incurred for the purposes of this Act are incurred in a manner that is consistent with the applicable Financing Plan.

Same

(2) For greater certainty, subsection XX (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

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

Prohibition

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

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and to provide for the reasonable alignment of the estimated finance amount with the fair allocation amount.

PART V
THE REGULATORY ASSET

IESO deferral

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

Same, retrospective amounts

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

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO deferral under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

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

1. The amount of the IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

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

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (2), the Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Same, limitations

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

Transfer of regulatory asset

22xx. (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.

Validity of transfer

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

Same

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

Deemed perfection, etc.

(3) At the time a transfer of the regulatory asset is made under section 22xx, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

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

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) The transfer of a specified portion of the regulatory asset under section 22x creates an investment asset or, if it is not the first transfer, adds to the investment asset.

Same

(1.1) Upon transfer of a specified portion of the regulatory asset under section 22xx to a financing entity the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right and interest to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors, IESO and other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor and IESO to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by any electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest, including any rights to receive funding rebates.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

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

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, IESO, an agent of the investment interest owner or an owner of a distribution system, within the meaning of the *Electricity Act, 1998*, in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

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

Exercise of rights

(3) The rights of the investment interest owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

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

Transfer of investment interest

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

Validity of transfer

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

Same

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

Deemed perfection, etc.

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

Priority of transfer, assignment, etc.

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

Investment interest owner may grant security interest

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

Validity

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

Perfection and priority of security interests

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

Proceeds

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

Perfection

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

Same

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

Notice required

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

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

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

Not Crown agent

30xx. (1) For greater certainty, a person appointed under section 29xx is not an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Board's authority

30.1xx (1) Each electricity vendor, the IESO and the Financial Services Manager shall maintain such accounts and provide such information to the Board as the Board may require for the purposes of carrying out its responsibilities under this Act, in the form and manner and within the time required by the Board.

No hearing required

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

Sequestration

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

Same

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

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to a transfer under this Act or the

creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section XX shall be the laws of the Province.

Conflict

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

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Liability

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

Same

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

Same

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

References in marketing materials and offering documents

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

Regulations

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

[OLC Note: Instructions pending on section 38.]

1. [5]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

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

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

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

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

7. Governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on or with invoices issued to specified consumers, including the form that the information must take and the form of the invoices and the form of any notice to be provided to the specified consumer under this Act[6];

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

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

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

Limitation

(2) Despite subsection (1) or any other Act, no regulation under this Act shall have the effect of reducing, impairing, postponing or terminating the obligations of specified

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

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

consumers to pay amounts in respect of the clean energy adjustment or impairing or postponing the invoicing, collection or remittance of the clean energy adjustment.

PART VII[7]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

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

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

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(A) incurring liabilities in relation to the regulatory asset,

(B) transferring the regulatory asset under section 22x for consideration, and

(C) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

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

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

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

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

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

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

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

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

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

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

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

Deemed assets, non-subsidiary

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

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

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

Deemed assets, subsidiary

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

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

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

Definition, financing entity

(1.5) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017.*

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

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

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

205.1x Section 70 of the Act is amended by adding the following subsection:

(2.3) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Fair Hydro Plan Act, 2017* and the regulations made under it.

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

Same, limitation re Ontario Power Generation Inc.

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

Same

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

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

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

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

PART VII
COMMENCEMENT AND SHORT TITLE

Commencement

103x. This Act comes into force on the day it receives Royal Assent.

[OLC Note: ENE LSB - please confirm that no regulations need to be in place in order for the legislative scheme to function on Royal Assent. I don't think so but we want to be sure that no lag time is needed.]

Short title

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

Document comparison by Workshare 9 on April-28-17 14:38:40

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Description	GOV2016.146.e17
Rendering set	Standard

Legend:	
Insertion	
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Style change	
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Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	7
Deletions	14
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	21

"Fair" – Sketch of Primary Legislation

Whereas:

1. IESO has entered into long-term power contracts (the "Power Contracts") with Generators, under which IESO has agreed to pay Generators amounts, determined in respect of quantities of electricity over specified periods (the "Future Quantities"), to the extent that applicable market prices of electricity (the "Market Prices") during a specified period are less than certain pre-agreed electricity prices (the "Reference Prices"), and, correspondingly, Generators have agreed to pay IESO amounts if the Market Prices exceed the Reference Prices.

2. The Reference Prices and Future Quantities were determined based on commitments made by IESO to provide Generators with long-term price certainty regarding, and to encourage the long-term construction and development of facilities for the purpose of generating electricity using, sustainable, lower carbon-based technologies such as [solar, wind, nuclear and natural gas-based generation methods], including under the Province's [*Describe Relevant Government Programs*] (the "Conservation Plan").

3. The long-term benefits of the Conservation Plan accrue over time and have benefited and will benefit present and future residents of the Province.

4. The expected present value of the Power Contracts is currently negative, primarily because expected Market Prices are less than the Reference Prices.

5. The amounts paid by users of electricity who are resident in the Province (the "Ratepayers") currently include an assessed amount calculated in part by reference to the present value of the Power Contracts from time to time, which assessment takes the form of a use-based charge to individual Ratepayers reflecting an allocation of the aggregate unamortized costs of the Conservation Plan (the "Global Adjustment").

6. The relationship between the past, present and future benefits to Ratepayers from the Conservation Plan, on the one hand, and the costs of the Conservation Plan 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 take account of inter-generational fairness considerations.

7. Any adjustment made to reflect inter-generational fairness considerations should incorporate principles and parameters that can be applied from time to time in order to establish an [objective] basis for measuring and allocating the relative costs and benefits of the Conservation Plan across present and future Ratepayers and upon which a plan to allocate such costs and benefits equitably across present and future Ratepayers may be developed (a "Fair Allocation Plan").

8. If a Fair Allocation Plan were to determine that the allocation of the Global Adjustment to the Ratepayers of a particular time period (a "Reference Period") should be reduced below the amount otherwise determined, the amount payable by such Ratepayers to Electricity Distributors in respect of such Reference 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 Reference

Period (a "Funding Gap"). In such circumstances, IESO's ability to make required Power Contract payments to the Generators for the Reference Period would require IESO to obtain funding from another source in order to cover the Funding Gap (a "Funding Obligation"), including funding obtained from third party sources operating in public and private capital markets ("Capital Market Fundings").

9. If a Funding Obligation is incurred in order to enable the IESO to cover a Funding Gap incurred during a Reference Period, the repayment of the Funding Obligation will be required in a future Reference Period (net of any related refinancing, a "Repayment"), and related funding, hedging and other transaction costs will be incurred and may become payable in one or more Reference Periods ("Funding Costs").

10. In connection with obtaining Funding Obligations, including Capital Market Fundings, it will be necessary to provide a reliable and committed source of cash flows to enable such Funding Obligations to be incurred and for the Repayments and related Funding Costs to be paid with certainty when they become due and payable.

11. If the responsibility to pay Repayments and Funding Costs is allocated to Ratepayers of future Reference Periods in a manner, on a basis and in quantities that correspond to the allocation of the costs and benefits of the Conservation Plan to such Ratepayers under the Fair Allocation Plan, the costs and benefits of the Conservation Plan may be spread across and borne by present and future Ratepayers on a basis that achieves intergenerational fairness. To achieve such intergenerational fairness, (1) Funding Obligations should only be incurred if Repayments and Funding Costs would be borne by present and future Ratepayers on a basis that is consistent with their respective allocations of the costs and benefits of the Conservation Plan contemplated in the Fair Allocation Plan and (2) In no circumstance should the expected aggregate amount payable during future Reference Periods under all Funding Obligations incurred on or before the date on which a new Funding Obligation is committed to exceed the aggregate amount of the Global Adjustment on that date (collectively, the "Incurrence Test").

12. So long as when a Funding Obligation is incurred the Incurrence Test is satisfied, the Ratepayers of a particular Reference Period will become obligated to pay an allocated share of the related Repayments and Funding Costs becoming or expected to become due and payable during such Reference Period. A Ratepayer's monthly electricity invoice issued by its Electricity Distributor will record as a separate amount the Ratepayer's allocated responsibility to pay such Repayments and Funding Costs becoming or expected to become due and payable during such time period, together with any true-up adjustment made in respect of any earlier Reference Period, which amount will constitute a payment obligation owing directly by the Ratepayer to the IESO or any assignee of IESO's right to receive such payment (a Ratepayer's "Transition Amount"). A Transition Amount will be payable by an applicable Ratepayer to its Electricity Distributor or another designated entity, in each case acting as a collection agent for and on behalf of IESO or such assignee.

13. A Ratepayer's Transition Amount will be taken into account in the calculation of the amount that will be assessed to the Ratepayer in respect of the Global Adjustment.

14. In order to minimize the allocated costs to Ratepayers, the incurrence of Funding Obligations should be managed under a comprehensive treasury plan designed,

implemented and adapted from time to time in order to make decisions respecting the redemption, defeasance, refinancing, hedging, repayment, trading, liquidity and adjustments of Funding Obligations on a cost-effective basis, including having regard to reasonable commercial terms and conditions for available Capital Market Fundings, and so that payments to be made in respect of Repayments and Funding Costs over a Reference Period remain consistent with the allocations to the Ratepayers of each applicable Reference Period in accordance with the Fair Allocation Plan (the "Treasury Plan").

15. The responsibility for establishing, applying, implementing and adapting a Fair Allocation Plan and a Treasury Plan from time to time, in furtherance of spreading the costs and benefits of the Conservation Plan across present and future Ratepayers on a basis that achieves intergenerational fairness, will require expertise, ongoing inputs and management from a variety of sources and so is appropriately delegated to persons having relevant expertise, knowledge and abilities, subject to appropriate accountability requirements.

Therefore:

A. Definitions

B. Creation of the Regulatory Asset and Related Rights

C. Collection and Enforcement of the Regulatory Asset

D. Establishment of a Fair Allocation Plan

E. Permitted Amendments to a Fair Allocation Plan[1]

F. Establishment of the Treasury Plan

G. No Change to Regulatory Asset

H. Irrevocability of Funding Obligations once Incurred

I. Ancillary Items (Authority of Administrative Agencies; tie-in to Electricity Act, PPSA, etc.)

J. Regulations

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[1] A Transition Amount may include Repayments or Funding Costs payments for a related Reference Period despite that such amounts are inconsistent with the Fair Allocation Plan applicable at the time of such payments are due if the related Funding Obligation was properly incurred in accordance with a Treasury Plan that was established in compliance with the Regulation on a basis that was consistent with a the Fair Allocation Plan applicable at the time of such incurrence; provided that the [Treasury Official] shall have determined that the refinancing or deferral of such Repayments or Funding Costs payments could not reasonably or cost-effectively be effected on a basis consistent with the Fair Allocation Plan based on then prevailing market terms and conditions. In no case shall a funding obligation incurred under a compliant Treasury Plan be affected by a subsequent amendment to a Fair Allocation Plan.

"Fair" – Sketch of Primary Legislation

Whereas:

1. IESO has entered into long-term power contracts (the "Power Contracts") with Generators, under which IESO has agreed to pay Generators amounts, determined in respect of quantities of electricity over specified periods (the "Future Quantities"), to the extent that applicable market prices of electricity (the "Market Prices") during a specified period are less than certain pre-agreed electricity prices (the "Reference Prices"), and, correspondingly, Generators have agreed to pay IESO amounts if the Market Prices exceed the Reference Prices.

2. The Reference Prices and Future Quantities were determined based on commitments made by IESO to provide Generators with long-term price certainty regarding, and to encourage the long-term construction and development of facilities for the purpose of generating electricity using, sustainable, lower carbon-based technologies such as [solar, wind, nuclear and natural gas-based generation methods], including under the Province's [*Describe Relevant Government Programs*] (the "Conservation Plan").

3. The long-term benefits of the Conservation Plan accrue over time and have benefited and will benefit present and future residents of the Province.

4. The expected present value of the Power Contracts is currently negative, primarily because expected Market Prices are less than the Reference Prices.

5. The amounts paid by users of electricity who are resident in the Province (the "Ratepayers") currently include an assessed amount calculated in part by reference to the present value of the Power Contracts from time to time, which assessment takes the form of a use-based charge to individual Ratepayers reflecting an allocation of the aggregate unamortized costs of the Conservation Plan (the "Global Adjustment").

6. The relationship between the past, present and future benefits to Ratepayers from the Conservation Plan, on the one hand, and the costs of the Conservation Plan 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 take account of inter-generational fairness considerations.

7. Any adjustment made to reflect inter-generational fairness considerations should incorporate principles and parameters that can be applied from time to time in order to establish an [objective] basis for measuring and allocating the relative costs and benefits of the Conservation Plan across present and future Ratepayers and upon which a plan to allocate such costs and benefits equitably across present and future Ratepayers may be developed (a "Fair Allocation Plan").

8. If a Fair Allocation Plan were to determine that the allocation of the Global Adjustment to the Ratepayers of a particular time period (a "Reference Period") should be reduced below the amount otherwise determined, the amount payable by such Ratepayers to Electricity Distributors in respect of such Reference 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 Reference

Period (a "Funding Gap"). In such circumstances, IESO's ability to make required Power Contract payments to the Generators for the Reference Period would require IESO to obtain funding from another source in order to cover the Funding Gap (a "Funding Obligation"), including funding obtained from third party sources operating in public and private capital markets ("Capital Market Fundings").

9. If a Funding Obligation is incurred in order to enable the IESO to cover a Funding Gap incurred during a Reference Period, the repayment of the Funding Obligation will be required in a future Reference Period (net of any related refinancing, a "Repayment"), and related funding, hedging and other transaction costs will be incurred and may become payable in one or more Reference Periods ("Funding Costs").

10. In connection with obtaining Funding Obligations, including Capital Market Fundings, it will be necessary to provide a reliable and committed source of cash flows to enable such Funding Obligations to be incurred and for the Repayments and related Funding Costs to be paid with certainty when they become due and payable.

11. If the responsibility to pay Repayments and Funding Costs is allocated to Ratepayers of future Reference Periods in a manner, on a basis and in quantities that correspond to the allocation of the costs and benefits of the Conservation Plan to such Ratepayers under the Fair Allocation Plan, the costs and benefits of the Conservation Plan may be spread across and borne by present and future Ratepayers on a basis that achieves intergenerational fairness. To achieve such intergenerational fairness, (1) Funding Obligations should only be incurred if Repayments and Funding Costs would be borne by present and future Ratepayers on a basis that is consistent with their respective allocations of the costs and benefits of the Conservation Plan contemplated in the Fair Allocation Plan and (2) In no circumstance should the expected aggregate amount payable during future Reference Periods under all Funding Obligations incurred on or before the date on which a new Funding Obligation is committed to exceed the aggregate amount of the Global Adjustment on that date (collectively, the "Incurrence Test").

12. So long as when a Funding Obligation is incurred the Incurrence Test is satisfied, the Ratepayers of a particular Reference Period will become obligated to pay an allocated share of the related Repayments and Funding Costs becoming or expected to become due and payable during such Reference Period. A Ratepayer's monthly electricity invoice issued by its Electricity Distributor will record as a separate amount the Ratepayer's allocated responsibility to pay such Repayments and Funding Costs becoming or expected to become due and payable during such time period, together with any true-up adjustment made in respect of any earlier Reference Period, which amount will constitute a payment obligation owing directly by the Ratepayer to the IESO or any assignee of IESO's right to receive such payment (a Ratepayer's "Transition Amount"). A Transition Amount will be payable by an applicable Ratepayer to its Electricity Distributor or another designated entity, in each case acting as a collection agent for and on behalf of IESO or such assignee.

13. A Ratepayer's Transition Amount will be taken into account in the calculation of the amount that will be assessed to the Ratepayer in respect of the Global Adjustment.

14. In order to minimize the allocated costs to Ratepayers, the incurrence of Funding Obligations should be managed under a comprehensive treasury plan designed,

implemented and adapted from time to time in order to make decisions respecting the redemption, defeasance, refinancing, hedging, repayment, trading, liquidity and adjustments of Funding Obligations on a cost-effective basis, including having regard to reasonable commercial terms and conditions for available Capital Market Fundings, and so that payments to be made in respect of Repayments and Funding Costs over a Reference Period remain consistent with the allocations to the Ratepayers of each applicable Reference Period in accordance with the Fair Allocation Plan (the "Treasury Plan").

15. The responsibility for establishing, applying, implementing and adapting a Fair Allocation Plan and a Treasury Plan from time to time, in furtherance of spreading the costs and benefits of the Conservation Plan across present and future Ratepayers on a basis that achieves intergenerational fairness, will require expertise, ongoing inputs and management from a variety of sources and so is appropriately delegated to persons having relevant expertise, knowledge and abilities, subject to appropriate accountability requirements.

Therefore:

A. Definitions

B. Creation of the Regulatory Asset and Related Rights

C. Collection and Enforcement of the Regulatory Asset

D. Establishment of a Fair Allocation Plan

E. Permitted Amendments to a Fair Allocation Plan[1]

F. Establishment of the Treasury Plan

G. No Change to Regulatory Asset

H. Irrevocability of Funding Obligations once Incurred

I. Ancillary Items (Authority of Administrative Agencies; tie-in to Electricity Act, PPSA, etc.)

J. Regulations

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[1] A Transition Amount may include Repayments or Funding Costs payments for a related Reference Period despite that such amounts are inconsistent with the Fair Allocation Plan applicable at the time of such payments are due if the related Funding Obligation was properly incurred in accordance with a Treasury Plan that was established in compliance with the Regulation on a basis that was consistent with a the Fair Allocation Plan applicable at the time of such incurrence; provided that the [Treasury Official] shall have determined that the refinancing or deferral of such Repayments or Funding Costs payments could not reasonably or cost-effectively be effected on a basis consistent with the Fair Allocation Plan based on then prevailing market terms and conditions. In no case shall a funding obligation incurred under a compliant Treasury Plan be affected by a subsequent amendment to a Fair Allocation Plan.

Electricity Amendment Fair Hydro Plan **Act, 201**7e (Pro ceeds Recycling- GAM Generational Redistribution -- GAM)

EXPLANATORY NOTE

[Insert explanatory note.]

NEW PURPOSE CLAUSE(S):

There has been strong interest in adding Purpose" clauses that highlight the following:

- The importance of achieving intergenerational fairness in the prices that electricity consumers have to pay and the recovery of electricity costs (spreading the cost of the generation of electricity captured by the Global Adjustment across generations of rate-payers).
- The policy of the Government of Ontario to undertake activities designed to defer some of the costs related to the costs of generation *[aka the Global Adjustment]* to achieve that goal over an extended time-period. *[nnk: Considering attempting to define a term below – "Fair Hydro Financing Initiative" similar to the Smart Metering Initiative provided for elsewhere in the Act.]*

x. Subsection 2(1) of the Act is amended by adding the following definition:

"Fair Hydro Financing Initiative" means those policies of the Government of Ontario related to its decision to ensure Ontario electricity consumers pay their fair share of the costs of electricity infrastructure, having regard to the benefits derived by different generations of consumers. [Blakes: See attached "Sketch" which attempts to described the broad parameters of the Initiative, in a way that explains the purpose. This Sketch is based on last Friday's session at our offices.]

"Fair Hydro Financing Entity" means the trust or other entity established by Ontario Power Generation Inc. under Part V.2

ELECTRICITY ACT, 1998

1. (1) Section 1 of the *Electricity Act, 1998* is amended by adding the following clause: [Blakes: Consider tying-in to the overall rate scheme by dealing with the Initiative in its own legislation and then specifying that electricity rates and GA allocations otherwise determined will be take into account (i.e., be reduced) amounts payable by ratepayers in respect of the "Transition Amount" (see earlier "Outline" for a basic definition) for a reference period.]

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

[NTD: Instead of the various references to "mitigation", we need to build in the concept that this regime is intended, for the eligible class of customers, to achieve a fair and equitable allocation of the costs associated with replacing coal fired generation with cleaner power sources having regard to, among other things, the useful life of such assets. In other words, the fair and equitable allocation of the cost of new generation assets which takes into account the useful life of such assets. This characterization is important from a Constitutional Law perspective.] [Blakes: I thought the connection was to the power contracts – see the description in the Sketch. If the reference is to the useful life of the generation assets, we should make that link more explicit.]

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

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

(i) the adequacy, reliability and quality of electricity service, and

(ii) prices that consumers pay of for electricity ~~services~~, which may include the establishment of one or more mechanisms to defer certain costs to achieve greater fairness amongst classes of consumers who consume electricity across different time periods as part of [*the Government of Ontario's initiative to defer the costs of global*

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

adjustment];[Blakes: Consider using "allocate" rather than defer. See Sketch.]

[OLC No te: I have a few concerns about the proposed amendments to clause (f) (and some of these same concerns come up in a few other places throughout the draft where similar wording is used):

1. Because the substantive provisions were are creating will be very express about what is being established, I don't understand why the above amendment to the purpose provision is necessary. The existing clause (f) already notes that a purpose of the Act is to protect the interest of consumers with respect to "price". Why is this considered to be insufficient?

[NTD: Linked to price is the inter-generational sharing of costs for the specified rate class, having regard to the useful life of the assets.]

2. I see that there is precedent within this Act to refer to government policies in broad terms, but this raises some concerns. A reference to a government "policy" or "initiative" is really vague (which initiative/ policies? At which point in time?) and I think this could cause lots of confusion, particularly if the policies evolve over time. It could also have unintended consequences. [Blakes: Consider the construct of a "Fair Allocation Plan" as contemplated in the Sketch]

3. If it's necessary to mention the initiative/policies in the purpose provision, consider whether or not you want to create a legislated link between these policies and "protecting the interests of consumers". Questions may be raised about *which consumers' interests* are meant to be protected (e.g. all consumers? a subset of consumers? Current consumers vs. future consumers?). Would it be better to refer to the implementation of the initiative without specifying that it must be done in the interests of consumer protection? [Blakes: The issue is less about protecting consumers and more about intergenerational fairness. We should land on this as it impacts the legal analysis.]

4. I have proposed some tentative wording to describe the initiative/policies. Once the language is settled, we may want to do something like what has been done with the definition of "smart metering initiative" to simplify repeated references throughout the draft.] [Blakes: Consider the Sketch]

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

(q.1) to enter into agreements or arrangements with the Fair Hydro Financing Trust or ~~any designated prescribed~~ entity ~~or entities~~ under Part V.2;

[NTD: The references to the Trust should be replaced with a defined term such as "authorized entity", "financing entity", or "fair hydro financing entity" – the term could be defined as: the Fair Hydro Financing Trust or such other trust, corporation, partnership, joint venture or other entity as may be prescribed under regulation, which shall include the successors and permitted assigns of any such entity]

(q.2) to engage in activities related the making payments to and receiving payments from the Financing Entity or other entities prescribed under Part V.2, as required under this Act, and to engage in related settlement activities; [Blakes: Consider scope of activities once counterparty relationships and flexibility issues are sorted out]

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

[HB-We need to expand the objects of the IESO to match up (in a bit more detailed of a manner) with the new activities the IESO would be expected to undertake with the OPG Financing Trust or (a new concept) new financing entities that OPG either creates or transacts with in order to facilitate the deferral activities – AG L still being developed]

[NTD: The IESO and the LDCs will also be collection agents on behalf of the holders of the "regulatory asset".][Blakes: Agreed. The collection and enforcement activities of the IESO (opposite the LDCs) will need to be specified in detail in the Initiative's primary legislation (the "Act")]

(q.3) to engage in activities related to the sale or disposition of the regulatory asset referred to in section 25.35 and in accordance with the Regulations including [Blakes: The IESO may enter into a variety of other counterparty arrangements as part of a financing. Consider broadening this out to include swaps, standby liquidity facilities, contracts with credit enhancement providers, back-stop arrangements, etc.]:

i. the incurring of liabilities in relation to the asset; IESO to incur debt which in the short-term it manages but has to be a "added" to the regulatory asset thereby increasing its value but also increasing IESO's liability eventually to be recovered through LDC's from consumers.]

ii. the disposition of the asset to the Financing Trust or other prescribed entities; [Blakes: Consider "sale, assignment, transfer, convey, set-over, grant

security interests in", etc. Confirm that the asset here is the "Regulatory Asset", or more broadly IESO's assets?]

(iii. the assignment of rights to the asset to third parties

(iv. acting as a recovery agent for the Financing Entity or prescribed entities in relation to amounts to be deferred and forming part of the regulatory asset created under s.25.36; [Blakes: Consider expanding to include the collection, servicing, administration and enforcement of the Regulatory Asset, on its own behalf or on behalf of any other person having an interest in the Regulatory Asset]

(q.4) to engage in any activities related the making of payments to and receiving payments from the Financing Entity or any prescribed entities under Part V.2,

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

Electricity pricing adjustments
Adjustments by IESO

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

[OLC Note: As per our discussion on March 16th, there is some concern about whether the above underlined wording (which is the current wording of subs. (1)) is sufficiently clear. The IESO is required to make adjustments to ensure that the payments "reflect" the various amounts listed below. Now that the list below is being expanded and will include a more diverse range of categories of amounts, we should consider whether revising the opening flush would be helpful to explain how, in a general way, the amounts are to be "reflected".] [Blakes: Should it say that the rates otherwise determined should have regard to the Transition Amount, essentially allowing the Initiative's Act to standalone, but connect to the payments owed by ratepayers under the Electricity Act by reference to the relevant amount?]

(a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the *Ontario Energy Board Act, 1998*;

(b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract;

(c) amounts received by the IESO, directly or indirectly, from the Greenhouse Gas Reduction Account established under section 71 of the *Climate Change Mitigation and Low-Carbon Economy Act, 2016* for the funding of greenhouse gas reduction initiatives under this Act or the *Ontario Energy Board Act, 1998* for which the costs would otherwise be borne in whole or in part by consumers;

(d) amounts received by the IESO from the Financing Entity under Part V.2; and

(e) amounts paid to the Financing Entity under section [repayment of principal/interest and operating cost],

[NTD: We should also contemplate the payments received by LDCs (as collection agent for the holder of the "regulatory asset").] [Blakes: Agreed. See comment below]

Adjustments by distributors and retailers

(2) Subject to subsection (2.1), distributors and retailers shall, through their billing systems, make adjustments in accordance with the regulations that ensure that, over time, payments by such classes of consumers in Ontario as are prescribed by regulation reflect, [OLC Note: Same concerns as flagged under subs. (1).] [Blakes: A key piece of the legislation creating the Regulatory Asset will be the requirement on the part of LDCs to invoice the Transition Amount and then to collect it on behalf of the IESO or a Finance Entity, in each case as agent (deemed to be). Consider the best location for those provisions in the Act or subordinate legislation.]

(a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the *Ontario Energy Board Act, 1998*;

(b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract;

(c) amounts received by the IESO, directly or indirectly, from the Greenhouse Gas Reduction Account established under section 71 of the *Climate Change Mitigation and Low-Carbon Economy Act, 2016* for the funding of greenhouse gas reduction initiatives under this Act or the *Ontario Energy Board Act, 1998* for which the costs would otherwise be borne in whole or in part by consumers;

(d) amounts received by the IESO, directly or indirectly, from the Financing Entity under Part V.2; and

(e) amounts paid to the Financing Entity under [repayment of principal/interest and operating cost].

[OLC Note: Your instructions were slightly different for clauses (1) (d) & (e) and (2) (d) & (e) - for example see the underlined phrase in (d) above. Please review carefully to ensure that the differences are intentional. I don't understand the discrepancies so if they are intended, please explain.]

[NTD: In the short run (probably the first few months of this proposed new mechanism), the IESO may cover the shortfall (caused by the deferral) by borrowing itself from lenders (and not by getting funds from the Financing Trust). As such, the GA settlement amount will be reduced by the amount deferred, not necessarily the amount received from the Financing Trust.

For (e) above, the LDCs need to be expressly obligated to collect, as collection agent of the holder of the regulatory asset, amounts due and payable pursuant to the terms of that regulatory asset. The amount will include all financing and servicing costs, not just those currently listed.

See also the NTD below re: whether (d) and (e) should be moved out of the GAM altogether.]

Application to certain market participants, consumers

(2.1) In making adjustments under subsection (1) or (2), the IESO shall, in accordance with the regulations, ensure that the amounts mentioned in clauses (1) (d) and (e) and (2) (d) and (e) are reflected only in payments by classes of market participants with respect to electricity consumed by a consumer who,

[OLC Note: This is an attempt to address the other issue we discussed on the phone, but I'm not sure it is quite right. The idea would be for the regulations to specify how the IESO would ensure that the short-term rate reductions that flow from the Trust borrowing are only received by the targeted class of consumers and that this same class of consumers is the only class responsible for the repayment of borrowed funds in the long-term.

An alternative to consider -- Perhaps this part of the calculations should not even be part of the GAM… it really depends on how this is supposed to work. I am wondering if perhaps this is a subsequent step that is entirely separate from the GAM. Tamara's previous draft had anticipated that the IESO would "apportion" amounts received from the Trust/entity for the purposes of covering the GAM to consumers. If that is the case, then perhaps subs. (2.1) doesn't need to be included in the GAM section at all. Instead, we would deal with "apportionment" by the IESO as a separate matter. I have included a proposed apportionment provision below in Part V.2.][Blakes: The certainty of the obligation to pay the Transition Amount will depend on the payors being defined broadly in a way that can't be avoided. Also, the Transition Amount should be a separate debt obligation that can be enforced separately by investors in a default situation, rather than dependent on an apportionment or other action by IESO or the LDCs.]

[NTD: It has not yet been conclusively settled that the amounts "deferred" will only be global adjustment costs.

As the wholesale market price increases, the amount of the global adjustment correspondingly decreases. [Blakes: If electricity prices rise, IESO's obligations under the power contracts will reduce. Those reductions (and any actual cashflows derived from market prices > reference prices), should be anticipated in the Treasury Plan (as contemplated in the Sketch).]

So for e.g., it is theoretically possible that HOEP could rise to a point where, on occasion, some of the amount "deferred" would relate to the wholesale market price (HOEP).

As such, it might be better to move the "deferral" and "recovery" provisions out of the GAM section altogether, since the relevant amounts might not be 100% global adjustment costs.] [Blakes: The Sketch contemplates that the Transition Amounts will not be the entire GA – just the amount incurred to fund "Funding Gaps"]

(a) is a member of a class of consumers prescribed for the purposes of subsection 79.16 (1) of the *Ontario Energy Board Act, 1998* who is required to pay the [global adjustment], regardless of whether or not the Board determines the rates for electricity payable by the consumer under that subsection;

(b) is [served by a sub-metering entity]; or

(c) is a member of a class of consumers prescribed by the regulations.

[NTD: See the description of "cross-generational consumer" in ss. 4 (3) of the proposed amendments to O. Reg. 95/05. That is the class of consumers who will be the subject of the "deferral" and recovery. [Blakes: The class of future ratepayers should be defined broadly and inclusively to avoid investors concerns regarding by-passability]

For now, there will still be a second (the original) prescribed class of consumers (the RPP consumers – ss. 4 (2) of the RPP reg.), although the ss. creating that class might be revoked if it is no longer needed. I assume we can clearly identify which "class" we mean in the regulation by saying something like "for the purposes of section (X)"?]

x. Clause 25.33 (4) (a) of the Act is amended by striking out "(2) and (3)" and substituting "(2), (2.1) and (3)".

x. Section 25.33 of the Act is amended by adding the following subsections:

Separate accounting by IESO

(4.1) If required by the regulations, the IESO shall separately track and account for any amounts referred to in clauses (1) (c) for which it makes adjustments under this section. [Blakes: This should be a measurement and recording function that can operate independently of the IESO. The concept in the Sketch is that the Transition Amount will depend on the implementation of a Treasury Plan by a delegated person (like OPG).]

[OLC Note: Please confirm the underlined. Or is this requirement intended to be broader?]
[OLC Note: Instructions included "and to direct such amounts to the contracts and generators or classes of contracts and generators as may be prescribed". You noted that for constitutional reasons, you may want to direct GGRA money only to renewables-related contracts so that you could show that the money was used for GHG reduction activities. Please advise.] [Blakes: I am not sure what this is saying, but it must be clear that the Transition Amount is a sum certain, determinable and payable without discretion or reversal (other than pre-agreed redemption rights, etc.) once a Funding Obligation is incurred.]

Same

(4.2) The IESO shall separately track and account for each of the following amounts [Blakes: This makes sense to the extent that IESO is part of the collection and enforcement methodology. The replacement of IESO in this role in a default/insolvency scenario, should be contemplated in the legislation, as it specifically relates to the collection and enforcement of the Transition Amount and affects third party rights. In any event, the book-keeping should not impact the amount and rights associated with the Regulatory Asset.]:

1. Amounts referred to in clause (1) (d) for which it makes adjustments under that subsection.

2. Amounts referred to in clause (1) (e) [principal/interest and other financing cost related amounts] for which it makes adjustments under that subsection.

3. Amounts referred to in clause (1) (e) [management and operating costs] for which it makes adjustments under that subsection.

4. Amounts paid to the Fair Hydro Financing Trust or designated entity under [authority requiring payment back to TBD of operating costs].

5. The following variances, if any:

i. Variances between the amounts set out in paragraphs 1 and 2.

ii. Variances between the amounts set out in paragraphs 3 and 4.

iii. Any other variances related to the amounts set out in paragraphs 1 to 4 that the IESO considers appropriate.

Separate accounting by distributors and retailers

(4.3) If required by the regulations, distributors and retailers shall separately track and account for any amounts referred to in clauses (2) (d) and (e) for which they make adjustments under this section. [Blakes: This separation will be critical to the marketability of the Regulatory Asset. It should be hard-coded in the legislation.]

x. Subsection 25.33 (5) of the Act is repealed and the following substituted:

Variance, deferral accounts[2]

(5) The IESO shall establish and maintain such variance or deferral accounts as may be required,

(a) for the purposes of subsections (3) and (4.2); and

(b) to otherwise record all amounts payable or receivable by it under this section.

[OLC Note: Subs. 25.33 (7) refers to adjustments made under subs. (1) or (2) -- this should perhaps also refer to subs. (2.1)?]

[NTD: Why are we referring in (5) (a) above to ss. (3), when ss. (3) already requires the IESO to establish variance accounts for the purposes of ss. (3)?

We need to be careful about broadly scoped deferral account provisions like the one in (5) (b) above, especially if we keep the proposed "deferral" and recovery in ss. 25.33. We may only have one deferral account for all the proposed "deferral" and recovery related in-flows and out-flows.]

(3) Section 25.33 of the Act is amended by adding the following subsection:

Additional requirements

(9) The Lieutenant Governor in Council may, by regulation, require the IESO, a distributor, retailer, generator or any other licence holder to take the steps prescribed by the regulations in the manner and time prescribed by the regulations, in order to

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[2] FLS: see the current s. 25.33 (5), as well as s. 88 (1) (i.7) of the Ontario Energy Board Act.

implement or facilitate the implementation of the adjustments for the amounts referred to in clauses (1) (c), (d) and (e) and (2) (c), (d) and (e) [and subsection (2.1)?].

[OLC Notes:
1. Can you give me any examples of how ENE might use this reg making authority?
2. Please confirm the citations to the borrowing piece against those provisions in this draft and let me know if you need to narrow them at all.]

Note: Regulation-making authority drafting to be done later, once the actual substantive elements of the scheme have been landed (or at least more landed). For now, I've left it exactly as it was in draft 2, when only GGRA was in play.

x. (1) Subclause 114 (1.3) (f) (ii) of the Act is amended by adding "under subsection 25.33 (2)" after "that must or may be made".

TBD whether s. 114 (1.3) (f) (i) and (ii) need further amendment, given the inclusion of the new clause (c) in s. 25.33 (1) and (2). I don't see anything at this point that would need changes.

[The expectation is that the IESO will have to receive amounts from the Financing Trust or prescribed entities in the normal course, or from the OEFC/OFA to cover short-term financing gaps/shortfalls. This provision is designed to ensure IESO is required (and therefore authorized) to undertake these activities.

IESO Fair Hydro Financing Initiative activities

25.34.1(1) The IESO shall, as often as is required to ensure that it meets its obligations under section 25.33, enter into transactions with the Financing Entity or any other entity *[eds: Trying to signal that it can negotiate new Lines of credit with Ontario Financing Authority or OEFC to conduct "warehousing" short-term financing activities]* for such amounts as are necessary to support the government's Fair Hydro Financing Initiative. [Blakes: Consider recasting this to say that IESO is permitted to enter into funding obligations so long as they are consistent with the "Fair Allocation Plan" (see Sketch).

Prescribed limits, etc.

(2) Notwithstanding subsection (1), the IESO shall conduct its activities in accordance with any maximum amounts and timing provided for in the regulations. [Blakes: Consider recasting this to reflect the flexibility and delegations contemplated by the "Treasury Plan" contemplated in the Sketch. In no case can a failure to comply with the Act vitiate a funding obligation once incurred or diminish the Regulatory Asset required for the repayment of the funding obligations.]

Deemed additions, regulatory asset

(3) When the IESO incurs any liability as a result of its activities in support of the Government's Fair Hydro Financing Initiative [Blakes: Consider rephrasing so that this is IESO's independent decision – if there are no funding obligations, then there is no corresponding claim for "Transition Amount", so funding obligations will inevitably be incurred to plug a Funding Gap], such amounts shall be added to the value of *[add amounts tracked in the accounts related to]* the regulatory asset established under section 25.34. *[add fpr: may need to break out the capital, interest (plus transaction) financing costs but likely not the operating costs.]*

Deemed regulatory asset

25.35 (1) There shall be established in the books and accounts of the IESO a regulatory asset to be comprised of the following. [Blakes: The focus should not be "the books and accounts" of IESO, but rather that the ratepayers (present and future) are obligated to pay the Transition Amount determined in accordance with the Act]

1. all amounts referred to in clause 25.33(1.1) (a) which are paid to the IESO by the Financing Entity or other prescribed entities during the deferral period and payable for the month or such other periods as are prescribed;

2. all amounts referred to in clause 25.33(1.1) (b) related to interest costs or charges, including transaction costs, incurred by the Financing Entity or prescribed entity during the deferral period;

3. all amounts of any costs or charges referred to in clause (1.1) (c) relating to the operation or management of the Financing Entity or other prescribed entities, as approved by the Board [Blakes: There are a variety of other inclusions to accommodate a flexible capital markets platform. See the earlier "Outline" for a broad construction of these types of amounts]

4. the full amount of any true-up amount which may be prescribed by the regulations. [Blakes: This will be critical for the financing, and so should be set out in detail in the Act, and only implemented in accordance with subordinate legislation]

[Blakes: As mentioned, we recommend that the Regulatory Asset be created and financed under a standalone "Act" that covers the sorts of things contemplated in the Sketch.]

Sale or assignment of regulatory assets

25.35.1 (1) The IESO shall, in accordance with the regulations, sell and convey to the Financing Entity or other prescribed entities all title and right to the regulatory asset established under section 25.34 on such terms and conditions as are provided for by the Financing Entity or prescribed entities [Blakes: Note that "shall sell" pre-judges the capital markets decisions that will properly apply in the context, and limits flexibility. In the Sketch, the idea is that the Treasury Plan is developed in order to allow that mechanism to make efficient decisions and react to market conditions. It may not be appropriate to require IESO to securitize through an SPV if other opportunities present themselves (e.g., sale of a participation interest in the Regulatory Asset directly to a syndicate of banks or investors) or a secured financing by IESO to substantially the same effect. To the extent that it is appropriate to embed the off-balance sheet motivation specifically in the Act, consider how that can be done without unduly limiting the flexibility of the funding platform (e.g., in a Treasury Plan)]

Assignment, etc.

(1.1) For the purposes of this section and sections 25.34 and 25.35.1, the IESO may assign its rights to the regulatory asset established under this section to the Financing Entity or entity prescribed under section 53.6.1 in accordance with any criteria as may be prescribed the regulations. *Insd-LSB: The "sale" could be characterized instead as an assignment to the Financing Entity or other prescribed entities. However, we may also need to provide the IESO with an authority to assign other rights during the times its doing its own financing and/or during a time before it actually transfers (assigns) the regulatory asset to the Financing entity. We're still working this out.*

[Blakes: This suggests that the funding decisions will be made pursuant to regulations. Consider the scope of this delegation and appropriate parameters around this sort of subordinate delegation. In the Sketch, the power to create a Treasury Plan is to be delegated , but the inurrences of funding obligations, etc., must be consistent with the "Fair Allocation Plan" (i.e, the plan for intergenerational sharing over time), subject to an "Incurrence Test".]

Sale deemed final

(2) The sale and conveyance referred to in subsection (1) is deemed to be final and for all purposes [Blakes: It would be helpful to review the U.S. parallel legislation to see what capital markets have required in the past. In some cases, the legislation goes beyond categorizing the transaction as a "sale" and adds colour (e.g., "true sale") to provide the capital markets comfort that the transaction is in-line with standard securitization assumptions. To the extent the legislation can accomplish those sorts of things, without raising other issues (e.g., validity) or complexities (e.g., complex overlaps with other legislation), there may be utility in reviewing these sorts of legislative provisions.]

Debts

(3) For greater certainty, the amounts mentioned in subsection (1) are debts owing to the Financial Entity or other entities as may be prescribed by the IESO, distributors and prescribed consumers until such amounts have been fully paid and fully discharged. [Blakes: Consider not hard-coding in favour of a more flexible Treasury Plan. Reference above to "owing to" should probably be to "owing by".]

Distributors liable.

(4) The IESO and distributors are entitled to compensation for any shortfall in relation to the amounts the IESO must pay to generators, the financial corporation or other persons including prescribed persons, under section 25.33 resulting from the IESO's activities under the Government's Fair Hydro Financing Initiative. [Blakes: This provision requires explanation. Is this saying that the LDCs are liable for credit losses? That would be a useful idea and if applicable would properly form part of the overall bundle of rights we are calling the "Regulatory Asset".]

Consumers liable.

(5) Consumers are required to contribute towards the amount of any compensation referred to in subsection (4) in accordance with the amounts and methods prescribed by the regulations and such amounts shall not be by-passed. *[ntd-we may add a timing element here as well.]* [Blakes: This provision requires explanation. We envision a separate true-up mechanism that forms part of the Regulatory Asset, and so is not described loosely as a contribution right.]

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

Recovery by IESO

(6). The IESO shall recover the amounts set out in subsection (5) from consumers referred to in subsection 25.33 (2.1), in accordance with the regulations. *[NTD-JPR: This may change to refer to regulations, such as O. Reg. 95/05, made under the Ontario Energy Board Act, 1998.] [ntd-we may add a timing element here as well.]*

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

[Blakes: The Act should create the Regulatory Asset with precision. See the earlier "Outline" for the preferred approach, from a capital markets perspective.]

Payments to Financing Entity *[and-This is meant to signal the ultimate fundamental obligation of the IESO to pay the full amounts that the Financing entity borrows.]*

25.35.2. (1) On or before January 1, 2047 or the later time prescribed in the regulations, the IESO shall, through its billing and settlement systems, make full payment to the Financing Entity of the following: [Blakes: Note that the Regulatory Asset is owed directly by ratepayers (each, as to its Transition Amount). The role of IESO, once the Regulatory Asset has been securitized, is to collect (from the LDCs) the relevant amount and remit it to the Finance Entity for payment to the ultimate investors. See the mechanics contemplated for the Treasury Plan, in terms of the creation of the funding obligations that in turn define the amount of the Regulatory Asset from time to time.]

1. The amounts received by the IESO under subsection 23.3.

2. The amounts of any interest costs or charges, including transaction costs, incurred by the Financing Entity in relation the amounts mentioned in paragraph 1.

3. The amounts of costs relating to the operation or management of the Financing Entity, as are approved by the Board.

[OLC Note: How will the Board be approving these costs? Is this related to the expenditure report submitted to the Board? That provision (below) doesn't refer to any approval taking place.]

4. Other amounts as may be prescribed or as may be approved by the Board. [Blakes: To make the Regulatory Asset beyond reproach, ensure that the Act specifies the categories of permitted funding obligations and associated costs, reserves, etc., and creates sufficient mechanics that the Transition Amount can be calculated as a sum certain, without discretion or challenge after the fact.]

(2) Subsection 114 (1.3) of the Act is amended by adding the following clause:

(g.0.1) requiring the IESO, a distributor, retailer or generator or any other licence holder to take specified steps, including […], in order to implement or facilitate the implementation of the adjustment of the amounts referred to in clauses 25.33 (1) (c) and (2) (c), and prescribing the manner in which and the timing by which the steps must be taken, [Blakes: After a funding obligation is

incurred, there should be no adjustments, other than as permitted within the acceptable refinancing, redemption, defeasance and repayment scenarios to be managed under the Treasury Plan. See the Sketch.]

Please provide examples, if possible, so that we can consider, (a) whether this reg authority is sufficient, and (b) whether to refer to the examples expressly.

TBD whether s. 114 (1.3) (f) (xii) – (xv) are to be amended in any way. They provide authority to require that various actors provide information to various other actors "for the purposes of section 25.33 or a regulation made under this clause". If your clients are interested in a reporting requirement relating to the actual GHG reduction initiatives, then I think that if that authority doesn't already exist elsewhere, it could be added, but not here. As I read it, this is really reporting in respect of the adjustments, set-offs, credits, payments, etc.

- Just a flag, in case it matters, that a couple of these information-sharing subclauses are subject to s. 114 (6) of the Act, which deals with agreements to the contrary.

x. Subsection 53.1 (1) of the Act is repealed and the following substituted: is amended by adding "and establishing and operating the Fair Hydro Financing Trust provided for under Part IV.1.1" at the end.:

Objects of Ontario Power Generation Inc.

s.53.1 (1) The objects of Ontario Power Generation Inc. include, in addition to any other objects: *[and-: Some elements of the "object" may be moved to a more substantive provision to ensure that the obligation to support the fair hydro financing initiative is properly supported.][Blakes: Assuming that OPG is the entity to which the Act will delegate funding decisions, I agree that OPG's powers should encompass those activities. The general construction of a Treasury Plan will require more precise refinement to the extent that the Act delegates this funding decision authority to a subordinate level or to a regulated or unregulated entity. The Act should confer regulation-making power, subject to the development of broad principles described in the Act to ensure that funding obligations incurred are consistent with the Fair Allocation Plan. See the Sketch for background. The specific powers required by OPG to implement the Act should be determined once the scope and required flexibility issues are determined, having regard to the accounting aspects of the program.]*

(i) owning and operating generation facilities;

(ii) establishing, operating and supervising the activities of the Fair Hydro Financing Entity;

(iii) establishing, operating and supervising the activities of financing entities for the purposes of supporting and promoting the government's Fair Hydro Financing Initiative *[mid-ipr: like the smart metering initiative, it may be that we define the Government's Fair Hydro Financing strategy.]*

(iv) providing financial and other support to the IESO in its activities in relation to the government's Fair Hydro Financing Initiative, including through the Fair Hydro Financing Entity or other prescribed entities,

(v) engaging in such financing, borrowing, lending and related activities and transactions as are or may be required to provide the IESO with short-term or long-term financing *[mid: consider adding "and financial support?"]* in relation to the IESO's activities referred to under (iv), and in accordance with the Regulations made pursuant to this Part or sections 25.33 through 25.35.1;

(vi) provide such equity and at such times *[and in such amounts or proportions?]* as required in order to support the financing capability *[mid-alternative: capacity?]* of the Fair Hydro Financing Entity or other prescribed entities, not to exceed the maximum prescribed by the regulations *[mid: this is required to ensure that the financing entity has the correct financial risk-profile. There will be prescribed limits to support the deferral.]*

Subsidiaries

(1.1) Ontario Power Generation may create one or more subsidiaries in order to more efficiently conduct its activities or its objects. *[mid: There does not appear to be a direct comparator to Hydro One: Hydro One has the authority to conduct its transmission and distribution business through one or more subsidiaries, as well as to undertake required generation activities through one or more subsidiaries. OPG's objects subtly acknowledge the existence of subsidiaries. This would clarify OPG's authority to create subsidiaries in order to carry out its objects.] [Note: This object is broad – it is not tied specifically to the Fair Hydro Financing Initiative, but it could be if desired.]*

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

Rights of the Minister[3]

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

Agreements

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

x. The Act is amended by adding the following Part:

PART V.2
[FAIR HYDRO FINANCING INITIATIVE/COST DEFERRAL INITIATIVE]

Definition

53.6.0.1 In this Part,

"Financing Entity" means,

(a) the Fair Hydro Financing ~~Trust Entity~~ mentioned in clause 53.6.1 (1) (a), or

(b) an entity ~~designated prescribed~~ by regulation as mentioned in clause 53.6.1 (1) (b).

[NTD - could move this definition to the beginning of the Act since we use this term in 25.33 but let's wait for the drafting to settle first. The idea is to have a single term that captures the Trust/designated entity.]

[OLC Note: As discussed on the phone, you are still working on identifying the "spark plug" that would set the financing activities in motion and establish limits on borrowing, etc. The possibility of a Minister/LGIC "financing directive" is not preferred because of the level of control this would give the government. You mentioned that you are considering whether LGIC regulations might be more appropriate or else whether a non-legislative process (e.g. SH declaration) might work best. Please advise.]

[NTD: OPG will likely be required by leg/reg to use some amount of effort to obtain financing. There will also likely be rules related to how OPG determines the financing to get (e.g. short term vs. long term), etc. This will all be set out in a

[3] FLS - this provision is based on s. 49 of the Act

regulation, but we will need legislative authority to make a regulation dealing with this.

COST DEFERRAL INITIATIVE

[NTD-Counter-part to the IESO trigger mechanism – this is intended to authorizes and requires OPG to assist IESO in the related Fair Hydro Financing Initiative activities.]

IESO-OPG borrowing Financial activities **to reduce electricity prices**

x. (1) The Ontario Power Generation shall, at the times that the IESO may specifies borrow funds from cause the Financing Entity or a prescribed entity established by the Corporation *[nnd: Corporation refers to OPG here]* to undertake any of the following activities for the purpose of accomplishing the [*the Government of Ontario's Fair Hydro Financing Initiative to defer the costs of global adjustment*]

(i) engaging in such financing, borrowing, lending and related transactions as required to provide the IESO with short-term or long-term financing *[nnd: consider adding "and financial support?"]* in relation to the IESO's activities referred to under this section,

(ii) purchase the regulated asset established under section 25.35 in accordance with s.25.35.1 and this section, at the times specified by the IESO or as may be prescribed, and to make any payments to the IESO that relate to the IESO's activities in support of the Government's Fair Hydro Financing Initiave,

(iii) To collect, from the IESO, all amounts that the IESO is required to pay in relation to its activities in support of the government's Fair Hydro Financing Initiative pursuant to section 25.36 and the regulations,

(iv) Make an assignment of all or any of its rights to all or part of the regulatory asset referred to in this section,

(v) Engage in such other activities *[nnd: assignment?]* as may be prescribed to support the Government's Fair Hydro Financing Initiative,

(vi) provide such equity as is required in order to support the financing capacity of the Fair Hydro Financing Entity or other entity up to the maximum prescribed by the regulations.

[nnd: this is required to ensure that the financing entity has the correct financial risk-profile. The provision places the authority to "trigger" the OPG's financing entity's borrowing/lending activities is triggered by the IESO. The approach may change depending upon certain decisions.][Blakes: The scope of permitted activities ought to include OPG undertaking activities as agent for Finance Entities. The activities contemplated in a Treasury Plan (see the Sketch and the earlier "Outline") will provide a guide regarding the sorts of activities that ought to be permitted or contemplated to be

undertaken by the relevant delagee of the funding decision-making authority under the Act.]

[NTD: This will not be a borrowing transaction with the Financing Entity. The IESO will assign its statutory recovery rights (the "regulatory asset") to the Financing Entity in return for an amount that equals the principal amount deferred plus interest and other financing-related costs of the Financing Entity.

We will also have to contemplate that if the IESO borrows money (from someone other than the Financing Entity) to cover any of the "deferral" amounts (e.g. before the Financing Entity has gotten the necessary financing in place), it will have the right to recover the principal amount borrowed together with interest and financing-related costs.]

Apportionment

(2) The IESO shall apportion amounts received under subsection (1) to consumers referred to in subsection 25.33 (2.1), in accordance with […].

[OLC Note: How are the requirements that would determine apportionment for this subsection meant to interact with the GAM reg? I know this is under active consideration.] [Blakes: See earlier comments regarding the required certainty for the Regulatory Asset/Transition Amount calculations, and the idea that the Regulatory Asset is not merely a fractional interest in overall electricity billings]

Consumer liable for apportioned amounts

x. Consumers referred to in [above] are liable to the IESO and their distributor for their proportionate share, to be determined by the regulations, of the [amounts listed in paras. 1-4 below?].

[OLC Note: The above is essentially a placeholder for the moment. You noted that *the provision is going to have to evolve to deal with consumers who exit the grid (disconnect) completely either because they leave the province or they decide to generate their own electricity and completely disconnect. You also want to be able to prescribe* methods of ensuring that the amounts required cannot be "by-passed". I'll need to understand what is meant by "by-passed".]

[NTD: Consumers must be liable to the holder of the Regulatory Asset. IESO and LDCs must have an obligation to collect as collection agents. We will consider further the "proportionate share, to be determined by the regulations". The amount payable by each consumer must determinable.] [Blakes: Agreed, but furthermore I question the appropriateness of the apportionment concept. See the Blakes legislative "Outline" for further items that go to the separateness, certainty of amount and enforceability of the Regulatory Asset.]

Right of recovery, Financing Entity

x. (1) The Financing Entity and any prescribed entities shall have the right to recover the following amounts in full from the IESO, distributors and prescribed consumers:

1. The amounts received by provided to the IESO by the Financing Entity or other prescribed entities under subsection (1).

2. The amounts of any interest costs or charges and transaction costs *[will mean to* incurred by the Financing Entity in relation the amounts mentioned in paragraph 1.

3. The amounts of costs relating to the operation or management of the Financing Entity, as are approved by the Board.

[OLC Note: How will the Board be approving these costs? Is this related to the expenditure report submitted to the Board? That provision (below) doesn't refer to any approval taking place.]

[OLC Note: Need to mention expenditures?] [Blakes: See the concept of a Treasury Plan, which would be approved in accordance with the delegation mechanics to be developed in a Regulation having regard to the principles and limitations set out in the Act]

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

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

[OLC Note:

I don't understand how the following provisions dealing with "regulatory assets" fit with the "right of recovery" provision above.

1. Are the "regulatory assets" something different from the amounts listed in paras. 1 to 4 above? Or are these meant to be the same amounts?

2. Are the rules relating to the "sale of regulatory assets" essentially rules about how the FE will actualize its right of recovery? I don't understand how the IESO would "sell" these things... don't they just make a payment, and haven't we already stated this below in the section that requires the IESO to make payments to the FE?

I've set out the substance of your instructions on the regulatory assets here for reference:

Sale of regulatory assets

x. (1) The IESO shall, in accordance with the regulations, sell and convey to the Financing Entity all title and right to the following regulatory assets on such terms and conditions as are provided for by the Financing Entity:

1. Any and all amounts referred to in clause (1.1) (a) which are borrowed by the Financing Entity during the deferral period and payable for the purposes of providing rate relief to prescribed electricity consumers.

2. Any and all amounts referred to in clause (1.1) (b) of any interest costs or charges incurred by the issuer or entity during the deferral period, payable in the month, in relation to amounts referred to in clause (a).

3. Any and all amounts of any costs or charges referred to in clause (1.1) (c) relating to the issuance or management of the issues as approved by the Board.

4. The full amount of any and all other costs of the type which may be prescribed by the regulations.

Sale deemed final

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

Debts

(2) For greater certainty, the amounts mentioned in subsection (1) are debts owing to the Financial Entity by the IESO, distributors and prescribed consumers until such amounts have been fully paid and fully discharged.

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

Recovery by IESO

x. The IESO shall recover the amounts set out in [previous section] from consumers referred to in subsection 25.33 (2.1), in accordance with [...].

[OLC Note: how are the requirements that would determine recovery for this subsection meant to interact with the GAM regs?]

Payments to Financing Entity

~~x. (1) On or before January 1, 2047, the IESO shall, through its billing and settlement systems, make full payment to the Financing Entity of the following:~~

~~1. The amounts received by the IESO under subsection (1).~~

~~2. The amounts of any interest costs or charges incurred by the Financing Entity in relation the amounts mentioned in paragraph 1.~~

~~3. The amounts of costs relating to the operation or management of the Financing Entity, as are approved by the Board.~~

~~[OLC Note: How will the Board be approving these costs? Is this related to the expenditure report submitted to the Board? That provision (below) doesn't refer to any approval taking place.]~~

~~4. Other amounts as may be prescribed or as may be approved by the Board.~~

[OLC Note: How would the IESO know if other costs have been approved by the Board?]

FINANCING ENTITY

Direction of Minister, Financing Entity

53.6.1 (1) For the purpose of accomplishing [*the Government of Ontario's initiative to defer the costs of global adjustment]*, the Minister may, [Blakes: Is this to be MOE discretion, or should it be elsewhere in the waterfall of delegations subject to principles set out in the Act? Consider providing more flexibility to accommodate multiple siloed entities, in order to accommodate different capital markets considerations, including in the cross-border finance context and as things evelove over time.]

(a) direct Ontario Power Generation Inc. to establish and operate the Fair Hydro Financing Trust; or

(b) direct Ontario Power Generation Inc. to [oversee? Administer?] an entity designated by regulation.

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

Duty of Ontario Power Generation Inc.

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

Object of Financing Entity

53.6.2 (1) The object of the Financing Entity is to finance the amounts required to accomplish [*the Government of Ontario's initiative to defer the costs of global adjustment]*. *[Blakes: Consider if the Finance Entity needs to be regulated at all. Should*

a Finance Entity simply be a mechanism through which the capital markets acquires an interest in the Regulatory Asset? Once established, it would be the investors' vehicle and responsibility, and the connection to the regulatory framework would properly be limited to funding decisions made with respect to the Finance Entity in compliance with the Treasury Plan and the fact that its assets consist of an interest in the Regulatory Asset.]

[OLC Note: We are imposing several obligations on the Financing Entity (FE). As a practical matter, how will these obligations be enforced? Who will be responsible for meeting these obligations? (e.g. is there an automatic hierarchy of individuals that are appointed and who take responsibility when a Trust is established?). Or will the OPG be responsible for meeting these obligations as the body that establishes/manages the trust or oversees the designated entity?]

Activities

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

[OLC Note: Just want to confirm that this should be "shall" and not "may".][Blakes: Agree that this should not be "regulated". Once the Finance Entity incurs commitments, they can only be affected by "voluntary" events like pre-agreed redemption rights. The Finance Entity should not be upset (as a "SPV") by a layer of regulation that would be counter to its independent and separate legal character.]

1. Borrowing funds from the Financial Corporation or from such other persons or entities [as may be prescribed?].

2. Investing funds.

3. Making payments and loans to the IESO or such other entity as may be prescribed in accordance with the regulations [or an order of the Board].

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

4. Receiving payments from the IESO or such other person or entity as may be prescribed in accordance with the regulations.

[OLC Note: Is it necessary to state that the payments are received to recover the amounts borrowed? We have already made it clear in the opening of this subsection that this is all being done to achieve the object of the Trust.]

5. Issuing securities or debt ***[in the manner prescribed?].***

6. Engaging in any activities, including entering into such transactions or agreements or arrangements as may be prescribed and in accordance with the regulations.

Board approval of expenditures, etc.

53.6.4 (1) The Financing Entity shall, at least 60 days after the end of each fiscal year, submit its expenditures relating to its operations for the fiscal year including the expenses it has charged to Ontario Power Generation Inc. or the IESO, or that it has been charged by the Financial Corporation, in relation to those operations, to the Board for review.

[OLC Note: As mentioned above, who will actually be responsible for carrying out this duty? OPG? IESO? Should we be more clear about who is submitting the expenditures?] [Blakes: Consider the scope of permitted delegations envisaged by a Treasury Plan. Again, the mandatory provisions applicable to a Finance Entity may be inconsistent with its status as a "bankruptcy remote" special purpose entity, and may also be unnecessary given the arm's length character of its role in the transaction.]

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

Board recommendations, etc.

(2) The Board may review the expenditures and charges referred to in subsection (1) and make recommendations to the Financing Entity as are appropriate in order to ensure the most efficient operation and management of the Financing Entity in order to protect consumers.

[OLC Note: Rather than saying "in order to protect consumers", should this say "in order to achieve the object of the FE"? Or perhaps this could just be deleted altogether with no need for replacement language.] [Blakes: The Finance Entity should not have a public policy purpose. It should simply be a vehicle for the capital markets to hold and enforce their interest in the Regulatory Asset.]

Deemed assets, trust or entity,

53.6.5 Despite any other provision of this Act or the *Business Corporations Act,* the assets and liabilities which are resident in and form part of the property of the Financing Entity or any prescribed entity referred to in section 53.6.1 shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries for any purpose. *[mid-Do we need a carve-out to exclude any subsidiary OPG establishes to borrow for its 5% (approximate) share from the market? Eg. [Blakes: Not sure where this is coming from, but I don't like the suggestion that an SPV's could be consolidated with OPG, and in fact standard legal (non-consolidation) opinions will likely be sought as part of a market transaction. Note that it is not possible to over-write federal bankruptcy laws to deem "non-consoldation" status for federal bankruptcy purposes –*

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but if somehow some measure of that could be managed, the market would be happy to accept that clarity on this important structural point.]

(2) Subsection (1) does not apply to a subsidiary established by Ontario Power Generation Inc. for the purposes of providing amounts in the form of equity to the Fair Hydro Financing Entity or other prescribed entities in order to support the Government's Fair Hydro Financing Initiative.][Blakes: See earlier notes re independent status of the Finance Entities]

ONTARIO ENERGY BOARD ACT, 1998

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

6. To facilitate the implementation of the policies of the Government of Ontario respecting climate change mitigation and greenhouse gas reduction.

~~1.~~ 7. To facilitate the implementation of the [the Government of Ontario's Fair Hydro Financing Initiative ~~to defer the costs of global adjustment as defined in the Electricity Act, 1998~~].

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[OLC Note: As noted above in the EA purpose provision, need to consider this further.]

x. Section 2 of the Act is amended by adding the following paragraph:

7. To facilitate the implementation of the policies of the Government of Ontario respecting climate change mitigation and greenhouse gas reduction.

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

Hearings

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

The underlined is what makes this different from the other provisions in the Act that basically have the same wording. There are already a number of places in the Act where you have this type of hearings provision re directives (e.g., s. 27.2 (7)). If you basically want the same authority in each instance, then the wording should be consistent in each case. There are already some discrepancies between the current provisions (e.g., s. 27.2 (7) talks about types of hearings, whereas s. 28 (2) doesn't). Differences in wording will

typically be presumed to be differences in meaning. So, the question is what you're intending to authorize in each case, and whether differences are intended. If you want the same thing everywhere, it should all be worded the same. Let me know.

[OLC Note: Waiting for confirmation whether amendments to s. 78.7 are needed. Please advise.] [Blakes: Consider how the regulatory overlay will operate. In no case can the regulatory provisions upend the validity and enforceability of a funding obligation that was incurred in accordance with this legislative scheme. Again, the Regulatory Asset cannot be diminished or affected by later regulatory decisions, actions or hearings. Any regulatory provision should be addressed at the time or before a funding obligation is incurred, and cannot be reversed by regulation or administrative action after the fact.]

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

Adjustment to eliminate variances

(3) In determining rates under clause (1) (b), the Board shall take into account balances in variance accounts established under section 25.33 of the *Electricity Act, 1998* and, subject to section X of that Act, make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct. [OLC Note: I didn't spend any time on the above amendment -- will revisit it in the next draft. This is a placeholder.]

Commencement

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

[NTD: The proposed "deferral" will become effective as of May 1, 2017. We will probably need to have retroactive reg-making authority to make the necessary regulations that support the proposal.] [Blakes: The Act should address all elements of the program that cannot be properly delegated to subordinate decision-making or regulation. The Regulatory Asset and related rights and enforcement matters (particularly if they affect other third party rights) will need to be addressed in the Act. See earlier Blakes discussion on legislative authority and the location of related provisions and possible issues.]

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Electricity Amendment Act, 2017 (Hydro Financing Initiative, etc. - title TBD)

EXPLANATORY NOTE

[Insert explanatory note.]

ELECTRICITY ACT, 1998

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

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

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

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

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

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

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

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

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

[OLC Note: I have applied the precedent of the "smart metering initiative" as per your instructions. Just want to reiterate my concern that the reference to government policies

is really vague (which initiative/ policies? At which point in time?) and I think this could cause lots of confusion, particularly if the policies evolve over time. It could also have unintended consequences.]

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

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

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

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

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

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

[OLC Note: As discussed, please confirm terminology.]

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

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

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

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

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

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

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

1. Do you want to amend the GAM so that the money received from the FE and the money recovered by the FE are part of the initial GA calculation?

2. Do you want to leave the GAM section as is and add a requirement (in a new section) for the IESO to conduct additional adjustments for a subset of the payments referred to in s. 25.33? This second adjustment would be engaged in after the existing GAM is calculated. So it would be a further adjustment of what has already been adjusted under the GAM.

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

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

Objects of Ontario Power Generation Inc.

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

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

1. Owning and operating generation facilities.

2. Establishing, operating and supervising the activities of entities for the purposes of supporting and promoting the government's hydro financing initiative.

3. Providing financial and other support to the IESO in its activities in relation to the hydro financing initiative.

4. Engaging in such financing, borrowing, lending and related activities and transactions to support the IESO with short-term or long-term financing.

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

Subsidiaries

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

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

Rights of the Minister[1]

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

Agreements

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

x. The Act is amended by adding the following Part:

PART V.2
HYDRO FINANCING INITIATIVE

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

FINANCING ENTITY

Financing Entity, established or prescribed

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

(a) direct Ontario Power Generation Inc. to establish and operate a trust; or

(b) direct Ontario Power Generation Inc. to [oversee? Administer?] an entity prescribed by the regulations.

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

Duty of Ontario Power Generation Inc.

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

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

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

Object of Financing Entity

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

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

Activities

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

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

1. Borrowing funds from the Financial Corporation or from such other persons or entities [as may be prescribed?].

2. Investing funds.

3. Making payments and loans to the IESO or such other entity as may be prescribed in accordance with the regulations [or an order of the Board].

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

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

4. Receiving payments from the IESO or such other person or entity as may be prescribed in accordance with the regulations.

5. Issuing securities or debt ***[in the manner prescribed?].***

6. Engaging in any activities, including entering into such transactions, agreements or arrangements as may be prescribed and in accordance with the regulations.

Board review of expenditures, etc.

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

it has charged to Ontario Power Generation Inc. or the IESO, or that it has been charged by the Financial Corporation, in relation to those operations, to the Board for review.
[OLC Note: The list of items that have to be reported on could be more prescriptive (e.g. specifying specific amounts to be set out) or it could also allow for the Board to specify what it wants to see in the report. Let me know if you'd like to adjust the wording of the requirement.]

Board recommendations, etc.

(2) The Board may review the expenditures and charges referred to in subsection (1) and make recommendations to the Financing Entity as are appropriate in order to ensure the most efficient operation and management of the Financing Entity in order to protect consumers.
[OLC Note: Rather than saying "in order to protect consumers", should this say "in order to achieve the object of the FE"? Or perhaps this could just be deleted altogether with no need for replacement language.]

Deemed assets, entity,

A4. Despite any other provision of this Act or the *Business Corporations Act,* the assets and liabilities which are resident in and form part of the property of the Financing Entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries for any purpose.
[OLC Note: You posed a question about excluding an OPG subsidiary from this rule. Please instruct.]

OBTAINING FINANCING

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

Ontario Power Generation Inc. to obtain financing

A5. (1) The IESO may direct Ontario Power Generation Inc. to cause the Financing Entity to engage in any of the following activities in order to accomplish the hydro financing initiative:
[OLC Note: As a practical matter, how would OPG "cause the FE" to do these things? How is this different from "directing"?]

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

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

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

3. Collecting from the IESO amounts that the IESO is required to pay in relation to its activities in support of the hydro financing initiative.

4. Assigning its [the IESO's?] rights to all or part of the regulatory assets established under section XXXX.

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

5. Such other activities as may be prescribed.

Same

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

IESO to enter into transactions

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

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

Same

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

RIGHT OF RECOVERY [CREATION OF REGULATORY ASSET]

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

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

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

1. Should we be creating a statutory right of recovery or deeming certain amounts to be a regulatory asset? You said you'd consult on whether the regulatory asset terminology is important to flag in the Bill.

2. You said you're not sure whether or not the Act will require the IESO to sell/assign the right. Please instruct. If it is optional for the IESO to sell/assign, then it seems that the right could in theory remain with the IESO (unless you are saying that the statute can just create the right of the FE to recover without any need for the right to be assigned/sold by the IESO… in which case please explain why we need to deal with the sale/assignment at all). Please clarify.

3. I'm assuming that if we are creating a right, then the right must be held by someone (e.g. the IESO) before it can be assigned/sold? So should the right be created in the Act for the IESO (e.g. the IESO has a right to recover the amounts from distributors and prescribed consumers) since the IESO would then sell/assign/transfer the right to the FE? The FE must also have the right to recover from the IESO itself, so that creates an extra complication.

4. Should there be some indication of when the right of recovery/regulatory assets will no longer continue to exist (e.g. once all of the amounts have been paid?). I notice that your instructions below about the debt indicate that the debt is no longer owing once the amounts are paid, but do we need to indicate that the regulatory asset also ceases to exist at that point?

Right of recovery created

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

1. The [deferred amount].

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

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

3. Other amounts as may be prescribed or as may be approved by the Board.
OLC Note: Are you going to be saying anything about how the interest will be calculated?

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

A8. (1) The IESO [may? Shall?], in accordance with the regulations, sell [and/or?] convey to the Financing Entity the right to recovery created established under section A7 on such terms and conditions as are provided for by the Financing Entity.
[OLC Note: Your instructions include the terms "sell", "assign" and "convey" -- which are correct?]
[OLC Note: Your instructions suggested that something other than the "regulatory assets" may need to be assigned to the FE. Are you referring to the "warehousing" liabilities assumed by the IESO in the early days? What else would need to be assigned? Could these items be listed above in A7 or is there a reason why they need to be kept separate?]

Sale deemed final

(2) The sale and conveyance referred to in subsection (1) is deemed to be final for all purposes.
[OLC Note: What is this intended to achieve? Is this based on precedent language that has been interpreted to have the desired effect?]

Debts

(3) For greater certainty, the [amounts to which the FE has a right of recovery] are debts owing by the IESO, distributors and prescribed consumers to the Financial Entity until the amounts have been fully paid and fully discharged.
[OLC Note: Why is subs. (3) necessary? Isn't it inherent in the sale of the regulatory assets that the FE would have acquired the future right to collect these amounts? Perhaps it is unclear that the amount can be collected from not just the IESO but from others down the chain. But isn't that what the "right of recovery" section above is meant to cover?]

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

IESO to recover amounts

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

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

[OLC Note: The following two subsections are placeholders. You noted that *the provision is going to have to evolve to deal with consumers who exit the grid (disconnect) completely either because they leave the province or they decide to generate their own electricity and completely disconnect. You also want to be able to prescribe* methods of ensuring that the amounts required cannot be "by-passed". I'll need to understand what is meant by "by-passed".]

Distributors liable

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

Consumers liable

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

USE OF FUNDS TO REDUCE ELECTRICITY BILLS

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

ONTARIO ENERGY BOARD ACT, 1998

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

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

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

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

Hearings

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

The underlined is what makes this different from the other provisions in the Act that basically have the same wording. There are already a number of places in the Act where you have this type of hearings provision re directives (e.g., s. 27.2 (7)). If you basically want the same authority in each instance, then the wording should be consistent in each case. There are already some discrepancies between the current provisions (e.g., s. 27.2 (7) talks about types of hearings, whereas s. 28 (2) doesn't). Differences in wording will typically be presumed to be differences in meaning. So, the question is what you're intending to authorize in each case, and whether differences are intended. If you want the same thing everywhere, it should all be worded the same. Let me know.

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

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

Adjustment to eliminate variances

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

Commencement

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

James → Motions - list for next Monday

Paul → bill insert

Jean → LRC material

Paul → letters

(as needed) → Cab. Treasury Board

& Jean MAG Modern BN

→ consolidation of EA & OEPA

→ 1 hard copy

→ 15 soft copies

Dan → Competition (Eng & French)

Cauchy → Opposition briefing

→ Regulations & regulatory posture

→ Comms materials

- OPG & LESO board assurances

- guarantees - OPG & OFA

& HOUSE RISES JUNE 2 OR

Intro - thurs 11th

5th reading next week.

Speeches - week of 15th (comms)

Publish hearings 24th

Clause-by-clause 29th

motions due 25th & 26th

RA - couple days after 30th/1st

CHART RE: OPG'S SUGGESTED AMENDMENTS – ELECTRICITY ACT, 1998 AND ONTARIO ENERGY BOARD ACT, 1998

OPG's proposed amendment	Captured/Not Captured by Bill (provision location if captured)	Recommended Plan
EA s. 53.1(1): [1]Amend to permit owning and operating generation facilities through subsidiaries (not only directly through OPG).[2] In addition, amend to permit OPG to administer, manage, loan moneys to and have a beneficial interest in, if applicable, Financing Trust.	Captured [1]: "Through one or more subs" See s.53.1 (1.2). -Captured [2]:53.2(1) see pars 4, 5.	Bill is sufficient as drafted.
EA s.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.	Not Captured in draft 8 – Drafted in previous draft -	Need to move provision from previous draft into next instructions.
EA s.53.□□(new): New statutory section to permit the Minister to enter into arrangements relating to an exercise of powers under 53.2.	Same (part of 53.2 in Bill	Need to move provision from previous draft into next instructions.
EA s.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.	Not captured – drafted in previous version.	Need to move provision from previous draft into next instructions.
. Miscellaneous Corporate Items to Address	Not captured	**Amending Articles:** Not to be

- **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.		provided for in bill – provided through corporate governance processes (may require shareholder approval). **Amending MOU:** Not to be provided for in bill – provided through MOA amendment process.
- **EA s.□□(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]**	~~Captured~~ A different approach leading to the same smoothing is captured through s.6, 7, amendments to O. Reg. 95/05 (drafting underway)	Bill provides for an OEB-related process for dealing with rate reductions.
- **EA s.25.33(1):** [. . .] 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**	Not captured in current draft. Similar approach used in previous drafts prior to stand-alone bill. Same	Consider / confirm whether necessary in light of IESO's clear payment obligations under stand-alone bill.

market participants. May be needed in reference to payments from distributors and retailers] - **EA s.25.33(2): [**. . .]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.		Same Amendments to ss. 25.33 (3) possible, depending on fate of RPP rate class in 95/05.
-EA Regs - Amendments to O. Reg. 429/04	Not yet drafted	Consider OPG approach when drafting amending reg.
OEBA -s.78(3.3) OPG flags that Ministry should consider whether any amendments are required to facilitate rate reduction.	Not yet drafted	So far s.78(3.3) appears to work. Will continue to consider whether cross-reference to IFHRA would help clarify the difference between EA variance accounts and variance or deferral accounts under IFHRA.
-New OEBA s.78.7 – OPG recommends creating a payments provision authorizing IESO to make GA-related payments to OPG Trust/financing entity.	Captured but through different mechanism: see s.12, in particular s.12(5).	Consider / confirm whether necessary given stand-alone bill has separate approach authorizing IESO to make payments from amounts collected from R.A. ***[NTD: Not clear that these are actually GA amounts going forward.]***
Notes on potential new reg. to be made under this proposed new provision. o The new regulation would need to be clear that the OEB does not have jurisdiction to consider the principal amount or any interest, financing costs, third party fees or expenses. Rather, OEB's role would be limited to considering the internal administrative costs of	Captured s.26, see in part. S.26(2).	Bill deals with "OEB"s role at s.26(2) – limited to review of administrative costs of trust/SPV. Much of OPG's approach deals with GAM. The stand-alone bill takes a different approach to IESO payments/remittances

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.		(s.15(3.1), (5) and collection from specified consumers (IESO s.15(6), electricity vendors (s.13(3)). Amendments to O. Reg. 429/04 are still under consideration.
Notes on s.79.16 and O. Reg. 95/05	Captured – in different manner: See ss. 6, 7 of Draft 8 and amendments to O. Reg. 95/05 - Issues recognized. Drafting amendments to RPP Reg. underway	Bill captures concepts in manner consistent with client instructions.
) 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]** o any reporting requirements from the	Same as above. **Note: Limitation on OEB's hearings processes re. establishing the new rates – this is not yet captured. Instructions on this need confirmation.**	See above but must consider each element against the drafting underway re. O. Reg. 95/05. The approach OPG brought forward may be out-dated against ENERGY policy's current approach to rate reductions for RPP-plus consumers. **Note: Limitation on OEB's hearings processes re. establishing the new rates – this is not yet captured. Instructions on this need confirmation.**

Financing Trust and/or the IESO to the OEB in connection with the global adjustment smoothing mechanism; o the frequency of the OEB making determinations under this part of the regulation; **NOTE: o 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;** o 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 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 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 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

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[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.

[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.

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]

"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

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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.

Retail Consumer Group, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

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

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

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

"Finance Amount" means, for a Reference Period in respect of an Absolute Assignee, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of the 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]

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

"Financing Entity" means an entity established in accordance with the Financing Plan to acquire all or an interest in the Regulatory Asset as an Absolute Assignee and to enter into Funding Obligations to finance such acquisition under the Financing Plan.[6]

"Financing Plan" means the written plan prepared by the Financial Services Agent on behalf of each Absolute Assignee in compliance with Article 9 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred by an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (j) the cash flows arising from time to time or otherwise derived from an Investment Interest may otherwise be applied, as the same may be amended, amended and restated or terminated by the Financial Services Agent in compliance with Article 9 from time to time.

"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve 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

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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.

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

[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.

estimates that were inaccurate, an adjustment shall be made in determining the amount of any subsequent shortfall for the month in which the inaccuracy is identified.

"IESO 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

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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 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

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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.

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 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 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.

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

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

(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 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 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 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.

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

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

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

(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 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

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[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.

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 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

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

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 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.

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[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.

(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 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

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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).

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** - 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

[19] 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.

consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][20]

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

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

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

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder,

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

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, Successor IESO shall be established to perform such obligations.

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[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.

[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.

(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 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]

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[22] Requested by Torys. For discussion.

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

(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 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 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

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

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.

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Intergenerational Fairness in Hydro Rates Act, 2017

[OLC Notes re this draft:

- Need to address "True-Up Amount".

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 can be amended in the same way as any other provision of the bill may be amended.]

The Government of Ontario has invested in decarbonizing and modernizing the Province's electricity infrastructure. Electricity costs have increased for consumers as a result of this investment.

Given the long-term benefits that future generations of Ontarians will receive from this Government's investment, it is appropriate to allocate the 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 the draft but please note that the structure of the bill is still very much up for discussion.]

CONTENTS

PART I
GENERAL

1. Definitions
2. Purpose
3. Undertaking by Lieutenant Governor in Council

PART II
TRANSITION CHARGES

4. Specified consumers to pay transition charge
5. Irrevocability of transition charge

BK7

DUTIES OF IESO

6. IESO to determine transition charge for electricity vendor

DUTIES OF ELECTRICITY VENDOR

7. Electricity vendor to determine transition charge for specified consumer

PART III
HOW TRANSITION CHARGES ARE DETERMINED

INTERPRETATION

7.1 Definitions

FAIR ALLOCATION IN YEARS 2017 TO 2021

7.2 Determination of rates, May 1 to October 31, 2017
7.3 Determination of baseline, average rate
7.4 Determination of rates, starting November 1, 2017
7.5 Determining amount of deferral

FAIR ALLOCATION PLAN

8. Fair Allocation Plan
8.1 Compliance
9. Principles
10. Methodology

FINANCING PLAN

11. Financing Plan to be prepared by prescribed entity
11.1 Compliance with Plan
12. Contents of plan

FUNDING SHORTFALL

13. Definitions
14. Funding shortfall
14.1 Net payment
15. Consumer contribution
16. Applied surplus
17. Unapplied surplus

FINANCE AMOUNT

18. Definitions
19. Finance amount
20. Finance reserve balance
21. Funding costs

PART IV
THE REGULATORY ASSET

ESTABLISHMENT OF REGULATORY ASSET

22. Regulatory asset established

TRANSFER OF REGULATORY ASSET

23. Transfer of regulatory asset
24.
25. Validity of transfer

ADMINISTRATION OF REGULATORY ASSET

26. Administrative agent
27. Regulatory asset owner may grant pledge
28. Collective action required
29. Exercise of rights

REGULATORY ASSET ACCOUNTS

30. Pro rating of payments
31. Electricity vendor
32. IESO
33. Accounts held by agents

AGENTS

34. Appointment of agent, invoicing
35. Appointment of agent, collection, etc.
35.1 Not Crown agent

PART V
MISCELLANEOUS

36. Enforcement
37. Successors
38. Conflict
39. No further approvals, etc.
100. Regulations

PART VI
CONSEQUENTIAL AMENDMENTS
101. Electricity Act, 1998
102. Ontario Energy Board Act, 1998
PART VII
COMMENCEMENT AND SHORT TITLE
103. Commencement
104. Short title

PART I
GENERAL

[OLC Note: All definitions will need to be re-evaluated as the drafting of the substantive provisions becomes more settled. All definitions are preliminary at this point until we have a better handle on how each term is going to be used.]

Definitions

1. (1) In this Act,

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner [for the purposes of this Act/under the Financing Plan]; ("French")

[OLC Note: Consider how "under the Financing Plan" might be interpreted and whether it meets your policy objectives. One might read it as meaning "in accordance with the Financing Plan", which might have the effect of raising questions about whether a particular funding obligation is a legitimate "funding obligation"... for example where doubts can be raised as to whether the obligation was incurred in strict accordance with the rules of the Financing Plan. I think that if you retain wording like "for the purposes of this Act" the effect would more inclusive and perhaps more in keeping with your policy objective.]

"electricity generation assets" means facilities that are constructed, acquired or developed in connection with electricity generation contracts and any related equipment; ("French")

[OLC Note: In previous drafting, I tried to retain the language of the Blakes document by using the term "green" in various terms (e.g. "green generation assets"). On further reflection, I think that the "green" label may be inaccurate and may cause some confusion. It is possible, I think, that some of the contracts in question may not be characterized as "green" (particularly since the meaning of "green" is pretty unclear). I'm proposing instead to use a more neutral reference to "electricity" broadly, and we can narrow the meaning expressly through the definitions if we need to.]

[OLC Note: Consider the use of the phrase "in connection with" above. This would be read as potentially covering a very broad category of matters (e.g. access roads; waterways; etc.) Do you need to limit the scope in order to achieve the desired policy outcome?]

"electricity generation contracts" means the contracts entered into by the IESO for electricity to be supplied during the period beginning on May 1, 2017 and ending on the prescribed date, other than contracts with Bruce Power L.P or Bruce Power A. L.P. or their successors or assigns; ("French")

[OLC Note: ENE LSB to confirm - do you want some reg-making power to exclude certain contracts generally (e.g. might there be new contracts that would arise that you would not want to have included in the electricity generation contracts?).]

"electricity generation costs" means the costs incurred [by the IESO?] in relation to the electricity generation contracts; ("French")

"electricity vendor" means a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

[OLC Note: ENE LSB noted that the definition of "electricity vendor" needs to be considered further. Also, your instructions were to include the IESO in the definition of "electricity vendor" but I don't think that works. Please confirm. If the IESO is in fact to be included in the term "electricity vendor" then we'd have to think about the various places where this will cause confusion (e.g. where the electricity vendor has an obligation to do something vis-à-vis the IESO etc.).]

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

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

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

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

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means, subject to subsection (4),

(a) the period beginning on the day this Act receives Royal Assent and ending on June 30, 2017,

[OLC Note: Didn't you want to make this retroactive to May 1, 2017? Or is that not necessary?]

(b) the period beginning on July 1, 2017 and ending on December 31, 2017,

(c) every six-month period following the period mentioned in clause (b); ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the regulatory asset established under section X; ("French")

"regulatory asset owner" means, collectively, the owners of the regulatory asset, which may include,

(a) the IESO, to the extent that it retains any ownership interest in, to or under the regulatory asset, and

(b) a transferee, to the extent that it has acquired and holds any ownership interest (including a specified portion on a divided basis or by way of an undivided interest) in, to or under the regulatory asset; ("French")

"service area", with respect to a licensed distributor or a licensed retailer, means the area in which the distributor is authorized by its licence to distribute electricity or the area in which the retailer is authorized by its licence to retail electricity, as the case may be; ("secteur de service")
[OLC Note: Not sure we need the def'n of service area - to check).]

"specified consumer" means a consumer within the meaning of the *Electricity Act, 1998* who meets the criteria set out in subsection (2); ("French")

"transfer" means an assignment, conveyance, disposition or sale; ("French")

"transferee" means any person to whom all or part of the regulatory asset has been transferred; ("French")

"transition charge" means the charge of that name that is included on the invoice of a consumer under this Act; ("French")

Specified consumers

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

1. The consumer has a <u>demand</u> for electricity of 50 kilowatts or less, <u>or such other amount as may be prescribed.</u>

[OLC Note: I understand now that "demand" means "highest instantaneous draw from the distribution system that a consumer has during a month" and I see that this phrase is used in a lot of ENE regs but how does anyone know that this is what "demand" means?]

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

[OLC Note: In the RPP reg, there is a minimum of 150,000 kilowatts… do you want to maintain that minimum here?]

3. The consumer [has an account with an electricity vendor or the IESO] and both of the following criteria apply:

    i. The consumer carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993.*

    ii. The consumer 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.

4. The consumer has an account with an electricity vendor [or the IESO?] that 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 consumer satisfies such criteria as may be prescribed.

Same

(3) In this Act, a reference to a specified consumer of an electricity vendor who is a licensed distributor or a licensed retailer means a specified consumer who has an account with the distributor or retailer for the provision of electricity in Ontario.

Reference period

(4) Clauses (b) and (c) of the definition of "reference period" do not apply if the Fair Allocation Plan specifies different reference periods.

[OLC Note: Subs. (4) is quite unusual as it would allow for an external document prepared by an external body to essentially override the legislation. Are you sure you don't want to impose some parameters?]

Intention of the Legislature

(5) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

[OLC Note: The above subsection is intended to address the instruction included in the Blakes doc in Article 12 (5) - "Severability". This kind of provision is generally not considered necessary but the above is based on a provision that was included in the *Climate Change Mitigation and Low-carbon Economy Act, 2016.* Please advise if this achieves your desired objective.]

Same

(6) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

[OLC Note: This is meant to address Article 12 (4) of the Blakes doc. This provision is a bit unusual and will have to be considered further to ensure that it achieves the desired outcome.]

Purpose

2. The purpose of this Act is to provide for the fair and cost-effective allocation of electricity generation costs among specified consumers throughout the useful life of electricity generation assets.

[OLC Note: Do you need a provision that states "This Act binds the Crown"?]

Undertaking by Lieutenant Governor in Council

3. [Drafting TBD - Article 10 of Blakes document under consideration by OLC. Please see questions set out in separate document.]

PART II
TRANSITION CHARGES

[OLC Note: Rather than deal with different concepts of charges (e.g. period transition charges; transition charges etc.) can we leave the details to either the Fair Allocation

Plan or the regulations? It seems to me that the most crucial point to communicate in the Bill is that the IESO will charge electricity vendors and that electricity vendors will charge specified consumers an amount on every invoice. See possible reg-making authority set out below.]

DUTY OF SPECIFIED CONSUMERS TO PAY

Specified consumers to pay transition charge

4. (1) Upon receipt of an invoice that includes a transition charge determined under this Act, a specified consumer shall pay the transition charge to the electricity vendor in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether payment of the amounts is inconsistent with the Fair Allocation Plan applicable at the time when the payment is due;

[OLC Note: Consumer protection issue -- this seems to suggest that the Fair Allocation Plan has no actual legal significance (e.g. the methodology and principles in the plan can be ignored).]

(b) whether the payments relate to funding obligations that were incurred in a manner that did not comply with the Financing Plan; and

[OLC Note: Again, what is the point of the Financing Plan if it is not going to have any legal effect on what people have to pay?]

Indebtedness of specified consumer

(4) An unpaid transition charge that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to the regulatory asset owner.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

[OLC Note: The phrase "single and separate" doesn't appear anywhere in Ontario's Current Consolidated Laws (Statutes and Regulations). I also haven't been able to find either term in relation to the phrase "debt obligation". Is there another way to describe what is meant by this phrase in the Ontario context? Is there some other statutory context in which we have tried to communicate this same idea -- would be good to consider precedent language.]

Irrevocability of transition charge

5. Any transition charge shown on an invoice issued to a specified consumer under this Act is irrevocable [upon invoicing the consumer] and may not be set off or [avoided/by-passed].

[OLC Notes:

1. Thanks for your help understanding the terms "set off" and "by-pass". I think "set off" has a meaning that is generally understood, particularly in the context of Ontario electricity legislation and regulations. I'm not sure if the same can be said for "by-pass" or "avoid" (e.g. would this cover situations when a consumer dies or moves out of province or goes off-grid?)].

2. Instructions in Article 3 (5) refer to the "irrevocability" of the charges. Any consumer protection vis-à-vis errors in the invoice? There is some indication in the instructions that there may be some ability to adjust the amount based on a "manifest calculation error" but what does that mean? (See Article 4 (5) in instructions).

3. I note that in the instruction on Article 4 (1), you state: "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". Does this mean the person is deemed to be billed even if they never see the invoice and even if there is an error in the invoice? You mentioned that you will be following up on consumer protection issues (e.g. OEB's Distribution System Code).]

DUTIES OF IESO

IESO to determine transition charge for electricity vendor

6. (1) The IESO shall apply the methodology set out in the Fair Allocation Plan to determine the amount payable on a monthly basis by each electricity vendor on behalf of the electricity vendor's specified consumers for transition charges.

IESO to invoice electricity vendors

(2) The IESO shall issue an invoice to each electricity vendor for the transition charges in accordance with the regulations.

IESO to collect

(3) The IESO shall, as an agent of the regulatory asset owner, make reasonably diligent efforts to collect transition charges from electricity vendors.

Deposit

(4) The IESO shall promptly deposit payments for transition charges in the account established under section X.

IESO's to remit

(5) The IESO shall remit amounts received to the regulatory asset holder in accordance with the regulations.

DUTIES OF ELECTRICITY VENDOR

Electricity vendor to determine transition charge for specified consumer

7. (1) In order to recover transition charges invoiced to an electricity vendor under subsection 6 (1), each electricity vendor shall apply the methodology set out in the Fair Allocation Plan to determine the proportionate share of transition charges 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 transition charges in accordance with the regulations.

Electricity vendor to collect

(3) (1) Each electricity vendor shall, as an agent of the regulatory asset owner, make reasonably diligent efforts to collect transition charges from specified consumers.

Deposit

(4) The electricity vendor shall promptly deposit payments for transition charges in the account established under section X.

Remittance to IESO

(5) The electricity vendor shall remit all amounts received to the IESO in accordance with the regulations.

PART III
HOW TRANSITION CHARGES ARE DETERMINED

INTERPRETATION

Definitions

7.1 (1) In this Part,

"generation facility" has the same meaning as in section 56 of the *Ontario Energy Board Act, 1998*; ("installation de production")

"invoice amount" means the sum of the following amounts:

1. The commodity price of the electricity used during the invoice period.

[Tara: I would prefer to keep the list of exclusions. See ss. 2(1) and 2(2) of the ORECA for an example of this approach. By not keeping the exclusions as I had drafted them, at

least one important exclusion element has been dropped – rate riders – see paragraph (f) of my drafting instructions to you.]

2. The rates and charges set out in the applicable rate order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

3. Any adjustment required under section 25.33 of the *Electricity Act, 1998*.

4. The amount of any harmonized sales tax payable under Part IX of the *Excise Tax Act* (Canada).

[OLC Note: TBD whether it is necessary to expressly exclude the items you've listed as "invoice amount exclusions" or whether that is sufficiently clear using the above definition.]

[Tara: I would prefer to also have the exclusions, as noted above.]

"rate of inflation means"… [to be included in next draft].

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

Invoice amount, exclusions

(2) For the purposes of the definition of "invoice amount" in subsection (1), an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

    iii. A rate rider.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the Act;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

FAIR ALLOCATION IN YEARS 2017 TO 2021

Determination of rates, May 1 to October 31, 2017

7.2 The Ontario Energy Board shall determine the rate for electricity payable by a specified consumer [for the period beginning on May 1, 2017 and ending on October 31, 2017?] in the following manner:

[OLC Note: I gather that the intention is for this to somehow override section 79.16 of the OEBA for the specified consumers. Consequential amendments TBD - please instruct.]

1. Determine the average rate payable by a representative consumer by applying the method set out in section 7.3.

2. Determine the average monthly [invoice amount?] that would be payable by a representative consumer under the rate determined under paragraph 1.

3. Determine the amount that is 25 per cent less than the monthly invoice amount determined under paragraph 2.

4. Determine the average rate payable by a representative consumer that would result in the monthly invoice amount mentioned in paragraph 3 for a representative consumer.

Determination of baseline, average rate

7.3 For the purposes of paragraph 1 of section 7.2, the follow method applies:[1]

1. The Board shall determine rates in a manner that is consistent with the Standard Supply Service Code issued by the Board.

[OLC Note: I removed para. 2 from O. Reg. 95/05 because this method is really only for the period from May 1 - Oct. 31, 2017, correct?]

2. In determining the rates, the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect those costs.

3. The Board shall set an off-peak period associated with the regulated price referred to as RPEMOFF in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board,

[OLC Note: This is an unusual amount of technical detail to include in an Act -- more appropriate for regs. Please confirm you want to set this out in the Act.]

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.

[OLC Note: Consider adding definitions of "holiday" and "weekday" from O. Reg. 95/05.]

Determination of rates, starting November 1, 2017

7.4 On and after November 1, 2017, the Board shall determine the rate for electricity payable by a specified consumer in the following manner:

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[1] FLS: Please see section 6 of O. Reg. 95/05 (a bilingual reg).

1. The Board shall determine rates in a manner that is consistent with the Standard Supply Service Code issued by the Board.

2. The rate determined by the Board shall remain in effect for six months. The Board shall determine separate rates after that time for periods of six months, up to and including the period beginning on November 1, 2021.

[OLC Note: This para. 2 is based on para. 2 of section 6 of O. Reg. 95/05. Likely need to tie this in to the defined term "reference period" but I haven't done so yet.]

3. The rate shall be determined by increasing the rate determined for the most recent [reference period] by the amount that would increase the monthly [invoice amount?] of a representative consumer by the year-over-year increase in CPI.

Determining amount of deferral

7.5 (1) The Ontario Energy Board shall determine the [amount of deferral] for each reference period by calculating the difference between the following amounts:

1. The sum of all monthly invoice amounts issued to specified consumers during the reference period.

2. The sum of all monthly invoice amounts that would have been issued to specified consumers during the reference period if [the 25% reduction had not been applied for the initial reference period?].

[OLC Note: Need to match up "amount of deferral" with terminology in the Bill. It is possible that this provision should be included somewhere else in the bill, depending on where in the Bill we need to refer to the amount.]

[OLC Note: Once the OEB determines this number, what do they do with it? Publish it? Provide it to the Minister?]

Same

(2) The determination under subsection (1) shall be made based on the amount of electricity actually used by specified consumers during the reference period.

FAIR ALLOCATION PLAN – regulating power will refer to this as offset.

Fair Allocation Plan

8. (1) In order to ensure the fair allocation of electricity generation costs among specified consumers beginning on May 1, 2017, the Minister shall prepare a written plan entitled the Fair Allocation Plan.

[OLC Note: Now that we have included the provisions from the RPP to cover the first years of fair allocation, please advise how you want to articulate the contents of the Plan

– Reg to make reference to FAP –
→ Stand alone res. under [illegible] bill

(e.g. must incorporate the above provisions and then come up with a scheme that would apply in subsequent years, subject to some limitations)?]

[OLC Note: Please confirm whether the "funding shortfall" should be mentioned above or if it is accurate to refer to the electricity generation costs.]

[OLC Note: ENE LSB flagged the following concern: *there needs to be a process for determining impact on the proxy consumer of the transition costs arising out of the Financing Plans which are based on the Fair Allocation Plan.*]

[OLC Note: Please confirm if the Plan (and amendments to the Plan) are to be subject to LGIC approval.]

Amendments to plan

(2) The Fair Allocation Plan may be amended by [XX] if [instructions required on circumstances when amendments may be made].

Publication

(3) The Minister shall ensure that the Fair Allocation Plan and any amendments to the plan are made available to the public in a manner that the Minister considers appropriate.

[OLC Note: When does the plan (or an amendment) take effect -- upon publication?]

Compliance

8.1 The IESO, electricity vendors and the [financing entity] shall comply with the Fair Allocation Plan.

Principles

9. In preparing the Fair Allocation Plan, the Minister shall have regard to the following principles:

1. Electricity generation costs should be allocated over a period not to exceed the later of,

    i. the last day of the estimated remaining useful life of the electricity generation assets, and

    ii. the last day on which the IESO has obligations under the electricity generation contracts.

2. The share of electricity generation costs allocated to a particular group of consumers in respect of a reference period should be proportionate to a

reasonable assessment of the benefits of the electricity generation contracts to the group of consumers over that reference period.

3. The estimated electricity generation costs allocated to a group of consumers for a reference period should not exceed the estimated value of the electricity generation assets [during and after the reference period?].

4. No group of consumers should bear an unreasonably disproportionate share of the electricity generation costs and adjustments should be made over time if the Minister is of the opinion that a group of consumers has paid more than is reasonably proportionate.

5. Allocation of the electricity generation costs should be determined for reference periods.

6. A reasonable estimate of the rate of inflation should be applied.

Methodology

10. (1) The Minister shall set out in the Fair Allocation Plan the methodology to be used for allocating electricity generation costs among specified consumers, which methodology shall include the inclusion by electricity vendors of transition charges on the invoices of specified consumers.

Same

(2) The Lieutenant Governor in Council may make regulations governing the methodology, which may include requiring the Minister to have regard to prescribed considerations when selecting the methodology.

FINANCING PLAN

Financing Plan to be prepared by prescribed entity

11. (1) In order to ensure that decisions made by the IESO or a transferee relating to the financing of [unrecovered electricity generation costs] are consistent with the Fair Allocation Plan and are cost-effective, the Ontario Power Generation Inc. shall prepare and propose to the Minister a plan entitled the Financing Plan.

[OLC Note: Consider whether the phrase "financing of" should be used vs. "incurring funding obligations".]

[OLC Note: Do you want to impose a timing requirement on the preparation of the plan? When does the plan take effect?]

Other prescribed entity

(1.1) If the another entity is prescribed for the purposes of this Part, that entity shall have all of the obligations and duties of Ontario Power Generation Inc. under this Part and all references to the Board in this Part are deemed to be references to that entity.

Approval by Minister

(2) Upon receipt of a proposed Financing Plan or proposed amendments to the plan,, the Minister shall, in writing,

[OLC Note: Please confirm that this reflects the desired policy.]

(a) approve the proposed plan or proposed amendments; or

(b) make any amendments to the proposed plan or proposed amendments that the Minister considers appropriate and approve the plan or amendments subject to those further amendments.

Publication

(3) The approved Financing Plan and any subsequent amendments to the plan under this section shall be made available to the public in a manner approved by the Minister.

[OLC Note: Please confirm that this reflects the desired policy.]

Amendments to approved plan

(4) The Financing Plan may be amended at any time by,

(a) [???], subject to the Minister's approval of any such amendments under subsection (2); or

(b) the Minister.

[OLC Notes:

- What does the Minister have to do in order to implement the amendments? Notification to anyone? Publication?)
- do you want to impose limits on the scope of amendments that can be made?]

[OLC Note: Do you want to impose a requirement that the Financing Plan be reviewed every time the Fair Allocation Plan is amended?]

Compliance with Plan

11.1 The IESO, electricity vendors, Ontario Power Generation Inc. and the [financing entity] shall comply with the Financing Plan.

Contents of plan

12. (1) The Financing Plan shall include the following:

1. A description of one or more transfers that may be made in respect of the regulatory asset established under Part **.

2. A description of the basis upon which funding obligations may be incurred as a means of recovering electricity generation costs in a manner that is consistent with the applicable Fair Allocation Plan.

[OLC Note: Please confirm whether "electricity generation costs" is correct vs. "funding shortfall".]

3. A description of the funding obligations mentioned in paragraph 2, which may include the following:

    i. Indebtedness.

    ii. Payment obligations arising under or in respect of derivatives.

    iii. Payment obligations owing to service providers, administrative agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies.

    iv. Refinancing an existing funding obligation by applying the net proceeds obtained by incurring other funding obligations.

3. Such other matters as may be prescribed by the regulations.

Special purpose financing entities

(2) The Financing Plan may, in accordance with the regulations, provide for the establishment of one or more special purpose financing entities that may incur funding obligations.

Administrative agent

(2.1) The Financing Plan may require an entity other than the Ontario Energy Board to perform the functions described in section [xx], in which case that entity shall perform those functions in accordance with such terms as may be specified in the Financing Plan. [OLC Note: ENE LSB noted the following: *The OEB's role and therefore the requirement for a replacement entity must be confirmed.]*

Prohibition

(3) The Financing Plan shall not provide for funding obligations to be incurred with any recourse to any assets of the electricity vendors, the IESO, the Ontario Energy Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or

under the express terms of a funding obligation or [an obligation in relation to a finance amount].
[OLC Note: What is meant by the phrase in square brackets?]

Funding obligations unaffected by amendment to Fair Allocation Plan

(4) No change to a funding obligation incurred under the Financing Plan shall result from an amendment to the Fair Allocation Plan that is made after the funding obligation has been incurred.
[OLC Note: Need to cross-reference all usage of the term "funding obligation" against the proposed definition of that term. If the defined term includes reference to its characteristic of being incurred "under the Financing Plan" or "under the Act" then we shouldn't be repeating that phrase here. However, I think we first need to understand what we are trying to convey (e.g. funding obligation *authorized under the FP* vs. funding obligation *incurred for the purposes of achieving the purposes of this Act, etc.).*]

[OLC Note: Consider Article 8 (9) entitled "incurrences are binding" -- I believe we have already stated in the Part dealing with the regulatory asset that the rights are enforceable etc. even if charges have been imposed in a manner that does not follow the Financing Plan. Is more drafting required? Please advise.]

FUNDING SHORTFALL

Definitions

13. In sections [subsequent sections under Funding Shortfall heading],

"applied surplus" means the amount calculated under section 16; ("French")
[OLC Note: In the Blakes document, this is the "IESO applied surplus".]

"consumer contributions" means the amount calculated under section 15; ("French")
[OLC Note: In the Blakes document, this is the "GA Power Contract Contribution".]

"net payment" means the amount calculated under subsection 14.1 (1); ("French")
[OLC Note: In the Blakes document, this is the "IESO Power Contract Net Payment".]

"net receipt" means the amount calculated under subsection 14.1 (2); ("French")
[OLC Note: In the Blakes document, this is the "IESO Power Contract Net Receipt".]

"unapplied surplus" means the amount calculated under section 17. ("French")
[OLC Note: In the Blakes document, this is the "IESO unapplied surplus".]

Funding shortfall

14. (1) For the purposes of this Act, the funding shortfall for a reference period shall be determined by applying the following formula:

$$(A - B) - C$$

Where,

A = the net payment for the reference period,

B = the consumer contribution for the reference period,

C = the applied surplus for the reference period.

Net payment

14.1 (1) The net payment for a reference period is determined as follows:

1. Calculate the sum of the amounts payable by IESO to generators under all electricity generation contracts for the reference period.

2. Calculate the sum of amounts payable by generators to the IESO under all electricity generation contracts for the reference period.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Net receipt

(2) The net receipt for a reference period is determined by subtracting the amount calculated under paragraph 1 of subsection (1) from the amount calculated under paragraph 2 of subsection (1).

Consumer contribution

15. The consumer contribution for a reference period is the aggregate of the payments to be made by the specified consumers in respect of the reference period for transition charges, as determined under the Fair Allocation Plan.

Applied surplus

16. The applied surplus for a reference period is the lesser of the following amounts:

1. The amount by which the net payment exceeds the consumer contribution for the period.

2. The unapplied surplus on the last day of the reference period that immediately preceded the relevant reference period.

Unapplied surplus

17. The unapplied surplus on a specified day shall be determined by applying the following formula:

$$(D + E) - (F + G)$$

Where,

D = the sum of all net receipts for the reference periods occurring before the specified date,

E = the sum of all consumer contributions for the reference periods occurring before the specified date,

F = the sum of all net payments for the reference periods occurring before the specified date, and

G = the sum of all applied surpluses for each reference period occurring before the specified date.

FINANCE AMOUNT

Definitions

18. In sections 19, 20 and 21,

"funding costs" means the amount determined under section 21; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of a transferee by applying the net proceeds obtained by the transferee incurring one or more other funding obligations. ("French")

[OLC Note: In the Blakes document, this is the "refinancing" definition.]

Finance amount

19. (1) For the purposes of this Act, the finance amount for a reference period shall be determined by calculating the sum of the following:

1. The sum of all payments made by a transferee [during the reference period?] to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the transferee under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

[OLC Note: Para. 1 is the definition of "repayment" from the Blakes doc. However, that definition include bracketed text that says: (*including making Finance Reserve Deposits).*

I don't understand this because (1) Finance Reserve Deposit is listed as a separate line item in the definition of "finance amount" (see para. 4 below). In order to avoid duplication, can we exclude "finance reserve deposits" from para. 1?]

2. The sum of all funding costs for the reference period.

3. The sum of all amounts payable by or on behalf of a transferee to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

[OLC Note: Para. 3 is the definition of "redemption amount" from the Blakes doc.]
[OLC Note: What is meant by "make-whole" -- need some assistance in order to translate this term accurately. Do you have any examples of bilingual legislation where this term has been used?]

4. The balance of the finance reserve at the end of the reference period, as determined under section 20.

5. The sum of any other amounts payable by a transferee for the reference period that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

[OLC Note: Para. 5 is based on the definition of "additional funding charges".]

Finance reserve balance

20. (1) For the purposes of paragraph 4 of section 19, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:
[OLC Note: This section is a modification of the definitions provided in the Blakes document for "Finance Reserve Deposits" and "Finance Reserve Withdrawals". The proposed definition of "FR deposit" involved a subtraction of the "FR withdrawal" so the term 'deposit' was not really descriptive of a pure deposit but rather the balance.]

1. Calculate the sum of all amounts deposited [to what account?] during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn from the account during the reference period from deposits previously made [e.g. during a previous reference period?] as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Funding costs

21. The funding costs for a reference period are determined by taking the following steps:

1. Calculate the aggregate of all interest and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of the transferee during the reference period in respect of all funding obligations, including the following:

    i. Standby commitment fees or charges paid to any lender.

    ii. Credit enhancement fees or charges paid to any credit enhancer.

    iii. Liquidity fees or charges paid to any liquidity provider.

    iv. Payments, including termination payments, made under derivatives.

    v. Deposits made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a funding obligation.

2. Calculate the aggregate of all amounts received by or on behalf of the transferees during the reference period in respect of a funding obligation, including reimbursement of any amounts referred to in subparagraphs 1 i to v.

[OLC Note: Para. 2 is the definition of "finance receipts" in the Blakes doc.]

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

PART IV
THE REGULATORY ASSET

[OLC Note: The provisions in Articles 4 (9) and 5 (10) relating to the Regulatory Asset Owner having standing would perhaps fit best in the part dealing with the Regulatory Asset. I'm not sure why this provision would be needed in addition to what is already being stated below (if the statutory right is sold/assigned to the new owner then doesn't that bring with it the ability to enforce the right?) Please instruct.]

ESTABLISHMENT OF REGULATORY ASSET

Regulatory asset established

22. (1) The IESO has property rights and interests, which together constitute a regulatory asset, in the following:

[OLC Note: As a drafting matter, we would typically want each of the items in a list to be distinct from one another (no overlap between the items in the list). Could you please assist with reviewing the language to ensure that each item is distinct.]

[OLC Note: Everything listed below is now characterized as a "right" to something. However, when read with the opening flush, we are essentially saying "the IESO has *a right to rights"*. I appreciate that what we are dealing with is a somewhat novel concept but we should see if we can word it in a way that is as clear as possible to avoid any unintended consequences in interpretation.]

1. The right of the IESO to record its portion of the regulatory asset in its accounts.

[OLC Note: Should the "right" referred to in para. 1 be set out in the statute somewhere? Would the IESO have this "right" if the statute were silent on this matter?]

[OLC Note: For the paragraphs below where I have suggested a cross-reference, please take a look at the relevant sections and let me know if you think a cross-reference would work well. We could always put a parenthetical reference after the cross-reference to flag the topic for readers of the law, but this way we can be sure that we are lining up the rights with the actual rights that are being given under the statute.]

2. The rights of the IESO under sections [include cross reference to sections that authorize the IESO to impose, bill, invoice, collect and receive amounts and the right to determine the amounts?].

3. The right to enforce section [include cross-reference to the section that creates indebtedness of each specified consumer to pay the transition charges, together with all related late payment fees or interest charges].

4. The right to enforce section [include cross-reference to section that requires electricity vendor to impose, bill, invoice, collect and receive transition charges, including amounts required to be remitted to the IESO and all collections and the proceeds of any enforcement action undertaken by the electricity vendor to recover payments].

5. The right to enforce section [include cross-reference to section that sets out the duties of IESO to collect and receive remittances with respect to and to remit IESO Remittances to or to the accounts of the regulatory asset owner, each

with respect to its Regulatory Asset, including all collections and the proceeds of any enforcement action undertaken by it…].

7. The right to receive and collect all transition charges under [include cross-reference].

8. The right to all amounts and entitlements under each account created under sections [cross-ref to regulatory asset accounts sections] and all amounts on deposit in those accounts.

[OLC Note: I believe those provisions refer to all of those amounts being held in trust for the regulatory asset owner. Is it necessary to layer this on top of that trust?]

9. All rights of any kind, whether in tort, contract or otherwise, of the IESO that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset.

[OLC Note: Para. 9 is essentially a cut and paste of the Blake's definition of "Related Rights".]

10. The right to all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 9, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

[OLC Note: Please check to see if para. 10 is necessary or if any elements could be covered/addressed under one of the previous paragraphs.]

[OLC Note:
1. I wonder whether the proposal allows for double recovery in some cases (e.g. right to recover both amounts that the distributor has to remit AND the amounts that the consumers have to pay). This would be addressed by ensuring each of the above items in the list is distinct from one another.
2. The "regulatory asset holder" would include the IESO for at least a bit of time at the beginning. But some of the items included in the list for the regulatory asset include *obligations of the IESO*. I understand that when the regulatory asset is sold/assigned, the IESO's obligation to accept remittances from distributors would be transferred to the Financing Entity but I don't understand how this obligation could form part of the initial regulatory asset that the statute initially gives to the IESO itself. Does the regulatory asset "grow" when it is assigned/sold to the financing entity and is no longer held by the IESO? Is it necessary to handle rules relating to the IESO separately from other holders of the regulatory asset?]

Same

(2) The establishment of the regulatory asset is not affected by failure to impose, attribute, invoice, accrue or collect transition charges.

No set off, etc.

(3) The regulatory asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, the IESO, an agent of the regulatory asset owner or an owner of distribution system assets in the Province;

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a);

(c) by any affiliate or successor of a person mentioned in clause (a).

[OLC Note: Need to check how this provision lines up with other provisions dealing with set off and reduction (e.g. transition charges irrevocable).]

TRANSFER OF REGULATORY ASSET

Transfer of regulatory asset

23. The IESO may transfer the regulatory asset to any entity.

[OLC Note: need to expand the rules in a subsequent draft to address other potential transferors an entity that receives the Regulatory Asset from the IESO may then go on to sell the Regulatory Asset to someone else.]

Ownership of a portion of the regulatory asset

24. The regulatory asset owner may transfer a portion of its rights and interests in the regulatory asset, including by way of a transfer of a divided or an undivided interest.

Validity of transfer

25. (1) A transfer of the regulatory asset is [final and binding? valid and enforceable?] and confers the regulatory asset upon the transferee in accordance with the terms of the transfer.

[OLC Note: We should choose the phrases we want to use to signify "irrevocable" and use those same phrases consistently throughout the Bill.]

[OLC Note: I understand that the intention is to communicate the finality of the sale/transfer but some of the terminology included in the instructions relating to "validity of dispositions" seems to be redundant of what is drafted in subs. (1) above.
The following terms do not appear in any current consolidated law (statutes and regulations) on e-Laws: "absolute transfer"; "true sale". I don't know what these terms

mean or what they are adding beyond what we have already said in subs. (1). Please advise.]

[OLC Note: Are there any circumstances under which the "transfer" should not be final and binding?]

Same

(2) For greater certainty, subsection (1) applies despite the existence of any of the following:

1. Any provision of an Act, regulation or contract relating to the transfer.

[OLC Note: Given that we are including a conflict provision under the "Miscellaneous" part of the Bill, I'd think para. 1 could be removed and we could address any concerns in that conflict provision. Please advise.]

2. Any consent that may be offered by a party to an agreement in respect of the transfer.

3. Any other circumstances, including the following:

[OLC Note: The risk with including the following list of circumstances in the statute is that someone might successfully argue (even though the list is drafted to be non-exhaustive) that because some other unforeseen circumstance is not listed, the transfer could be legitimately challenged on the basis of that other unforeseen circumstance.]

i. Revenues or other proceeds from transition charges have comingled with other amounts.

ii. Any interest (including any partial, residual or subordinated interest, whether direct or indirect) has been retained in the regulatory asset by the IESO.

iii. Any right to repurchase the regulatory asset in favour of the IESO has been retained.

iv. Any recourse that a transferee may have against the IESO is available. [OLC Note: What recourse would this be?]

v. Any indemnification rights or obligations are provided to the transferee by the IESO.

vi. Any obligation of the IESO to collect and remit transition charges on behalf of a transferee, including but not limited to, any retention by the IESO to bare legal title for the purpose of collecting transition charges.

[OLC Note: Since the obligation referred to in vi above is an obligation that we are creating in the statute, I can't imagine that it would need to be included in this list. Do you agree? Or is this referring to a different obligation?]

vii. The ascribed or intended treatment of the transfer by the IESO or the transferee for tax, financial reporting or other purposes.

Deemed perfection, etc.

(3) At the time a transfer is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the IESO and all other persons who have claims of any kind against the IESO.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of such other persons.

ADMINISTRATION OF REGULATORY ASSET

Administrative agent

26. (1) Unless the Financing Plan provides for another entity to administer the incurrence and payment of funding obligations by transferees, the Ontario Energy Board shall perform those functions as agent of the regulatory asset owner.

Application of amounts

(2) For the purposes of performing the functions mentioned in subsection (1), the Ontario Energy Board shall ensure that any amounts transferred to it as agent for the regulatory asset owner shall only be applied or used to pay finance amounts, as determined under section 19, when they are due and payable.

Regulatory asset owner may grant pledge

27. (1) The regulatory asset owner may, [in accordance with the Financing Plan?] grant a pledge to or in favour of a person in, to and over all or a specified portion of the regulatory asset.

[OLC Note: The drafting of s. 27 is very rough. I will need to work on the drafting of this section further… just trying to understand the concepts for now. Please advise as to whether this is correct.]

Types of pledge

(2) A pledge may be a lien, mortgage, charge, right of set-off or security interest.

Validity

(3) Subject to subsections (4) and (5), despite any limitations or restriction on the pledge that may arise under an Act or a contract, the pledge may be made to secure a funding obligation and when granted shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the person to whom the pledge is granted a valid security interest in, to and in respect of the regulatory asset in accordance with the terms of the pledge.

Same

(4) Subsection (3) applies if the description of the regulatory asset in the agreement giving effect to the pledge expressly refers to this section.

Financing Plan may require consent

(5) If the Financing Plan requires the consent of any person before the pledge may be given effect, that consent must be obtained [in accordance with the regulations? The plan?] before the pledge takes effect.

Deemed perfection and priority of pledges

(6) The pledge is deemed to have been and shall be perfected, valid and binding from the time when the Pledge is made and shall be valid and binding as against the regulatory asset owner and all other persons who have claims of any kind against the regulatory asset owner.

Same

(7) Subsection (6) applies regardless of whether the persons mentioned in that subsection have notice of the pledge and the security interests under the pledge shall have priority over any liens in favour of those persons.

Proceeds

(8) All proceeds of the regulatory asset that are subject to the pledge and that are received by the regulatory 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 regulatory asset subject to the Pledge, subject to the written consent of the person to whom the pledge has been granted.

Same

(10) The person to whom the pledge has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [regulatory asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

[OLC Note: Is the following something you want to specify in the Bill? *A Pledgee shall cause a financing statement to be filed in respect of a Pledge for informational purposes only under the [PPSA].*]

Collective action required

28. If the IESO or a transferee owns a right or interest in the regulatory asset that comprises less than the entire property right and interest constituted by the regulatory asset, the right or interest shall only be enforced by the regulatory asset owner collectively, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the regulatory asset owner as a collective in accordance with its terms.

[OLC Note: It seems that successors may need to be addressed here. Also Pledgees have not yet been addressed in this draft.]

Exercise of rights

29. The rights of the regulatory asset owner to collect and enforce its rights and interests in, to and in respect of the regulatory asset shall be exercised in accordance with section [xx].

REGULATORY ASSET ACCOUNTS

Pro rating of payments

30. (1) This section applies if,

(a) an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices; and

(b) the amount paid is less than the total amount payable.

Same

(2) The electricity vendor shall distribute the payment on a pro rata basis in order to allocate a portion of the payment to the transition charges payable under the relevant invoices.

Deposit

(3) The electricity vendor shall deposit the portion of the payment allocated to transition charges into the account established under section 31.

Electricity vendor

31. (1) Each electricity vendor shall establish and maintain an account into which the electricity vendor deposits or receives only the following:

1. Payments by specified consumers for transition charges.

2. Portions of payments by specified consumers that are attributed to transition charges under subsection x (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the regulatory asset.

Held in trust

(2) The amounts required to be deposited or received into the account are deemed to be held in trust for the regulatory asset owner.

IESO

32. (1) The IESO shall establish and maintain an account into which the IESO deposits or receives only amounts remitted from accounts established under section 31. [OLC Note - *These amounts remitted are meant to be what is referred to as "electricity distributor remittances" in the Blakes document, which I believes means remittance of the amounts mentioned in paras. 1-3 of the electricity vendor's account section above*]

(2) The amounts required to be deposited or received into the account are deemed to be held in trust for the regulatory asset holder.

Accounts held by agents

33. (1) If a person is appointed under section 34 or 35 and accepts the appointment in accordance with the applicable section, the person shall establish and maintain an account into which the person deposits or receives any of the amounts mentioned in sections 31 and 32 in respect of which the person has assumed obligations under section 34 or 35.

Held in trust

(2) The amounts required to be deposited or received into the account are deemed to be held in trust for the regulatory asset owner.

AGENTS

Appointment of agent, invoicing

34. (1) If a prescribed circumstance applies, the regulatory asset owner may appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing.

[OLC Note: I have used the phrase "prescribed circumstances" to capture the concept of a "replacement event". I'm not sure if this is something that you'd want to include in regulations or if it's something you'd like to provide for otherwise (e.g. in the Financing Plan?). Please instruct.]

[OLC Note: This section (and the following section dealing with collections) is unusual because the statutory obligations of the parties are determined by a document that exists outside of the legislation and regulations and that is prepared by someone external (a written appointment prepared by the RA owner). So it is a very significant delegation of legislative power.

It's basically giving the RA owner the power to exempt an electricity vendor from specific provisions of the Act and to simultaneously impose statutory obligations on a party who would not otherwise be subject to the Act.

Would the appointment, once "accepted", be published somehow so that consumers would understand who has a legitimate obligation to issue the invoices or to collect?

What happens if the appointment needs to be cancelled or amended? In some cases the obligations being delegated to the agent would otherwise be performed by another statutory creature (e.g. collection by the IESO) so it's not clear to me whether the IESO's obligations would automatically resume at that point and how the IESO (and the public) would be made aware etc. Or would a new appointment be required to replace the previous appointment? This all gets kind of confusing when obligations are set out through a combination of statutory requirements and non-legislative appointments that may be hard to track over time.

I think we have to provide some mechanism for all affected parties to understand who has the statutory obligations at any given point in time.]

Appointment to be in writing

(2) An appointment under subsection (1) shall be in writing and shall specify the provisions of this Act that set out the obligations that the appointed person would be required to carry out.

Acceptance

(3) If the person appointed accepts the appointment in writing, that person is deemed to be the electricity vendor for the purposes of the provisions specified in the appointment.

Notice to electricity vendor

(4) Upon acceptance under subsection (3), the regulatory asset owner shall provide written notice to the electricity vendor affected by the appointment of the details regarding the appointment.

Duties of electricity vendor

(5) Upon receipt of a notice under subsection (4), the electricity vendor is no longer required to comply with the provisions specified in the appointment.

Same, regulations

(6) The Minister may make regulations specifying steps that an electricity vendor is required to take upon receipt of a notice under subsection (5), which may include the execution of instruments in order to allow the appointed person to carry out the obligations specified in the appointment.

Appointment of agent, collection, etc.

35. (1) If a prescribed circumstance applies, the regulatory asset owner may appoint a person to carry out some or all of the obligations relating to collection, segregation and remittance under this Act in the place of an electricity vendor or the IESO, as the case may be.

Appointment to be in writing

(2) An appointment under subsection (1) shall be in writing and shall specify the provisions of this Act that set out the obligations that the appointed person would be required to carry out.

Acceptance

(3) If the person appointed accepts the appointment in writing, that person is deemed to be the electricity vendor for the purposes of the provisions specified in the appointment.

Notice to electricity vendor, IESO

(4) Upon acceptance under subsection (3), the regulatory asset owner shall provide written notice to the electricity vendor or the IESO, as the case may be, of the details regarding the appointment.

Duties of electricity vendor, IESO

(5) Upon receipt of a notice under subsection (4), the electricity vendor is no longer required to comply with the provisions specified in the appointment.

Same, regulations

(6) The Minister may make regulations specifying steps that an electricity vendor or the IESO is required to take upon receipt of a notice under subsection (5), which may include the execution of instruments in order to allow the appointed person to carry out the obligations specified in the appointment.

Not Crown agent

35.1 For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

[OLC Note: Now that I have set this provision out, I wonder if there would be any doubt about whether the regulatory asset owner is a Crown agent? Is that where this needs to be articulated instead?]

PART V
MISCELLANEOUS

Enforcement

36. [OLC note - Article 9 of Blakes doc deals with "compliance matters" but more instructions are required in order to draft. What are the "regulatory sanctions"? Perhaps this needs to be linked up with authority of the OEB under existing legislation? Please instruct.]

[OLC Note: Are there to be any offences created under this Act? If so, what are they? What are the penalties? What is the liability of directors and officers of a corporation? Is there a limitation period on proceedings?]

[OLC Note: I also believe that the following provision from Article 5 (13) of the Blakes document is an enforcement matter, so please consider this provision along with other compliance matters:

***[Sequestration** – If any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect 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.]

Successors

37. [OLC Note: Articles 4 (6) and (7) and Articles 5 (7) and (8) are rules about successors to distributors and the IESO being bound by specific requirements. Still to be drafted.]

[OLC Note: I think that Article 5 (9) also relates to succession to some extent --- I understand that this is included in anticipation of restructuring of the distribution system or sale of a distributor to another party. But if we use the defined terms from the Electricity Act (distributor and distribution system) then this doesn't make any sense since a "distributor" is [within the context of the EA] just someone who owns or operates a "distribution system". Are we using different definitions for these terms hre?

It also seems unusual to impose a legal requirement that would be triggered by the regulatory asset owner "requesting" that the new entities comply. Normally I think this kind of issue (new parties becoming part of the distribution system) would be handled through an amendment to the Act when the situation actually arose. Perhaps with more information I will better understand.

Owners of Distribution Assets *- If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province, then such person shall, if requested by the Regulatory Asset Owner, be obligated to act diligently to (a) facilitate the invoicing and collect of any Transition Charges applicable to Ratepayers in its applicable service area, including all consumers connected to the electricity distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by Ratepayers as provided in this Part; (c) terminate service to non-paying Ratepayers on the same basis as termination of service is permitted for non-payment of electricity transmission and distribution rates; (d) exercise all enforcement rights of the Regulatory Asset Owner or Pledgee for the benefit of the Regulatory Asset Owner or Pledgee; and (e) remit any Transition Charge Collections to the Regulatory Asset Owner or Pledgee, as applicable.]*

[OLC Note re Article 12 (1) of the Blakes doc ("Choice of law") -- usually in legislation we don't have to specify that the laws of Ontario apply. Is this necessary?]

Conflict

38. The provisions of this Act [and the regulations?] apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or PLEDGE,

[OLC Note: Please confirm that the underlined list of verbs is correct, taking into consideration the defined terms we are using in the draft Bill.]

No further approvals, etc.

39. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

[OLC Note: This is to address Article 12 (3) of the Blakes doc. Could you please explain the intention behind this provision in order to ensure it achieves the intended goal? Is it to ensure that nothing like an Environmental Assessment is required with respect to a funding obligation? Because it is so broad, it would also purport to cover things like consultation with Indigenous partners. Do you want to keep some reg-making power to allow for exceptions to this rule or do you want to narrow it somehow to address specific concerns that you have?]

[OLC Note: Should the Bill address any issues relating to Immunity of the Crown, liability of various individuals, etc.?]

Regulations

100x. The Lieutenant Governor in Council may make regulations,

(a) governing the inclusion of transition charges in invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the transition charges to be imposed over specified periods of time.

[OLC Note: Both of Articles 4 and 5 in the instructions included extremely broad regulation-making powers. I am deferring the issue of regulation-making authority until we have worked out more of the substance of the bill and have a better sense of what kind of reg-making power would be needed. Expansion of regulation-making powers may also be something that we deal with in more detail at the motions stage, if we are running short of time.

Please advise if there are reg-making powers that you would like to give to the Minister vs. LGIC.]

PART VI
CONSEQUENTIAL AMENDMENTS

Electricity Act, 1998

101x. [instructions required]

Ontario Energy Board Act, 1998

102x. [instructions required]

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.*

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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; except as expressly provided for by the Act,

(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.

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.

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. NTD: the objective of this point is to ensure that once we incur debt, we can't eliminate the entity that holds that debt. We have to deal with the debt first.

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). For instance, this would allow a 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]

(1) **No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections** – The [Lieutenant Governor in Council] shall not in any way take or permit any action to reduce, impair, postpone or terminate the obligation of Retail Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by the Lieutenant Governor in Council, including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) **Undertaking and Agreement** – The [Lieutenant Governor in Council] shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, Successor IESO shall be established to perform such obligations.

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[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.

(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.

(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*].

[2] Requested by Torys. For discussion.

~~Internal~~Comment Draft: April ~~4~~10, 2017

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CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act" ~~– Part V.2~~

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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~~The Province has and continues to encourage the ~~long-term~~ construction and development of facilities for the ~~purpose of generating~~long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer ~~and~~, feed in tariff and other similar programs (the "Green Generation Initiative"). ~~The terms of the Power Contracts were intended to approximate the anticipated useful life of the related generation assets; however, it has been determined that the useful life of many of these assets will be well in excess of the actual term of the related Power Contracts and will extend over more than one generation of ratepayers.~~ The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will benefit present and future ~~ratepayers of the Province. Currently, market prices for electricity are less than the reference prices set out in the Power Contracts, leaving a gap in funding which is funded by charging ratepayers a "Global Adjustment" (part of which is available to IESO to pay this shortfall).~~electricity consumers in the Province.

The imputed costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment"). The Global Adjustment is included as a charge billed to electricity consumers in their monthly electricity invoices.

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~~Each month, the IESO determines the Global Adjustment payable by consumers for the consumption~~The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province~~. A component of the Global Adjustment is the amount by which the reference prices in the Power Contracts~~ under the Green Generation Initiative, which may be higher than prevailing market price for electricity. These differences arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with long-term price certainty for electricity, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. In general, whenever amounts payable under these procurement contracts exceed the market price for electricity ~~for the quantities of electricity specified under the Power Contracts for the relevant period. The relationship between~~, 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 ~~benefits to Ratepayers~~electricity consumers from the Green Generation Initiative~~, on the one hand, and the costs of~~ 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 ~~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~~should be passed through to Retail Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Retail Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on principles and parameters that ~~can be applied from time to time in order to~~ establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative ~~across present and future Ratepayers. A plan to allocate such costs and benefits~~ equitably across present and future ~~Ratepayers may be developed based on those principles and parameters (a~~Retail Consumers (the "Fair Allocation Plan").

If ~~a~~the Fair Allocation Plan determines that the equitable allocation of the ~~Global Adjustment to the Ratepayers~~costs associated with the Green Generation Initiative to the Retail Consumers of a particular time period ~~in respect of the Power Contracts~~ should be reduced below the amount ~~otherwise determined,~~that currently would be charged based on the Green Costs Adjustment, then the amount payable by such ~~Ratepayers to Electricity Distributors in respect of such period,~~Retail Consumers and in turn ~~by the Electricity Distributors to the~~available to IESO~~, would~~ will, in the aggregate, be less than the amount payable by the IESO to the ~~Generators under the Power Contracts~~generators 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,~~In this case IESO will need to obtain funding from another source~~, which could include funding from third party sources operating in public and private capital markets~~ to cover such a shortfall. If a funding obligation is incurred ~~in order to enable the~~by IESO to cover such a ~~funding~~ shortfall during one period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs ~~will be~~ incurred ~~and may~~will become payable in one or more ~~other~~future periods.

~~It will be necessary to provide~~In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding ~~obligations and to pay related funding costs with certainty when the funding obligations~~amounts when they become due and payable~~. This Part~~, this Act imposes irrevocable and non-bypassable financial obligations ~~of Ratepayers~~on Retail Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable~~. Such~~ and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations ~~will constitute property rights and interests, which~~ will take the form of the Regulatory Asset contemplated in this ~~Part. The~~Act, which will constitute property rights and interests. Interests in the Regulatory Asset ~~will~~may be sold and absolutely assigned ~~and will belong~~by IESO to one or more ~~newly created~~ financing entities, which in turn will finance their ~~purchase of such Regulatory Asset~~acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf ~~the~~such financing entities by ~~an administrative~~a financial services agent ~~(initially OPG),~~ under the ~~Treasury~~Financing Plan contemplated in this ~~Part~~Act. The ~~Treasury~~Financing Plan will seek to reasonably match the payment obligations arising under such funding obligations ~~and~~, to be borne by the future ~~Ratepayers~~Retail

Consumers of the period in which such payment obligations become due, with the ~~costs and~~ benefits of the Green Generation Initiative ~~attributed~~allocated to such future ~~Ratepayers~~Retail Consumers under the Fair Allocation Plan.

The purpose of this ~~Part~~Act is to establish the basis upon which intergenerational fairness can be achieved by ~~attributing~~charging the costs and benefits of the Green Generation Initiative to present and future ~~Ratepayers~~Retail Consumers on an equitable and cost effective basis.

Article 2 - Definitions

In this ~~Part~~Act:

"Absolute Assignee" means a person to whom a Regulatory Asset Owner ~~assigns, transfers, conveys, sells, contributes, sets over, exchanges or disposes all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the transferring Regulatory Asset Owner's right, title and interest in, to and in respect of the Regulatory Asset~~effects a Disposition.

"Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the ~~Administrative~~Financial Services Agent whose records shall be determinative for the purposes of this ~~Part in~~Act except to the ~~absence~~extent of a manifest calculation error.

"Additional Funding Charges" means, for a Reference Period in respect of an Absolute Assignee, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by ~~the Regulated Asset Owner~~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 ~~Treasury~~Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including (without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the ~~Administrative~~Financial Services Agent on behalf of, the ~~Regulatory Asset Owner~~Absolute Assignee under the ~~Treasury~~Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on the ~~Regulatory Asset Owner~~Absolute Assignee or incurred by on behalf of the ~~Regulatory Asset Owner~~Absolute Assignee under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the ~~Administrative~~Financial Services Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the ~~Treasury~~Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative ~~Invoicing Agent~~Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of the ~~Regulatory Asset Owner~~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; (~~m~~o) any rating agency fees; and

(~~n~~p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith by the Financial Services Agent for recovery and payment under the ~~Treasury~~Financing Plan.

~~"Administrative Agent" means [OPG] or, following any Replacement Event, such other person or persons who may be appointed as the administrative agent of the Regulatory Asset Owner under the Treasury Plan in compliance with the requirements set out in Schedule 2.~~"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 behalf of the Regulatory Asset ~~Owner~~Owners.

"Alternative ~~Invoicing Agent~~Servicer" means a person appointed under Section 4(8) to assume the ~~invoicing and other activities of any Electricity Distributor~~obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset ~~Owner~~Owners.

"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 ~~the~~ individual ~~Ratepayers~~Retail Consumers of the applicable ~~Ratepayer~~Retail Consumer Group based on its Allocation Factor.

"Collected Amount Adjustment" means, in respect of a ~~Reference~~True-Up Period, the amount (which may be a negative amount) calculated by the ~~Administrative Agent~~Servicer or the Financial Services Agent, as applicable, equal to (a) the Estimate

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[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.

~~2 A key question will be how the overall costs will be spread across the rate base. For simplicity, overall costs could be spread across the rate base based on a per capita (ratepayer) concept. This would generally mean that all consumers who are invoiced in a month would pay the same Transition Charge, and to the extent that the invoiced amounts (i.e., the Transition Charges billed for a month) are higher or lower than the actual costs, due to a change in the Consumer Base, that difference should (among other things) be reflected in the True-Up calculation for the relevant reference period (see "Collected Amount Adjustment"). To the extent that a different allocation method is adopted (such as based on actual electricity use by individual consumers), the divisor for the Transition Charge will need to be modified.~~[2] This 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.

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of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[3]

~~["Consumer Base" means, for a Reference Period, the total number of Ratepayers in the Ratepayer Group determined by the Administrative Agent as of the [30th] day immediately preceding the first day of the Reference Period.]~~

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) and each Pledgee that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.[4]

"Delegate" means the person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act.

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of ~~all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of~~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~~'s right, title and interest in, to and under the Regulatory Asset to an Absolute Assignee.~~ effects a Disposition to an Absolute Assignee.

"Electricity Distributor" means, in respect of a Service Area, the rate regulated distributor ~~of electricity to residences located in~~licensed under Part V of the *Ontario Energy Board Act, 1998* in respect of such Service Area, together with and its successors.

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"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to IESO or if applicable the Alternative Collection Agent in accordance with Section 5(3) , including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by ~~an~~any of a Electricity Distributor (or in its stead, by an Alternative ~~Invoicing Agent)~~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 ~~attributed~~charged in respect of ~~a residence located~~connectivity to a distribution network

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[3] This would pick up adjustments based on actual collection experience, changes in the ~~Consumer Base~~retail consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

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[4] Consider adding the Financial Services Agent and the Servicer as parties.

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in the Electricity Distributor's designated Service Area and in respect of applicable Transition Charges to be charged to the Retail Consumer under this Act.

"Estimate" means~~,~~ (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the ~~Administrative Agent~~Financial Services Agent; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to any Retail Consumer Group, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this ~~Part in~~Act except to the ~~absence~~extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Retail Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Retail Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, ~~in respect of~~for a Reference Period in respect of an Absolute Assignee, the sum (without duplication) of the following amounts ~~for~~that are or become payable during the Reference Period in respect of the Absolute Assignee: (a) Repayments; (b) Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

~~"Finance Receipts" means, for a Reference Period, all amounts received by or on behalf of the Regulatory Asset 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~~Financing Plan, exceed (b) any Finance Reserve Withdrawals.

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the ~~Treasury~~Financing Plan.

"Financial Services Agent" means OPG or, following any Replacement Event, such other person or persons who may be appointed as the Financial Services Agent of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]

"Financing Entity" means an entity established in accordance with the Financing Plan to acquire all or an interest in the Regulatory Asset as an Absolute Assignee and to enter into Funding Obligations to finance such acquisition under the Financing Plan.[6]

"Financing Plan" means the written plan prepared by the Financial Services Agent on behalf of each Absolute Assignee in compliance with Article 9 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred by an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (j) the cash flows arising from time to time or otherwise derived from an Investment Interest may otherwise be applied, as the same may be amended, amended and restated or terminated by the Financial Services Agent in compliance with Article 9 from time to time.

"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the ~~Regulatory Asset Owner~~Absolute Assignee during the Reference Period in respect of ~~all~~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 ~~a~~its Funding ~~Obligation~~Obligations, exceeds (b) the aggregate of all ~~Finance Receipts~~amounts received by or on behalf of

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[5] Discuss whether to accommodate multiple Financial Services Agents. MOE to consider.

[6] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

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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 ~~indebtedness,~~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, ~~administrative agents~~Financial Services Agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies~~)~~; and all Additional Funding Charges incurred by or on behalf of the ~~Regulatory Asset Owner~~Absolute Assignee under the ~~Treasury Plan in order to fund a Funding Shortfall for a Reference Period~~Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

~~"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.~~Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

~~"GA Power Contract Contribution" means, for a Reference Period, the aggregate of the payments to be made by the applicable Ratepayer Group in respect of the portion of the Global Adjustment attributable to the Power Contracts in accordance with the Fair Allocation Plan.~~

"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.~~the *Electricity Act, 1998*.

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"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 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. "~~

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.

"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.~~Recovery" means each amount remitted to IESO (including by IESO retaining such amount) in respect of the IESO Retained Interest pursuant to Section 5(6)(b), and "IESO Recoveries" means, collectively, all such amounts received by IESO.

~~"IESO Power Contract Net Receipt" means, for a Reference Period, the amount by which (a) the sum of amounts payable by the Generators to IESO under all Power Contracts for the Reference Period, exceeds (b) the sum of amounts payable by IESO to the Generators to IESO under all Power Contracts for the Reference Period.~~

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset ~~Owner~~Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative

[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.

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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.~~ 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.

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"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period ~~Transition Charge~~Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount and (b) the True-Up Amount in respect of the immediately preceding Reference Period.

"Period Transition Charges" means, for a Reference Period, the sum of (a) the Period Finance Charges for the Reference Period and (b) the IESO Available Amount for the Reference Period.

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge~~, right of set-off~~ or security interest granted to or in favour of a Pledgee by ~~a Regulatory Asset Owner~~the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the ~~Regulatory Asset~~Investment Interest.

"Pledgee" means a person to whom ~~[or for whose benefit] a Regulatory Asset Owner~~an Absolute Assignee grants a Pledge.

~~"Power Contracts" means long-term power contracts entered into by IESO with certain Generators, under which IESO has agreed to pay such Generators amounts, determined in respect of quantities of electricity over specified periods, to the extent that applicable market prices for such quantities of electricity during a specified period are less than specified reference prices for such quantities of electricity, and, correspondingly, Generators have agreed to pay IESO amounts if the market prices for such quantities exceed the applicable reference prices for such quantities.~~[8]Program End Date" means •, [2047].

"Province" means the Province of Ontario.

~~"Ratepayer" means present and future [retail] consumers of electricity [in the Province] who are [RPP][or OREC-eligible] consumers, which shall include all such retail consumers who are connected 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.~~[9]

~~"Ratepayer Group" means, in relation to a Reference Period, the Ratepayers who receive Electricity Invoices during the Reference Period.~~

~~8 Should this contemplate the possibility of additional or amended power contracts?~~

~~9 Need to describe consumers in a fashion that is broad and not weakened by a bypass risk.~~

"Redemption Amount" means the amount payable by or on behalf of ~~a Regulatory Asset Owner~~an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the ~~[Legislation Implementation~~Measurement Date~~]~~ to (and including) June 30, 2017, (b) each six month period commencing [~~July~~May 1st and ~~January~~November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Reference Period Length" means, for a Reference Period, the number of months in the Reference Period.

"Refinancing" means ~~that a~~, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the ~~Regulated Asset Owner~~Absolute Assignee by applying the net proceeds obtained by the ~~Regulated Asset Owner~~Absolute Assignee incurring one or more other Funding Obligations.

"Regulatory Asset" means the property ~~right~~rights and ~~interest~~interests described in Section 6(1), 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 ~~IESO~~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~~, collectively,~~ each of (a) IESO, as owner of (and to the extent ~~that it has retained any ownership interest in, to or under the Regulatory Asset~~of) the IESO Retained Interest and (b) each Absolute Assignee, ~~to the extent that it has acquired and owns any ownership interest (including a specified portion on a divided basis or by way of an undivided interest) in, to or under the Regulatory Asset, which~~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 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~~such Regulatory Asset.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO or if applicable the

Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in ~~relation to~~accordance with any Funding Obligation, then the Business Day preceding each Settlement Date.

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the ~~Regulatory Asset Owner~~Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by ~~a Regulatory Asset Owner~~an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

~~"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.~~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*.

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"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].

~~"Treasury Plan" means the written plan prepared by the Administrative Agent in compliance with Article 8 to set forth the basis upon which, among other things: (a) any Disposition may be made or effected; (b) any Funding Obligations may be incurred in order to fund a Funding Shortfall, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; and (h) the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied.~~

"Transition Charge" means, for a Retail Consumer in respect of a Reference Period, ~~[one-sixth] of~~(a) the Period Transition Charge, ~~[divided by the Consumer Base[10]~~](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 ~~Part~~Act to have been received upon the collection of a Transition Charge paid by or on behalf of a ~~Ratepayer~~Retail Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the ~~Administrative~~Financial Services Agent equal to (a) the Estimate of the Finance Amount for the related True-Up Period, minus (b) the Actual Finance Amount for such related True-Up Period, plus (c) the Collected Amount Adjustment for such related True-Up Period.

"True-Up Period" means, in relation to a Reference Period, the period from and including the [30th] day immediately preceding the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the Reference Period.

"Undertaking of the Lieutenant Governor in Council" means the undertaking of the Lieutenant Governor in Council given under Section ~~10~~11(2).

~~"Unrecovered Transition Costs" means the [unrecovered][unamortized] costs incurred in connection with the creation, adoption and implementation of the Green Generation Initiative, including any negative value of the Power Contracts and [other].~~

Article 3 – Transition Charges

~~10 See footnote 1, above.~~

(1) **~~Ratepayer~~Retail Consumer Obligation to Pay a Transition Charge** – Each ~~Ratepayer~~Retail Consumer shall pay each Transition Charge ~~attributed~~charged to it ~~and specified as such~~ in any Electricity Invoice issued to such ~~Ratepayer~~Retail Consumer by its Electricity Distributor or by an Alternative ~~Invoicing Agent~~Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

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(2) **Indebtedness of ~~Ratepayers~~Retail Consumers** – Until paid, a Transition Charge ~~attributed~~charged to a ~~Ratepayer and recorded~~Retail Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the ~~Ratepayer~~Retail Consumer to the Regulatory Asset ~~Owner~~Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[11] debt obligation owing by the ~~Ratepayer~~Retail Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the ~~Ratepayer~~Retail Consumer under the Electricity Invoice or otherwise.[12]

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(3) **No Set-Off or Reduction** – A ~~Ratepayer~~Retail Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such ~~Ratepayer~~Retail Consumer by its Electricity Distributor, ~~the~~any Regulatory Asset Owner or any other person.

(4) **Allocation of ~~Ratepayer~~Retail Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a ~~Ratepayer~~Retail Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collection.

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(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred under the ~~Treasury~~Financing Plan (including any adjustments based on modifications to such Funding Obligations made in compliance with the ~~Treasury~~Financing Plan or as a result of amendments to the ~~Treasury~~Financing Plan made in accordance with Section ~~8~~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 ~~Treasury~~Financing Plan. In no case shall a Funding Obligation incurred under the ~~Treasury~~Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

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[11] Determine if this is critical for rating and markets. Logistics under consideration.

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[12] 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.

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~~(6) [Anti-avoidance; No by-pass – Transition Charges attributed to a Ratepayer in respect of any Finance Amount incurred under with the Treasury Plan applicable at the time the related Funding Obligation was incurred may not be avoided and shall be [non-by-passable].]~~

Article 4 – Invoicing of Transition Charges

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative ~~Invoicing Agent~~Servicer shall, as an agent of the Regulatory Asset ~~Owner~~Owners, specify the Transition Charge to be ~~attributed~~charged to a ~~Ratepayer~~Retail Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued by the Electricity Distributor or if applicable by the Alternative ~~Invoicing Agent~~Servicer to the ~~Ratepayer~~Retail Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be ~~deemed to have been imposed on and billed to~~binding on the applicable ~~Ratepayer~~Retail Consumer.

(2) **Calculation of the Period Transition Charge** – Not later than [35] days prior to the first day of a Reference Period, each 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, ~~[IESO][13] or if applicable the [Alternative Collection Agent]~~[14]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, ~~[IESO] or if applicable the [Alternative Collection Agent]~~the OEB shall apply the Attribution Methodology to determine the ~~Transition Charges to be attributed to the Ratepayers~~Allocation Factor for each Retail Consumer of the applicable ~~Ratepayer~~Retail Consumer Group.

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, ~~[IESO] or if applicable the [Alternative Collection Agent]~~the OEB shall inform each Electricity Distributor and if applicable any Alternative ~~Invoicing~~

~~13 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.~~

~~14 Should this be a designated government official, rather than an agent appointed by investors?~~

~~Agent~~Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each ~~Ratepayer~~Retail Consumer of the applicable ~~Ratepayer~~Retail Consumer Group who has a billing address in the Electricity Distributor's Service Area.

(5) **Adjustments** – The amount of any Transition Charge ~~attributed~~charged to a ~~Ratepayer by [IESO]~~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, ~~in~~except to the ~~absence~~extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) ~~**Successors of** **IESO**~~ **Successor** – Any ~~successor of~~ IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

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(8) **Appointment of an Alternative** ~~Invoicing Agent~~**Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the ~~Regulatory Asset Owner shall~~Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative ~~Invoicing Agent~~Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative ~~Invoicing Agent~~Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative ~~Invoicing Agent~~Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative ~~Invoicing Agent~~Servicer to perform such obligations and duties on behalf of the Regulatory Asset ~~Owner~~Owners.

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(9) ~~**Regulatory Asset Owner has**~~**Absolute Assignees have Standing** – The ~~Regulatory Asset Owner~~Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative ~~Invoicing Agent~~Servicer or any other person who may be authorized to issue Electricity Invoices to ~~Ratepayers~~Retail Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges. Any court of the Province ~~[and the OEB]~~ shall have jurisdiction over any actions brought before it by ~~a Regulatory Asset Owner~~the Absolute Assignees in relation to any such failure.

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(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.

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~~(9)~~(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

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Distributor~~, any Alternative Invoicing Agent~~ or any [Alternative ~~Collection Agent~~]Servicer to ensure that Transition Charges are properly ~~attributed to Ratepayers~~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 ~~Owner~~Owners, undertake [diligent][reasonable][15] efforts] to collect amounts owing by ~~Ratepayers~~Retail Consumers in respect of Transition Charges ~~attributed~~charged to such ~~Ratepayers~~Retail Consumers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent.

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall [promptly] segregate Transition Charge Collections from other payments received by it from ~~Ratepayers~~Retail Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[16] 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~~Owners.

(3) **Electricity Distributor Remittances** – On each [applicable Remittance Date], an Electricity Distributor shall remit all Transition Charge Collections received by it from ~~Ratepayers~~Retail Consumers in respect of the related Reference Period to or to the account of IESO or if applicable the Alternative Collection Agent.

(4) **Duty to Collect Electricity Distributor Remittances** – IESO or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset ~~Owner~~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.[17]

(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~~Owners.

(6) **IESO Remittances** – On each [Settlement Date][18], IESO and if applicable the Alternative Collection Agent shall remit all amounts on deposit in its Regulatory Asset Account (a) first, to or to the account of the ~~Regulatory Asset Owner~~Absolute Assignees

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[15] Mirror collection "standard of care" under applicable legislation.

[16] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

[17] Consider building this obligation into a deemed condition of licence for the IESO.

[18] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

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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) ~~Successors of~~ **IESO Successor** ~~– Any successor of~~ IESO Successor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

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(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[19], then such person shall, if requested by the ~~Regulatory Asset Owner~~Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and ~~collect~~collection of any Transition Charges applicable to ~~Ratepayers~~Retail Consumers in its applicable service area, including all consumers connected to the electricity distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by ~~Ratepayers~~Retail Consumers as provided in this ~~Part; (c) terminate service to non-paying Ratepayers on the same basis as termination of service is permitted for non-payment of electricity transmission and distribution rates; (d~~Act; (c) exercise all enforcement rights of the ~~Regulatory Asset Owner or Pledgee~~Absolute Assignees for the benefit of ~~the Regulatory Asset Owner or Pledgee~~an Absolute Assignee; and (~~e~~d) remit any Transition Charge Collections to the ~~Regulatory Asset Owner or Pledgee~~Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest.

(10) ~~**Regulatory Asset Owner has**~~**Absolute Assignees have Standing** – The ~~Regulatory Asset Owner and any Pledgee~~Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Alternative ~~Invoicing~~Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from ~~Ratepayers~~Retail Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5. Any court of the Province ~~[and the OEB]~~ shall have jurisdiction over any actions brought before it by ~~a Regulatory Asset Owner~~the Absolute Assignees in relation to any such failure.

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(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~~Absolute

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[19] 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.~~

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 ~~Regulatory Asset Owner~~Absolute Assignees.

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of ~~the~~a Regulatory Asset Owner, ~~any~~an Absolute Assignee and ~~any~~a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any ~~Ratepayer~~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.~~]~~[20]

(13) ~~[~~**Sequestration** – If any Electricity Distributor, IESO, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by ~~a Regulatory Asset Owner or Pledgee~~and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the ~~applying party~~Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the ~~Regulatory Asset 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.~~]Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable.[21]

(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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[20] 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.

[21] Consider adding or substituting this provision for a right to appoint a receiver.

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Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by ~~the Regulatory Asset Owner~~some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the ~~Regulatory Asset Owner in the~~ following rights and interests (without duplication):

a. the ~~present and future~~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;

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c. the right to enforce the obligations and indebtedness of each ~~Ratepayer~~Retail Consumer to pay the Transition Charges ~~attributed~~charged to the ~~Ratepayer~~Retail Consumer from time to time in accordance with Article ~~2~~,3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices;

~~(2)~~d. the ~~present and future~~right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative ~~Invoicing Agent~~Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

~~(3)~~e. the ~~present and future~~right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of IESO or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article ~~4~~5;

~~(4)~~f. the ~~present and future~~right to enforce the duties and obligations of IESO and if applicable the Alternative Collection Agent to ~~accept~~collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the ~~account~~accounts of the Regulatory Asset ~~Owner~~Owners, each with respect to its 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 ~~4~~5;

~~(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;

~~(6)~~h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

~~(7)~~i. all Related Rights; and

~~(8)~~j. all ~~proceeds of or derived from the foregoing.~~revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

~~The~~A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, ~~attributed~~charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred.

~~(9)~~(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~~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 ~~its~~the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the ~~Regulatory Asset~~applicable Investment Interest (or relevant portion thereof) in accordance with the terms of such Disposition~~[~~, provided that the ~~description of Regulatory Asset in the agreement giving effect to the Disposition expressly refers to this Part]. [Other than as required by the Treasury Plan, no consent of any person shall be required to give effect to a Disposition.]~~ parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the Regulatory Asset Owner's applicable right, title, and interest in, to and under the Regulatory Asset (or relevant portion thereof), and not merely as a Pledge thereof~~. A Disposition shall not be subject to recharacterization or challenge on any other basis and the validity of a Disposition shall not be affected or impaired by: (a) the commingling of Transition Charge Collections or other proceeds from Transition Charges with other amounts; (b) the retention of any interest (including any partial, residual or subordinated interest, whether direct or indirect) in the Regulatory Asset by the transferring Regulatory Asset Owner; (c) any right to repurchase the Regulatory Asset in favour of the transferring Regulatory Asset Owner; (d) any recourse that an Absolute Assignee may have against the transferring Regulatory Asset Owner; (e) any indemnification rights or obligations provided by the transferring Regulatory Asset Owner; (f) any obligation of the transferring Regulatory Asset Owner to collect and remit Transition Charge Collections on behalf of an Absolute Assignee, including but not limited to, any retention by the transferring Regulatory Asset Owner to bare legal title for~~

~~the purpose of collecting Transition Charges; or (g) the ascribed or intended treatment of the Disposition by the transferring Regulatory Asset Owner or the Absolute Assignee on any different basis including for tax, financial reporting or other purposes.~~, 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.

~~(10)~~(3) ~~Deemed~~ **Perfection and Priority of Dispositions** – ~~At the time a~~Any Disposition ~~is made, the absolute assignment of the property rights and~~of an interest in ~~the~~a Regulatory Asset ~~subject to the Disposition shall be deemed to have been and~~shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the transferring Regulatory Asset Owner and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the transferring Regulatory Asset Owner, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall ~~have priority over~~be free and clear of any liens in favour of such other persons.

~~(11)~~(4) **Validity of Pledges** – Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province ~~[~~or any consent requirement applicable to a Pledge that may arise by ~~contract or by~~ operation of any applicable law of the Province~~]~~, a Pledge by ~~a Regulatory Asset Owner~~an Absolute Assignee may be made to secure any related Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the ~~Regulatory Asset~~related Investment Interest in accordance with the terms of the Pledge~~[, provided that the description of Regulatory Asset in the agreement giving effect to the Pledge expressly refers to this Part~~]. Other than as required by the ~~Treasury~~Financing Plan, no consent of any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

~~(12)~~(5) ~~Deemed~~ **Perfection and Priority of Pledges** - ~~Any Pledge made by a~~For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset ~~Owner~~shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation ~~incurred under the 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~~may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the ~~Regulatory Asset Owner~~Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected~~, without any physical delivery thereof, registration of any financing statement with respect~~

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~~thereto~~ pursuant to the ~~[~~PPSA~~] or any other further act~~.[22] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may ~~subsequently~~ attach to the property rights and interests in the ~~Regulatory Asset~~Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. ~~Any~~Subject to the terms of the Collective Action Agreement, a Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. ~~[A Pledgee shall cause a financing statement to be filed in respect of a Pledge for informational purposes only under the [PPSA].~~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.

~~(13)~~(8) **Collective Action Required** – If a Regulatory Asset Owner's ~~right~~rights and ~~interest~~interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective ~~[~~and ~~joint]~~coordinated basis with each other Regulatory Asset Owner~~, and any agreement among all of the Regulatory Asset Owners in furtherance of such collective action shall be valid and binding on each Regulatory Asset Owner and each Absolute Assignee, Pledgee and successor of a Regulatory Asset Owner in accordance with its terms~~ in accordance with the Collective Rights Agreement.

Article 7 – Establishment of the Fair Allocation Plan[23]

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[22] 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.

23 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).

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(1) **Adoption of the Fair Allocation Plan** – The ~~Minister of Energy~~Delegate may , [by written ~~order~~declaration,] designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this ~~Part~~Act, except if amended, amended and restated or terminated by a further written ~~order issued~~declaration made by the ~~Minister of Energy~~ [Delegate in compliance with Section ~~•~~]7(4).

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits across present and future ~~Ratepayer~~Retail Consumer Groups on a basis that the ~~Minister of Energy~~Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters[24]:

1. ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits should be allocated over ~~a period not to exceed the later of (a) the estimated remaining useful life of the Related Generating Assets and (b) the remaining term of IESO's commitments under the Power Contracts~~the period ending on the Program End Date.

2. The Fair Allocation Plan should specify the Reference Periods ~~(e.g., 6 month periods),~~ for the purpose of identifying applicable ~~Ratepayer~~Retail Consumer Groups and allocating ~~among them responsibility to bear the Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits among them on a relative basis over time.

3. The share of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits allocable to a particular ~~Ratepayer~~Retail Consumer Group in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to the ~~Ratepayer~~Retail Consumer Group over such Reference Period.

4. The ~~estimated Unrecovered~~share of Future Fair Share of Green Transition ~~Costs~~Benefits to be allocated to a ~~Ratepayer~~Retail Consumer Group and any future ~~Ratepayer~~Retail Consumer Group at a particular time should not exceed the ~~estimated value of the Related Generating Assets based on their remaining useful lives or terms~~Estimated Future Green Transition Benefits, measured in respect of the ~~period~~Reference Periods following such particular time and to the Program End Date.

5. No future ~~Ratepayer~~Retail Consumer Group should ~~bear~~be allocated an unreasonably disproportionate share of ~~the Unrecovered~~Estimated Future Green Transition ~~Costs~~Benefits. Except in exceptional circumstances or in the case of any ~~backward-looking adjustment made~~reallocation of an Over-Assessed Amount as contemplated in 7, below, the ~~share of the Unrecovered~~Future Fair

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~~24 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.~~

Share of Green Transition ~~Costs~~Benefits to be allocated under a Fair Allocation Plan to any future ~~Ratepayer~~Retail Consumer Group should have regard to [Insert formula if a year-over-year maximum amount is determined to be appropriate][25].

6. ~~A reasonable estimate of the rate of inflation~~The time value of money should be ~~applied~~reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal ~~amount of Unrecovered Transition Costs to be allocable to Ratepayer~~allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Retail Consumer Groups over time.

7. ~~Backward-looking adjustments to a 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.~~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 ~~an objective methodology~~ (the "Attribution Methodology~~")~~ for the purposes of allocating the Period Transition Charges across ~~all of~~ the ~~Ratepayers~~Retail Consumers of a particular ~~Ratepayer~~Retail Consumer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that ~~are~~is considered by the ~~Minister of Energy~~Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation. ~~[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?]~~**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

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~~25 Consider if a quantitative limit needs to be included in the legislation.~~

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 ~~Treasury Plan~~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 ~~and~~, Implement and Amend the** ~~Treasury Plan – In compliance with a [written order][MOE to confirm process.] of the Minister of Energy, the Administrative Agent shall~~**Financing Plan** – The Financial Services Agent shall be authorized to prepare, implement and ~~propose~~amend the ~~adoption of a Treasury~~Financing Plan. If the ~~Administrative~~Financial Services Agent is unwilling or unable to prepare and propose the adoption of ~~a Treasury~~the Financing Plan, the ~~Minister of Energy~~Delegate may by

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written ~~order~~declaration designate one or more other persons who shall be authorized to prepare ~~and~~, implement ~~such a Treasury~~and amend the Financing Plan.

(2) ~~Required~~ **Terms and Conditions of the ~~Treasury~~Financing Plan** – The ~~Treasury~~Financing Plan shall establish the basis for each Absolute Assignee's funding decisions ~~that have the effect of allocating the Unrecovered Transition Costs across present and future Ratepayer Groups on a basis that is consistent with the Fair Allocation Plan. The Treasury~~. The Financing Plan shall ~~be consistent with~~have regard to the principles~~,~~ and parameters~~, requirements and conditions~~ set forth in Schedule 3 and such other conditions and requirements as may be specified in a written ~~order~~declaration of the ~~Minister of Energy [~~Delegate or in accordance with the Regulation~~]~~.

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(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?]~~**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.

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(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.~~**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.

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(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.~~**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.

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~~(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)~~(6) **Obligation to Apply IESO Remittances** – The ~~Administrative~~Financial Services Agent shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the ~~Regulatory Asset Owner~~Absolute Assignees, or otherwise in respect of or as proceeds from ~~the Regulatory Asset~~an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose.[26]

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~~(8)~~(7) **Non-Recourse** – The ~~Treasury~~Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative ~~Invoicing Agent, and~~Servicer, any Alternative Collection Agent, the ~~Administrative~~Financial Services Agent, the OEB, the Province or the Lieutenant Governor in Council, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this ~~Part~~Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount. [All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]

~~26 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.~~

~~(9)~~(8) **Incurrences are Binding** – ~~Despite any failure to adhere to the Treasury Plan or to comply with any requirement of this Part,~~Notwithstanding anything to the contrary in this Act, each Disposition made to or by an Absolute Assignee and all amounts payable or becoming due and payable by or on behalf of ~~the Regulatory Asset Owner~~an Absolute Assignee 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~~Act, including in determining the amount of related Transition Charges, despite any impairment or defect resulting from such failure.

[Article ~~9~~10 – Compliance Matters[27]

(1) **Right of the [OEB] to Inspect Books and Records** - For the purpose of investigating compliance with the provisions of this ~~Part~~Act, the [OEB] shall have the right, jurisdiction, power and authority to examine the books and records of ~~any person who is or may become obligated or have duties that arise under this Part or any Funding Obligation~~*[Insert names if any]*.

~~(2) Power to Investigate Compliance and Impose Regulatory Sanctions - Subject to the limitations set forth regarding the irrevocability of Transition Charges and the Undertaking of the Lieutenant Governor in Council, nothing in this Part shall (a) prevent or preclude the [OEB] from investigating the compliance of any person who is or may become obligated or have duties that arise under this Part [or any Funding Obligation] with the terms and conditions of this Part and requiring compliance by such person therewith; or (b) prevent or preclude the 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)~~(2) **[~~Other Rating~~OPG's Rate Settings** – When setting other rates for or in respect of ~~any person who is or may become obligated or have duties that arise under this Part, including any Electricity Distributor, IESO, Generator or the Administrative Agent, nothing in this Part shall prevent the [OEB] or any successor regulator from taking~~OPG, the OEB shall not take into account (a) ~~the collection by or attribution to such person of~~ administrative or servicing fees charged by OPG as Financial Services Agent [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services.~~]~~]; (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.]**[28]**

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[27] 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.

[28] 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.

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Article ~~10~~11 – Undertaking of the Lieutenant Governor in Council[29]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – The [Lieutenant Governor in Council ~~may~~] shall not in any way take or permit any action to reduce, impair, postpone or terminate the obligation of ~~Ratepayers~~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 ~~Lieutenant Governor in Council undertakes that the~~ amount of Transition Charges determined ~~hereunder~~under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by the Lieutenant Governor in Council, including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) **Undertaking and Agreement** – The [Lieutenant Governor in Council ~~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~~] shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of ~~the Regulatory Asset or,~~ 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 ~~Regulatory Asset Owner, including any~~ Absolute ~~Assignee from time to time, and~~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.[30]

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[29] 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.

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(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)~~(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 ~~11~~12 – Regulations

Regulations may be made under this ~~Part~~Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable ~~expectations~~requirements of the Province associated with ~~any Regulated Asset Owner~~an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding ~~Costs~~Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a ~~Treasury~~Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this ~~Part~~Act;

(c) to set out reasonable ~~expectations~~requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this ~~Part~~Act [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~~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 ~~Treasury~~Financing Plan.

Article ~~12~~13- Miscellaneous[31]

(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

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[30] Requested by Torys. For discussion.

[31] OPG would like the specific amendments related to OPG to be included in the Bill.]

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an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this ~~Part~~Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this ~~Part~~Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this ~~Part~~Act shall be required with respect to the actions to be taken in compliance with this ~~Part~~Act, including under the ~~Treasury~~Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this ~~Part~~Act or the ~~Treasury~~Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the ~~Treasury~~Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this ~~Part~~Act, if any provision of this ~~Part~~Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this ~~Part~~Act that is taken by any person who is or may become obligated or have duties that arise under this ~~Part [or under any Funding Obligation]~~ Act and any such action shall remain in full force and effect.

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(5) **Severability** - If any Article, Section, paragraph or subparagraph of this ~~Part~~Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this ~~Part~~Act are intended to be severable and that the Legislature would have enacted this ~~Part~~Act even if any Article, Section, paragraph or subparagraph of this ~~Part~~Act held to be unconstitutional or invalid had not been included in this ~~Part~~Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3[32]

Principles, and Parameters, ~~Requirements and Conditions~~ for Establishing the ~~Treasury~~Financing Plan

The ~~Treasury Plan shall have regard to the~~ following principles, and parameters~~, requirements and conditions:[Consider others.]~~

~~(1)~~ ~~the Treasury Plan shall,~~ provide a guideline as to what a Financing Plan should address:

(1) in respect of each Reference Period, ~~describe~~make reference to the allocations of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits to each Reference Group ~~as~~ contemplated by the Fair Allocation Plan;

(2) ~~the Administrative Agent shall make a good faith~~ estimate ~~of the~~IESO Funding Shortfalls for each Reference Period~~, based on the terms of the Power Contracts and assumptions considered to be reasonable respecting forward market prices for electricity~~;

(3) ~~the Administrative Agent shall describe~~consider alternative funding arrangements ~~considered to be~~ suitable ~~for the purpose of funding~~to fund the estimated IESO Funding Shortfalls, including ~~by reference to~~ short term and/or long term Funding Obligations ~~that could reasonably be incurred by Regulatory Asset Owner for such purpose~~;

(4) ~~such Funding Obligations shall reflect~~consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that ~~the effect of incurring such Funding Obligations would be that the~~ payments made ~~thereunder in respect of each~~for a Reference Period ~~(including the anticipated Finance Amounts becoming payable in relation to such Funding Obligations) would~~ reasonably correspond to the allocations of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits to the applicable Reference Group under the Fair Allocation Plan;

(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 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)~~(6) ~~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~~charged to a hypothetical ~~Ratepayer~~Retail Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation having regard to the application of the Allocation Methodology); ~~[Consider what outputs from OPG will be tested by the OEB and when. The modelling in~~

[32] Awaiting input from Torys based on OPG mark-up of Financing Plan sections.

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~~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)~~(7) ~~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]~~Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not obligate ~~a Regulatory Asset Owner~~an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the ~~Treasury~~Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the ~~Administrative~~Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations ~~shall~~should not obligate ~~a Regulatory Asset Owner~~an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the ~~Treasury~~Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits to the applicable Reference Group under the Fair Allocation Plan;

c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the ~~Administrative~~Financial Services Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the ~~Administrative~~Financial Services Agent shall cause the ~~[~~applicable~~] Regulatory Asset Owner~~ Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the ~~Administrative~~Financial Services Agent will select counterparties under any transaction to be entered into by ~~a Regulatory Asset Owner~~an Absolute Assignee, including any paying agent, servicer, cash

manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the ~~Administrative~~Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the ~~Administrative~~Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

~~(7)~~(8) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding ~~Shortfall~~Shortfalls from time to time on a basis that is consistent with the allocations of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits to applicable Reference Groups under the Fair Allocation Plan;

~~(8)~~(9) 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)~~(10) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the ~~Administrative~~Financial Services Agent and other agents and service providers to the ~~Regulatory Asset Owner[s]~~Absolute Assignees may be determined, allocated and paid;

~~(10)~~(11) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

~~(11)~~(12) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

~~(12)~~(13) 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)~~(14) 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)~~(15) the basis upon which any Disposition may be made or effected by ~~a Regulatory Asset Owner~~an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

~~(15)~~(16) ~~a description of each~~describe the requirements applicable to any special purchase entity that will purchase ~~the Regulatory Asset from the IESO~~an Investment

Interest, including proposed capitalization, governance, and restrictions on their powers and activities ~~having regard to the parameters in Schedule 4~~; and

~~(16)~~**(17)** the basis on which any Pledge may be given or effected.

~~Schedule 4~~

~~Creation of any Special Purpose Entity to become a Regulatory Asset Owner]~~

~~(1) Powers and Abilities:~~

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~~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]~~

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Blakes Article 10
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Intergenerational Fairness in Hydro Rates Act, 2017

(Working document – Blakes Article 10)

OLC Note (MS): I will be assisting Tara with dealing with Article 10 from the Blakes document. I have reviewed the article and considered the implications and possible drafting approaches. However I have some preliminary questions that need to be answered before I can usefully do a draft. I've set out my questions below.

For convenience, here is the relevant article:

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*].

Preliminary questions:

1. Why LG in C?

I was puzzled at the choice of the LG in C as the body against which the Article 10.1 (1) prohibition was directed towards. Many statutory schemes, including the one being drafted, provided for powers, etc. to be exercised by various actors, often the LG in C, a Minister or other body. Are the prohibitions intended to apply only to the LG in C? (Initially I wondered if the prohibition should be aimed at the Province or Government, as the legal entity, and the LG in C and Ministers, as the entities/officials that are usually the ones to exercise statutory powers. But before drafting I think I should get an explanation first, particularly in light of my question #2.)

2. Relationship between prohibition and role in scheme?

I'm having trouble understanding how the prohibitions in article 10(1) apply with respect to the LG in C's role under the overall scheme. In particular, under draft 2-TP, s. 10(2), the LG in C can make regulations governing the methodology for allocating green generation costs among consumers, which includes transition charges (see s. 10(1) of draft 2-TP). How is the prohibition in Article 10 supposed to apply to the exercise of such powers? (And, obviously, if the Article 10 prohibition is supposed to extend, directly or indirectly, to others, like the Minister, then the question comes up in relation to things the Minister does under the scheme.)

3."permit" / "failure" – what to be covered?

A. I wondered what the "permit" part of "take or permit any action" in article 10.1(1) might be intended to mean and whether it might relate to the issue raised in question #1. (Article 10 has a number of chains of words that contain synonyms, near-synonyms and overlapping words. I'm not sure how carefully they are all chosen and what they were intended to mean.) It is common in Ontario legislation to provide for legal actions to be subject to the approval of the LG in C. Is that all the "permit" part was directed towards? Or was it also intended to somehow cover actions that don't require any LG in C approval or in relation to which the LG in C has no legal role? If so, that strikes me as somewhat problematic and I think I would need more explanation of how that was intended to work legally. It might help if I got an explanation of what sort of power you (Energy or Blakes) think the LG in C has, absent an explicit statutory provision.

B. It might also be useful if, at the same time, you could consider and explain what

the use of "failure" in the phrase "any action taken or failure" was supposed to refer to. Is that just a failure to use a legal power or was it supposed to cover more. (I'm hoping that the explanation relating to my question 3A may clarify this, but I can't be sure until I hear the explanation and it may be useful to consider both of these things at the same time.)

4. Legal effect of undertaking/agreement and related questions?

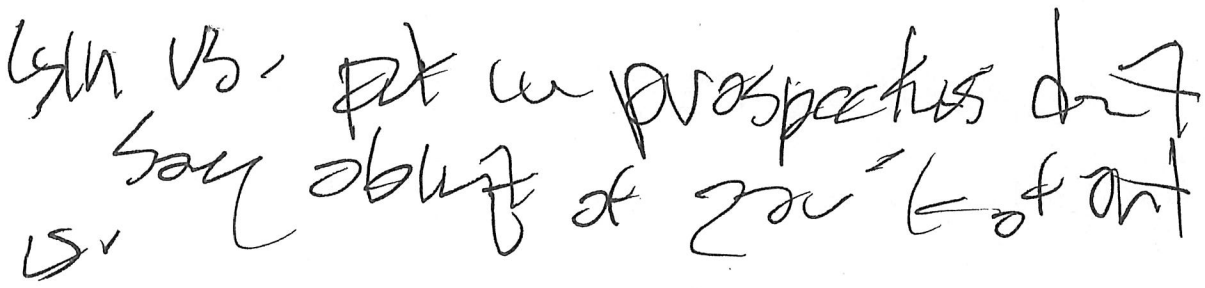
I wondered why article 10(2) provided for the undertaking and agreement to be from the LG in C which led me to wonder about what the intended legal effect was. (This raises similar issues as those noted in my question #1 but others arise as well.) Was the intention of the agreement/undertaking to create a legal obligation in the nature of a contractual obligation? (If such words were included in a contract I think they would have that effect – but it is far from clear, to me at least, that the inclusion of these words in a statute would have that effect.) If this is what was intended, one way of doing this more clearly would be to deem there to be a contract and provide for what you wanted that contract to provide. A provision to do that really should specify the parties. The sort of provision I'm envisaging would be along the following lines:

> "There is deemed to be a contract between [party A] and [party B] under which/providing for [contractual promise]"
>
> OR
>
> "[party A] and [party B] are deemed to have entered into a contract under which/ providing for [contractual promise]".

If that is what you are intending then the LGinC seems like the wrong "party" for the government side – I'd have expected something like "the Government of Ontario" or "the Province of Ontario".. (You (Energy) might want to check with the folks who do contracts on behalf of the Government to determine who the legal party would be on the government side.)

5. What is Article 10(3) supposed to do?

Apart from article 10(3) not being complete, I'm really not sure what article 10(3) is getting at. It seems to be some sort of permission to make references to the undertaking, subject to some not-yet-stated conditions. Perhaps something like this might make sense as a term in a commercial undertaking where the undertaking itself was confidential. But I don't see how this would make sense where the undertaking is statutory and, therefore, far from confidential. But perhaps I just don't understand what this is supposed to do. In that case an explanation might help.



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ONTARIO REGULATION

made under the

ONTARIO ENERGY BOARD ACT, 1998

Amending O. Reg. 95/05

(CLASSES OF CONSUMERS AND DETERMINATION OF RATES)

1. Section 1 of Ontario Regulation 95/05 is amended by adding the following definitions:

"consumer" means a consumer within the meaning of the *Electricity Act, 1998*;

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("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")

"representative ~~time-of-use~~ consumer" means a consumer who ~~is billed time-of-use rates and~~ meets the criteria set out in section 2;

~~"representative two-tier consumer" means a consumer who is billed two-tier rates and meets the criteria set out in section 3;~~

[OLC Note: Are the terms "time-of-use rate" and "two-tier rates" defined or explained in any Act or regulation that we could refer to? If not, are they well-understood or do they need explanation?]

[We will not need to differentiate between TOU and two-tier representative consumers. The Board will set TOU and tiered rates based on first determining an "average" rate, then taking into account the historical proportionality among the TOU periods and between the tiered periods to come up with TOU rates and tiered rates. Drafting instructions later in this amending reg. reflect that approach.]

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"Toronto Hydro" means Toronto Hydro-Electric System Limited;

x. The Regulation is amended by adding the following sections:

Representative ~~time-of-use~~ consumer

2. For the purposes of this Regulation, a representative ~~time-of-use~~ consumer meets the following criteria:

1. The consumer is a member of the class of consumers described in section 4.

2. The consumer,

   i. purchases electricity directly from Toronto Hydro,

   ii. 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,

   iii. is invoiced by Toronto Hydro on a monthly basis, and

   iv. is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan.

3. The consumer consumes, on average, 750 kilowatt hours of electricity each month~~, of which,~~.

~~i. 65 per cent is consumed during the off-peak period,~~

~~ii. 17 per cent is consumed during the mid-peak period, and~~

~~iii. 18 per cent is consumed during the on-peak period.~~

~~Representative two-tier consumer~~

~~**3.** For the purposes of this Regulation, a representative two-tier consumer meets the following criteria:~~

~~1. The consumer meets the criteria set out in paragraphs 1, 2 and 4 of section 2.~~

~~2. The consumer consumes, on average, 750 kilowatt hours of electricity each month, of which,~~

~~i. 53 per cent is consumed during the lower tier period, and~~

~~ii. 47 per cent is consumed during the upper tier period.~~

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~~[OLC Note: Are the "lower tier" and "upper tier" periods defined somewhere? (I haven't checked.]~~

[Tara: We will have the Board calculate an average rate for the proxy consumer, then use historical consumption patterns for the *RPP* class of consumers to establish TOU and two-tier rates. The use of historical consumption patterns is already what the Board does (in the context of RPP consumers), so we don't need to say anything about that here.]

2. Section 4 of the Regulation is revoked and the following substituted:

Class of consumers, s. 76.16

4. Beginning on May 1, 2017, the following are prescribed as 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 licensed distributor, a licensed retailer or the IESO, 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*, 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 [consumes? Uses?] at least 150,000 but not more than 250,000 kilowatt hours of electricity. **[Tara: Let's stick with "uses" to be consistent with the ORECA (and the OCEBA, and the RPP reg.)]**

5. A consumer who has an account with a licensed distributor, a licensed retailer or the IESO, 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.

3. Section 6 of the Regulation is revoked and the following substituted:

Determining rates, s. 79.16

6. (1) In this section,

~~"CPI" means… [to be included in next draft];~~

[Tara: We don't need separate definitions for CPI and rate of inflation.]

"invoice amount" means the sum of the following amounts:

1. The commodity price of the electricity consumed [during the invoice period].

[OLC Note: Does the addition of the words in square brackets eliminate the need to clarify that the amount invoiced doesn't include the balance carried forward from previous invoices, etc.?]

[Tara: I would prefer to keep the list of exclusions. See ss. 2(1) and 2(2) of the ORECA for an example of this approach. By not keeping the exclusions as I had drafted them, at least one important exclusion element has been dropped – rate riders – see paragraph (f) of my drafting instructions to you.]

2. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the Act.

3. Any adjustment required under section 25.33 of the *Electricity Act, 1998*.

[OLC Note: Is the adjustment actually meant to be added to the other amounts in this list?]
[Tara: Yes. See ss. 2(1) of the ORECA.]

4. The amount of any harmonized sales tax payable under Part IX of the *Excise Tax Act* (Canada).

[OLC Note: TBD whether it is necessary to expressly exclude the items you've listed as "invoice amount exclusions" or whether that is sufficiently clear using the above definition.]
[Tara: I would prefer to also have the exclusions, as noted above.]

"rate of inflation means"… [to be included in next draft].

(2) For the purpose of clause 79.16 (1) (b) of the Act, the Board shall determine rates for the members of the class prescribed under section 4 of this Regulation in the following manner:

[Tara: There is some interest in setting out in the Bill itself how rates will be set for the first five years of the Fair Allocation Plan. This would mean moving over a number of the provisions from the proposed RPP reg. amendments to the Bill.

I have set out below a description of the first five years of rate setting under the FAP, which incorporates some updated policy instructions.

- **The initial 25% decrease in the representative consumer's bill now involves a decrease relative to what the bill otherwise would have been. As such, in order to determine the "baseline" representative consumer bill amount, the Board would follow its normal rate-setting process to determine the RPP rate for the period from May 1, 2017 – October 31, 2017. This process is contemplated in s. 6 of the existing RPP reg.**

- **The RPP rate that the Board would determine is called the "RPA" or average RPP rate.**

- **This average rate is used by the Board to set TOU and two-tier rates. In a nutshell, the Board forecasts proportionate consumption among the TOU and two-tier periods (having regard to historical proportionality) and derives TOU and two-tier rates that would result in the "RPA" rate if the actual proportionality equated to the forecast proportionality. We want to leave the Board the discretion to determine TOU and two-tier rates based on the RPA. This is the reason for removing the distinction between representative TOU consumer and representative two-tier consumer.**

- **After making this "baseline" determination of the RPA rate, the Board would calculate the average monthly representative consumer bill amount *as of May 1, 2017*, applying the RPA rate referred to above and the Toronto Hydro distribution rate in effect on May 1, 2017.**

- **Then the Board would determine what the RPA rate would have to be in order to achieve a reduction in the representative consumer's bill by 25%. This new RPA rate would become the rate for the class of consumers prescribed under s. 4 above (subject to the May 1, 2017 timing problem flagged above).**

- **Effective November 1, 2017, the Board would calculate an adjustment in the RPA rate. The adjustment would increase the all-in representative consumer's bill by the year-over-year increase in CPI (i.e. the rate of inflation increase). Further rate of inflation increases would be made every six months up to and including November 1, 2021.**

1. ~~The~~ Subject to clauses **[the remaining clauses of this subsection]**, the Board shall determine rates in a manner that is consistent with the Standard Supply Service Code issued by the Board.

~~[OLC Note: You were seeking confirmation as to whether para. 1 is needed. Please advise.]~~

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2. The first rates determined by the Board under this section shall remain in effect for the period beginning on May 1, 2017 and ending on ~~April~~ October ~~30~~31, ~~2018~~2017. The Board shall determine separate rates after that time for periods of not more than 12 months.

[OLC Note: I see that you have eliminated all references to the GAM in your new proposed section, whereas that is currently one of the items currently taken into consideration when determining rates (see para. 3 of the current subs. 4 (1) of the reg). Don't you need to retain this for all determinations after May 1st?]

3. In determining the rates for the period beginning on May 1, 2017 and ending on ~~April 30, 2018~~October 31, 2017, the Board shall do the following:

[NTD: See narrative above. The Board will calculate the "RPA" rate in the normal way to establish the baseline rate. The baseline rate will be applied to the representative consumer bill to determine what the all-in, after-tax bill amount would have been absent the deferral.]]

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   i. ~~Calculate the average monthly invoice amount payable under this Regulation as it read immediately before Ontario Regulation [O. Reg. # for reg2017.0139] came into force, for the period beginning on May 1, 2016 and ending on April 30, 2017 for each of the following:~~the representative consumer.

      ~~A. A representative time-of-use consumer.~~

      ~~B. A representative two-tier consumer.~~

   ii. Determine ~~time-of-use~~ rates that would, during the period beginning on May 1, 2017 and ending on ~~April 30, 2018~~October 31,2017, reduce the average monthly invoice amount for a representative ~~time-of-use~~ consumer by an amount equal to twenty-five percent of the amount calculated under sub-subparagraph i A~~; and~~

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   ~~iii. Determine two-tier rates that would, during the period beginning on May 1, 2017 and ending on April 30, 2018,reduce the average monthly invoice amount for a representative two-tier consumer by an amount equal to twenty-five percent of the amount calculated under sub-subparagraph i~~ B.

4. In determining the rates for each ~~twelve~~ six month period during the period beginning on ~~May 1, 2018~~November 1, 2017 and ending on April 30, 2022, the Board shall do the following:

   i. Determine time-of-use rates that would increase the average monthly invoice amount for a representative ~~time-of-use~~ consumer for the ~~twelve~~ six month

period by the rate of inflation relative to the average monthly invoice amount for a representative ~~time-of-use~~ consumer for the immediately preceding ~~twelve~~ six month period; ~~and~~

~~ii. Determine two-tier rates that would increase the average monthly invoice amount for a representative two-tier consumer for the twelve month period by the rate of inflation relative to the average monthly invoice amount for a representative two-tier consumer for the immediately preceding twelve month period.~~

[NTD: The limitations contemplated in s. 5 below are now gone.]

~~5. Subject to paragraph 6, in determining the rates for each twelve month period during the period beginning on May 1, 2022 and ending on April 30, 2047, the Board shall do the following:~~

~~i. Determine time-of-use rates that would increase the average monthly invoice amount for a representative time-of-use consumer for the twelve month period by no more than ten percent relative to the average monthly invoice amount for a representative time-of-use consumer for the immediately preceding twelve month period; and~~

~~ii. Determine two-tier rates that would increase the average monthly invoice amount for a representative two-tier consumer for the twelve month period by no more than ten percent relative to the average monthly invoice amount for a representative time-of-use consumer for the immediately preceding twelve month period.~~

~~6. The Board shall determine rates under paragraph 5 with a view to ensuring that by April 30, 2047, the rates [reflect?achieve?] full recovery of the [amount of deferral as determined under section X?] for each 12-month period in the period beginning on May 1, 2017 and ending on April 30, 2047.~~

~~[OLC Note: What does "with a view to ensuring" mean? Do you mean to say that the Board could have the rates increase more than 10 % if necessary to achieve full recovery? (If that's the intention, then I think we should make it more clear.)]~~

x. The Regulation is amended by adding the following section:

Determining amount of deferral

xx. (1) In order to determine the amount of deferral during a 12-month period… [shouldn't this actually be done under the EA instead of under the OEBA?], the Board shall determine the difference between the following amounts:

[OLC Note: I'm not sure it makes sense for the "amount of deferral" to be calculated under this Act. It seems like the amount should be something calculated under the Electricity Act since that is where the entire deferral mechanism is established.]
[NTD: This should be set out in the Bill]

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1. The total amount payable under section 6.

2. The total amount that would have been payable under section 6 of this Regulation as it read immediately before the day Ontario Regulation [O. Reg. # for reg2017.139] came into force.

(2) The determination under subsection (1) shall be made based on the amount of electricity actually consumed by the consumers prescribed under section 4 in the 12-month period.

Commencement

x. This Regulation comes into force on the later of May 1, 2017 and the day it is filed.

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REG2017.0139.e
1-TP

ONTARIO REGULATION

made under the

ONTARIO ENERGY BOARD ACT, 1998

Amending O. Reg. 95/05

(CLASSES OF CONSUMERS AND DETERMINATION OF RATES)

1. Section 1 of Ontario Regulation 95/05 is amended by adding the following definitions:

"consumer" means a consumer within the meaning of the *Electricity Act, 1998*;

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("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")

"representative ~~time-of-use~~ consumer" means a consumer who ~~is billed time-of-use rates and~~ meets the criteria set out in section 2;

~~"representative two-tier consumer" means a consumer who is billed two-tier rates and meets the criteria set out in section 3;~~

[OLC Note: Are the terms "time-of-use rate" and "two-tier rates" defined or explained in any Act or regulation that we could refer to? If not, are they well-understood or do they need explanation?]

[We will not need to differentiate between TOU and two-tier representative consumers. The Board will set TOU and tiered rates based on first determining an "average" rate, then taking into account the historical proportionality among the TOU periods and between the tiered periods to come up with TOU rates and tiered rates. Drafting instructions later in this amending reg. reflect that approach.]

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"Toronto Hydro" means Toronto Hydro-Electric System Limited;

x. The Regulation is amended by adding the following sections:

Representative ~~time-of-use~~ consumer

2. For the purposes of this Regulation, a representative ~~time-of-use~~ consumer meets the following criteria:

1. The consumer is a member of the class of consumers described in section 4.

2. The consumer,

   i. purchases electricity directly from Toronto Hydro,

   ii. 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,

   iii. is invoiced by Toronto Hydro on a monthly basis, and

   iv. is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan.

3. The consumer consumes, on average, 750 kilowatt hours of electricity each month~~, of which,~~.

~~i. 65 per cent is consumed during the off-peak period,~~

~~ii. 17 per cent is consumed during the mid-peak period, and~~

~~iii. 18 per cent is consumed during the on-peak period.~~

~~Representative two-tier consumer~~

~~3. For the purposes of this Regulation, a representative two-tier consumer meets the following criteria:~~

~~1. The consumer meets the criteria set out in paragraphs 1, 2 and 4 of section 2.~~

~~2. The consumer consumes, on average, 750 kilowatt hours of electricity each month, of which,~~

~~i. 53 per cent is consumed during the lower tier period, and~~

~~ii. 47 per cent is consumed during the upper tier period.~~

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~~[OLC Note: Are the "lower tier" and "upper tier" periods defined somewhere? (I haven't checked.]~~

[Tara: We will have the Board calculate an average rate for the proxy consumer, then use historical consumption patterns for the *RPP* class of consumers to establish TOU and two-tier rates. The use of historical consumption patterns is already what the Board does (in the context of RPP consumers), so we don't need to say anything about that here.]

2. Section 4 of the Regulation is revoked and the following substituted:

Class of consumers, s. 76.16

4. Beginning on May 1, 2017, the following are prescribed as 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 licensed distributor, a licensed retailer or the IESO, 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*, 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 [consumes? Uses?] at least 150,000 but not more than 250,000 kilowatt hours of electricity. **[Tara: Let's stick with "uses" to be consistent with the ORECA (and the OCEBA, and the RPP reg.)]**

5. A consumer who has an account with a licensed distributor, a licensed retailer or the IESO, 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.

3. Section 6 of the Regulation is revoked and the following substituted:

Determining rates, s. 79.16

6. (1) In this section,

~~"CPI" means… [to be included in next draft];~~

[Tara: We don't need separate definitions for CPI and rate of inflation.]

"invoice amount" means the sum of the following amounts:

1. The commodity price of the electricity consumed [during the invoice period].

[OLC Note: Does the addition of the words in square brackets eliminate the need to clarify that the amount invoiced doesn't include the balance carried forward from previous invoices, etc.?]

[Tara: I would prefer to keep the list of exclusions. See ss. 2(1) and 2(2) of the ORECA for an example of this approach. By not keeping the exclusions as I had drafted them, at least one important exclusion element has been dropped – rate riders – see paragraph (f) of my drafting instructions to you.]

2. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the Act.

3. Any adjustment required under section 25.33 of the *Electricity Act, 1998*.

[OLC Note: Is the adjustment actually meant to be added to the other amounts in this list?]

[Tara: Yes. See ss. 2(1) of the ORECA.]

4. The amount of any harmonized sales tax payable under Part IX of the *Excise Tax Act* (Canada).

[OLC Note: TBD whether it is necessary to expressly exclude the items you've listed as "invoice amount exclusions" or whether that is sufficiently clear using the above definition.]

[Tara: I would prefer to also have the exclusions, as noted above.]

"rate of inflation means"… [to be included in next draft].

(2) For the purpose of clause 79.16 (1) (b) of the Act, the Board shall determine rates for the members of the class prescribed under section 4 of this Regulation in the following manner:

[Tara: There is some interest in setting out in the Bill itself how rates will be set for the first five years of the Fair Allocation Plan. This would mean moving over a number of the provisions from the proposed RPP reg. amendments to the Bill.

I have set out below a description of the first five years of rate setting under the FAP, which incorporates some updated policy instructions.

- **The initial 25% decrease in the representative consumer's bill now involves a decrease relative to what the bill otherwise would have been. As such, in order to determine the "baseline" representative consumer bill amount, the Board would follow its normal rate-setting process to determine the RPP rate for the period from May 1, 2017 – October 31, 2017. This process is contemplated in s. 6 of the existing RPP reg.**

- **The RPP rate that the Board would determine is called the "RPA" or average RPP rate.**

- **This average rate is used by the Board to set TOU and two-tier rates. In a nutshell, the Board forecasts proportionate consumption among the TOU and two-tier periods (having regard to historical proportionality) and derives TOU and two-tier rates that would result in the "RPA" rate if the actual proportionality equated to the forecast proportionality. We want to leave the Board the discretion to determine TOU and two-tier rates based on the RPA. This is the reason for removing the distinction between representative TOU consumer and representative two-tier consumer.**

- **After making this "baseline" determination of the RPA rate, the Board would calculate the average monthly representative consumer bill amount *as of May 1, 2017*, applying the RPA rate referred to above and the Toronto Hydro distribution rate in effect on May 1, 2017.**

- **Then the Board would determine what the RPA rate would have to be in order to achieve a reduction in the representative consumer's bill by 25%. This new RPA rate would become the rate for the class of consumers prescribed under s. 4 above (subject to the May 1, 2017 timing problem flagged above).**

- **Effective November 1, 2017, the Board would calculate an adjustment in the RPA rate. The adjustment would increase the all-in representative consumer's bill by the year-over-year increase in CPI (i.e. the rate of inflation increase). Further rate of inflation increases would be made every six months up to and including November 1, 2021.**

1. ~~The~~ Subject to clauses **[the remaining clauses of this subsection]**, the Board shall determine rates in a manner that is consistent with the Standard Supply Service Code issued by the Board.

~~[OLC Note: You were seeking confirmation as to whether para. 1 is needed. Please advise.]~~

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2. The first rates determined by the Board under this section shall remain in effect for the period beginning on May 1, 2017 and ending on ~~April~~ October ~~30~~31, ~~2018~~2017. The Board shall determine separate rates after that time for periods of not more than 12 months.

[OLC Note: I see that you have eliminated all references to the GAM in your new proposed section, whereas that is currently one of the items currently taken into consideration when determining rates (see para. 3 of the current subs. 4 (1) of the reg). Don't you need to retain this for all determinations after May 1st?]

3. In determining the rates for the period beginning on May 1, 2017 and ending on ~~April 30, 2018~~October 31, 2017, the Board shall do the following:

[NTD: See narrative above. The Board will calculate the "RPA" rate in the normal way to establish the baseline rate. The baseline rate will be applied to the representative consumer bill to determine what the all-in, after-tax bill amount would have been absent the deferral.]]

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   i. ~~Calculate the average monthly invoice amount payable under this Regulation as it read immediately before Ontario Regulation [O. Reg. # for reg2017.0139] came into force, for the period beginning on May 1, 2016 and ending on April 30, 2017 for each of the following:~~the representative consumer.~~

      A. A representative time-of-use consumer.~~

      B. A representative two-tier consumer.~~

   ii. Determine ~~time-of-use~~ rates that would, during the period beginning on May 1, 2017 and ending on ~~April 30, 2018~~October 31,2017, reduce the average monthly invoice amount for a representative ~~time-of-use~~ consumer by an amount equal to twenty-five percent of the amount calculated under sub-subparagraph i A~~; and~~

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   iii. ~~Determine two-tier rates that would, during the period beginning on May 1, 2017 and ending on April 30, 2018,reduce the average monthly invoice amount for a representative two-tier consumer by an amount equal to twenty-five percent of the amount calculated under sub-subparagraph i~~ B.

4. In determining the rates for each ~~twelve~~ six month period during the period beginning on ~~May 1, 2018~~November 1, 2017 and ending on April 30, 2022, the Board shall do the following:

   i. Determine time-of-use rates that would increase the average monthly invoice amount for a representative ~~time-of-use~~ consumer for the ~~twelve~~ six month

period by the rate of inflation relative to the average monthly invoice amount for a representative ~~time-of-use~~ consumer for the immediately preceding ~~twelve~~ six month period; ~~and~~

~~ii. Determine two-tier rates that would increase the average monthly invoice amount for a representative two-tier consumer for the twelve month period by the rate of inflation relative to the average monthly invoice amount for a representative two-tier consumer for the immediately preceding twelve month period.~~

[NTD: The limitations contemplated in s. 5 below are now gone.]

~~5. Subject to paragraph 6, in determining the rates for each twelve month period during the period beginning on May 1, 2022 and ending on April 30, 2047, the Board shall do the following:~~

~~i. Determine time-of-use rates that would increase the average monthly invoice amount for a representative time-of-use consumer for the twelve month period by no more than ten percent relative to the average monthly invoice amount for a representative time-of-use consumer for the immediately preceding twelve month period; and~~

~~ii. Determine two-tier rates that would increase the average monthly invoice amount for a representative two-tier consumer for the twelve month period by no more than ten percent relative to the average monthly invoice amount for a representative time-of-use consumer for the immediately preceding twelve month period.~~

~~6. The Board shall determine rates under paragraph 5 with a view to ensuring that by April 30, 2047, the rates [reflect?achieve?] full recovery of the [amount of deferral as determined under section X?] for each 12-month period in the period beginning on May 1, 2017 and ending on April 30, 2047.~~

~~[OLC Note: What does "with a view to ensuring" mean? Do you mean to say that the Board could have the rates increase more than 10 % if necessary to achieve full recovery? (If that's the intention, then I think we should make it more clear.)]~~

x. The Regulation is amended by adding the following section:

Determining amount of deferral

xx. (1) In order to determine the amount of deferral during a 12-month period… [shouldn't this actually be done under the EA instead of under the OEBA?], the Board shall determine the difference between the following amounts:

[OLC Note: I'm not sure it makes sense for the "amount of deferral" to be calculated under this Act. It seems like the amount should be something calculated under the Electricity Act since that is where the entire deferral mechanism is established.]
[NTD: This should be set out in the Bill]

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1. The total amount payable under section 6.

2. The total amount that would have been payable under section 6 of this Regulation as it read immediately before the day Ontario Regulation [O. Reg. # for reg2017.139] came into force.

(2) The determination under subsection (1) shall be made based on the amount of electricity actually consumed by the consumers prescribed under section 4 in the 12-month period.

Commencement

x. This Regulation comes into force on the later of May 1, 2017 and the day it is filed.

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ONTARIO REGULATION

made under the

ONTARIO ENERGY BOARD ACT, 1998

Amending O. Reg. 95/05

(CLASSES OF CONSUMERS AND DETERMINATION OF RATES)

1. Section 1 of Ontario Regulation 95/05 is amended by adding the following definitions:

"consumer" means a consumer within the meaning of the *Electricity Act, 1998*;

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("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")

"representative ~~time-of-use~~ consumer" means a consumer who ~~is billed time-of-use rates and~~ meets the criteria set out in section 2;

~~"representative two-tier consumer" means a consumer who is billed two-tier rates and meets the criteria set out in section 3;~~

[OLC Note: Are the terms "time-of-use rate" and "two-tier rates" defined or explained in any Act or regulation that we could refer to? If not, are they well-understood or do they need explanation?]

[We will not need to differentiate between TOU and two-tier representative consumers. The Board will set TOU and tiered rates based on first determining an "average" rate, then taking into account the historical proportionality among the TOU periods and between the tiered periods to come up with TOU rates and tiered rates. Drafting instructions later in this amending reg. reflect that approach.]

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"Toronto Hydro" means Toronto Hydro-Electric System Limited;

x. The Regulation is amended by adding the following sections:

Representative ~~time-of-use~~ consumer

2. For the purposes of this Regulation, a representative ~~time-of-use~~ consumer meets the following criteria:

1. The consumer is a member of the class of consumers described in section 4.

2. The consumer,

   i. purchases electricity directly from Toronto Hydro,

   ii. 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,

   iii. is invoiced by Toronto Hydro on a monthly basis, and

   iv. is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan.

3. The consumer consumes, on average, 750 kilowatt hours of electricity each month~~, of which,~~.

~~i. 65 per cent is consumed during the off-peak period,~~

~~ii. 17 per cent is consumed during the mid-peak period, and~~

~~iii. 18 per cent is consumed during the on-peak period.~~

~~Representative two-tier consumer~~

~~**3.** For the purposes of this Regulation, a representative two-tier consumer meets the following criteria:~~

~~1. The consumer meets the criteria set out in paragraphs 1, 2 and 4 of section 2.~~

~~2. The consumer consumes, on average, 750 kilowatt hours of electricity each month, of which,~~

~~i. 53 per cent is consumed during the lower tier period, and~~

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~~[OLC Note: Are the "lower tier" and "upper tier" periods defined somewhere? (I haven't checked.]~~

[Tara: We will have the Board calculate an average rate for the proxy consumer, then use historical consumption patterns for the *RPP* class of consumers to establish TOU and two-tier rates. The use of historical consumption patterns is already what the Board does (in the context of RPP consumers), so we don't need to say anything about that here.]

2. Section 4 of the Regulation is revoked and the following substituted:

Class of consumers, s. 76.16

4. Beginning on May 1, 2017, the following are prescribed as 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 licensed distributor, a licensed retailer or the IESO, 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*, 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 [consumes? Uses?] at least 150,000 but not more than 250,000 kilowatt hours of electricity. **[Tara: Let's stick with "uses" to be consistent with the ORECA (and the OCEBA, and the RPP reg.)]**

5. A consumer who has an account with a licensed distributor, a licensed retailer or the IESO, 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.

3. Section 6 of the Regulation is revoked and the following substituted:

Determining rates, s. 79.16

6. (1) In this section,

~~"CPI" means… [to be included in next draft];~~

[Tara: We don't need separate definitions for CPI and rate of inflation.]

"invoice amount" means the sum of the following amounts:

1. The commodity price of the electricity consumed [during the invoice period].

[OLC Note: Does the addition of the words in square brackets eliminate the need to clarify that the amount invoiced doesn't include the balance carried forward from previous invoices, etc.?]

[Tara: I would prefer to keep the list of exclusions. See ss. 2(1) and 2(2) of the ORECA for an example of this approach. By not keeping the exclusions as I had drafted them, at least one important exclusion element has been dropped – rate riders – see paragraph (f) of my drafting instructions to you.]

2. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the Act.

3. Any adjustment required under section 25.33 of the *Electricity Act, 1998*.

[OLC Note: Is the adjustment actually meant to be added to the other amounts in this list?]

[Tara: Yes. See ss. 2(1) of the ORECA.]

4. The amount of any harmonized sales tax payable under Part IX of the *Excise Tax Act* (Canada).

[OLC Note: TBD whether it is necessary to expressly exclude the items you've listed as "invoice amount exclusions" or whether that is sufficiently clear using the above definition.]

[Tara: I would prefer to also have the exclusions, as noted above.]

"rate of inflation means"… [to be included in next draft].

(2) For the purpose of clause 79.16 (1) (b) of the Act, the Board shall determine rates for the members of the class prescribed under section 4 of this Regulation in the following manner:

[Tara: There is some interest in setting out in the Bill itself how rates will be set for the first five years of the Fair Allocation Plan. This would mean moving over a number of the provisions from the proposed RPP reg. amendments to the Bill.

I have set out below a description of the first five years of rate setting under the FAP, which incorporates some updated policy instructions.

- **The initial 25% decrease in the representative consumer's bill now involves a decrease relative to what the bill otherwise would have been. As such, in order to determine the "baseline" representative consumer bill amount, the Board would follow its normal rate-setting process to determine the RPP rate for the period from May 1, 2017 – October 31, 2017. This process is contemplated in s. 6 of the existing RPP reg.**

- **The RPP rate that the Board would determine is called the "RPA" or average RPP rate.**

- **This average rate is used by the Board to set TOU and two-tier rates. In a nutshell, the Board forecasts proportionate consumption among the TOU and two-tier periods (having regard to historical proportionality) and derives TOU and two-tier rates that would result in the "RPA" rate if the actual proportionality equated to the forecast proportionality. We want to leave the Board the discretion to determine TOU and two-tier rates based on the RPA. This is the reason for removing the distinction between representative TOU consumer and representative two-tier consumer.**

- **After making this "baseline" determination of the RPA rate, the Board would calculate the average monthly representative consumer bill amount *as of May 1, 2017*, applying the RPA rate referred to above and the Toronto Hydro distribution rate in effect on May 1, 2017.**

- **Then the Board would determine what the RPA rate would have to be in order to achieve a reduction in the representative consumer's bill by 25%. This new RPA rate would become the rate for the class of consumers prescribed under s. 4 above (subject to the May 1, 2017 timing problem flagged above).**

- **Effective November 1, 2017, the Board would calculate an adjustment in the RPA rate. The adjustment would increase the all-in representative consumer's bill by the year-over-year increase in CPI (i.e. the rate of inflation increase). Further rate of inflation increases would be made every six months up to and including November 1, 2021.**

1. ~~The~~ Subject to clauses **[the remaining clauses of this subsection]**, the Board shall determine rates in a manner that is consistent with the Standard Supply Service Code issued by the Board.

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[OLC Note: I see that you have eliminated all references to the GAM in your new proposed section, whereas that is currently one of the items currently taken into consideration when determining rates (see para. 3 of the current subs. 4 (1) of the reg). Don't you need to retain this for all determinations after May 1st?]

3. In determining the rates for the period beginning on May 1, 2017 and ending on ~~April 30, 2018~~October 31, 2017, the Board shall do the following:

[NTD: See narrative above. The Board will calculate the "RPA" rate in the normal way to establish the baseline rate. The baseline rate will be applied to the representative consumer bill to determine what the all-in, after-tax bill amount would have been absent the deferral.]]

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i. ~~Calculate the average monthly invoice amount payable under this Regulation as it read immediately before Ontario Regulation [O. Reg. # for reg2017.0139] came into force, for the period beginning on May 1, 2016 and ending on April 30, 2017 for each of the following:~~the representative consumer.

~~A. A representative time-of-use consumer.~~

~~B. A representative two-tier consumer.~~

ii. Determine ~~time-of-use~~ rates that would, during the period beginning on May 1, 2017 and ending on ~~April 30, 2018~~October 31,2017, reduce the average monthly invoice amount for a representative ~~time-of-use~~ consumer by an amount equal to twenty-five percent of the amount calculated under sub-subparagraph i A~~; and~~

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~~iii. Determine two-tier rates that would, during the period beginning on May 1, 2017 and ending on April 30, 2018,reduce the average monthly invoice amount for a representative two-tier consumer by an amount equal to twenty-five percent of the amount calculated under sub-subparagraph i~~ B.

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~~5. Subject to paragraph 6, in determining the rates for each twelve month period during the period beginning on May 1, 2022 and ending on April 30, 2047, the Board shall do the following:~~

~~i. Determine time-of-use rates that would increase the average monthly invoice amount for a representative time-of-use consumer for the twelve month period by no more than ten percent relative to the average monthly invoice amount for a representative time-of-use consumer for the immediately preceding twelve month period; and~~

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~~6. The Board shall determine rates under paragraph 5 with a view to ensuring that by April 30, 2047, the rates [reflect?achieve?] full recovery of the [amount of deferral as determined under section X?] for each 12-month period in the period beginning on May 1, 2017 and ending on April 30, 2047.~~

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Determining amount of deferral

xx. (1) In order to determine the amount of deferral during a 12-month period… [shouldn't this actually be done under the EA instead of under the OEBA?], the Board shall determine the difference between the following amounts:

[OLC Note: I'm not sure it makes sense for the "amount of deferral" to be calculated under this Act. It seems like the amount should be something calculated under the Electricity Act since that is where the entire deferral mechanism is established.]
[NTD: This should be set out in the Bill]

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1. The total amount payable under section 6.

2. The total amount that would have been payable under section 6 of this Regulation as it read immediately before the day Ontario Regulation [O. Reg. # for reg2017.139] came into force.

(2) The determination under subsection (1) shall be made based on the amount of electricity actually consumed by the consumers prescribed under section 4 in the 12-month period.

Commencement

x. This Regulation comes into force on the later of May 1, 2017 and the day it is filed.