FHP OEB

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

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

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

Using current RPP price setting regime

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

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

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

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

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

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

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

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

Ability to make sure payments are made

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

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

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

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

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

OEB role in approving the Treasury (Financing Plan)

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

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

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

OEB role in setting up the regulatory asset

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

Other matters

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

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

OEB Comment Ap 17/17
version 1 of
consult. draft.

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

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A proposal to create Legislation.

Intergenerational Fairness in Hydro Rates Act, 2017, if enacted

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

[Notes re this draft:
- all numbering of provisions will need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)]

* watch to ensure we don't limit OEB moving to once annual RPP.

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix including renewable energy, and to removing barriers to and promoting opportunities for renewable energy projects.

The Government of Ontario has established a regulatory and contractual framework related to the generation and sale of electricity to ensure significant investment in decarbonizing and modernizing the generation of electrical energy and the production therefrom.

Given the long-term benefits that future generations of Ontarians will receive from many of these investments, it is appropriate and fair to raise money in respect of these generating facilities in a manner that allocates the costs of and benefits from these investments fairly among present and future consumers.

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

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PART I
GENERAL

Interpretation
Definitions

1. (1) In this Act,

"clean energy adjustment" means...

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

(a) fostering the growth of and investment in renewable energy projects [which use cleaner sources of energy],

(b) removing barriers to and promoting opportunities for renewable energy projects, and

(c) promoting a green economy [including conservation and demand management]; ("French")

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[OEB Note to Draft: Should "clean energy initiative" include a date to place parameters around the activities that are relevant to the FHP (i.e., not any future contracts)? It seems that the only place where the concept is used with substantive import is section 8.0.1 – unclear whether that provides clear temporal limits]

"electricity vendor"[1] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French") ***[OEB Note to Draft: With respect to USMPs, in the normal course they would flow through the FHP reductions from the bulk meter bill and we assume that there is no intention to require any separate reduction for their fees, but please confirm. Are you planning to include an amendment to the OEB Act that requires USMPs to do this pass-through as per approach for OCEB/ORECA?]***

"Fair Allocation Plan" means a plan prepared under section X; ("French")

"Financial Services Manager" means Ontario Power Generation Inc. or such other entity as may be prescribed; ("French")

"Financing Plan" means a plan prepared under section X; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner under section x; ("French")

"holiday" means [O. Reg. 95/05 definition];] ("French")

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

"investment asset" means all or part of the regulatory asset that is deemed to be an investment asset under section x; ("French")

"invoice amount" means the sum of the following amounts: ***[OEB Note to Draft: Does this definition, and the exclusions below, work in the context of section 22.2, which appears to be the only place this term is used other than in relation to the "representative consumer"?]***

1. The commodity price of the electricity used during the invoice period.

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

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2. The rates and charges set out in the applicable rate order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

3. Any adjustment required under section 25.33 of the *Electricity Act, 1998*.

4. The amount of any harmonized sales tax payable under Part IX of the *Excise Tax Act* (Canada); ("French")

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

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

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

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

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a), or such shorter period as may be set out in a Fair Allocation Plan; ("French")

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

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

"regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, the portion of the regulatory asset that is not deemed to be an investment asset; ("French")

[NOTE: CURRENT PROPOSAL IS THAT THE REGULATORY ASSET WILL REPRESENT THE RIGHT OF RECOVERY. UPON A TRANSFER OF AN INVESTMENT INTEREST, THE QUANTUM OF THE RIGHT OF RECOVERY FOR THE REGULATORY ASSET WILL BE REDUCED. THE TRANSFER OF AN INVESTMENT INTEREST WILL RESULT IN IESO RELINQISHING ANY

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INTEREST IN THE TRANSFERRED INVESTMENT INTEREST, AND WILL RESULT IN THE TRANSFEREE ACQUIRING THE RIGHT OF RECOVERY OF AN INTEREST IN THE CLEAN ENERGY ADJUSTMENTS DETERMINED BY REFERENCE TO FINANCE AMOUNTS INCURRED BY OR ON BEHALF OF THE TRANSFEREE.]

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French") ***[OEB Note to Draft: Should this be written more as a deemed/assumed consumer, rather than appearing to be a real consumer, and which may run the risk of capturing either no consumers or more than one?]***

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

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

"weekday means [O. Reg. 95/05 definition]; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria: ***[OEB Note to Draft: See comments on sections 6 and 7.]***

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

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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 ***[OEB Note to Draft: We have real concerns with the addition of the "without regard to section 5 of the RTA" proviso. There is uncertainty, including the potential for litigation, around who is or is not eligible as a result, given uncertainties relating to the interpretation of the RTA]***

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount, exclusions

(2) For the purposes of the definition of "invoice amount" in subsection (1), an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

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ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider. ***[OEB Note to Draft: We suggest the exclusion should be limited to retail settlement variances, and not cover distribution-related rate riders. This could potentially reduce the amount of GA smoothing.]***

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; ***[OEB Note to Draft: THESL has 2 residential rate classes – we assume that you intend to capture the residential service class and not the competitive sector multi-unit residential service class, and you should be specific about that]***

(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. ***[OEB Note to Draft: "On average" is not required here. The fact that the consumer is assumed to be on RPP time-of-use rates should be expressly included. As long as the representative consumer concept applies only until May 2022, use of 750 kWh is OK, but if the concept were to apply for longer then we believe more flexibility would be desirable in terms of what a "typical" residential consumer uses]***

Intention of the Legislature[2]

(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.

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

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Same

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

Purpose

2. (1) The purposes of this Act are,[3]

(a) to ensure that the costs of the clean energy initiative are fairly distributed among specified customers over time;

(b) to recognize the long-term benefits of the clean energy initiative that accrue over time and will continue to benefit present and future electricity consumers in the Province;

(c) to promote the use of clean energy sources and technologies, including low carbon, alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario;

(d) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity;

(e) to facilitate the maintenance of a financially viable electricity industry, including by raising money in respect of sites and facilities in the Province for the generation of electrical energy and the production therefrom;[4] and

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

Crown bound

3. This Act binds the Crown.

Protection and guarantee of scheme

Prohibition

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

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

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

[4] FLS - as per the note in the Preamble on this language, please see 92A (4) of the *Constitution Act, 1867.*

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(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

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

Agreements for compensation

(3) The Minister may enter into agreements for the purposes of guaranteeing that compensation will be paid to an investment asset owner for losses suffered as a result of,

(a) a contravention of subsection (1);

(b) a change in law that would adversely affect the rights under this Act of an owner of an investment asset;

(c) approval by the Lieutenant Governor in Council of a Fair Allocation Plan, or an amendment to a Fair Allocation Plan, that fails to recognize the principles set out in section x; or

(d) a final determination by a court of final jurisdiction rendering invalid or ineffective all or any of the provisions of this Act.[5]

IESO obligations

(5) If the IESO fails to carry out its obligations under this Act for any reason, including because the IESO is dissolved or restructured or because it becomes insolvent, the Government of Ontario shall carry out those obligations or ensure they are carried out by another appropriate entity.

PART II
FAIR ADJUSTMENT PERIOD

Application of Part

5. This Part applies in respect of the five year period beginning on May 1, 2017 and ending on April 30, 2022.

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[5] Note to translator: See s. 9 of the Public Authorities Protection Act.

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[NOTE: THIS IS A ROUGH ADAPTATION OF THE "FAIR ADJUSTMENT" CONCEPT. FOR YEARS 2 TO 5, THE LGIC WILL PASS A REGULATION TO LIMIT THE INCREASE TO REDUCED HYDRO BILLS TO REFLECT A FURTHER "FAIR ADJUSTMENT". THE SUM OF ALL FAIR ADJUSTMENTS WILL CORRESPOND TO THE SUM (TIME VALUE ADJUSTED) OF THE PAYMENTS BY PAST RATEPAYERS OF MORE THAN THEIR FAIR SHARE OF THE GREEN COSTS (I.E., AS A RESULT OF THE EXISTING AMORTIZATION RATE OF GREEN COSTS THROUGH THE GA CALCULATION). THE VALUE OF THOSE PAST OVER-PAYMENTS WILL BE A LIMIT ON THE TOTAL AMOUNT OF FAIR ADJUSTMENTS. THE CONCEPT IS MORE FLEXIBILE THAN THE SUGGESTION HERE, WHICH RELATES ONLY TO THE FIRST 5 YEARS – ALTHOUGH THAT IS CERTAINLY THE CURRENT FOCUS. THE IDEA FOR NOW IS THAT THE ACT WILL REDUCE HYDRO BILLS FOR THE FIRST YEAR, AND EACH OF THE FOLLOWING 4 YEARS BY REGULATION – IN AGGREGATE EQUAL TO THE PAST OVER-CHARGES. TO ENSURE THAT THE INCURRENCE OF FUNDING OBLIGATIONS AND CORRESPONDING FINANCE AMOUNTS DO NOT CONFLICT WITH THE FAIR ADJUSTMENT (AND REDUCED HYDRO RATES), THERE WILL BE A MORATORIUM ON CLEAN ENERGY ADJUSTMENTS DURING THE FIRST 5 YEARS (ON BOTH IESO CHARGE THROUGH RECOVERIES AND IN RESPECT OF FINANCE AMOUNTS PAYABLE DURING THESE FIRST 5 YEARS – PROVIDED THAT IF THE LGIC DOES NOT ULTIMATELY DETERMINE THAT A FAIR ADJUSTMENT WILL APPLY IN A YEAR, THE BALANCE, UNDER THE FAP, WILL BE RECOVERABLE BY WAY OF A PASS-THROUGH OF FINANCE AMOUNTS /IESO RECOVERIES. THE IDEA WILL BE THAT THE LGIC WILL DETERMINE THE AMOUNT OF A FAIR ADJUSTMENT PRIOR TO THE RELEVANT PERIOD TO WHICH IT APPLIES. NOTE THAT THE PAST-OVERPAYMENTS WILL BE FACTORED INTO THE FAP ON A GO FORWARD BASIS, IN ADDITION TO THE CONTINUING GREEN COSTS – AND AMORTIZED OVER THE LONGER PERIOD. THE FOLLOWING PROVISION ADDRESSES ONLY THE FIRST YEAR OF THE FAIR ADJUSTMENT.]

[OEB Note to Draft: We have significant concerns with sections 6 and 7. As a general comment, it is not entirely clear to us why this mechanism cannot be addressed in a regulation made under section 79.16 as opposed to being embedded in the legislation. In terms of more specific points:

i. Not clear whether/how these sections can co-exist with section 79.16 of the OEB Act.

ii. The sections appear to create an expanded class of RPP consumers. Unlike 79.16 of the OEB Act, there is no opportunity for consumers to opt out. As written, this seems to over-ride retail contracts, market participant status and opting-out decisions made before the legislation is passed. RPP prices may

well not be suitable for consumers that are currently not eligible for the RPP (who may end up on tiered prices), and we have no objective basis for setting RPP prices that include them. A different mechanism needs to be put in place to address how consumers that are not currently eligible for the RPP or that have opted out of the RPP will receive the benefit of the FHP reduction – something like the "GA modifier" concept that we understood was the policy approach, or setting a Class C GA.]

~~i.~~***iii. Giving this section retroactive effect to May 1, 2017 is not workable, both generally and in particular if the class of RPP consumers is expanding and bringing in consumers that have contracts, are market participants or have opted out. We do understand that any price reductions effective May 1 would need to be addressed as far as the regulatory asset goes, but we are not planning to retroactively change rates – we would give full effect to the legislation in post-May 2017 price setting on a prospective basis.]***

Determination of rates, first twelve months

6. (1) The Ontario Energy Board shall determine the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 in the following manner:

1. Determine the average rate payable by a representative consumer by applying the method set out in subsection (2).

2. Determine the average monthly invoice amount that would be payable by a representative consumer under the rate determined under paragraph 1. ***[OEB Note to Draft: The word "average" should be removed from here]***

3. Determine the amount that is [# tbc] per cent less than the monthly invoice amount determined under paragraph 2. ***[OEB Note to Draft: The TBC# needs to be more refined than a simple percentage, and in any event should not be 25% unless the invoice in (2) is specified as including other elements of FHP. Perhaps a reg-making power would be useful for that?]***

4. Determine the average rate payable by a representative consumer that would result in the monthly invoice amount mentioned in paragraph 3 for a representative consumer.

[Note: Query whether 79.16 of the OEBA should be replaced to clearly state that the price-setting work that the OEB does under the RPP is authorized and that the work it must do to accommodate the Fair Adjustments is also authorized going forward.]

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Determination of baseline, average rate

(2) For the purposes of paragraph 1 of subsection (1), the follow method applies:[6]

1. The Board shall determine rates in a manner that is consistent with the Standard Supply Service Code issued by the Board.

2. In determining the rates, the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect those costs. ***[OEB Note to Draft: Is the IESO going to keep tracking "normal" variances? We don't believe that this is required to be tracked unless the dealers require it.]***

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, ***[OEB Note to Draft: This requirement should be deleted in the context of prices set by reference to the representative consumer.]***

    i. that begins no later than 7 p.m. on every weekday and ends,

        A. no earlier than 7 a.m. on the next day if the next day is a weekday, or

        B. no earlier than 12 a.m. on the next day if the next day is Saturday, Sunday or a holiday, and

    ii. that begins no later than 12 a.m. on every Saturday, Sunday and holiday and ends no earlier than,

        A. 12 a.m. on the next day, if the next day is Saturday, Sunday or a holiday, or

        B. 7 a.m. on the next day if the next day is a weekday.

Determination of rates, on and after May 1, 2018

7. On and after May 1, 2018, the Board shall determine the rate for electricity payable by a specified consumer in the following manner:

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[6] FLS: Please see section 6 of O. Reg. 95/05 (a bilingual reg).

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1. Determine the rate by applying the steps set out in section 6.

2. Adjust the rate determined under paragraph 1 for inflation in accordance with the regulations. ***[OEB Note to Draft: (1) As written, this means that the RPP price would increase by the rate of inflation, as opposed to the total proxy consumer bill increasing by that amount – not the same result. (2) Please confirm that you intend to make regulations under this section to prescribe what you mean by rate of inflation]***

PART III
CLEAN ENERGY ADJUSTMENT PERIOD

Application of Part

8x. This Part applies in respect of the period beginning on May 1, 2022 and ending on April 30, 2047.

[NOTE: CONSISTENT WITH THE EARLIER NOTE, THE MORATORIUM IS LIFTED IF THE LGIC DETERMINES THAT NO FAIR ADJUSTMENT WILL APPLY, IN WHICH CASE CEAs WILL APPLY DURING THE FIRST 5 YEARS. THE DIVISION OF TIME CONTEMPLATED IN THIS DRAFT IS MORE INFLEXIBLE THAN WE HAVE ENVISIONED]

Specified consumers to pay clean energy adjustment

9x. (1) Subject to subsection (1.1), upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor 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.

[NOTE: MODIFY TO REFLECT THAT THE PAYMENT IS MADE TO AN EV, AS AGENT FOR THE INVESTMENT ASSET OWNERS]

Limitation

(1.1) No clean energy adjustment is payable by a specified consumer on a day before May 1, 2022. [NOTE: MODIFY TO REFLECT EARLIER NOTES]

Same

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

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

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(b) whether the payments relate to funding obligations that were incurred in a manner that did not comply with the Financing Plan; and [NOTE: UNDER CONSIDERATION. SEEMS OVERBROAD]

Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to the investment asset owners in respect of their respective interests in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise. [NOTE: ENFORCEMENT WILL BE LIMITED UNDER THE ACT, SO THAT INVESTMENT ASSET OWNERS CAN'T SERVE NOTICES ON RATEPAYERS DIRECTLY, OTHER THAN THROUGH A SPECIFIED AGENT AND PROCESS – SEE BELOW]

Irrevocability of clean energy adjustment

10x. (1) Any clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is an error in calculations made by the electricity vendor.

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Determination of clean energy adjustment

[OEB Note to Draft: (1) The language of (2) needs to clearly support the segregation of RPP-related versus other variances. It is imperative that the variance calculations involve the IESO, who we currently count on to track variances for the RPP. We will need their input to calculate the adjustments for both RPP and non-RPP. (2) The IESO should collate all of the information required to do the Schedule 1 calculation, and then submit it to us. Also, bear in mind that all of the information that we would use to derive the amount of the clean energy adjustment would be made public. (3) Please confirm if the clean energy adjustment is intended to be a fixed or a volumetric amount. Schedule 1 gets us to an amount, but not a rate – it does not appear to be a methodology that lays out how the total amounts to be recovered in a period are to be converted into a rate to be charged to customers. Is that going to be laid out elsewhere?]

11x. (1) The Ontario Energy Board shall apply the method set out in Schedule 1 to determine the amount of the clean energy adjustment payable on a monthly basis by each electricity vendor on behalf of the electricity vendor's specified consumers. . [NOTE: THE AMOUNTS WILL BE CALCULATED AS FOLLOWS: (1) FSM (FOR ALL IAOs) WILL INFORM OEB OF PERIOD FINANCE AMOUNTS FOR THE REFERENCE PERIOD (IE ESTIMATE OF FAs PLUS PAST TRUE UP ALLOCATION) (2) OEB WILL ATTRIBUTE THAT AGGREGATE AMOUNT BASED ON RPP-LIKE RATE DETERMINATION FOR CUSTOMERS OF THE RELEVANT CLASSES (3) OEB WILL TELL EVs THE RATES APPLICABLE TO THEIR CUSTOMERS, SO THAT THE FULL AMOUNT IN (1) IS RECOVERED (BASED ON EXPECTED COLLECTION RATES AND NONE PAYMENTS)] ***[OEB Note to Draft: Consistency with 23.1(2), which states that one of the rights associated with an investment asset is the right to determine the amount of the clean energy adjustment?]***

True up amount

(2) The Ontario Energy Board may adjust the amount determined under Schedule 1 from time to time to address the any difference between the amount of the clean energy adjustment payable in respect of the reference period and the amount of the clean energy adjustment collected as of the date of the determination. [NOTE: THIS IS ONLY A PARTIAL DESCRIPTION OF THE TRUE UP. SEE EARLIER DRAFTING INSTRUCTION FOR SUGGESTED APPROACH – I.E., DESCRIBE BROADLY THE NATURE OF THE CALCULATION AND THEN SPECIFY THE CALCULATION IN A DETAILED CALCULATION TO BE INCLUDED IN A REGULATION]

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Same, regulations

(3) The Lieutenant Governor in Council may make regulations governing the calculation under subsection (2) and how the amount is to be applied to the clean energy adjustment.

Communication to electricity vendors

(4) The Ontario Energy Board shall communicate to each electricity vendor information relating to the clean energy adjustment to be allocated by the electricity vendor to each specified consumer in respect of a reference period. [NOTE: WE ARE NOT SURE THERE IS A ROLE FOR IESO. WE THOUGHT THE PERIOD FINANCE AMOUNTS WOULD BE FORWARED BY FSM TO OEB DIRECTLY] ***[OEB Note to Draft: Consistency with 13x, which speaks to the electricity vendor determining the proportionate share for each of its customers? Also, what would be the basis for the vendor's allocation – consumption?]***

IESO to invoice electricity vendors

12x. (2) The IESO shall issue an invoice to each electricity vendor for the clean energy adjustments in accordance with the regulations.

IESO to collect

(3) The IESO shall, as an agent of the investment asset owner, make reasonably diligent efforts to collect clean energy adjustments from electricity vendors.

Collection account

(3.1) The IESO shall establish an account in which to record its collection of the following:

1. Amounts remitted from accounts established under section 31.

2. Payments made by specified consumers directly to the IESO as electricity vendor, in respect of clean energy adjustments.

Deposit

(4) The IESO shall promptly deposit all amounts received in respect of clean energy adjustments into the account established under subsection (3.1). [NOTE: CONSIDER FEASIBILITY OF DAILY SEGREGATION/ REMITTANCES]

Same, held in trust

(2) The amounts collected are deemed to be held in trust for the investment asset owner.

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IESO to remit

(5) The IESO shall remit amounts received in respect of clean energy adjustments to or for the benefit of the regulatory asset owner in accordance with the regulations.

Electricity vendor to apply rate

13x. (1) Each electricity vendor shall [in accordance with the regulations?] determine the proportionate share of clean energy adjustments payable on a monthly basis by each of its specified consumers.

Electricity vendor to invoice specified consumers

(2) The electricity vendor shall issue an invoice to each specified consumer for the applicable amount of clean energy adjustments in accordance with the regulations.

Electricity vendor to collect

(3) Each electricity vendor shall, as an agent of the IESO, make reasonably diligent efforts to collect clean energy adjustments from specified consumers.

Pro rating of payments

14x. (1) This section applies if,

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

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

Same

(2) The electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices. ***[OEB Draft Note: Some LDCs also bill for non-electricity charges (for example, water services).]***

electricity charges

Deposit

(3) The electricity vendor shall deposit the portion of the payment allocated to clean energy adjustments into the account established under X.

Electricity vendor, account

15x. (1) Each electricity vendor shall establish and maintain an account into which the electricity vendor deposits or receives only the following:

1. Payments by specified consumers in respect of clean energy adjustments.

2. Portions of payments by specified consumers that are allocated to clean energy adjustments under subsection 30 (2).

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

Held in trust

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

Remittance to IESO

(5) The electricity vendor shall remit amounts received in respect of clean energy adjustments to the IESO for the benefit of the investment asset owner in accordance with the regulations.

Payment re regulatory asset

(x) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable Fair Allocation Plan, the difference is payable to the IESO by the specified consumers.

[NOTE: REQUIRES FURTHER CONSIDERATION.]

PART IV
FAIR ALLOCATION PLAN AND FINANCING PLAN

FAIR ALLOCATION PLAN

Minister to prepare plan

8. (1) In order to fairly measure and allocate amounts described in section 8.0.1 as of a specified day among specified consumers for the purposes of this Act, the Minister shall prepare and provide to the Lieutenant Governor in Council a written plan entitled the Fair Allocation Plan to take effect on the specified day.

Amendments to the plan

(2) Subject to the approval of the Lieutenant Governor in Council, the Minister may amend the Fair Allocation Plan from time to time, as the Minister considers appropriate, having regard to the requirements of this Act.

Effective date

(3) The Fair Allocation Plan or an amendment to the plan takes effect on the day that the plan or the amendment, as the case may be, is approved by the Lieutenant Governor in Council.

Publication

(4) The Minister shall ensure that the Fair Allocation Plan and any amendments to the plan are made available to the public in a manner that the Minister considers appropriate.

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Amounts to be allocated

8.0.1 The amounts referred to in subsection 8 (1) are, in relation to a specified day,

[NOTE: THE IDEA IS THAT THE EXPECTED FUTURE GREEN COSTS WILL BE INCLUDED AS COSTS, AND RATHER THAN AMORTIZING THEM BASED ON THE TERMS OF THE POWER CONTRACTS, THE COSTS WILL BE AMORTIZED AND PASSED THROUGH BASED ON A MORE ACCURATE AMORTIZATION SCHEDULE TIED MORE TO THE COSTS AND BENEFITS OF THE GREEN PLAN OVER THE NEXT 30 YEARS. IN ADDITION, TO THE EXTENT THAT THERE HAVE BEEN OVER-CHARGES (BASED ON THE SHORT AMORTIZATION OF GREEN COSTS) SINCE 2005, THOSE OVERAGES WILL BE ADDED TO THE AMOUNT OF THE FAP COSTS TO BE AMORTIZED OVER THE FUTURE – I.E., THE FUTURE GENERATIONS WOULD HAVE BENEFITED FROM AN ARTIFICALLY LOW SHARE OF THE COSTS SINCE THE RATEPAYERS FOR 2005 – 2017 PAID TOO MUCH, SO WE SHOULD BE ABLE TO ADD THOSE TO THE FUTURE GROUPS AND RECOGNIZE A FAIR ADJUSTMENT FOR CURRENT RATEPAYERS]

(a) the costs incurred by the IESO before that day or expected to be incurred by the IESO on or after that day in relation to, ***[OEB Note to Draft: Section 78.1 of the OEB Act is limited in its application to OPG at the moment, and section 78.5 is for OEB-approved CDM programs, of which there are none at the moment, unless there are still incentives payable under the older CDM regime]***

(i) payments made or expected to be made under section 78.1 of the *Ontario Energy Board Act, 1998*, other than payments made under contracts with Bruce Power L.P or Bruce Power A. L.P. or their successors or assigns, and

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

(b) such other costs, benefits or amounts as may be prescribed, in respect of the clean energy initiative, made or received before that day or expected to be incurred on or after that day. ("French")

Principles

8.1 In preparing the Fair Allocation Plan or any amendments to the plan, the Minister shall have regard to the following principles:

1. The amounts should not be allocated in respect of any period of time after April 30, 2047.

1.1 At no time should the Fair Allocation Plan impair any investment asset, outstanding funding obligation or clean energy adjustment.

2. The share of the amounts allocated to specified consumers who receive an invoice in respect of a reference period should be proportionate to a reasonable assessment of the benefits derived by those consumers during that reference period.

3. The specified consumers to whom an invoice is issued during a reference period should not bear an unreasonably disproportionate share of the amounts allocated.

4. Adjustments should be made over time if the Minister is of the opinion that specified consumers have paid more than is reasonably proportionate.

5. Allocation of amounts should be determined for each reference period.

6. A reasonable estimate of the rate of inflation should be applied [in accordance with the regulations?].

Compliance

8.2 The IESO and the Financial Services Manager shall not, at any time, exceed the limits set out in the applicable Fair Allocation Plan.

[NOTE: THIS IS TOO STRONG. THE IDEA IS THAT IESO'S RIGHT OF RECOVERY WILL BE LIMITED IN A REFERENCE PERIOD BY THE FAP AMOUNT FOR THE PERIOD, MINUS THE FINANCE AMOUNTS FOR THE PERIOD. IN THIS WAY, THE IESO WILL BE ENTITLED TO PASS-THROUGH RECOVERIES IN A WAY THAT AFFECTS THE HYDRO BILLS OF EACH REFERENCE PERIOD RATEPAYERS IN A WAY THAT TRACKS THE FAP. SIMILARLY, IF IESO HAS TRANSFERRED ITS RECOVERY RIGHTS TO A IAO, THEN THE RELATED CEAs FOR THAT IAO WILL BE INSIDE THE FAP – AGAIN, SO THAT THE RATEPAYERS OF THAT PERIOD DO NOT BEAR A DISPROPORTIONATE BURDEN FOR THOSE COSTS. THESE CONCEPTS ARE REFLECTED IN THE MECHANICS DEALING WITH IESO RECOVERIES AND PASSING THROUGH CEAs, AND SO THIS SECTION CAN PROBABLY BE REMOVED]

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FINANCING PLAN

Financial Services Manager to prepare plan

11. (1) The Financial Services Manager shall prepare and provide to the Minister a plan entitled the Financing Plan for the purpose of ensuring that decisions made under this Act are cost-effective and consistent with the Fair Allocation Plan.

Amendments to approved plan

(2) The financial services manager may propose amendments to the Financing Plan at any time.

[NOTE: THE FINANCING PLAN IS SUPPOSED TO BE FLEXIBLE, UNLIKE THE FAP. FORMAL AMENDMENTS WOULD MAKE THIS TOO RIGID. THE FSM SHOULD KEEP RECORDS OF THE FP OVERTIME, SO THAT FUNDING DECISIONS CAN BE DETERMINED BASED ON THE PRINCIPLES AND THERE IS A MEASURE OF ACCOUNTABILITY FOR THE FSM, INSOFAR AS THE RECORD-KEEPING WILL ALLOW THE MINISTER TO DO A PERIODIC CHECK TO MAKE SURE THAT FUNDING OBLIGATIONS WERE INCURRED IN MATERIAL CONFORMITY WITH THE FSM'S EVOLVING FP. THE CONCEPT OF THE FP IS TO CREATE DISCIPLINE, THOUGHFULNESS AND SOME MEASURE OF ACCOUNTABILITY FOR FSM IN MAKING FINDING DECISIONS.]

Compliance with Plan

11.1 The Financial Services Manager shall comply with the Financing Plan.

[NOTE: PROBABLY TOO RIGID A STATEMENT – SEE ABOVE. ALSO, OPG SEEMS TO HAVE ACCOUNTING ISSUES WITH THIS SORT OF MANDATORY DIRECTION – NEED TO CONFIRM]

Contents of plan

12. (1) The Financing Plan shall be prepared in accordance with the regulations and shall include such matters as may be prescribed, which may 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 in a manner that is consistent with the applicable Fair Allocation Plan.

3. A description of the funding obligations mentioned in paragraph 2, which may include the following:

    i. Indebtedness.

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

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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.

[NOTE: PRINCIPLES AND PARAMETERS ARE UNDER CONSIDERATION AND WILL BE INCLUDED IN THE REGULATION.]

Limitation

(1.1) The Financing Plan shall not provide for the payment of the clean energy adjustment by specified consumers before May 1, 2022. [NOTE: WOULD PREFER TO SAY (1) NO CEAs IN THE FIRST 5 YEARS UNTIL, FOR A YEAR, THE LGIC CONFIRMS THAT THERE WILL NOT BE A FAIR ADJUSTMENT FOR THAT YEAR. SEE MECHANICS, ABOVE.]

Special purpose financing entities

(2) If the Financial Services Manager is a prescribed entity, the Financing Plan may, in accordance with the regulations, provide for the establishment by that entity of one or more special purpose financing entities that may incur funding obligations.

[Note: I understand that OPG doesn't need authority to establish a SPV beyond existing OPG authority under the EA, but do you still want something like subs. (2) for an entity other than OPG? It almost makes it look like OPG is not authorized to do so, since the provision singles out prescribed entities. Need to consider further]

[NOTE: THIS CONCEPT SHOULD BE MOVED TO THE REGULATION]

Limit on liquidation, etc. of [special purpose funding entities]

(3) The Financing Plan shall not provide for a [special purpose funding entity] tbe be liquidated, dissolved or voluntarily wound-up until at least one year after all of the funding obligations the entity has incurred have been satisfied. [NOTE: MOVE TO THE REGULATION]

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. ***[OEB Note to Draft: Given the nature and limitations on the OEB's role, the OEB's assets should be immune from recourse irrespective of whether or not we have "obligations or duties" arising under this Act.***

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We are not expected to have obligations or duties arising under the terms of a funding obligation.]

Funding obligations unaffected by amendment to Fair Allocation Plan

(4) No change to a funding obligation shall result from an amendment to the Fair Allocation Plan that is made after the funding obligation has been incurred.
[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?]

PART V
THE REGULATORY ASSET [AND INVESTMENT ASSET]

Regulatory asset established

22. (1) The IESO has property rights and interests, which together constitute a regulatory asset, in the recovery of the IESO funding shortfall.
[Note to draft - Is it sufficient to say "*property rights and interests in the recovery of the IESO funding shortfall*"? Does that convey the right to enforce other parties' obligations that would allow for the shortfall to be recovered by the IESO?]

Limitation

(1.1) The right to recover the IESO funding shortfall under subsection (1) is subject to the following limits:

1. The amount recovered in respect of a reference period may not exceed the amount by which the [fair allocation] in respect of a reference period exceeds the amount of the clean energy adjustment for the reference period.
   [NOTE: CONSIDER IF THIS SHOULD BE A MAXIMUM OR A MANDATORY FLOW-THROUGH. IF THE IESO RECOVERIES PLUS CEAs FOR A PERIOD ARE LESS THAN THE FAIR ALLOCATION FOR A PERIOD, THEN THE RATEPAYERS OF THE PERIOD WILL BENEFIT FROM A LESSER SHARE OF THE COSTS THAN WOULD BE INDICATED BY THE FAP]
2. No part of the funding shortfall shall be recovered before May 1, 2022.
   [NOTE: TOO RIGID. SEE CONCEPT OF FAIR ADJUSTMENT, ABOVE]

Same

(2) The establishment of the regulatory asset is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

Recording of IESO funding shortfall in books

22.1 (1) Subject to the approval by order of the Ontario Energy Board, the IESO shall record the IESO funding shortfall from time to time in its books. [NOTE: THIS

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SHOULD ALSO INCLUDE ADJUSTMENTS WHEN THERE IS A TRANSFER OR RECOVERY – I.E., THE REGULATORY ASSET AMOUNT RECORDED SHOULD BE REDUCED]

Order

(2) The Ontario Energy Board may, in accordance with the regulations, by order specify how the IESO funding shortfall must be recorded.

Recording in books determinative

(3) A recording in its books is determinative of the amount of IESO funding shortfall at the time of the recording.

IESO funding shortfall

22.2 (1) The IESO shall determine the IESO funding shortfall for each month in a reference period by calculating the difference between the following amounts: ***[OEB Note to Draft: See comment about re whether "invoice amount" as defined is suitable here. Not sure the IESO would know what the invoice amounts are, just the market plus GA costs that need to be settled]***

1. The sum of all invoice amounts issued to specified consumers for the month.

2. The sum of all invoice amounts that would have been issued to specified consumers for the month if paragraphs 1 and 2 of section 7.2 did not apply.

[Note: Should the value of any consideration received as part of a transfer be reflected in this section?]

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. ***[OEB Note to Draft: Reference to electricity actually used may be better revised to "billed quantity" or some other figure that includes losses]***

[NOTE: FUNDING SHORTFALL DESCRIPTION MAY ALSO RELFECT ADJUSTMENT BASED ON ESTIMATE TO ACTUAL FROM EARLIER MONTH]

Transfer of regulatory asset

23. (1) The IESO may transfer the regulatory asset in accordance with the Financing Plan.

Consideration

(2) The IESO may receive consideration for the transfer of the regulatory asset, subject to the following rules:

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1. The prospective owner of the investment asset to be acquired through the transfer shall pay to the IESO an amount equal to all or part of the IESO funding shortfall. [NOTE: INVESTMENT ASSET TO BE BASED ON FACE VALUE SO THAT THE IESO RECOVERY IS DOLLAR-FOR-DOLLAR. THIS MEANS THAT ACCRUALS WILL BE NEEDED FOR INITIAL PERIOD, RATHER THAN THE TRUST BUYING INVESTMENT INTERESTS AT A DISCOUNT AND HOLDING BACK ISSUE PROCEEDS TO FUND THOSE AMOUNTS.]

2. Upon receipt of the payment, the IESO shall record the payment as a reduction of the AGGREGATE IESO funding shortfall in its books.

3. Upon receipt of the payment, the IESO shall have no continuing right or interest in, or maintain any right to recover all or any part of the transferred regulatory asset.

Investment asset

Regulatory asset deemed to be investment asset upon transfer

23.1 Upon transfer of the regulatory asset or a portion of the regulatory asset, the regulatory asset or portion is deemed to be an investment asset and is vested in the investment asset owner.

[NOTE: DEEMING LANGUAGE TO ADDRESS TRANSFER AND CONVEYANCE IS UNDER CONSIDERATION.]

[NOTE: THE ASSET TRANSFERRED BY IESO WILL BE A RIGHT OF RECOVERY, BY REFERENCE TO CEAs. THE ASSET ACQUIRED WILL BE AN "INVESTMENT INTEREST", BEING A SHARE (THE TERMS AND ENTITLEMENTS OF WHICH WILL BE DETERMINED UNDER A COLLECTIVE RIGHTS AGREEMENT) OF THE RIGHTS AND RELATED PROCEEDS FROM THE RIGHT TO BILL, ETC., CEAs. THE SUM OF ALL INVESTMENT INTERESTS WILL BE THE "INVESTMENT ASSET".]

Same

(2) An investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any

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amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Same

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

No set off, etc.

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

(a) by a consumer, an electricity vendor, the IESO, an agent of the investment asset owner or an owner of distribution system assets in the Province; [NOTE: IF THE MECHANICS FOR CASH FLOWS ADOPT THE PRE-EXISTING METHODS AND TERMS AMONG IESO, LDCs AND RATEPAYERS, THIS PROVISION WILL NEED TO RECOGNIZE THAT THOSE TERMS WILL PREVAIL AND NOT BE AFFECTED BY THE NEUTERING OF SET-OFF, ETC.]

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(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); [NOTE: CONSIDER IN CONTEXT OF FEDERAL BANKRUPTCY POWERS]

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

Transfer of investment asset

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

Validity of transfer

25. (1) A transfer of a regulatory asset or an investment asset under this Act that is expressed to be a sale or an absolute assignment is a valid and enforceable sale and absolute assignment of the regulatory asset or investment asset, as the case may be, and confers upon the owner of the investment asset acquired a valid property right and interest in, to and under the applicable investment asset in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall or an investment asset owner's right, title and interest in, to and under an investment asset, as applicable (or relevant portion thereof), and not merely as a pledge thereof, and upon such absolute transfer the transferor shall retain no right, title or interest in regulatory asset or the investment asset (or relevant portion thereof) subject to the transfer, including all rights to recover the IESO funding shortfall or the investment asset arising after such transfer. [NOTE: ADDRESSES POSSIBLE RECHARACTERIZATION CONSIDERATIONS. MARKET WILL EXPECT TO SEE THIS GIVEN SECURITIZATION CONCEPTS IN PLAY.]

Deemed perfection, etc.

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

Priority of transfer, assignment, etc.

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

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Administration of investment asset

26. (1) The Financial Services Manager shall administer an investment asset on behalf of the owner of the investment asset. [NOTE: TO BE ELABORATED]

Review of costs

(2) The Ontario Energy Board shall review the administrative costs of the Financial Services Manager. [NOTE: TO BE ELABORATED] ***[OEB Note to Draft: (1) Our role should be limited to being in the nature of the OEB's review of IESO fees, and this should be something that we are empowered to do with or without a hearing. (2) There are later references in notes to the FSM submitting accounting to the OEB (note under section 53.1) and to the approval of fees charges before they can be recovered as part of the clean energy adjustment (at the end of the Electricity Act amendments) – are those different from/incremental to what is contemplated here?]*** agree

Investment asset owner may grant pledge

27. (1) The owner of an investment asset may grant a pledge to or in favour of a person in, to and over all or a specified portion of its right, title and interest in, to and under the investment asset in connection with any funding obligation.

Types of pledge

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

Validity

(3) The pledge may be made to secure a funding obligation and when granted shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the person to whom the pledge is granted a valid security interest in, to and in respect of the investment asset in accordance with the terms of the pledge.
[Note: Additional content relating to the PPSA has not yet been addressed in any detail. Please review all subsections that contain the (x) below and advise what is needed. Some of this content was already covered by some of the numbered subsections in this draft.]

Perfection and priority of pledges

(x) For purposes of the *Personal Property Security Act*, the regulatory asset shall be intangible personal property and any pledge made by the owner of an investment asset in respect of a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Same

(x) All provisions of the *Personal Property Security Act* shall apply to the regulatory asset on the basis that it is intangible personal property, except to the extent otherwise provided in this section.

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Same

(x) All proceeds of a related [Investment Interest?] that are subject to the pledge that are received by the owner of the investment asset shall immediately be subject to the pledge, and the security interest in the proceeds shall be perfected pursuant to the *Personal Property Security Act.*

Same

(x) A pledge perfected under the *Personal Property Security Act* shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the [Investment Interest?] subject to the pledge unless the pledgee has otherwise agreed in writing.

Same

(x) A pledgee shall have a perfected security interest in a related investment interest, including the owner of the investment asset's rights and interests in and to [the clean energy adjustment?] or other related proceeds in respect of the investment interest and that are deposited in any [which account?] or other account of any [Electricity Distributor, IESO, Alternative Servicer or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds].

Proceeds

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

Perfection

(9) The pledge shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment asset subject to the Pledge, subject to the written consent of the person to whom the pledge has been granted.

Same

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

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Collective action required

28. If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: It seems that successors may need to be addressed here. Also Pledgees have not yet been addressed in this draft.]

Exercise of rights

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

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

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

Not Crown agent

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

Sequestration

35.2 [Note: Still to be drafted:
If any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect clean energy adjustments, defaults on any required remittance of Clean energy adjustment Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by a Regulatory Asset Owner or Pledgee and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the Clean energy adjustment Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Regulatory Asset Owner or Pledgee.] [Such order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or other person or entity authorized to collect Clean energy adjustments, as applicable.]

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Successors

37. [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.]

Choice of law

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

Conflict

38. The provisions of this Act [and the regulations?] apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or PLEDGE,

No further approvals, etc.

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

Immunity

97x. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act. ***[OEB Note to Draft: It is critical that Board members, who by statute are not employees of the OEB, also be covered here.]***

Same

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

References in marketing materials and offering documents

98x. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

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Non-application, Financial Administration Act, s. 28[7]

99x. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

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

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

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

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

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

(q.1) to enter into agreements or arrangements with [any special purpose financing entities established under (name of new Fair Hydro Act?)];

(q.2) to engage in activities related to making payments to and receiving payments from [any special purpose financing entities established under (name of new Fair Hydro Act?)], as required under that Act, and to engage in related settlement activities;

(q.3) to engage in activities related to the transfer of the regulatory asset created under [(name of new Fair Hydro Act?)], which activities may include,

(i) incurring liabilities in relation to the regulatory asset

(ii) transferring the regulatory asset to [any special purpose financing entities established under (name of new Fair Hydro Act?)];

(iii) transferring the regulatory asset to third parties;

---

[7] FLS - see s. 51 of the Electricity Act, 1998

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

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(q.4) acting as a recovery agent under the [(name of new Fair Hydro Act?)];

201x. Subsection 53.1 (1) of the Act would be repealed and the following substituted:

Objects of Ontario Power Generation Inc.

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

1. Owning and operating generation facilities.

2. Establishing, operating and supervising the activities of [any special purpose financing entities established under (name of new Fair Hydro Act?)].

3. Providing financial and other support to the IESO in its activities under the [name of new Fair Hydro Act?].

4. Engaging in such financing, borrowing, lending and related activities and transactions to support the IESO with short-term or long-term financing.

5. Providing equity, not exceeding the prescribed amount, to support the financing capacity [any special purpose financing entities established under (name of new Fair Hydro Act?)].

[Note: Still to draft:
-for the new Fair Hydro Bill: *if OPG is the Financial Services Manager, it shall be required to provide an accounting of the amounts it charges the trust for the financing entity to the OEB 60 days in advance of the commencement of the fiscal year for the OPG trust/special purpose vehicle*].

Subsidiaries

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

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

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

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203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

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

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

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

[OEB Note to Draft: This new objective is not necessary – the legislation itself is sufficient to identify what the OEB's role is, and it is not clear what other actions the OEB might be expected to take given the addition of this new objective. And it could have unintended consequences for how we do our other work, especially where our work is stated to be in relation to the promotion of our objectives]

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 71 of the Act would be amended by adding the following subsection

[OEB Note to Draft: Please advise as to the nature of the new licence condition(s) intended to be included here.]

[Note - still need to draft new subs. 70 (2.1) - instructions on pp. 8-9 of Rider instructions rec'd April 14th]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

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SCHEDULE 1
METHOD FOR DETERMINING AMOUNT OF CLEAN ENERGY ADJUSTMENT FOR REFERENCE PERIOD

[NOTE: CEAs WILL BE DETERMINED BASED ON AN ESTIMATE OF COSTS AND REPAYMENTS FOR AN UPCOMING PERIOD, AND BE TRUED UP TO ACTUAL COSTS AND REPYAMENTS IN THE NEXT FOLLOWING PERIOD. THESE MECHANICS CAN BE SEEN IN THE SUMMARY DOCUMENT – "PERIOD FINANCE AMOUNTS" AND SECONDARY DEFINITIONS. THIS FORMULAIC APPROACH IS PREFERRED TO ESTABLISH A SUM CERTAIN OF THE DEBT REPRESENTED BY THE CEAs, ONCE BILLED. IT MAY BE USEFUL TO CREATE A DEFINITION TO ENCOMPASS ALL CEAs FOR A PERIOD, SINCE A CEA IS THE AMOUNT BILLED TO A PARTICULAR CUSTOMER]

1. The amount of the clean energy adjustment for a reference period shall be determined by calculating the sum of the following:

1. The sum of all payments made by owners of an investment asset [during the reference period?] to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

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

[NOTE THAT SHOULD LIMIT CONCEPT OF RESERVE DEPOSITS AS INCURRENCES IF IT WOULD MEAN THAT THE PROCEEDS FROM A TRANSFER WOULD BE REDUCED FROM FACE VALUE WITH THE RESULT THAT IESO WOULD BE TRANSFERRING IAs AT A DISCOUNT]

2. The sum of all funding costs for the reference period, as determined under section 2 to this Schedule.

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

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[Note: Para. 3 is the definition of "redemption amount" from the Blakes doc.]
[Note: What is meant by "make-whole" -- need some assistance in order to translate this term accurately. Do you have any examples of bilingual legislation where this term has been used?]

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

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

[Note: Para. 5 is based on the definition of "additional funding charges".]

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

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

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

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

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

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

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

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

[Note: Para. 2 is the definition of "finance receipts" in the Blakes doc.]

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

Finance reserve balance

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

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

1. Calculate the sum of all amounts deposited [to what account?] during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn from the account during the reference period from deposits previously made [e.g. during a previous reference period?] as described in paragraph 1.

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

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Version 4: OEB COMMENTS

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

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A proposal to create Legislation.

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

[OEB Note to Draft:

(1) We offered a number of comments on the earlier draft regarding the ability of distributors to implement certain parts of this legislation given their billing systems, accounting practices etc. Those remain open questions.

(2) We note that certain elements are now proposed to be moved to the regulations. We understand the rationale for that, but in respect of setting new RPP prices and the GA modifier under Part II in particular it is critical that the regulations reflect our current understanding of the approach to be used by the OEB in performing those tasks.

(3) We understand that RPP prices and the GA modifier will only apply as of the effective date going forward, but as raised the other day does this require a change to ensure that the shortfall from May 1 to the effective date resulting from our May 1 price change (the forecast $1B GA reduction) will be captured as part of the funding shortfall/reg asset?

(4) The OEB will not be able to perform all of its responsibilities under this Act without information from others (for example, the IESO) and without proper third party accounts. We have included a proposed new provision at the end for this purpose.

(5) Absent anything else, the OEB's responsibilities would need to be done through a hearing. We propose a new provision at the end that would enable the OEB to perform these responsibilities with or without a hearing.]

A proposal to create Legislation.

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

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

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Preamble

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

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

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

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

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

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

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

"clean energy adjustment" means the amount determined under section 10xx; ("French")

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

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

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

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

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

(b) such other estimated costs as may be prescribed; ("French")

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

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor, ***[OEB Note to Draft: Are Cornwall and Dubreuil intended to be captured]***

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

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

"fair allocation amount" means the amount determined in under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

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

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

"funding obligation" means,

(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

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

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

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 22xx; ("French")

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

"investment interest" means,

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

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

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

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

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

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

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

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

"reference period" means,

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(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, a redemption, repayment or repurchase of a funding obligation; ("French")

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

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

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

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by ~~the specified consumer, by an agent of the specified consumer or by~~ a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")***[OEB Note to Draft: See NTDs below]***

"transfer" means [TBD]; ("French")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

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

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

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

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

   i. The commodity price of the electricity ~~used~~. ***[OEB Note to Draft: The word "used" is not in ORECA, and we are not sure why it would need to be added now.]***

   ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017. ***[OEB Note to Draft: We understand that the addition of the reference to April 2017 is to address the fact***

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that the OESP charge is coming off the bill on May 1. However, note also that (i) there will be another change to the THESL rates for the residential service class effective May 1 – a rate rider of 8 cents/month is coming off; and (ii) the April 30th bill will still have the full RRRP charge (as will the May 1st bill).]

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. In circumstances where the electricity is provided by the IESO or a ~~other~~ person prescribed as an electricity vendor~~entity~~, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

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Effect of invalidity, etc.[3]

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

Same, funding obligation

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

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

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

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

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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.

Clarification with respect to regulations

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

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rates determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rates are ~~is~~ commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

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1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is invoiced ~~subject to~~ the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) Despite any order under section 78(3.1) of the *Ontario Energy Board Act, 1998* and despite section 79.16 of that Act, ~~T~~the rates for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2). ***[OEB Note to Draft: (1) We assume that the criteria will prescribe the THESL proxy consumer criteria, and will do so in the manner we expect based on our last comments on the draft legislation. (2) We remain concerned that the 25% will "oversmooth", potentially by the amount of the RRRP charge and by the amount of the 8% rebate. Oversmoothing by the amount of the OESP charge may potentially have been addressed by the reference to April 30th in the definition of "invoice amount", but not sure.]***

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 this Act. ***[OEB Note to Draft: (1) This concept has to be a pre-fair adjustment concept. The OEB has already included a portion of the fair adjustment in May prices. And it did so "solely using the method prescribed" in the reg. under 79.16. Unless you somehow recognize that expressly here, we believe you will be oversmoothing. "Without regard to this Act" may not be the right words, but we believe the concept needs to be reflected here. (2) "Without regard to this Act" may also avoid the application of the changes to 25.33 set out later – it isn't clear that they would be applicable at this time, but if there is a chance that they might then it should be clear that they don't apply.]***

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force. ***[OEB Note to Draft: We don't understand the purpose of this section. The method under 79.16 hasn't changed, and it seems to us that this has the potential to exacerbate the problem noted in relation to the above section]***

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Specified consumers (non-RPP), first fair adjustment

6.2xx The monthly global adjustment rate ~~rate for electricity~~ payable in accordance with regulations made pursuant to section 25.33 of the *Electricity Act, 1998* by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is adjusted by an adjustment factor set by the Board to reduce the monthly global adjustment rate ~~the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced~~ by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1). ***[OEB Note to Draft: (1) As worded, this section would have the OEB setting electricity prices for these consumers. We understood that this was not the intention. If that is now the intention, please advise – note that other issues will then have to be addressed. Assuming that you are staying with the "GA modifier" approach as we understand it, we have revised along those lines. Note that the IESO is going to have to calculate the fair adjustment-adjusted GA for these consumers based on the OEB's modifier – are you going to amend 429/04 accordingly? And will the IESO have the systems in place to settle with LDCs on that basis? (2) The reference to the GA reg has been added because some customers pay GA on the basis of an estimated rate and others on the basis of actuals. That may or may not completely address the issue, but we believe it helps.]***

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and the adjustment factor mentioned in section 6.2xx no later than seven business days after the day this section receives Royal Assent. ***[OEB Note to Draft: The OEB will not be able to meet this timeline unless the methodology to be used to set the prices and the GA modifier is what we understand them to be today.]***

Implementation of rates

6.4xx Each electricity vendor, ~~[specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer]~~ shall, no later than seven business days after the day on which the Board determines the rates and adjustment factor under section 6.3xx, adapt ~~is billing practices and~~ its invoices to reflect the new rates and the application of the adjustment factor. ***[OEB Note to Draft: (1) We suggest that this section should be deleted. First, it is not necessary – the responsibility of the LDC is to bill the rates then in effect, not to have its systems adapted by a given date. Second, what if the prices don't take effect on the 7th business day? Are LDCs going to be billing the new rates in advance of the date on which they take effect? (2) We do not know whether distributors will be able to do this – 7 business days is enough for a straight RPP price change, but unknown for the GA modifier. (3) We don't understand the purpose of referring to billing practices***

here – please advise as to what about their billing practices is going to change. (4) If you delete this section, other sections below will need to be modified accordingly.]

Effective date

[OEB Note to Draft: (1) This section doesn't work if Royal Assent happens on a date that is later than 7 business days before the end of June. If Royal Assent is later, there may be no new rates in place on July 1. We have therefore changed "earlier of" to "later of". (2) We assume that month means calendar month notwithstanding the deletion of the word "calendar" (but would appreciate confirmation) - RPP prices could come into effect on a day other than the first day of the month, but it is not clear whether the same can be said for the modified GA rates. This would need to be discussed with the IESO.]

6.5xx The rates and adjustment factor determined under section 6.3xx are effective on the later ~~earlier~~ of the following days:

1. The first day of the month immediately following the last day of the seven business- day period referred to in section 6.4xx.
2. July 1, 2017.

Transition

[OEB Note to Draft: Is item 1 circular? . Compliance with section 6.4 requires adapting bills within 7 BD of the date on which the Board sets the rate/adjustment factor. So why would there being less than 7 BD between that date and the effective date of the rates be relevant to compliance under 6.4?]

6.6xx (1) This section applies if an electricity vendor ~~, specified consumer or unit sub-meter provider~~ is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven business days between the day of the Board's determination of rates and the adjustment factor under section 6.3xx and the effective date.
2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor ~~, specified consumer or unit sub-meter provider~~ shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and *[OEB Note to Draft: It is not known whether LDCs can*

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implement this by August 1, particularly for the GA modifier. Note that you left 6 months for ORECA.]

(b) ensure that any specified consumer ~~or sub-meter customer~~ invoiced at ~~a~~ rate ~~rate~~ higher than the applicable rates determined by the Board under section 6.3 or invoiced a monthly global adjustment rate that does not reflect the application of the adjustment factor determined by the Board under section 6.3 receives the difference between the rates or global adjustment amount shown on their invoice for electricity consumed on and after the effective date ~~and the applicable rate~~ and the rates or monthly global adjustment as determined under section 6.3 as a lump sum credit on the first invoice received ~~issued~~ after the invoices have been adapted or by such other means as may be prescribed by the regulations. ***[OEB Note to Draft: LDCs may still struggle with this – worth verifying feasibility with the LDCs]***

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified RPP consumers under section 79.16 of the *Ontario Energy Board Act, 1998* ~~specified consumers and sub-meter customers~~ during the period beginning on May 1, 2018 and ending on April 30, 2022. ***[OEB Note to Draft: Either the OEB is setting RPP prices under this section, in which case it should be worded as such, or the OEB is setting RPP prices under section 79.16. This provision as drafted did not appear to us to achieve either purpose. We have proposed to clarify that the regulations affect the setting of prices under section 79.16 because the concept of a "specified RPP consumer" is defined by reference to section 79.16 and therefore seems to us to pre-suppose that we are setting RPP prices under 79.16 for this period.]***

7.1xx The monthly global adjustment rate payable in accordance with regulations made pursuant to section 25.33 of the *Electricity Act, 1998* by a specified consumer who is not a specified RPP consumer for the period beginning on May 1, 2018 and ending on April 30, 2022 shall be adjusted by an adjustment factor determined by the Board in accordance with the regulations.

~~Sub-meter customers~~

~~7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.~~ ***[OEB Note to Draft: (1) We do not understand why anyone other than a consumer that is sub-metered by a licensed USMP needs to be captured by this legislation. If a landlord/building owner passes through the cost of electricity to***

tenants in a building that is not sub-metered, it would be included in rent or billed on a basis like square footage or number of units. These kinds of consumers do not pay a regulated rate today, they pay the costs passed through by the landlord/building owner. (2) In terms of consumers served by a USMP, we believe that their obligation should be to pass through the fair adjustment. We propose something for that below.]

7.2xx (1) This section applies if,

(a) a specified consumer provides to a sub-metered consumer electricity in respect of which the specified consumer is entitled to a fair adjustment under this Part; and
(b) an invoice for the electricity is issued to the sub-metered consumer by a unit sub-meter provider providing sub-metering for specified consumer.

(2) Every unit sub-meter provider providing unit sub-metering for the specified consumer shall, in accordance with such requirements as may be prescribed, ensure that each sub-metered consumer referred to in subsection (1)(a) receives its share of the benefit of any fair adjustment that is provided to the specified consumer under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

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

Same

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

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

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

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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.~~ ***[OEB Note to Draft: We do not understand the need for this section. If the overall framework needs for USMPs to recover these amounts, then that should presumably be included. Something that simply allows them to recover the CEA doesn't seem to us to work in the context of their acting as agent for the unlicensed distributor and where the total CEA payable for the building should presumably be on the bulk meter bill. If you are retaining some residual reference to consumers that are in buildings that are not sub-metered, then at a minimum we believe that USMPs should be backed out of this.]***

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:

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

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

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

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

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

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed. ***[OEB Note to Draft: The regulations will need to provide a timeline within which this information has to be provided if there are timelines for the setting of rates applicable to the OEB under (5)]***

Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment as notified to it under subsection (4) in respect of the reference period. ***[OEB Note to Draft: (1) Do you need to contemplate the possibility that different CEA rates may be required for different specified consumers (i.e., consumers on RPP vs. others?) (2) The OEB will likely need consumption information from the IESO in order to do this. See our proposed new section at the end.]***

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).

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2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

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

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations. ***[OEB Note to Draft: It remains unclear to us whether this is a separate invoice or the normal utility bill. Requiring LDCs to issue separate bills will increase their billing costs and create customer confusion.]***

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. ***[OEB Note to Draft: Having LDCs use a collection process for the CEA that is different from a collection process for the rest of the bill will be an issue for them (assuming that the CEA is invoiced on the normal utility bill). The OEB has requirements that LDCs have to follow in relation to invoicing and that apply to the rest of the bill. Depending on what collection means, there could be a conflict.]***

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on

a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period. *[OEB Note to Draft: See our concerns on our earlier draft about whether LDCs can track this way]*

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

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

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

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

Same

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

1. Providing information, in accordance with the regulations, to the Board in respect of ~~funding obligations and~~ the Board's determination of the clean energy adjustment rate under ~~in accordance with~~ subsection 10(5)~~xx~~. *[OEB Note to Draft: Our proposed new provision at the end would eliminate the need for this item. In addition, why does the OEB need information regarding "funding obligations" and the determination of the CEA itself,*

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which we understand to be a global dollar amount that we are expected to take from the FSM without question to derive the CEA rate?]

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. *[OEB Note to Draft: We still do not know what these costs are; what the purpose of the review is; what process we are expected to use for this review and whether an order of some kind will be required; and whether the review has any consequence for anything else that we need to think about in relation to this responsibility. We understand that some of this may be suitable for regulations, but we are not convinced that this can override the OEB Act provisions relating to hearings. This is addressed in our proposed new provision at the end]*

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.

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2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

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

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Publication

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

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

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

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

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

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

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

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

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

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(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

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

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

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

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1). ***[OEB Note to Draft: There is no 17(5).]***

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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. *[OEB Note to Draft: We remain of the view that the OEB's assets should be immune from recourse whether or not the OEB has responsibilities under this Act.]*

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

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2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) Subject to any finding of [manifest error], a recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

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

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account. ***[OEB Note to Draft: We understand that some details may be suitable for regulations, but we are not convinced that this can override the OEB Act provisions relating to hearings. This is addressed in our proposed new provision at the end. If this is going to be implemented through RPP prices, O. Reg. 95/05 will presumably need to be amended accordingly at some point.]***

Same, limitations

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

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

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Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

Same

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

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

Same

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

Deemed perfection, etc.

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

Priority of transfer

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

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) The first transfer of the regulatory asset or a portion of it creates the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest.

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Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

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

No set off, etc.

(2) The investment asset shall not be set off,

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

(b) in connection with any default of a person mentioned in clause (a); or

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

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act. ***[OEB Note to Draft: Presumably, this means that the rights and interests will be through the electricity vendors acting as their agents? If so, what does that mean for LDCs?]***

Collective action required

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

Transfer of investment interest

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

Validity of transfer

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

Same

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

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Deemed perfection, etc.

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

Priority of transfer, assignment, etc.

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

Investment interest owner may grant security interest

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

Validity

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

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, 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.

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

Sequestration

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

Same

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

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Choice of law

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

Conflict

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

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or the Board, or against a member of the Board, ~~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. ***[OEB Draft Note: Under the OEB Act, Board members are specifically noted as not being employees of the OEB. It is imperative that they also be covered by this provision.]***

Jackie
Jennifer

Same

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

References in marketing materials and offering documents

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

Non-application, Financial Administration Act, s. 28[5]

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

[5] FLS - see s. 51 of the Electricity Act, 1998

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37.1xx. Each electricity vendor, the IESO, the Financial Services Manager and such other person as may be prescribed 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.

37.2xx Despite anything to the contrary in the *Ontario Energy Board Act, 1998*, the Board may exercise any of its responsibilities under this Act with or without a hearing.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.
[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

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x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

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

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

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

[OEB Note to Draft: In the interests of time, we have not reviewed the section below in detail. However, without a better understanding, it raises a question about the continued viability of section 79.16(3) of the OEB Act, which we address below.]

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

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

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(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

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

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

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

4. A consumer who is,

   i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017*, or

   ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998*].

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

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

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

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

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engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

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

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

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

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

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017.*

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

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

~~6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017.*~~ ***[OEB Note to Draft: We remain of the view that this is ill-advised. On the earlier draft we noted that, among other things, this could affect the setting of payment amounts for OPG by requiring us to include the effect, if any, of the Fair Hydro Plan on OPG's financing costs in determining a reasonable cost of capital, which represents a major cost component of the price setting and could adversely affect all ratepayers. If this were to be an objective, it will by definition have to be considered whenever we exercise any part of our mandate, and we understand that this is not the intention. In the context of distribution and transmission rates, this could potentially affect utility financial viability or reliability of service if it comes into play in setting their rates.]***

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 *Ontario Energy Board Act, 1998* 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.Section 79.16 of the *Ontario Energy Board Act, 1998* is amended by deleting subsection (3). ***[OEB Note to Draft: We are concerned that, with the different changes set out in this Act (including notably the changes to 25.33 above), the impact of which is not yet known, the obligation to clear variance accounts will not be feasible in the way that it is today, and could cause the OEB to act in violation of this subsection. If it is relevant in the future, it can be added to O. Reg. 95/05].***

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Version 3 OEB COMMENTS

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

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A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

business issues - effective date of price decrease (May 1, 2017)
- time for OEB implementation
- when electricity vendors must adopt billing systems (Aug 1)
- feasibility of LDCs providing paid payments

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.*)]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom,[2] and conservation and demand management.

The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and future generations of consumers.

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

---

[1] Note: please see the preamble of the *Green Energy Act, 2009*.
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".
[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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OEB Comments on Sections 6xx(1) and (2) of the Draft Legislation

We have a number of questions/concerns with these subsections, which we understand are intended to set out how electricity (commodity) prices are determined for "specified consumers" for May 1 2017 to April 30, 2018 in lieu of any other statutory provision (notably section 79.16 of the OEB Act as far as RPP customers are concerned). The comments below expand on comments provided on an earlier draft and in writing or verbally to Ministry counsel and Ministry policy staff.

1. *Based on recent discussions with Ministry policy staff, this draft does not reflect our understanding of the policy intention. We understand that the policy intent is for consumers that are on the RPP to get the benefit of the Fair Hydro Plan through RPP prices, and for others to get the benefit through another settlement mechanism (like a GA modifier). By contrast, section 6xx forces all OREC-eligible consumers onto a statutory electricity pricing regime (referred to here as "FHP pricing") from which there is no opportunity to opt out, at least until May 2022. As such, the following customers would be shifted to FHP pricing: (A) RPP-eligible customers that have opted out of the RPP in favour of market pricing; (B) RPP-eligible customers that are market participants; (C) RPP-eligible customers that have a retail contract; and (D) customers that are not eligible for the RPP but are eligible for OREC, regardless of what their current electricity pricing regime is.*

   With respect to (B) (and possibly (D)), we understand from Ministry counsel that there is only 1 customer that is a market participant. We leave it to the IESO to speak to how it would settle this customer on FHP prices.

   With respect to (C):

   a. *We offer no opinion on the implications of over-riding retail contracts that are currently in effect.*

   b. *If RPP-eligible consumers with retail contracts are moved to FHP pricing, for so long as the contracts remain in effect (or a new one is entered into) the distributor must settle with retailers for the contract price, such that any difference between the FHP price and the contract price will be for the distributor's account. How will this be accounted for? Note also that there is nothing that prevents any of these customers from entering into new (or renewing existing) contracts during the FHP term. It is not clear whether the net impact will be to decrease or increase retailer market share.*

With respect to (A) and (D), has consideration been given to the financial impact for that customer of moving them from their current pricing regime to FHP pricing?

With respect to all of (A) to (D), is the intention to amend O. Reg. 429/04 such that they would no longer also pay the GA on top of their commodity price?

2. *It remains unclear to us how this section can co-exist with section 79.16 of the OEB Act, at least as far as RPP-eligible customers are concerned, during the fair adjustment period, absent something that makes it clear which section prevails during that period.*

3. *We do not believe that it is advisable to make FHP pricing "retroactive" to May 1, even on a prospective basis. This has the potential to increase the amount of GA smoothing for the May 2017 to April 2018 period by $200M. The impact of this, plus interest, will carry forward over to the April 2018 to April 2022 period since the FHP price for 2017/18 serves as the baseline for the remainder of the period. We therefore do not support making the next prices retroactive to May 1. Concerns about retroactivity are exacerbated to the extent that these prices are paid by consumers that today are not paying RPP prices. Nevertheless, we have included below some language that could be used to address this (i.e., to set the rates such that they include a further reduction to account for "undersmoothing" since May 1), but it must necessarily be at a higher or more conceptual level as it is not feasible to articulate in a meaningful way how the adjustment would be done. An alternative would be to state that this adjustment will be done in accordance with the regulations, which would allow additional time to consider that.*

Power said July 1 - this was intended to assist the OEB

4. *We assume that it is not the intention that the new prices be one singular price/kWh for all consumers, which appeared to us to be the implication from the draft. We do not believe that TOU and tiered pricing need to be eliminated for the fair adjustment period, and would not be supportive of that approach.*

(Dan)

5. *We note that the definition of "invoice amount" does not refer to the 8% ORECA rebate. As such, we understand that the 25% referred to here can work here without "double-smoothing" of that 8%, but please confirm. If the number remains at 25%, however, it will still "over smooth" by the amount of the RRRP charge that still exists today.*

6. *We have tried to simplify the draft and provide greater clarity. We provide a narrative description here:*

a. *The calculation needs to be a "point in time" calculation. All references to averages have been removed.*
b. *The "baseline rate" is RPP TOU prices as they would have been on May 1. Because the OEB has already set May 1 prices with an adjustment for the proposed Fair Hydro Plan, the "baseline rate" needs to expressly state that this is RPP TOU prices as they would have been on May 1 absent that adjustment.*
c. *The "baseline rate" is then used to calculate the "baseline invoice amount" to which the 25% reduction is then applied under subsection (2).*
d. *In subsection (2), the rates set by the OEB are expressed as being the rates that would be required to reduce the proxy consumer's "baseline invoice amount" by 25%.*

6xx. (1) In this section,

"~~average~~ baseline invoice amount" means the ~~average~~ monthly invoice amount that would be payable by a representative consumer under the ~~average~~ baseline rate; ("French")

"~~average~~ baseline rate" means the ~~average~~ rate that would be payable a representative consumer effective May 1, 2017 ~~by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act,~~ as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of ~~that Act~~ the *Ontario Energy Board Act, 1998* and without any adjustment in whole or in part that would otherwise be required under subsection (2); ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French") ***[Note to draft: The issue of the treatment of "sub-metered customers" is addressed in our comments on the draft legislation provided separately]***

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the rates for electricity payable by a specified consumer for the period beginning on the effective date referred to in subsection (4)(b) ~~May 1, 2017~~ and ending on April 30, 2018 ~~is~~are the ~~average~~ rates determined by the Board such that ~~that would be payable by a representative consumer in order for the representative consumer to receive a~~ the monthly invoice amount for a representative consumer is ~~that is~~ 25 per cent less than the ~~average~~ baseline invoice amount, adjusted to account for the total difference between the baseline monthly invoice amount and the monthly invoice amount that is 25 percent less than the baseline invoice amount for each invoice issued during the period between May 1, 2017 and the effective date referred to in subsection (4)(b).

[Note to draft: Our comments on the remainder of section 6xx and section 7xx are provided separately on the draft legislation]

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Schedule 1 Estimated finance amount

PART I
GENERAL

[OEB Note to Draft: We have generally focussed our comments on provisions of the draft that relate directly to the OEB. Consistent with that approach, we are not repeating high level comments that we have offered in the past about different elements of the approach proposed for implementing the Fair Hydro Plan]

Interpretation
Definitions

1xx. (1) In this Act,

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

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs; ("French")

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

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

(i) renewable energy generation or capacity,

(ii) conservation and demand management, including storage,

(iii) energy efficiency,

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

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

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

(b) such other estimated costs as may be prescribed; ("French")

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

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[4] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

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

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French")

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

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner under section x; ("French")

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

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section 20xx for the reference period; ("French")

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

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"investment asset" means the investment asset created as described in section 22xx; ("French")

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

"investment interest" means an ownership interest in the investment asset, which entitles an investment asset owner to the rights and benefits specified in the agreement under which the ownership interest is transferred;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French") ***[OEB Note to Draft: As noted in our earlier comments, is it clear that this definition is suitable for section 20xx? We suspect that it may not be (the expanded description below does not include the 8% rebate or the DRC for consumers that are still paying that). We understand that you may be contemplating adjusting the expanded definition of "invoice amount" in (2.1) and (2.2) to make the reference to 25% in section 6 work in terms of the numbers. That may also be relevant to consideration of whether the term is suited to section 20xx.]***

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French") ***[OEB Note to Draft: What about Cornwall and Dureau? They are licensed but not rate-regulated. Are they intended to be covered?]***

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

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

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

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French") ***[OEB Note to Draft: There are a few residual references to the "Fair Allocation***

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Plan", which we assume are hold-overs from earlier drafts as the term is no longer defined or described in this draft.]

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

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

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity, for whose account an invoice for electricity is issued~~, receives an invoice in respect of the account~~ and meets the criteria set out in subsection (2); or ***[OEB Note to Draft: There are instances where the account holder may not actually receive the invoice – rather, the invoice is sent to a third party for payment. We do not know the reason for adding the reference to the receipt of an invoice, which has no counterpart in the current definition of the classes eligible for the RPP under section 79.16 of the OEB Act or O. Reg. 95/05, nor in the current definition of the classes eligible for OREC.]***

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

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

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

Specified consumers

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

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

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

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3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts: ***[OEB Note to Draft: A reference to anyone other than a licensed distributor in this section is presumably relevant only in relation to the use of the term "invoice amount" in section 20xx; otherwise, the concept is only used for the THESL proxy customer for whom a reference to the IESO or a licensed retailer is not necessary. Note that the OREC regulation has separate rules for defining the base invoice amount for Cornwall and Dubreuil. We also assume that there is no intention to capture remote unlicensed distributors whose customers may be eligible for OREC.]***

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

   i. The commodity price of the electricity used during the invoice period.

   ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

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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); ***[OEB Note to Draft: We do not understand why it would be necessary to include "by the consumer" here. Please advise.]***

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

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

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider. ***[OEB Note to Draft: To expand on a comment made on an earlier draft, rate riders are generally of two types: those which dispose of variances or deferred amounts related to distribution service, and those which relate to variances arising from retail settlement (which arise largely due to temporary differences between revenues from customers and payments to the IESO). Toronto Hydro has riders of both types for its residential service class; some are credits (reduce current costs for customers) and some are debits (increase costs to customers). All riders related to distribution service recover in some manner a distributor's cost of providing service to customers, and some eventually become part of the distribution revenue requirement when base rates are adjusted. For example, Toronto Hydro's current rates***

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include 2 rate riders that recover foregone distribution revenue related to 2015 and 2016 until December 2019. These riders should not be excluded from the definition of "invoice amount" because of their relationship to a distributor's cost of service. We agree, however, that retail settlement variances, which can be volatile year to year and do not relate to underlying costs of service provision, may more appropriately be excluded from the definition of "invoice amount", as there is less of a policy rationale for recovering them on an inter-generational basis.]

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within ~~a~~ the residential service ~~residential rate~~ classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*; ***[OEB Note to Draft: As noted in comments on an earlier draft, THESL has two residential classes, and it is necessary to be precise here. We believe the appropriate class for present purposes is the one described as "residential service".]***

(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 or a net metered basis; and

(e) uses ~~, on average,~~ 750 kilowatt hours of electricity each month.

Transfer

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

Effect of invalidity, etc.[5]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature

[5] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

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

Purpose

3xx. (1) The purposes of this Act are,[6]

(a) to ensure that clean energy costs are fairly allocated among specified consumers over time and that the process by which the Province raises money to fund the costs reflects the fair allocation; and

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

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

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

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

[6] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding financial commitments, financial arrangements, indemnities or similar transactions.

PART II
FAIR ADJUSTMENT

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

[OEB Note to Draft: Given the number of comments on the price-setting methodology in subsections (1) and (2), we have addressed those in a separate document.]

~~**6xx.** (1) In this section,~~

~~"average baseline invoice amount" means the average monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")~~

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

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

~~Rate determination~~

~~(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive a monthly invoice amount that is 25 per cent less than the average baseline invoice amount.~~

Sub-meter customers

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(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2). ***[OEB Note to Draft: In some cases, the customer to whom the rate is "applied" as a result of this section will not see the rates (i.e., TOU or tiered prices) on the invoice – in other words, the fact that they are "paying" this rate will not be evident on the invoice. However, it should be the case that the cost for commodity is generally equivalent to what they would have paid should they have been billed on that basis. It is not clear whether this practical reality affects other provisions below that relate to "rates payable by" these consumers. It is also not clear why this section is necessary, as opposed to relying on pass-through requirements that would otherwise apply (potentially with licence conditions that require USMPs to pass this through as was done for ORECA and OCEB if you think necessary).]***

Determining rate

[OEB Note to Draft: We do not believe that this section is necessary, and would prefer that it be deleted. The OEB has been clear that we will reset prices if and when the legislation is passed. Second, if the intention is to make the "entitlement" to the bill reduction retroactive, no consumer will be harmed by the timeline. However, if this section is to be included:

1. ***7 business days is not feasible, and we would prefer a qualitative time (i.e., "as soon as practicable") although we have included 15 business days as an alternative. First, the nature of the calculation required will not be certain until the legislation is passed, and we as yet have no certainty as to the class to be covered and cannot necessarily anticipate how much time and additional data will be required. Second, leaving aside the time required for the calculation, time is also required for briefings, the development of communications and the like. It is necessary to make allowance for some lead time for the provision of the new rates to LDCs. If there is to be some separate calculation done for consumers that are not in the RPP (i.e., the GA modifier concept), that will take more time.***
2. ***Depending on timing of the OEB's determination, if that were to be at the end of a month the rate could not be implemented as of the first of the following month. For a change in RPP prices, LDCs are generally provided with at least 10 days' notice. If the LDCs need to start billing a new set of customers with these rates (i.e., specified customers that are not currently on the RPP, including RPP-eligible consumers that have retail contracts), billing system program changes would likely be required which would lead to a much longer lead time for them to adapt their invoices]***

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

(a) determined by the Board within ~~seven~~fifteen business days after this section receives Royal Assent; and

(b) effective as of the first day of first ~~the~~ calendar month immediately following the determination, if that day is more than 7 business days from the date of the determination, or on the first day of the second calendar month in any other case.

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017, ***[OEB Note to Draft: May 1 2017 does not appear to be the right date here, unless both the legislation and the new rates are in place for electricity consumed on or after May 1, which appears unlikely]***

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and ***[OEB Note to Draft: As noted in an earlier comment, August 1, 2017 may not be sufficient lead time if LDCs need to make billing system program changes to accommodate new customers being on these rates. We note that LDCs were given 6 months to adapt their invoices for ORECA].***

(b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at ~~a~~ rates higher than the applicable rates receives the difference between the rates shown on their invoice and the applicable rates as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

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

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022. ***[OEB Note to Draft: What happens if the LGIC does NOT make regulations under this section? This does not appear to be written in such a way that the regulations could enable the OEB to set the rates, only that the rates would be prescribed. We think it would be appropriate for the OEB to be setting these rates for the fair adjustment period, subject to the regulations.]***

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PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

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

Same

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

(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation applicable at the time when the payment is due; and

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

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

Same

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

Irrevocability of clean energy adjustment

9xx. (1) The amount of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed. ***[OEB Note to Draft: Do you need something clearer and stronger to address the issue of by-pass, as in the case of the DRC.]***

Exception

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

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FSM.

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows: ***[OEB Draft Note: Who will be doing this calculation?]***

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1.

True up amount

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

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

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

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

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

IESO to issue remittance notice to electricity vendors

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

IESO to collect

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

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Collection account

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

1. Amounts described in subsection 12 (4).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

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

Collection of outstanding amounts, regulatory asset

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

Electricity vendor to invoice specified consumers

12xx. (1) The electricity vendor shall issue an invoice to each specified consumer for the consumer's amount of the clean energy adjustment in accordance with the regulations. ***[OEB Note to Draft: We assume that there is no intention for the CEA to be billed on an invoice separate from the invoice with electricity charges.]***

Electricity vendor to collect

(2) Each electricity vendor other than the IESO shall, as an agent of the IESO and the investment asset owners, collect the clean energy adjustment from specified consumers in accordance with requirements pertaining to billing and settlement in a condition of a licence or order issued by Board under the *Ontario Energy Board Act, 1998*. ~~[in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998*]~~.. ***[OEB Draft Note: The reference to the IESO's settlement process does not work for LDCs (including those that are doing distributor-consolidated billing for contracted customers) and we have changed the section accordingly. If you require a separate provision for how the IESO would***

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directly collect the CEA from any specified consumer that they settle with, that should be the subject of a separate subsection.]

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period. ***[OEB Note to Draft: This proposed section requires a distributor to track payments on a customer specific basis for the FHP allocation separately from its payments in relation to all other electricity charges. This is likely to impose significant cost and technical issues for a distributor as it does not reflect how they account for payments today. It would be wise to investigate the feasibility of this proposal with one or more distributors.***

Under the existing billing/settlements system a distributor bills customers for all amounts owing, and we believe that the market rules (compliance with which is a licence condition) require the LDC to pay 100% of the IESO's invoice (representing commodity, transmission and regulatory charges) - regardless of what is received from the customers. All payments by customers are recorded in the distributor's accounts, they are not required to segregate/allocate by each type of expense. The only tracking by customer is against the total bill owing through the customer billing system so that any shortfall is included on the next invoice. Any underpayment is a matter for the distributor to manage through its collection processes. Therefore distributors' accounting systems have no reason to be set up to allocate payments by expense type on a customer specific basis.]

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

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

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

[OEB Note to Draft: This section (4) does not appear to take into account how LDCs do their accounting. Although they can record the cost they have been charged and will record revenue to pay it, the amounts won't be tied to a particular payment, or partial payment.]

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (~~5~~4) to the IESO for the benefit of the investment asset owners or secured parties in accordance with the regulations.

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe. ***[OEB Note to Draft: We would appreciate information on what kinds of other steps might be prescribed here, given that LDCs already have responsibilities in terms of paying amounts received and mechanisms used to collect.]***

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.]

Termination

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

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

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Replacement

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

Duties and powers

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

Same

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

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX. ***[OEB Note to Draft: Given the limited nature of the OEB's role under this draft, it is not clear why the OEB would require information related to the determination of the CEA or in relation to funding obligations. Please advise as to the intended purpose of this information being provided to the OEB – it would help if that could be identified relative to the relevant provision of the legislation.]***

2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations. ***[OEB Note to Draft:***

1. It remains unclear to us whether this is different from the approval referred to in the Note under section 203x. If there are to be two different OEB processes for two different purposes, please advise as to expectations for each one, both in terms of scope and intended process.

2. We assume that the regulations would address the process by which the OEB would review these costs, and it is not clear whether an order of the OEB would is contemplated. Note however that, under the OEB Act, the OEB must make a determination in a proceeding through an order (s. 19(2)), and with limited exceptions an order cannot be issued without a hearing (s. 21(4)). If the intention is that this review be done without a hearing, have you considered whether a regulation is sufficient for that purpose given the provisions of the OEB Act?

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~~1.~~3. ***The term "administrative cost" needs be defined, either in this Act or in a regulation assuming that there will be a regulation-making power that allows for terms to be defined. The Electricity Act defines what a "fee" is in the context of the OEB's review of IESO fees, and similar certainty is required in relation to what "administrative costs" are. Even if you are proposing to defer a definition to the regulations, we would want to understand now how you are proposing to define the term.]***

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate the fair allocation amount for the purposes of,

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

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

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

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

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

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period.

Amendments to the fair allocation calculation

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

Submission of fair allocation to Minister

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

Effective date

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

Publication

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

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FINANCING PLAN

Financial Services Manager to prepare Financing Plan

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

Principles

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

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

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

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

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

Amendments to approved plan

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

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

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(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period].

Confidentiality of plan

(4) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

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

Same

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

Financing entities

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

Prohibition

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

Effect of amendment to Fair Allocation Plan

(4) No funding obligation incurred and no transfer made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

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PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.
[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

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

1. Create a variance account for the purposes of this Act.

2. Record the IESO funding shortfall in the variance account from time to time.

3. Recover the IESO funding shortfall in accordance with section X and the regulations.

No hearing

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

No appeals, etc.

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

IESO funding shortfall

20xx. (1) The IESO shall determine the IESO funding shortfall for each month in the following manner: ***[OEB Note to Draft: See the Note to Draft accompanying the definition of the term "invoice amount"]***

1. Calculate the sum of all invoice amounts issued to specified consumers for the month if Part II of this Act did not apply.

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity used by specified consumers, the IESO shall record an

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adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers.

Recording of IESO funding shortfall

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

Recording determinative

(4) A recording of the IESO funding shortfall in the variance account is determinative of the amount of IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the IESO funding shortfall.

Same, restrictions

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

1. The IESO shall not be entitled to collect the IESO funding shortfall from specified consumers before May 1, 2022.

2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation]. ***[OEB Note to Draft:***

   1. We understand that this recovery mechanism applies when there is a "funding shortfall" remaining with the IESO as a result of the inability to transfer amounts to OPG, but please confirm.

   ~~***1.***~~***2. We have not been involved in any discussions relating to the OEB's role in this regard, and as such we don't know what is intended. This section needs to be less vague, and should contemplate the process that the OEB is expected to use. In that regard, we propose that the OEB should be able to do this with or without a hearing given that the magnitude of any such funding shortfall is not known at this time.***

   ~~***2.***~~***3. Other questions include: (a) is item (2) intended to allow the recovery of the funding shortfall from consumers other than specified consumers before May 1, 2022? (b) what "process" is contemplated to be used for recovery of the funding shortfall from specified consumers after May 1, 2022? (c) How does this relate to the recovery referred to in item 3 of section 19xx(1), and how does this "process" relate to the accounting***

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order referred to in that section? (d) Is the OEB intended to have a role in figuring out or allowing the IESO to recover carrying costs related to holding the shortfall until after May 1, 2022?]

3. Such other restrictions as may be prescribed.

Transfer of regulatory asset

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

Same

(2) Upon receipt of any payment in consideration for the transfer,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) unless otherwise provided for in this Act, the IESO shall have no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

Same

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

Validity of transfer

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

Same

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

Deemed perfection, etc.

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

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Priority of transfer

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

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

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

Investment asset established

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

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

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7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

No set off, etc.

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

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

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

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

Exercise of rights

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

Collective action required

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

Transfer of investment interest

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

Validity of transfer

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

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Same

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

Deemed perfection, etc.

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

Priority of transfer, assignment, etc.

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

Investment asset owner may grant security interest

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

Validity

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

Perfection and priority of security interests

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

Proceeds

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

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Perfection

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

Same

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

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

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

Not Crown agent

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

Sequestration

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

Same

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

Same

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

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Choice of law

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

Conflict

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

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan. ***[OEB Note to Draft: This is very broad, and for that reason could have unintended consequences, particularly in relation to as-yet unknown obligations under the Financing Plan.]***

Immunity

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

Same

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

References in marketing materials and offering documents

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

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Non-application, Financial Administration Act, s. 28[7]

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

Regulations

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

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

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

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

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

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* 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;

[7] Note - see s. 51 of the Electricity Act, 1998

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(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

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

Same, *Ontario Fair Hydro Plan Act, 2017*

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

1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017.*

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Subsidiaries, etc.

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

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

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

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

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

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.] [OEB Note to Draft: See the Note to Draft accompanying section 14xx(3)]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

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

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.] ***[OEB Note to Draft: We reiterate that this is not necessary and could have unintended consequences for the OEB's work. Among other things, this could affect the setting of payment amounts for OPG by requiring us to include the effect, if any, of the Fair Hydro Plan on OPG's financing costs in determining a reasonable cost of capital, which represents a major cost component of the price setting and could adversely affect all ratepayers.]***

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205x. Section 70 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1)] ***[OEB Note to Draft: We reiterate our request for information as to what new licence conditions are intended here so that we can have as meaningful an opportunity as possible to consider the proposal. Anything included in a licence becomes an "enforceable provision" for the OEB. The OEB has a regulatory regime in place and processes to address LDC and other regulated entity non-compliance. However, enforcement action is a matter of discretion for the OEB, and we reiterate that third parties (like creditors) do not have a right to cause the OEB to take enforcement action. Our approach to commenting on this draft of the legislation reflects our assumption that we will not be responsible for enforcing compliance with much of what is in this Act.]***

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

SCHEDULE 1
ESTIMATED FINANCE AMOUNT

[OEB Note to Draft: On the assumption that the OEB has no role in the calculation of the CEA, we offer no comments on this schedule. We would ask whether the "administrative costs" referred to in section 14xx(3) and/or the "fees" referred to in the note under section 203x are intended to be recovered through the CEA].

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

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

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

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

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

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

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

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

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

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OEB Comments on Sections 6xx(1) and (2) of the Draft Legislation

We have a number of questions/concerns with these subsections, which we understand are intended to set out how electricity (commodity) prices are determined for "specified consumers" for May 1 2017 to April 30, 2018 in lieu of any other statutory provision (notably section 79.16 of the OEB Act as far as RPP customers are concerned). The comments below expand on comments provided on an earlier draft and in writing or verbally to Ministry counsel and Ministry policy staff.

1. *Based on recent discussions with Ministry policy staff, this draft does not reflect our understanding of the policy intention. We understand that the policy intent is for consumers that are on the RPP to get the benefit of the Fair Hydro Plan through RPP prices, and for others to get the benefit through another settlement mechanism (like a GA modifier). By contrast, section 6xx forces all OREC-eligible consumers onto a statutory electricity pricing regime (referred to here as "FHP pricing") from which there is no opportunity to opt out, at least until May 2022. As such, the following customers would be shifted to FHP pricing: (A) RPP-eligible customers that have opted out of the RPP in favour of market pricing; (B) RPP-eligible customers that are market participants; (C) RPP-eligible customers that have a retail contract; and (D) customers that are not eligible for the RPP but are eligible for OREC, regardless of what their current electricity pricing regime is.*

   With respect to (B) (and possibly (D)), we understand from Ministry counsel that there is only 1 customer that is a market participant. We leave it to the IESO to speak to how it would settle this customer on FHP prices.

   With respect to (C):

   a. *We offer no opinion on the implications of over-riding retail contracts that are currently in effect.*

   b. *If RPP-eligible consumers with retail contracts are moved to FHP pricing, for so long as the contracts remain in effect (or a new one is entered into) the distributor must settle with retailers for the contract price, such that any difference between the FHP price and the contract price will be for the distributor's account. How will this be accounted for? Note also that there is nothing that prevents any of these customers from entering into new (or renewing existing) contracts during the FHP term. It is not clear whether the net impact will be to decrease or increase retailer market share.*

With respect to (A) and (D), has consideration been given to the financial impact for that customer of moving them from their current pricing regime to FHP pricing?

With respect to all of (A) to (D), is the intention to amend O. Reg. 429/04 such that they would no longer also pay the GA on top of their commodity price?

2. *It remains unclear to us how this section can co-exist with section 79.16 of the OEB Act, at least as far as RPP-eligible customers are concerned, during the fair adjustment period, absent something that makes it clear which section prevails during that period.*

3. *We do not believe that it is advisable to make FHP pricing "retroactive" to May 1, even on a prospective basis. This has the potential to increase the amount of GA smoothing for the May 2017 to April 2018 period by $200M. The impact of this, plus interest, will carry forward over to the April 2018 to April 2022 period since the FHP price for 2017/18 serves as the baseline for the remainder of the period. We therefore do not support making the next prices retroactive to May 1. Concerns about retroactivity are exacerbated to the extent that these prices are paid by consumers that today are not paying RPP prices. Nevertheless, we have included below some language that could be used to address this (i.e., to set the rates such that they include a further reduction to account for "undersmoothing" since May 1), but it must necessarily be at a higher or more conceptual level as it is not feasible to articulate in a meaningful way how the adjustment would be done. An alternative would be to state that this adjustment will be done in accordance with the regulations, which would allow additional time to consider that.*

4. *We assume that it is not the intention that the new prices be one singular price/kWh for all consumers, which appeared to us to be the implication from the draft. We do not believe that TOU and tiered pricing need to be eliminated for the fair adjustment period, and would not be supportive of that approach.*

5. *We note that the definition of "invoice amount" does not refer to the 8% ORECA rebate. As such, we understand that the 25% referred to here can work here without "double-smoothing" of that 8%, but please confirm. If the number remains at 25%, however, it will still "over smooth" by the amount of the RRRP charge that still exists today.*

6. *We have tried to simplify the draft and provide greater clarity. We provide a narrative description here:*

a. *The calculation needs to be a "point in time" calculation. All references to averages have been removed.*
b. *The "baseline rate" is RPP TOU prices as they would have been on May 1. Because the OEB has already set May 1 prices with an adjustment for the proposed Fair Hydro Plan, the "baseline rate" needs to expressly state that this is RPP TOU prices as they would have been on May 1 absent that adjustment.*
c. *The "baseline rate" is then used to calculate the "baseline invoice amount" to which the 25% reduction is then applied under subsection (2).*
d. *In subsection (2), the rates set by the OEB are expressed as being the rates that would be required to reduce the proxy consumer's "baseline invoice amount" by 25%.*

6xx. (1) In this section,

"~~average~~ baseline invoice amount" means the ~~average~~ monthly invoice amount that would be payable by a representative consumer under the ~~average~~ baseline rate; ("French")

"~~average~~ baseline rate" means the ~~average~~ rate that would be payable a representative consumer effective May 1, 2017 ~~by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act,~~ as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of ~~that Act~~ the *Ontario Energy Board Act, 1998* and without any adjustment in whole or in part that would otherwise be required under subsection (2); ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French") ***[Note to draft: The issue of the treatment of "sub-metered customers" is addressed in our comments on the draft legislation provided separately]***

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the rates for electricity payable by a specified consumer for the period beginning on the effective date referred to in subsection (4)(b) ~~May 1, 2017~~ and ending on April 30, 2018 ~~is~~are the ~~average~~ rates determined by the Board such that ~~that would be payable by a representative consumer in order for the representative consumer to receive a~~ the monthly invoice amount for a representative consumer is ~~that is~~ 25 per cent less than the ~~average~~ baseline invoice amount, adjusted to account for the total difference between the baseline monthly invoice amount and the monthly invoice amount that is 25 percent less than the baseline invoice amount for each invoice issued during the period between May 1, 2017 and the effective date referred to in subsection (4)(b).

[Note to draft: Our comments on the remainder of section 6xx and section 7xx are provided separately on the draft legislation]

Calwell, Carolyn (ENERGY/MEDEI/MRI)

From: Martine Band <Martine.Band@oeb.ca>
Sent: April-23-17 10:49 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Cc: Mary Anne Aldred; Brian Hewson
Subject: CONFIDENTIAL: Re: Draft Legislation

Hi Carolyn,

As promised, below is our list of issues.

There are a number of items that I might call more second-order points that need to be ironed out with you (alone or with other(s)) and that were set out in the documents that we sent earlier today, but in terms of key items that we really do need to discuss with the Ministry:

Points for discussion that would or could involve the IESO – these mostly arise from the IESO's comments on and revisions to the draft legislation. We are content to raise these initially with the IESO ourselves if you prefer:

i. The IESO's proposed approach to recovery of the "IESO funding shortfall". We have not had any discussions about this, and at the moment we are rather speculating even as to the method (through RPP prices or otherwise?) and anticipated frequency of recovery. There are also related questions pertaining to the IESO maintaining the appropriate variance accounts and ensuring that OEB has the necessary tools in relation to accounting and review of accounts. Since the IESO has proposed that an OEB accounting order is no longer contemplated for the variance account that records the different amounts, there may need to be at least a regulation-making power that can address these issues as required.

ii. We have concerns with the IESO's proposal to have distributors do a number of calculations relating to the IESO funding shortfall. Distributors may not all be well-equipped to do this properly, and we believe that the IESO should be doing whatever calculations may be necessary (recognizing that they may well need information from distributors).

iii. We also need to confirm what is contemplated as far as invoicing for the clean energy adjustment is concerned. On more of a point of detail item, we don't see why it is necessary for there to be regulations governing how distributors will bill for and settle the clean energy adjustment. The IESO acknowledges that these are issues addressed by the OEB, and our requirements should be sufficient (and if they are not today, we could certainly look at that).

Points for discussion with the Ministry – these arise mostly from our review of the draft legislation but also from documents provided by others today, and the IESO likely does not need to be involved in a number of these and from our perspective shouldn't be for the last item:

i. The price-setting methodology for May 2017/2018. Some of the issues are listed below, and the first one in particular needs to be resolved very quickly as new provisions may need to be drafted for the legislation:

a. The draft doesn't align with what we understand to be the policy intention, as it appears to force consumers onto regulated pricing whether that is their pricing regime today or not. So low-volume consumers with retail contracts or that have opted out would be pushed to this. Some of the implications of this are identified in one of the documents we sent around earlier today. We had understood that consumers not on the RPP would be settled for the Fair Hydro Plan benefit by some other means (I heard reference to a GA modifier). As far as we

know, no drafting has been done for any alternative settlement methodology for consumers that are eligible for the Fair Hydro Plan but not currently on the RPP.

b. Retroactivity of the Fair Hydro Plan benefit – even on a prospective basis – when prices are reset if and when the legislation passes.

c. Timing of the OEB's price-setting if and when the legislation passes.

ii. Who is setting prices for May 2018-April 2022 and on what basis.

iii. The OEB's role in reviewing the FSM's administration costs: which costs? for what purpose? through what process? with what outcome/deliverable? We need to have a better understanding of what is contemplated. Based on our limited understanding of what might be contemplated, we are not convinced that all of the detail can be left to regulations.

iv. Whether some of the provisions relating to the clean energy adjustment can be practically implemented based on how we understand distributors do their accounting and track revenues and expenses.

v. The IESO (and others) have proposed that the OEB be tasked with calculating the clean energy adjustment. I have no instructions on that at the moment. Subject to that caveat, we need to confirm our understanding of the nature of that adjustment and, as noted above, how it is intended to be invoiced. Issues relating to variance accounts and the OEB having the necessary tools (as per (i) above) would need to be discussed.

vi. The OEB's role in relation to enforcement of the draft legislation. OPG has proposed this, and it has also been raised by the dealers.

I hope this is helpful to you in moving things forward. We are happy to meet or participate in calls as required to facilitate resolution on these issues.
Martine

Martine M. N. Band
Associate General Counsel
Ontario Energy Board
Direct Line: 416-440-8117

From: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>
Sent: April 23, 2017 6:40 PM
To: Martine Band
Cc: Mary Anne Aldred
Subject: RE: Draft Legislation

Thanks.

From: Martine Band [mailto:Martine.Band@oeb.ca]
Sent: April-23-17 6:39 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Cc: Mary Anne Aldred
Subject: Re: Draft Legislation

Thanks Carolyn. You and the IESO have our comments on the draft legislation, and I can give you a list of items from there that could be discussed as well as the (reasonably short I think) list of incremental comments/questions on the IESO's draft. I will try and get that to you some time later this evening.

Farm hydro Meeting @ Tory's April 2014.

Carolyn
- draft from EOD tomorrow.
- provide comments over the weekend.
- cross-walk to where Blakes doc appears in legis
- balance.
- pens down friday 21st.
- committee - mid-may
- anything into reg.s - side agent etc.

Tory's revised draft.

Purpose

Def'n
→ Delegate
→ Electricity Invoice
is US example daily
[illegible]

Tony's - need collect. for shortfall.
thats covered & identified separately

Stuttgart where doing tree up.
→ collection risk
is who bears?

→ characteristics of receivable heavy (OEG owns) vs. other receivables.

Under collection ① Customer fail. ② utility fail.

- Under collect. amount billed. / vs. amt collected pursuant to RPR

- LDC's pay for what withdrawn from grid.

- rate mech. through OEB to recover for bad customer.

Tony - trying to amend daily collect & remittance

IESO - Bill LDC next rate
- on bill, LDC will tell detail of RPE interest
- on same bill.
- if they fail to pay any part of 88 - payment default
- IESO requires them to pay full amt.
- LDC's manage bad debt.

- transit charges. issue of who owed to.
- part of what IESO collects belongs to financing entity
  ↳ any adjustment related to under collect. is financing entity.

GES - ① LDC's sept. remit on daily basis, amts collected from customers
- to trust
- this is US structure
- If discrepancy, there is account for in transactions

② - this fee or charge - similar true - up - if misfocasting in usage -
- adjust happen as part of true up.

- G&S - be a true up, twice a yr, account for all amt's due -
- (will do appropriately)
(series of agreements sorts out all of this)

Cindy - LDC's theory as revenue,

G&S - disagree in part,
- bill explicitly say LDC/IESO have no. ownership of this

~~Stuff~~ - true up.
revised obligat.

(pg) Tony -

pg. 8 - discuss. re: LESO might to recover.

- concept they have under existing proms. of EA

- if reco

Promise decis

① OFA lend $ to LESO.

M.B

25.33 - in past discuss. current process recovery over very short term

Tony's other threats to EA

Steve - sale of whatever every discontinuity

- true sale has to be accept. to market

G&S - accept from standard under collections bc cash based event
- not meant to create credit enhancement
- needed to get AAA rate
- rest of detail fill out in reg.

Steve -
eg. LDC doesn't comply w/ legis.

G&S - true up

Steve - passing through financing costs

G&S - Texas - reps - billing intermediary.

Steve -
- policy issue - defect in structure flows back to ratebase

Stan - true up pick up collection
risk -
- if broader than that - its m.

G&S - if not enough cash in
trust to make payment
(hot, cold, LDC bankrupt)
- passes through true up

G&S → Mike
- actual customer relied on
to true-up

O&B
- if LDC unable to continue w/
work - issue energy order
transfer custom to new LDC.
5.59 ↳
- in out - LDC's are backstop
by other LDC's

G&S - what happens if during transit,
cash gets lost btwn
LDC transfer.

Steve -
① - show US examples where true
up. → in legis. details in funding
orders

- def - ~ look at amt ...
- amts due - looking at reserve - tries to amt due & payable

② Power to true up in legis - legis empowers OPG to true up
vs.
part of debt.

G&S legis - shall be true-up no less than semi-annually.
- funds avail. to true up trips

req. steps

Steam ability to say there is a debt created or can we shift
- amt payable determined by reference to legislat.

G&S - intent to bill customer so can charge up for billing delay etc - only source for re-pay customer

Stm - nothing critical to qualify debt by way of hard refuses

MF:

1. See as [illegible] for PPSA.
2. entitlement (part of my asset
   - is unlimited credit enhancement.
   - if don't recover enough we move - recover more next

Stm -
- true-up at wrong end.
- PPSA & true up power

P3.11.

P2.13 - Deal on [illegible] changes
→ OEB - for any person defining change wouldn't anticipate value.

Truc up def: n-13

Steer,

① invoicing function - creates debt obligat.

② collection function
- must needs ability to replace collect agent

- ability to create debt manifest

GES - not going to treat our rep / collect different
- use same standard of care.
- 3(4)

---

financing plan
↳ "in accordance in financing plan"

Pg. 15
- OEB tells LDC's amt through order amt to change rate payer
- LESO bills amount.

2 concepts
① OEB determines price in relation to w
LDC remit amt. to consumers

② collect. peece
- based on values consumed
- invoice that amt

- OEB communicates this is amt
- ~~LDC~~ ~~OEB~~ determines volumetric rate.
- volumetric rate billed by LDC's to consumers
→
- Obligat for OEB to commit volumetric rate 4(4)

OEB

RFP - starts 60 u

- ~~2~~ 4(3) vs. 7(3)

- period to period allocation. attribute

Rocco - no cap on transit charges
- was to all be recovered

G&S. - analysis part of ratings work - reasonable.
- cap on any part does not work.

Steve - no cap - once ~~spe~~ consumed -

MB

G&S ① invoice / Sewage amt verified monthly basis

② if only verifying what collected needs to be daily

MF on mth to mth basis.

LDC's - in order to have monthly money pay as bills go out

Not as $ collected

- in same way as LDC's pay LESO in advance also pay transit. charges at same time

- everything else the same.

- LESO is conduit - 2 day just as principle or as agent to financing

Stu - LDC's not at this table in order for anything to be effect. one chance to make happen.

- seamless vs. impact on LDC's

~~[illegible]~~

Conclusion

→ - aim / tomorrow / this.

Torys - same sense of
what in leg.
what in regs.

CC - chart matching
up doc.

CONFIDENTIAL
GOV2016.146.e
2alt- TP

Intergenerational Fairness in Hydro Rates Act, 2017

[OLC Notes re this draft:

- 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.]

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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. *[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

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 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 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. If the Minister is to remain in an the issuing/approving position it would make sense to have Cabinet / LGIC oversight/approval. As noted, the Minister's role has to be confirmed.]*

[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:
- 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-: We're hearing two stories: one is that the thinking is that the Minister would neither approve or amend the Fair Allocation Plan (we're being told by OPCD that having the Minister approve or amend the FAP places things too close to Government and could risk both the consolidation (accounting) issue as (from Tory's) taint the saleability of the commercialization of the regulatory asset on the investment market-side.] We'll sort this out tomorrow hopefully.*
- do you want to impose limits on the scope of amendments that can be made?] *[NTD: We are not sure whether the FAP is to be capable of being amended or not: please maintain this NTD for now. Thank you!]*

[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. ***[NTD: The issue of whether the Minister would be providing this kind of supervision has not been firmly landed. This can stay but please leave an NTD to ask for a decision on this point. Thank you!]***

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. *[NTD: Same as above]*

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. 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 – these decisions haven't been landed yet. Please keep an NTD here for the next draft.]***

- not sure if amend or issue new plan

[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? the funding shortfall?] in a manner that is consistent with the applicable Fair Allocation Plan. *[NTD: Funding shortfall.]*

3. A description of the [potential?] 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?] [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.

Prohibition

(3) The Financing Plan shall not provide for funding obligations to be incurred with any recourse to any assets of the 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 funding obligation incurred under the Financing Plan shall be affected by an amendment to the Fair Allocation Plan that 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. 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.
2. What is meant by "affected"?]

[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 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.]

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.]

4. The balance of the finance reserve at the end of the reference period, as determined under section 203.

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. 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.]

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 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?] 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.]

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 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].

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, a 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? 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 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?] 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.
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 <u>any</u> circumstances under which the "transfer" should <u>not</u> 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 [imposed on? By what mechanism?] 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? Requires?] 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 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 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].*]

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) a 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 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 vendor shall deposit the portion of the payment allocated to transition charges into the account established under section 31.

Vendor

31. (1) Each vendor shall establish and maintain an account into which the 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 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 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 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

[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. 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.]

[OLC Note: Consider whether you need to clarify status of any agents as non-Crown 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 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". 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 a 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?

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 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 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 a 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 vendor for the purposes of the provisions specified in the appointment.

Notice to vendor, IESO

(4) Upon acceptance under subsection (3), the regulatory asset owner shall provide written notice to the 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 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 a 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"? 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 think I need some more information in order to understand it. I understand that this is included in anticipation of restructuring of the distribution system. 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 just someone who owns or operates a "distribution system". 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 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*.

Huang, Jackson (MEDG/MRIS)

From: ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>
Sent: April-12-17 8:02 PM
To: Huang, Jackson (MEDG/MRIS)
Subject: Fwd: Question

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>
Dir: 416-863-3086<tel:416-863-3086>

Begin forwarded message:

From: "Calwell, Carolyn (ENERGY/MEDEI/MRI)" <Carolyn.Calwell@ontario.ca<mailto:Carolyn.Calwell@ontario.ca>>
Date: April 12, 2017 at 8:55:10 AM EDT
To: "ASHBOURNE, STEPHEN" <STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>>
Subject: RE: Question

Hi Steve - Let's talk about this because I see it playing out a different way than you have reflected. I want the Ministry to be able to get rid of the Financial Services Agent, but I don't want the OEB to play a role in that decision.

In thinking about this, I refer to the Governance Agreement that the Province has with Hydro One. The purpose of this agreement is to establish the role of the Province "as an investor and not as a manager" and it squarely articulates the roles and responsibilities of the board of directors, with the intent that the Province does not wade into the board's territory. The agreement limits the Province's ability to nominate directors to the board to 40% of the number of directors to be elected, regardless of the Province's ownership interest. The remaining 60% of the directors are nominated by a Nominating and Governance Committee of the Board. The Province is required to vote in favour of the directors nominated by the Committee except that it may withhold from voting in favour of any nominee only if it withholds from voting in favour of all nominees (with the exception of the CEO and in the Province's discretion, the Chair). The Province has advance notification requirements of taking this action. There is then a process for replacing the board.

Applying this model to the provisions below, I would re-visit Article 9 along these lines (recognizing that this is not fully thought through):

"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 Minister may by written declaration designate one or more other persons who shall be authorized to prepare, implement and amend the Financing Plan.

The plan should be provided to the Minister – see s. 11(1) of James' and Dan's draft. I would replace "propose to the Minister" with "provide to the Minister" (for information, not approval).

(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. [NTD: see section 25 of the Electricity Act: The Financial Services Agent shall, at least 60 days before the beginning of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees that it proposes to charge during the fiscal year to the Board for review.]

(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 Minister determines that the Financing Plan is not consistent with the Fair Allocation Plan, the Administrative Agent Financial Services Agent shall take reasonable measures to make the Financing Plan consistent with the Fair Allocation Plan prior to incurring a Funding Obligation. 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 make the Financing Plan consistent with the Fair Allocation Plan, reflect such recommendations in relation to such further actions, the Delegate Minister may by written declaration remove the Financial Services Agent and designate one or more other persons who shall thereafter become the Financial Services Agent (a Replacement Financial Services Agent).'

I can't attach a copy of the Governance Agreement right now but I will send it to you when I am in the office or you can see it on SEDAR (an Other material contract(s) filed October 28, 2015 at 16:01:45 (the second of 2 listed together)). The advantage of using that agreement as even an imperfect model is that the Ministry already understands it.

Carolyn

-----Original Message-----
From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: April-12-17 7:58 AM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Subject: RE: Question

Hi Carolyn. The version from Monday night included the following:

"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.'

* * * * * * *

Paragraphs 4 and 5 were inserted to reflect your brief exchange with John (OPG) at the meeting - where John said "you can look at what I'm doing and if you don't like it you can get rid of me" (paraphrase). You should consider the wording in light of James' questions and in advance of the meeting today - I suspect that (minimal/hindsight) oversight through the OEB will be a hot-button for OPG and its accountants. I'm not sure you could do less and still maintain some ability to steer the incurrence side of the program if there is a big problem in the future with how it's implemented.

Regards, Steve

Stephen R. Ashbourne

Partner

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-----Original Message-----

From: Calwell, Carolyn (ENERGY/MEDEI/MRI) [mailto:Carolyn.Calwell@ontario.ca]

Sent: Tuesday, April 11, 2017 9:18 PM

To: Rehob, James (ENERGY); ASHBOURNE, STEPHEN; STOKES, BRYSON

Cc: Shear, Dan (ENERGY)

Subject: Re: Question

No. OPG is the only entity involved in the Financing Plan.

From: Rehob, James (ENERGY)

Sent: Tuesday, April 11, 2017 8:59 PM

To: ASHBOURNE, STEPHEN (STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>); STOKES, BRYSON (BRYSON.STOKES@blakes.com<mailto:BRYSON.STOKES@blakes.com>)

Cc: Shear, Dan (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI)

Subject: Question

Does the Minister or anyone else get to approve or amend the Financing Plan? (not the Fair Allocation Plan but the Financing Plan) ? If not, and I suspect its not, then I think we have to correct the current draft. Thoughts?

James P. H. Rehob

Senior Counsel

Ministry of the Attorney General

Legal Services Branch

MAG Civil Law Division

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LSB ENERGY INSTRUCTS PART 2 (APRIL 12-17 AT 10:10 PM)CONFIDENTIAL

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Intergenerational Fairness in Hydro Rates Act, 2017

NTD: Please create a new schedule to amend the Electricity Act, 1998 (EA) that would bring in the previous provisions from the previous two drafts. (The idea is that we would draw upon the previous drafting that you and Tamara had done to create the amending schedule.) Provisions being brought in are related to: (1) changes to address authority of OPG to create subsidiaries at s. 53.1 of EA; (note there were expanded objects for OPG in 53.1 that we would like to have appear in the consequential amendments near 53.1 as well)
(2) changes to the IESO at s. 6 regarding its powers and authorities to undertake the Fair Hydro Plan Act activities contemplated in this Act.

NTD: changes to section 53.1(1), to allow OPG to carry out any activities necessary to carryout the purposes and objects of the fair hydro act, in its capacity as financial services manager (FSM) including entering into contracts as principal subject to a right of reimbursement from the financing entity. OPG should have authority to create subsidiaries.

To carry out anything ancillary to its activities as Financial Services Manager (FSM).

Please provide a provision that ensures OPG will continue to have these objects when acting in role as FSM, excluding objects related to generation of electricity. In addition to the objects of OPG.

NTD: please provide a requirement if OPG is the Financial Services Manager, it shall be required to provide an accounting of the amounts it charges the trust for the financing entity to the OEB 60 days in advance of the commencement of the fiscal year for the OPG trust/special purpose vehicle.

Amounts payable to OPG when it is the financial services manager (FSM), in respect of its activities in relation to the Trust are exempt from application of sections 89 and 90 of the EA. (payments in lieu of taxes) All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of transition charges. This needs to be broader to include the situation where OPG is not the FSM and we would need a corresponding provision to cover this in the new legislation itself.

NTD: section 25.33 – section 114(1.3)(f) we will need to examine our GAM related legislative and regulatory authority to capture any leftover or residual amounts that were supposed to be captured through OPG/SPV funding obligation but that were not accommodated through the financing plan. The idea here is that IESO in being left with a shortfall wont be able to look to OPG/SPV to fund the entire amount and will have to have resort back to the ratebase to cover off some of these amounts. We would look to this in the future for the out years.

NTD: section 53.1 in this area, OPG will have to be able to borrow money for the purpose of purchasing or acquiring equity or providing debt in the funding/financing entity. They might go to market to do this and borrow from or issue debt securities from the government. They are going to the market to receive debt. Their investment in the entity will be done by way of subordinated debt. We want to constrain their ability to this.

NTD: We also will need to provide to amend the Ontario Energy Board Act, 1998 specifically: (1) the electricity purposes at section 1(1) in order to ensure the board has the authority that it needs to participate in activities relating to the Fair Hydro Plan Act. (2) section 71 of the OEBA to be amended to provide for deemed licence conditions to provide for all electricity vendors as defined under the Fair Hydro Plan Act to comply with the obligations provided for under the new act. for simplicity the IESO, distributors, retailers, unit sub meter providers as well as any other prescribed entities.

NTD: Unit sub meter providers must be addressed in next draft as well as anyone who sends invoices to a specified consumer will be required to share the rebate and will

Preamble

The Government of Ontario is committed to fostering the growth of renewable energy projects, which use cleaner sources of energy, and to removing barriers to and promoting opportunities for renewable energy projects and to promoting a green economy. **[NTD: this is part of the Preamble in the Green Energy Act, 2009 – we want to connect the two statutes].**

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity to ensure significant investment in decarbonizing and modernizing sites and facilities in the province for the generation of electrical energy and the production therefrom. **[NTD: the highlighted language is borrowed from s. 92A(4) of the Constitution, which we understand to be important from a constitutional law perspective. The revisions also emphasize regulation and are more consistent with both the investments and levying of the charges being accomplished indirectly]**

~~The Government of Ontario made significant investments, beginning in 2005, in decarbonizing and modernizing the Province's electricity infrastructure and in activities related to conservation, demand management and load management of electricity. Electricity costs have increased for consumers as a result of these investments.~~

Given the long-term benefits that future generations of Ontarians will receive from these investments, it is appropriate to raise money in respect of these sites and facilities in a manner that allocates the ~~related~~ costs of these investments fairly among present and future consumers. **[NTD: The highlighted language is borrowed from 92A(4) of the Constitution.]**

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

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PART I
GENERAL

Definitions

1. (1) In this Act,

"clean energy initiative" means the policies of the [Government of Ontario] related to fostering the growth of and investment in renewable energy projects, which use cleaner sources of energy, and to removing barriers to and promoting opportunities for renewable energy projects and to promoting a green economy [including conservation and demand management];

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner under section [*] ~~in accordance with the Financing Plan~~; ("French")

[See drafting note under ss. 12(2)]

[OLC Note: I've implemented your instruction above. However, I just want to keep the underlined phrase flagged while we are settling the substantive provisions of the Bill since this would mean that *a funding obligation that is not incurred in accordance with the FP would not meet the definition of "funding obligation"*, which may create some problems. To be considered further. See for example clause 4 (2) (b) below, which doesn't work with your proposed definition.]

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

~~"electricity generation contracts" means the contracts entered into by the IESO for electricity to be supplied during all or part of 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")~~

"eligible ~~costs~~[amounts]" in relation to a [measurement date] means,

(a) the costs incurred or expected to be incurred by the IESO in relation to,

(ia) ~~the electricity generation contracts~~payments made or expected to be made under section 78.1 of the *Ontario Energy Board Act, 1998*, other than payments made under contracts with Bruce Power L.P or Bruce Power A. L.P. or their successors or assigns, and

(iib) ~~conservation of electricity~~payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*,; and

(b) such other costs, benefits or amounts in respect of the [clean energy initiative] as may be prescribed.

~~(c) electricity demand management, and~~

~~(d) electricity load management; ("French")~~

[OLC Note: You included the following in your instructions but you also mentioned that you are working on how to deal with these issues. I'm not sure if my above approval works or if you need to link the items in (b), (c) and (d) to specific contracts. Please advise.

"conservation and demand management contract" means a contract entered into by the IESO pursuant to section 25.32 of the Electricity Act, 1998, which relates to the conservation or management of load or demand, and may include activities relating to energy efficiency [since its linked to conservation/demand-management – including equipment upgrades/replacements] the costs of which are which are recovered from specified consumers together with other consumers pursuant to section 25.33 of that Act.]

"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 currently has one market participant "customer" that would qualify as a specified consumer, so IESO would have all of the same collection and remittance obligations that LDCs have under this Bill in respect of such customer (and any other specified consumer customers that IESO may have in the future).]

"fair allocation plan" means the plan issued by the Minister from time to time under subsection 8(1) [as amended under subsection 8(2)] that establishes the basis for measuring and allocating the eligible [amounts] equitably across present and future specified consumers;

[NTD: We want to have a defined term for the "fair allocation plan".]

[NTD: Need definition of "financial services agent". We have set out a starting point below, which will need more fleshing out.]

"fair adjustment" means [the initial proxy bill decrease in the Bill and such other adjustments as are prescribed]
[NTD: We will put the initial bill decrease in the Bill, and the initial CPI increase in a regulation. The "fair adjustment" concept will be more fully fleshed out in the next drafting instructions.]

"finance amount" for a reference period means all amounts that are or become payable during the reference period in respect of [all financing charges and true-up amounts payable by specified consumers for the reference period that are incurred under the financing plan]
[NTD: This will be further fleshed out in the next drafting instructions]

"financial services agent" means Ontario Power Generation Inc. 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].

"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")

"[measurement date]" means the effective date of the fair allocation plan or any amendments to the fair allocation plan;
[NTD: The usage of this defined term will be more fully developed in the next drafting instructions]

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

"program end date" means April 30, 2047;

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

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

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

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

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

[NTD: We want to introduce an additional, new defined term, called "investment asset", that is the "regulatory asset" after being sold to what we have been calling the "regulatory asset owner". Also, the "regulatory asset owner" will become the "investment asset owner" after the "regulatory asset" has been transferred from IESO. In other words, the "regulatory asset owner" holds the "regulatory asset" and the "investment asset owner" holds the "investment asset". This means that all references in the Bill to "regulatory asset" or "regulatory asset owner" after the regulatory asset has been sold/transferred would be changed to "investment asset" and "investment asset owner".]

"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")

"specified consumer" means a person,

(a) ~~consumer within the meaning of the *Electricity Act, 1998*~~ who has an account with an electricity vendor and receives an invoice in respect of that account; and

(b) meets the criteria set out in subsection (2);

or such other persons as may be prescribed by the regulations; ("French")

"specified consumer group" in relation to a reference period means the specified consumers to whom an invoice is issued in that reference period;

"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~~clean energy adjustment" for a specified consumer in respect of a reference period means the rate determined under section [x];
[NTD: "Section [x] is set out below (also highlighted in blue)]

~~charge of that name that is included on the invoice of a consumer under this Act;~~
("French")
[OLC Note: As the draft settles, need to consider if the term "transition charge" should include some of the characteristics of the charge or at least flag the provision of the Bill that communicates what the charge is about, rather than just the form in which it is invoiced.]

Section [x]:

Except as otherwise prescribed by regulation, the clean energy adjustment for a reference period shall be determined by applying the following formula:

A / B

where,

A is the [Period Transition Charge]

B is the [forecast by the Ontario Energy Board of the total volume of electricity that will be consumed by the specified consumer group in the reference period]

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 demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

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

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. (1) The purposes of this Act ~~is to provide for the allocation of eligible costs among specified consumers in a fair and cost-effective manner that~~are,

~~(a) takes into account the useful life of electricity generation assets used for the benefit of specified consumers; and~~

~~(b) recognizes the value of conservation, demand management and load management activities for specified consumers.~~

[OLC Note: Do you need a provision that states "This Act binds the Crown"?]

(a) to ensure the adequacy, safety, sustainability and reliability of electricity supply in Ontario through responsible planning and management of electricity resources, supply and demand; **[NTD: from the *Electricity Act, 1998*]**

(b) to promote the use of cleaner energy sources and technologies, including alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario; **[NTD: from the *Electricity Act, 1998*]**

(c) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity; **[NTD: from the *Electricity Act, 1998*]**

(d) to facilitate the maintenance of a financially viable electricity industry, including by raising money in respect of sites and facilities in the province for the generation of electrical energy and the production therefrom; **[NTD: first phrase from the *Electricity Act, 1998*, second from s. 92A(4) of the Constitution]**

(e) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service; **[NTD: from the *Electricity Act, 1998*]**

(f) to ensure that the costs of generating cleaner energy are fairly distributed among specified customers over time **[NTD: One of the purposes of the *Electricity Act, 1998* is "(h) to ensure that Ontario Hydro's debt is repaid in a prudent manner and that the burden of debt repayment is fairly distributed"].**

Undertaking by Lieutenant Governor in Council

3. [Drafting TBD - Article 11 of Blakes document under consideration by OLC. Please see questions set out in separate document.]

PART II
TRANSITION CHARGES

DUTY OF SPECIFIED CONSUMERS TO PAY

Specified consumers to pay transition charge

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

Same

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

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

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

[OLC Note: See my notes in definition of "funding obligation", which may be problematic in the context of the above clause.]

Indebtedness of specified consumer

(4) An unpaid ~~transition charge~~ Clean Energy Adjustment 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: ENE LSB to advise if there is precedent language in Ontario legislation to express the above concepts rather than relying on US law.]

Irrevocability of transition charge

5. Any ~~transition charge~~ Clean Energy Adjustment 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: Which term is preferred to convey the desired legal outcome - "by-pass" or "avoid"? Because these are terms that would have a direct impact on actual members of the public, I think it's important to clarify what this means in the legislation if we can.]

[OLC Note: 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).]

[OLC Note: I note that in the instruction on Article 4 (1), you state: "Upon the inclusion of a ~~Transition Charge~~ Clean Energy Adjustment in an Electricity Invoice, the obligation to pay such amount shall be deemed to have been imposed on and billed to the applicable Ratepayer". Does this mean the person is deemed to be billed even if they never see the invoice and even if there is an error in the invoice? You mentioned that you will be following up on consumer protection issues (e.g. OEB's Distribution System Code).]

DUTIES OF IESO

IESO to determine ~~transition charge~~ Clean Energy Adjustment 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~~ Clean Energy Adjustment 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 CLEAN ENERGY ADJUSTMENTS ARE DETERMINED

INTERPRETATION

Definitions

7.1 (1) In this Part,

"generation facility" has the same meaning as in section 56 of the *Ontario Energy Board Act, 1998*; ("installation de production")

"holiday" means [O. Reg. 95/05 definition];] ("French")

"invoice amount" means the sum of the following amounts:

1. The commodity price of the electricity used during the invoice period.

2. The rates and charges set out in the applicable rate order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

3. Any adjustment required under section 25.33 of the *Electricity Act, 1998*.

4. The amount of any harmonized sales tax payable under Part IX of the *Excise Tax Act* (Canada).

"rate of inflation means"… [to be included in next draft].

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"weekday means [O. Reg. 95/05 definition]; ("French")

Invoice amount, exclusions

(2) For the purposes of the definition of "invoice amount" in subsection (1), an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

    iii. A rate rider.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the Act;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

~~FAIR ALLOCATION IN YEARS 2017 TO 2021~~PART IV: FAIR ADJUSTMENT

NTD: THIS IS A NEW CONCEPT. IT WILL LINK TO THE VALUE OF AMOUNTS PRIOR TO LEGISLATION DATE (GOING BACK TO 2005) THAT REPRESENT AN OVERCHARGE THROUGH THE EXISTING GA IN RELATION TO "THE GREEN PLAN" (IE. BASED ON THE LONGER AMORTIZATION OF THOSE COSTS NOW ANTICIPATED RELATIVE TO THE AMORTIZATION PERIODS UNDER THE CONTRACTS THEMSELVES; EG. ELECTRICITY GENERATIONS, CONSERVATION, DEMAND MANAGEMENT). THESE ADJUSTMENT AMOUNTS WILL BE REPRESENTED FOR YEAR 1 IN THE LEGISLATION ITSELF (17% REDUCTION) AND FOR SUBSEQUENT YEARS IN A REGULATION TO BE MADE EACH YEAR, IN EACH CASE BASED ON A HYPOTHETICAL REPRESENTATIVE TORONTO HYDRO PROXY CUSTOMER. THE WAY THIS FITS INTO THE ACT IS THAT THE FAIR ALLOCATION PLAN SETS OUT A LIMIT ON HOW MUCH DEBT REPAYMENT AND FINANCE COSTS A PARTICULAR REFERENCE PERIOD WILL BEAR AND WHERE THERE IS A FAIR ADJUSTMENT THOSE COSTS WILL BE REDUCED BY THE FAIR ADJUSTMENT AMOUNT. THE LINK TO THE FINANCING PLAN WILL BE THAT WHERE THE FINANCING PLAN CONSTRAINS THE INCURRENCE OF FUNDING OBLIGATIONS PAYABLE IN A YEAR, THE NEW APPROACH WILL BE THAT WE WILL REFER TO BOTH THE FAIR ALLOCATION PLAN AND ANY APPLICATION FAIR ADJUSTMENT FOR THAT REFERENCE PERIOD.

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: Consequential amendments - e.g. relationship with section 79.16 of the OEBA 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.

2. In determining the rates, the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect those costs.

3. The Board shall set an off-peak period associated with the regulated price referred to as RPEMOFF in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board,

    i. that begins no later than 7 p.m. on every weekday and ends,

        A. no earlier than 7 a.m. on the next day if the next day is a weekday, or

        B. no earlier than 12 a.m. on the next day if the next day is Saturday, Sunday or a holiday, and

    ii. that begins no later than 12 a.m. on every Saturday, Sunday and holiday and ends no earlier than,

        A. 12 a.m. on the next day, if the next day is Saturday, Sunday or a holiday, or

        B. 7 a.m. on the next day if the next day is a weekday.

Determination of rates, starting November 1, 2017

7.4 On and after November 1, 2017, the Board shall determine the rate for electricity payable by a specified consumer in the following manner:
[OLC Note: You mentioned that you might want to delete s. 7.4 but I will wait for confirmation before removing.]

1. The Board shall determine rates in a manner that is consistent with the Standard Supply Service Code issued by the Board.

---

[1] FLS: Please see section 6 of O. Reg. 95/05 (a bilingual reg).

2. The rate determined by the Board shall remain in effect for six months. The Board shall determine separate rates after that time for each reference period, up to and including the period beginning on November 1, 2021.

3. The rate shall be determined by increasing the rate determined for the most recent reference period by the amount that would increase the monthly invoice amount of a representative consumer by the year-over-year increase in CPI.

Determining amount of ~~deferral~~IESO funding shortfall

7.5 (1) The ~~Ontario Energy Board~~IESO shall determine the ~~[amount of deferral]~~IESO funding shortfall for each reference period **[month?]** by calculating the difference between the following amounts:

1. The sum of all monthly invoice amounts issued to specified consumers during the reference period **[month]**.

2. The sum of all monthly invoice amounts that would have been issued to specified consumers if paragraphs 1 and 2 of section 7.2 ~~applied~~did not apply.

[NTD: We will create reg-making authority to make "fair adjustments" by reg. (as noted in the definition of "fair adjustment" above). The first fair adjustment reg. will provide for a CPI increase in the proxy bill amount effective November 1, 2017 relative to the bill amount as of May 1, 2017, and CPI increases again as of May 1, 2018 and November 1, 2018. These will create further "funding shortfalls". Going forward from there, any differences between the amount IESO can collect from the specified consumers in respect of a reference period and the amount of the eligible costs that would otherwise have been attributed to and payable by the specified consumers would constitute further "funding shortfalls".]

[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

8. (1) In order to ~~ensure~~ give effect to the fair allocation of eligible costs among specified consumers beginning on May 1, 2017, the Minister shall, ~~subject to the approval of the Lieutenant Governor in Council,~~ ~~prepare, issue and propose to the Lieutenant Governor in Council~~ a ~~written plan entitled the~~ Fair Allocation Plan. [OLC Note: I think that "written" could include any written form (e.g. even a spreadsheet). Also presumably even a spreadsheet would be accompanied by at least some explanatory text.]

~~LGIC approval~~

~~(2) Upon receipt of a proposed Fair Allocation Plan or proposed amendments to the plan, the Lieutenant Governor in Council shall, in writing,~~

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

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

[OLC Note: Now that we have included the provisions from the RPP to cover the first years of fair allocation, please advise how you want to articulate the contents of the Plan (e.g. must incorporate the above provisions and then come up with a scheme that would apply in subsequent years, subject to some limitations)?]

[OLC Note: Please confirm whether the "funding shortfall" should be mentioned above or if it is accurate to refer to the eligible 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.*]

Amendments to plan

(2) ~~The Minister may propose amendments to the Fair Allocation Plan from time to time, as the Minister considers appropriate.~~ Subject to the approval of the Lieutenant Governor in Council, a fair allocation plan issued under subsection (1) may be amended or amended and restated by the Minister, as the Minister considers appropriate.

Publication

(3) The Minister shall ensure that the Fair Allocation Plan and any amendments to the plan are made available to the public in a manner that the Minister considers appropriate.

Effective date

(4) The Fair Allocation Plan or an amendment to the plan takes effect on the date that the plan or the amendment is published under subsection (3) or on such later date as may be specified by the Minister.

[OLC Note: Please confirm above.]

Compliance

8.1 The IESO, electricity vendors and the [financing entity] shall comply with the Fair Allocation Plan.

[OLC Note: I don't think we have dealt with the term "financing entity" yet.]

Principles

9. In preparing the ~~f~~Fair ~~a~~Allocation ~~p~~Plan, the Minister shall have regard to the following principles:

1. Eligible costs should be allocated over a period not to exceed the ~~later of~~ [program end date];

~~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.~~

[OLC Note: Just checking, since we're not only dealing with electricity generation contracts now, do you need to expand the list of possible end dates above to address conservation activities etc.?]

2. The share of eligible ~~costs~~ [amounts] allocated to ~~a particular group of a specified~~ consumer~~s~~ group ~~in respect of a reference period~~ should be proportionate to a reasonable assessment of the benefits ~~incurred~~ derived by~~to~~ the ~~group of specified consumers~~ consumer group over ~~that~~ the related reference period ~~as a result of incurring these costs~~.

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

[OLC Note: I'm not sure what to do with this based on your instructions. I thought the intention here was to assess the remaining value of an asset but you're suggesting that the

value of an asset *prior* to the reference period has relevance here? Also I'm not sure what to say about the conservation matters etc. without repeating the components of "eligible costs" but perhaps this will become more clear with further instructions on conservation/load management etc.]

4. No ~~group of specified~~ consumers group ~~-~~should bear an unreasonably disproportionate share of the eligible ~~costs[amounts]~~, and adjustments should be made over time if the Minister is of the opinion that a ~~group of specified~~ consumers group has paid more than is reasonably proportionate.

5. Allocation of the eligible costs should be determined for each reference period.

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 eligible 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 under this section ~~by the IESO or a transferee relating to the financing of [unrecovered eligible costs]~~ are consistent with the Fair Allocation Plan, and the Fair Adjustment, and are cost-effective, the Financial Services Manager~~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?]

[NTD: We need a provision that says the financing plan must not contemplate any clean energy adjustments before May 1, 2022.]

Other prescribed entity

(1.1) If another entity is prescribed for the purposes of this Part, that entity shall have all of the obligations and duties of 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 eligible costs~~ in a manner that is consistent with the applicable Fair Allocation Plan.

~~[OLC Note: Please confirm whether "eligible 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.

[NTD (for further consideration): Should we link this ss. to section 23? In other words, should the above SPVs be limited to the entities contemplated in s. 23?]

[Also - is this (together with clauses 2 and 3 of ss. 12(1)) merely creating the vehicle to incur funding obligations, or is this authorizing the creation of funding obligations? Please include an explicit authority for the creation of funding obligations in accordance with the financing plan.]

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:

[NTD: Need to ascertain whether the provisions under "FUNDING SHORTFALL" address the same thing as section 7.5]

$$(A - B) - C$$

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.]

[Is it possible to deal with this in a "shorthand" way by saying in the opening words of ss. (1) "in the following, *without duplication*"? There may not be time to ensure that there is no overlap among the listed items.]

[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. The amount recorded from time to time in the IESO's books under section [x] [illegible] INTD: This is covered sufficiently in the new s. 22.1. Any amount recorded in the books under s. 22.1 is deemed to be part of the regulatory asset. In s. 22.1, need to provide that IESO has a shortfall, and creation of an account to record the shortfall in IESO's books, and approval of that account by the OEB. More to come on what specifically OEB does here, depending on how the shortfall is calculated (i.e. what role the IESO has to play (e.g. in providing OEB with information).~~

[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?]

[Let's create a new requirement (in a separate section) for the IESO to record the amount of the regulatory asset from time to time in the IESO's books (reflecting

additions and repayments). Once recorded, the right is a right in the amount recorded. [NTD: This is dealt with in the new s. 22.1 in draft 5 of the Bill.]

Let's also provide in this new section that such books of account shall be determinative with respect to the amount of IESO's related regulatory asset.]

[NTD: The initial fair allocation plan will be predicated on the assumption that the full amount of the "regulatory asset" will always be transferred and refinanced under the financing plan.

However, it is possible that during the first five years IESO will not transfer the entirety of the "regulatory asset". This would mean that as of the end of year 5 there could still be a "regulatory asset". In other words, less than the full amount of the "regulatory asset" might be sold/transferred as an "investment asset".

This would mean that in a reference period after year 5, the amounts constituting the total amount of the "clean energy adjustment" for that reference period (based on the financing plan, which would have been developed having regard to the fair allocation plan) could be less than the amount contemplated by the fair allocation plan for the same reference period. This would result in a "windfall" for that specified consumer group if they only had to pay the "clean energy adjustment" (as determined under the financing plan for that reference period) as it would be less than the amount contemplated under the fair allocation plan. Since debt would have been incurred by IESO, that difference still has to be repaid to IESO so it can reduce the "regulatory asset" on its books.

Given the foregoing, we will need a new provision along the following lines:

> In any reference period, where the total clean energy adjustment payable by the specified consumer group is less than the amount contemplated to be payable under the fair allocation plan, that difference would be payable to the IESO [to use to repay the amount it [borrowed] to finance the regulatory asset].]

[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?]
[We are only transferring rights of IESO as part of the "regulatory asset". That would include IESO's right to receive payments from collection agents. IESO will have an independent obligation under the Bill to act as a collection agent – see ss. 6 (3) and 6 (5). This obligation would not form part of the regulatory asset, and would not be transferred to the transferee).]

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 established in accordance with the financing plan to acquire all or an interest in the regulatory asset and to enter into funding obligations to finance such acquisition under the financing plan.
[OLC Note: need to expand the rules in a subsequent draft to address other potential transferors an entity that receives the Regulatory Asset from the IESO may then go on to sell the Regulatory Asset to someone else.]
[NTD (for further consideration): Do we need to contemplate above an assignee of the regulatory asset beyond the initial assignee from the IESO (e.g. in the event of a default by the [trust] under its financing agreements with the lenders; or in the event of a pledge under s. 27).]

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.
[NTD (for further consideration): Should there be limits on transfers here? See the addition in s. 23.]

Validity of transfer

25. (1) A transfer of the regulatory asset is [final and binding? valid and enforceable?] and confers the 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?]
[No, there are no circumstances where the transfer would 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.]

[We are trying to provide for the paramountcy of this subsection relative to anything else either within or outside of this Bill. The transfer should be effective despite anything else either in this Bill or elsewhere. Would prefer to keep this here given its importance.]

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?]
[Want to ensure that the transfer occurs no matter what, and that a court not grant another remedy such as damages instead]

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?]

[We want to ensure that any finding that IESO retains bare legal title to support its collection activity in no way impairs the characterization of the transaction as an absolute sale.]

[NTD (for further consideration): Should we have a defined term that expresses the intention that the transfer constitute an absolute sale?]

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 its interest in the regulatory asset in connection with any funding obligation.

[OLC Note: The drafting of s. 27 is very rough. I will need to work on the drafting of this section further… just trying to understand the concepts for now. Please advise as to whether this is correct.]

Types of pledge

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

Validity

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

[NTD: (Spoke to MS about this) – Please include in the Bill an exception to s. 28 of the FAA, similar to s. 51 of the Electricity Act, 1998. S. 28 would not apply to any transaction contemplated in this Bill.]

Regulations

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

(a) specifying contracts are not electricity generation contracts for the purposes of this Act;

(b) governing the inclusion of 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*.

Maksymuik, Amanda (ENERGY)

Subject:	Ontario Fair Hydro Plan
Location:	79 Wellington St. W. - 33rd Floor TD South Tower, Torys
Start:	Wed 04/12/2017 2:00 PM
End:	Wed 04/12/2017 5:00 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); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS); 'Mary Anne Aldred'
Optional Attendees:	'Myers, Jonathan'

Update

This meeting has been moved from Blakes to Torys due to boardroom availability.

Please contact Reception or Nicole Drake (ndrake@torys.com) when you arrive to be shown to the boardroom.

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.~~

Please forward this meeting invitation to your respective teams for their attendance if any individuals are not included.

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,

Convo w Steve
fair adjustment

Apr 17/2017

↳ will supress cost distrib yr over y

- fr → no occurances for repayment in first five years
  - interaction of when you set fair adjustment when set by reg will reduce amount for occur.

- leave first 5 yr adjustment to into mechanics
  - recognize that amount regarded

Alaus - 200 t to not be specific in first 5 yrs
  - see what is in prop bank

- 17% in yr 17
- fair adj. 15

DS - no doc that can point to that world show people

JR - from adjust - from first 5 yrs consult req.

DS - the law requires. in the ... decrease & then from upwards of next 10 yrs - pass bill and below portion of GA.

SA - FAP - nice quadrical line covers all period
- treasury put maturities under curve to allow LESO to finance gap
- have capacity for first 5 yrs can't use it
- adjustment push down - absorb. benefit allocation

- line is

- SA - yrs 3-5 [illegible] bc OPG to [illegible]
  not to incur maturities
  - leave you't opport to do
    adjustment in first 5 yrs
  - will push # down -
    reset on curve.
  - mechanic exists bc curve
    applies [illegible] on
  - as long as increases not
    inconsistent all adds up
  - 1st 5 yrs - [illegible] [illegible]
    but for [illegible] FAC would
    be continuous [illegible].
  - you't say - intergenerat. [illegible]
    [illegible].
    - take piggy bank - quantify
    - in second yr look back &
      compare - that is secondary
    - each of those is for adjust / req

- in adjusted curve - whatever decide looks like.

- gov't passes reg - having regard to farm adjustment

↳ actual reg → creates impact on farm hydro plan.

CL - post reg that sets out ~~prop~~ plan long. for reg-posting

SA - FAP - not adjustment, separately defined

- impact that treasurer has to have regard,

SA - reg. will allow you to make adjustment during first 5 yrs

- reg

Q. - treasurer will have regard to curve & reg.

- what OPG does in thousand plan consistent OPG

Monday

deal w/
commitments

meeting on
monday

Wed

- SOC
- OPG board

Revised April 12/2017.

~~Comment Draft~~Torys' & Osler's Comments: April ~~10,~~12, 2017

Jane Stikeman's.

CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

- preference to shorter dates.

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will **continue to** benefit present and future electricity consumers in the Province.

The ~~imputed~~**out-of-market** costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment"). ~~The 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~~, **These amounts paid by the IESO** arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with ~~long-term price~~**revenue** 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~~ **[NTD: This statement is not correct in respect of all IESO procurement contracts.]** It has been determined that the useful lives of many of the assets ~~encouraged by~~**developed under** the Green Generation Initiative will be ~~well~~ in excess of the respective terms of ~~the related~~**their respective** 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~~**terms** of the **applicable** procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to ~~Retail~~**Regulated** Consumers (as defined in Article 2) should be more closely aligned with the benefits that such ~~Retail~~**Regulated** Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on **general** principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future ~~Retail~~**Regulated** Consumers (the "Fair Allocation

Plan"). **[NTD: There is no explanation as to why realignment is limited to Regulated Consumers.]**

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the ~~Retail~~**Regulated** Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such ~~Retail~~**Regulated** Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in respect of such period. In this case, IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred ~~by IESO~~ to cover such a shortfall during ~~one~~**any** period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in ~~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~~**Regulated** Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf **of** such financing entities by a financial services ~~agent~~**manager** 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.~~

[NTD: Our strong preference is to limit the introduction to the next paragraph and move defined terms from the previous paragraphs to Article 2]

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~~**Regulated** Consumers on an equitable and cost effective basis.

Article 2 – Definitions

In this Act: **[NTD: It would be preferable to use plain language definitions in the legislation and leave the more detailed definitions to either the regulations or the agreements contemplated hereunder.]**

Attempt to Simplify

> "Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition **other than as security**.
>
> "Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services ~~Agent~~**Manager**

whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.

Scaled back deleted stuff

"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~~**without limitation such amounts as may be prescribed**.

deleted to once there is IT determ. of period finance amt - will come up in dollar per hr.

~~"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.~~ **[NTD: See section 5(11). Remove this concept globally.]**

Stitch in cover in draft

"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. **[NTD: We see this, in effect, as the same thing as the IESO Successor; that is, replacement of the master Servicer.]**

~~[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.~~

"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"[21] means the methodology specified in the Fair Allocation Plan for allocating the Period ~~Transition~~**Finance** Charges for a Reference Period to ~~individual Retail Consumers of the applicable Retail Consumer Group based on its Allocation Factor.~~**Regulated Consumers. [NTD: We understood that the Ministry accepted that the transition charge would be a volumetric rate.][NTD: Can be moved to Regulations.]**

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services ~~Agent~~**Manager**, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[32]

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

"Delegate" means **any of** the **following** person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act~~.~~**: ●. [NTD: Why is this delegation of authority necessary? This requires further discussion and clarity as to which entity or entities that the Province can select as the Delegate; for example, it would not be acceptable for the Province to select the OEB to be the Delegate. If this is required, an acceptable delegate would be a stakeholder committee comprised of representatives from the Ministry of Energy, the OEB, the IESO, and OPG. In addition, the regulation should prescribe how the stakeholder committee would operate.]**

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of **(a) IESO's right to recover all or any portion of an IESO Funding Shortfall or (b)** an Investment Interest to an Absolute Assignee**, in each case** pursuant to a Disposition Document.

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

[21] 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.

[32] This would pick up adjustments based on actual collection experience, changes in the ~~retail consumer~~**Regulated 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.~~

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

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

"Electricity Invoice" means an invoice issued by ~~any of a~~**an** Electricity Distributor (or in its stead, by an Alternative ~~Servicer~~**Collection Agent**), by the Servicer or by a Retailer, in each case to a ~~Retail~~**Regulated** 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~~**such** Electricity Distributor's ~~designated Service Area~~**distribution system** and in respect of applicable Transition Charges to be charged to the ~~Retail~~**Regulated** Consumer under this Act. **[NTD: The Alternative Servicer should only invoice for Transition Charges, not the entire invoice. Also, to avoid confusion, we suggest using the word "invoice" in reference to what the IESO sends out to distributors, and "bills" in reference to what distributors send out to consumers.]**

"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~~**Manager**; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to ~~any Retail Consumer Group~~**Regulated Consumers**, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

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

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

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

"Finance Amount" means, for a Reference Period~~ 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~~**all** Absolute ~~Assignee~~**Assignees**: (a) Repayments; (b) **Net** Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

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

"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. **[NTD: Move this to regulation.]**

unmanageable if more than one

"Financial Services ~~Agent~~**Manager**" means OPG or, following any Replacement Event **involving OPG**, such other person ~~or persons~~ who may be appointed as the ~~Financial Services Agent~~**financial services manager** of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[~~5~~3]

"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]~~**any entity established at the initiative of and managed by the Financial Services Manager to support the Financing Plan.**[4]

can be ~~not~~

concern to comply if more than one.

"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,~~**Manager in accordance with Article 9,** as the same may be amended, amended and restated or terminated by the

[~~5~~] ~~Discuss whether to accommodate multiple~~[3] **There must only be one** Financial Services ~~Agents. MOE to consider~~**Manager**.

[~~6~~4] 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.

Financial Services ~~Agent~~**Manager** in ~~compliance~~**accordance** with Article 9 from time to time.

Presented by Reg Counsel

~~"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.~~

Stem
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- Purpose of doc

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including**, without limitation,** each obligation to pay: principal, interest, premiums and other financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services ~~Agents~~**Managers**, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges**)** incurred by or on behalf of the Absolute Assignee under the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

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

~~"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*~~:~~ **in respect of Regulated Consumers. [NTD: IESO indicates that it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDCs entails payments by LDCs to the IESO and then credits/debits by the IESO to LDCs to reflect RPP shortfalls/overages.]**

~~"IESO 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[75]~~; 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.~~ **.To the extent reasonably necessary to give effect to this Act, or any transaction contemplated hereby, IESO shall calculate the IESO Funding Shortfall for any month taking into account information provided by the Electricity Distributors and (i) such calculation shall be binding for all purposes; and (ii) any demonstrated inaccuracy in the calculation for any month (including any such resulting from inaccuracies in the information provided by Electricity Distributors) shall be accounted for by adjusting the IESO Funding Shortfall for a subsequent month. [NTD: Need to add the mechanism for IESO to record this shortfall because without that there is no Regulatory Asset. This IESO Funding Shortfall is the regulatory asset owned by IESO.]**

~~"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

[75] 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.

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~~**Funding Obligations** 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.

"Net Funding Costs" means, for a Reference Period in respect of a Financing Entity, the amount by which (a) the aggregate of all interest, scheduled principal> *and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including* <**such amounts as may be prescribed, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of the Funding Obligations referred to in (a), including such amounts as may be prescribed.**

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

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

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount ~~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.~~ **applicable True-Up Period and (c) an adjustment amount as may be prescribed to account for estimated collection shortfalls and collection delays in respect of amounts under (a) and (b).**

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

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

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

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

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) ~~June~~**October** 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

~~"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.

"Regulated Consumer" means consumers of electricity in the Province as prescribed.

[NTD: There are a number of issues with this definition. First, the word "Retail" is a source of confusion as it implies customers of licensed retailers. Really, the purpose of the term is to define the group of consumers that are eligible to receive the benefit of the Fair Hydro program and who will bear the cost of the program over the long term. We have proposed "Regulated Consumer" but you could also use the term "Eligible Consumer" or "Fair Hydro Eligible Consumer" and for purposes of the legislation to say that it is a member of a class of consumers prescribed by the regulations for purposes of the relevant section of the legislation. The regulation would then describe who is in the class. Second, it may not be appropriate to rely on the class of consumers prescribed for the purposes of s. 79.16 or under the OREC Act. Section 79.16 is the section that defines the class of RPP consumers. We understand that the "Fair Hydro Eligible Consumers" are not an identical class to that which is eligible for the RPP or for> ***the Ontario Rebate for Electricity Consumers***<. For example, we have heard that Fair Hydro Eligible Consumers will (a) exclude consumers served by independent power authorities (certain remote communities not served by Hydro One Remotes), and (b) include consumers served by licensed unit sub-metering providers, licensed retailers and certain consumers served directly by the IESO (which may or may not be captured by the classes under 79.16 or OREC). Third, it is not clear why consumers with contracts with retailers who use retailer consolidated billing are removed from the first part of the definition but then added back into the second part of the definition. Fourth, Retailers do not necessarily have physical electricity assets that would be connected to the grid. Some just sell or offer contracts for electricity. As such, the first few lines after (b) are problematic. Fifth, the phrase "purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets" does not make sense. A consumer does not purchase generation services from a transmitter or distributor. Rather, a consumer receives distribution services from a distributor. In addition to charging for its distribution services, the distributor also charges the associated transmission costs and commodity costs associated with the volumes delivered. Those commodity costs are the price of the electricity itself and are almost entirely made up of the amounts determined under the global adjustment. Sixth, the phrase "***>whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO<***" does not make sense. Transmission assets are owned and operated by transmitters. Distribution assets are owned and operated by distributors. The IESO does not own but does administer and direct the operation of the transmission system.]

Steve
① true up at wrong end.
② ppsh 2 true up power.

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

the Alternative Collection Agent deposits or receives Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

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

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO**Servicer** or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the Business Day **[NTD: Not defined.]** preceding each Settlement Date. **[NTD: Move to Regulations. Remittances will be in accordance with the current rules.]**

"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].

OEB what does this mean

"Transition Charge" means, ~~for a Retail~~**the amount recoverable from a Regulated** 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.~~ **being the Period Finance Charge ~~as allocated~~ to such Regulated Consumer in accordance with Article 4(3) on a monthly basis. [NTD: This needs to be grossed up to account for variability associated with expected uncollectables and remittance delays.] [NTD: Do not need to create parallel process. The definition should be linked to the OEB process for determining the volumetric rate as part of the RPP process (see s. 4(2)). The OEB will determine volumetric rate based on forecast consumption, number of consumers, etc. to recover the Period Finance Charges.]**

IESO spoken for deemed collect

- says - no concept of deemed collect

"Transition Charge Collection" means any amount received **[or deemed by this Act to have been received] by the Absolute Assignees** upon the collection of a Transition Charge paid by or on behalf of a ~~Retail~~**Regulated** Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services ~~Agent~~**Manager** equal to (a) the >*Actual Finance Amount for such related True-Up Period*<**, minus (b) the** Estimate of the Finance Amount for the related True-Up Period, ~~minus (b) the <*Actual Finance Amount for such related True-Up Period*>~~, plus (c) the Collected Amount Adjustment for such related True-Up Period. **[NTD: need to discuss how this will work for our true-up. What about prior period shortages? An example of how this works needs to be provided.]**

don't need 30 day adjust (from US examples)

"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~~**Her Majesty in right of Ontario**" means the undertaking of ~~the Lieutenant Governor in Council~~**Her Majesty in right of Ontario** given under Section 11(2).

Article 3 – Transition Charges

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

(2) **Indebtedness of ~~Retail~~Regulated Consumers** – Until paid, a Transition Charge charged to a ~~Retail~~**Regulated** Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the ~~Retail~~**Regulated** Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[86] debt obligation owing by the ~~Retail~~**Regulated** Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the ~~Retail~~**Regulated** Consumer under the Electricity Invoice or otherwise.[97]

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

(4) **Allocation of ~~Retail~~Regulated Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a ~~Retail~~**Regulated** Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be ~~allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collection~~**subject to rights and benefits that are no less favourable than the treatment accorded to other amounts payable to the IESO by the Electricity Distributor**.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations ~~incurred under the Financing Plan~~ (including any

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

[97] 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.

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

(6) True-Up of Transition Charges? – [NTD: Include specifics regarding the true-up of the charges and the process for the true-up, but move to Regulations. The True-Up Mechanism should require the Transition Charges to be reviewed and adjusted semi-annually to ensure the expected recovery of amounts sufficient to timely provide all payments in respect of Funding Obligations, provided that in some cases it may need to be adjusted more frequently than semi-annually, e.g., as part of a refinancing.]

(7) Commencement of Invoicing and Collection of Transition Charges – [NTD: Please confirm that as drafted, Transition Charges will begin on the Measurement Date.]

Article 4 – Invoicing of Transition Charges [NTD: Move Article 4 sections (1) to (4) to Regulations. Also note, these sections remain subject to further due diligence by the Dealers.]

(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~~**Regulated** Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued by the Electricity Distributor or if applicable by the Alternative Servicer to the ~~Retail~~**Regulated** Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable ~~Retail Consumer.~~**Regulated Consumer. [NTD: Must capture bills issued to eligible consumers served by unit sub-metering providers, retailers and the IESO – not just distributors][NTD: This provision also needs to address the inclusion of Transition Charges in invoices from the IESO to the LDC, consistent with the current process of how the IESO bills LDCs.]**

(2) Calculation of the Period ~~Transition~~**Finance Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services ~~Agent~~**Manager** on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. ~~[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~~**each Absolute Assignee (or the Financial Services Manager on its behalf)** shall calculate the Period ~~Transition~~**Finance** 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~~**having regard to** such amounts specified by ~~IESO or Successor IESO~~**the Servicer**, which calculations, information and amounts shall be **accepted by the OEB and 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~~**allocation of the Transition Charge** for each ~~Retail~~**Regulated** Consumer~~ of the applicable Retail Consumer Group~~. **[NTD: We think the OEB would be determining the Fair Hydro recovery rate (on a volumetric basis) that distributors would then be required to charge to consumers]**

(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~~**Regulated** Consumer ~~of the applicable Retail Consumer Group who has a billing address in~~**who is served by** the Electricity Distributor~~'s Service Area~~.

(5) **Adjustments** – The amount of any Transition Charge charged to a ~~Retail~~**Regulated** Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

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

(7) **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. **[NTD: We would expect the IESO to manage this in accordance with its normal business practices.]**

(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~~**Regulated** Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges **or to otherwise comply with this Act**. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure~~.~~ **and may make any interim or final order it thinks fit in this regard. [NTD: We would like to see the sections on "Standing" to bring an action to remain in the legislation (as opposed to being moved to the regulations as we believe we previously suggested) as we see those provisions as part of ensuring a rigorous enforcement scheme for the Financing Entity (and so something that should be difficult for the Province to change going forward).]**

Have keep in statute

Steve agreed

(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~~**Regulated** Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances [NTD: Move Article 5 sections (3), (6), (9), (12), (13) and (14) to Regulations.] IESO contradiction

(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~~**Servicer,** collect amounts owing by ~~Retail~~**Regulated** Consumers in respect of Transition Charges charged to such ~~Retail~~**Regulated** Consumers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent~~.~~ **all in accordance with the Regulations. [NTD: The obligation to collect and remit the Transition Charge should be included as a deemed condition of license for electricity distributors (and retailers and unit sub-metering providers).]**

Steve coverage amounts - that in above

(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~~**Regulated** Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.~~[11]~~[8] **[NTD: Determine if this is critical for rating and markets or if segregation can occur in the hands of the IESO]** 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 **or its Pledgee**.

Steve - tactical drafting

Steve - invoice vs bill

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all **amounts invoiced by the IESO on account of the**

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

~~[11]~~[8] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

Transition Charge ~~Collections received by it from Retail Consumers~~ in respect of the related Reference Period to or to the account of ~~IESO~~**Servicer** or if applicable the Alternative Collection Agent. **[NTD: It is the Dealers expectation that the Transition Charge will be paid on the same basis as other amounts invoiced by the IESO, failing which, they will need to be remitted daily.]**

IESO agency role not pursuing

(4) **Duty to Collect Electricity Distributor Remittances** – ~~IESO~~**Servicer** or if applicable any Alternative ~~Collection Agent~~**Servicer** 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~~**Regulated** Consumers that pay their Electricity Invoices directly to IESO~~.~~[12] **on the same basis as it accepts and collects other charges from such Regulated Consumers.**[9]

- diligence effort not warranty

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

(6) ~~IESO~~**Servicer Remittances** – On each Settlement Date[13][10], ~~IESO and if applicable the Alternative Collection Agent~~**Servicer** 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~~**Successors** – IESO ~~Successor~~**Successors** shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[14][11], 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~~**Regulated** Consumers ~~in its~~

[12][9] Consider building this obligation into a deemed condition of licence for the IESO.
[13][10] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.
[14][11] This is in anticipation of a possible future restructuring of the distribution system.

~~applicable service area, including all consumers~~ connected to ~~the electricity~~**such person's** distribution system assets ~~and taking electric delivery service located within such service area~~; (b) allocate partial payments by ~~Retail~~**Regulated** Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest. **[NTD: Such acquisition of a distribution system would require the person to be an electricity distributor; consider deleting since this is covered off by Section 5(7).]**

(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~~**Servicer**, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from ~~Retail~~**Regulated** Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article ~~5.~~**5, or to otherwise comply with this Act.** Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure **and may make any interim or final order it thinks fit in this regard**.

(11) ~~**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.~~**Not Used. [NTD: The Servicer should manage this process.]**

(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~~**Regulated** Consumer, any Electricity Distributor, ~~IESO~~**Servicer**, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor,

~~IESO~~**Servicer**, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[~~15~~12]

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

[NTD: Suggest considering a more typical remedy such as the ability to appoint a receiver. Concept should be moved to Regulations.]

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

Article 6 – The Regulatory Asset

[NTD: We believe that the statute should impose a time limit on the ability of IESO to create additional Regulatory Assets under this Act. It is our expectation that this will be no later than 10 years after the commencement of the program.]

[NTD: In addition, additional language is required to address the acquisition of the Regulatory Asset by the Financing Entity, including reference to the consideration being provided for it, funding upfront costs.]

[NTD: The sale of Regulatory Assets must be restricted to Financing Entities controlled by a single entity (initially, OPG).]

[NTD: For greater certainty, a Financing Entity will not be required to purchase Regulatory Assets from IESO.]

(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):

[~~15~~12] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a ~~Retail~~**Regulated** Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

[~~16~~13] Consider adding or substituting this provision for a right to appoint a receiver.

a. the right of ~~IESO (i)~~**a Regulatory Asset Owner** 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)~~**portion of the Regulatory Asset in its accounts**;

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

c. the right to enforce the obligations and indebtedness of each ~~Retail~~**Regulated** Consumer to pay the Transition Charges charged to the ~~Retail~~**Regulated** Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices; **[NTD: Do we really want and need the ability for the Financing Entities to chase after individual consumers?] [NTD: This should be the right to provide notices to the OEB of the amounts required for recovery, which the OEB would then be required to accept for purposes of determining the amount of Transition Charges to be charged to consumers]**

in addit to hang rights to enforce – right to enforce Art 5. collect. procedure. Ignore

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~~**Servicer** or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

f. the right to enforce the duties and obligations of ~~IESO~~**Servicer** and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

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. **The Regulatory Asset shall continue to exist until all Funding Obligations ~~and Additional Funding Charges~~ have been paid in full.**

Steve put in if you need - assets don't disappear

(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~~**A** Disposition by IESO **of all or any part of the IESO Funding Shortfall** to an Absolute Assignee ~~made under the Financing Plan~~, or **a Disposition of all or any part of an Investment Interest** by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the ~~applicable~~**IESO Funding Shortfall or** Investment Interest**, as applicable** (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the ~~Regulatory Asset Owner's applicable~~**IESO Funding Shortfall or an Absolute Assignee's** right, title~~,~~ and interest in, to and under ~~the Regulatory Asset~~**an Investment Interest, as applicable** (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the **IESO Funding Shortfall or** Investment Interest **(or relevant portion thereof)** subject to the Disposition, including all rights under the **IESO Funding Shortfall or** Investment Interest arising after such Disposition. **[NTD: Subject to review by Osler/dealers.]**

expand defn of disp

disp. deemed to be sale

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

(4) **Validity of Pledges** – ~~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~~**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~~**No** consent of**, or notice to,** any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation **shall, subject to the terms thereof, give rise to a security interest of which the PPSA applies, and** may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.[~~17~~14] 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~~**A** Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

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

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

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement. **[NTD: Move to Regulations.]**

[~~17~~14] 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.

CC: financing plan

Article 7 – Establishment of the Fair Allocation Plan[~~18~~15] **[NTD: Move entire Article 7 to Regulations, other than 7(1) and 7(2).]**

(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).~~**[the Regulations]**

OPG → Initially considered inflation transition amount

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

accounting/comments - consumer from control perspect

Steve 1 FAP amortiz. curve - won't deal in first 4½ yr. BSM - fair adjust. can built into reg - limited direct - don't make a limit in first - Ruppath result is $ figure

[NTD: E&Y will need to see the guidelines of the Fair Allocation Plan set in reference to parameters that will allow it to establish a modeling curve]

- **[Inflation period: (between November 2017 – and April 2022) bill increases need to be capped at inflation (assumed at 2% for modeling purposes)]**
- **[Transition Period: (May 2022- April 2027) bills increased at a consistent rate which is set so that the borrowing will not exceed the Trust's capacity, which is determined by the Finance Service Manager]**
- **[Amortization Period: (May 2027-April 2047) equitable distribution of Finance Amount among Regulated Consumers]**

Q keep principles & move elements into financing plan,

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.*~~ >

2. ~~3.~~ The share of Future Fair Share of Green Transition Benefits allocable to a particular ~~Retail~~**Regulated** 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~~**such Regulated** Consumer~~ Group~~ over such Reference Period~~.~~**, other than**> *in exceptional circumstances*<**.**

[~~18~~15] 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).

- Plan will restrict principle obligat from becoming due,

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

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

3. ~~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.~~>*The Fair Allocation Plan should specify the Reference Periods for the purpose of* <>*allocating Future Fair Share of Green Transition Benefits among* <**Regulated Consumers**> *on a relative basis 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~~**Finance** Charges across the ~~Retail~~**Regulated** 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~~.~~**; provided that**> *the Attribution Methodology* <**shall not be used to limit the recovery of Transition Charges. [NTD: Can the methodology be adjusted outside an amendment? If so, the rating agencies need to understand the limits of any adjustment.]**

(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~~.~~**, and (c) not impair any Regulatory Asset, outstanding Funding Obligation or any Transition Charges. [NTD: If the Fair Allocation Plan is amended, there should be no further Regulatory Assets until the revised Fair Allocation Plan and corresponding Financing Plan have been approved.]**

IESO fixed & needs to be divisible - sell in chunks

Article 8 – The IESO ~~Retained Interest~~Funding Shortfall

(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.~~**Recording of IESO Funding Shortfall -- IESO will record any IESO Funding Shortfall in its books.**

~~(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.~~

framework to allow for carents

(2) ~~(3)~~ **Dispositions** – IESO may effect a Disposition **of all or any part of the IESO Funding Shortfall** to an Absolute Assignee if (a) the ~~Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the~~ Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; **and** (~~c~~**b**) the Financial Services ~~Agent~~**Manager** confirms in writing that the Disposition **complies with any restrictions or limitations specified with respect thereto in any documents evidencing the Funding Obligations and** is permitted under the Financing Plan~~; 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~~.

(3) ~~(4)~~ **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any ~~Investment Interest~~**IESO Funding Shortfall** 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 [NTD: Move all of Article 9 to Regulations other than 9(1).]

(1) **Power to Prepare, Implement and Amend the Financing Plan** – The Financial Services ~~Agent~~**Manager** shall be authorized to prepare, implement and amend **a financing plan for the Financing Entities**> *and propose the adoption*< **of such financing plan as** the Financing Plan~~. 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~~ **for the purposes of this Act. The Financial Services Manager shall have the right to withdraw its financing plan as the Financing Plan at any time if it determines that implementing the Financing Plan in such manner would not be in the best interests of a Financing Entity**.

(2) ~~Terms~~**Principles and** ~~Conditions~~**Parameters of the Financing Plan** – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions~~. The Financing Plan shall have~~ **having** 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.**

(3) **OEB Approval** – Any Additional Funding Charge payable to~~ or for the benefit of~~ the Financial Services ~~Agent~~**Manager in respect of services provided by the Financial Services Manager (other than third party costs)** shall be subject to review and approval by the OEB.

(4) ~~OEB~~ **Review of Financing Plan** – The [OEB] ~~[~~shall~~]~~ undertake an annual review of the records maintained by the Financial Services ~~Agent~~**Manager** 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. **[NTD: We would prefer that this be dealt with by an attestation prepared by an officer of the Financial Services Manager.]**

(5) **Replacement of the** ~~Administrative Agent~~**Financial Services Manager** – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the ~~Administrative Agent~~**Financial Services Manager** shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services ~~Agent~~**Manager** under the Financing Plan. If the Financial Services ~~Agent~~**Manager** is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services~~.~~ **Manager. Any replacement must comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations.**

(6) **Obligation to Apply IESO Remittances** – The Financial Services ~~Agent~~**Manager** shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Absolute Assignees, or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when

they are due and payable and for no other purpose. **[NTD: This can be dealt with by contract.]**

(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~~**Manager**, the OEB~~, the Province or the Lieutenant Governor in Council~~ **or Her Majesty in right of Ontario**, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount. ~~[All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]~~

(8) **Incurrences are Binding** – ~~Notwithstanding anything to the contrary in this Act, each~~**Each** Disposition made to or by an Absolute Assignee~~ and~~**,** all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation **and each Pledge entered into by an Absolute Assignee**, shall be **valid and** binding~~ for the purposes of this Act~~, including in determining the amount of related Transition Charges, ~~despite~~**notwithstanding** any ~~impairment or defect resulting from such failure~~**defect in the manner in incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan**.

[Article 10 – Compliance Matters~~19~~[16]

(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~~**Manager** [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services ~~Agent~~**Manager**; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.]~~20~~[17]

~~19~~[16] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

~~20~~[17] 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~~**Financial Services Manager** of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

Article 11 – Undertaking of the ~~Lieutenant Governor in Council~~[21]Her Majesty in right of Ontario[18]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – ~~The [Lieutenant Governor in Council]~~**Her Majesty in right of Ontario** shall not in any way take or permit **(including by any agency or administrative body)** any action to reduce, impair, postpone or terminate the obligation of ~~Retail~~**Regulated** Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by ~~the Lieutenant Governor in Council~~**Her Majesty in right of Ontario (including by any agency or administrative body)**, including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) Undertaking and Agreement – ~~The [Lieutenant Governor in Council]~~**Her Majesty in right of Ontario** shall not:

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

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

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder, **or would not otherwise comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations,**

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

(3) Successor IESO – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, **an IESO** Successor ~~IESO~~ shall **immediately** be established **by Her Majesty in right of Ontario** to perform such obligations.

~~21~~18 Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes. ~~1~~
In the event of a market disruption that renders it impossible to refinance debt when required (or where financing of amounts required to service the debt is not available because of a market disruption where the Financing Entity was relying on such further issuance of debt until the recovery is set to begin to fund interest), either the Province must step in and payout the debt or there must be the right to recover the debt from ratepayers as it becomes due, notwithstanding the intended rate cut.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated **by Her Majesty in right of Ontario** for any losses suffered by them as a result of any failure by ~~the Lieutenant Governor in Council~~**Her Majesty in right of Ontario** to comply with its undertakings and agreements in this Article 11.[~~22~~19]

(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. **[NTD: This concept can be contained in the Regulations.]**

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

Article 12 – Regulations

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

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

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

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

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

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

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

Article 13- Miscellaneous[~~23~~20]

[~~22~~19] Requested by ~~Torys~~**Dealers**. For discussion.

[~~23~~20] 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;~~

(1) ~~(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;

(2) ~~(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~~**Regulated Consumers** under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(3) ~~(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~~**Regulated** Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation **[having regard to the application of the ~~Allocation~~Attribution Methodology][NTD: Are the words in square brackets necessary?]**);

(4) **require the Financial Services Manager, for and on behalf of each Regulatory Asset Owner, to use diligent efforts to manage Finance Amounts to be borne by Ratepayers;**

(5) **include a proposal regarding the compensation of the Financial Services Manager that reflects market terms and conditions; and**

(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:~~**require that the Financial Services Manager report annually to**

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

the Ministry of Energy on the operation of the Financing Plan including, in particular, with respect to the amount and terms of the Funding Obligations incurred and the sufficiency of such Funding Obligations for the purpose of funding the estimated Funding Shortfalls in accordance with the Fair Allocation Plan.

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

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

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

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

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

~~f. the basis upon which the Financial Services Agent will select counterparties under any transaction to be entered into by an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

Document comparison by Workshare Compare on April-12-17 12:08:25 PM

Input:	
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Document 2 ID	interwovenSite://INVENTORYS1/TorysAtWork/23326245/2
Description	#23326245v2<TorysAtWork> - Fair_Hydro_Act Torys_Osler Mark-up April 11 2017 Draft (Torys-Oslers_April12)
Rendering set	strikeout-colour

Legend:	
Insertion	
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<~~*Moved from*~~>	
>*Moved to*<	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	351
Deletions	352
Moved from	10
Moved to	10
Style change	0
Format changed	0
Total changes	723

Maksymuik, Amanda (ENERGY)

Subject:	Equitable Allocation Forecasts
Location:	Teleconference
Start:	Tue 04/11/2017 10:30 AM
End:	Tue 04/11/2017 11:30 AM
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	Not yet responded
Organizer:	Kulasinghe, Meineka (MEDG/MRIS)
Required Attendees:	Shear, Dan (ENERGY); Rehob, James (ENERGY); O'Riordan, Eamon (ENERGY); stephen.ashbourne@blakes.com; bryson.stokes@blakes.com; judy.wilson@blakes.com; Cayley, Daniel (ENERGY); Christie, Tim (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); Kacaba, Jennifer (ENERGY)
Optional Attendees:	Malecki, Justin (ENERGY)

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

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

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

Thanks,

Meineka Kulasinghe
Legal Secretary
Ministries of Energy / Economic Development & Growth /
Research, Innovation & Science / Infrastructure / Accessibility
Legal Services Branch
56 Wellesley Street West, 5th Floor
Toronto, ON M7A 2E7

Maksymuik, Amanda (ENERGY)

Subject:	fair hydro - cap and trade - 7:45pm
Start:	Tue 04/11/2017 5:00 PM
End:	Tue 04/11/2017 5:30 PM
Recurrence:	(none)
Organizer:	Kacaba, Jennifer (ENERGY)

Blakes Mtg

Apr 11/2017

Issue is more concept of govt standing behind

- Contract that only future.
- Underbrake / agree that is contract
- 11(2) anything that impairs investor interest

Difference. Bloom Versions

- preamble - tie in tracing to fill in gap - incorp. Broader construct
- fair

- green cost adjustment - ties into contract
- fair plan tes

Defn → immune tuitiency

- concept that regulatory asset subsidies

new

- Investment interest
- (ESO returned interest.

⇒ 4 key def'n

① assessed past given costs,

② estimated future given transit benefits

estimated past given tm

- have regard to FAP.

defn: over assessed amt. → pg. 11.

- amt by which assessed amt exceeds past amt.

---

def'n of disposition - moved.

electricity distribution

given - moved -

blue - new

red - strike out

- admin agent becomes financial agent

- funding obligs. only relate to OPG assist.
(IESO doesn't want)

- future tax share of green benefits
↳ this is plug of bank
→ replaced costs of unrecd. transition costs

no more reference to power controls

Steve - obligs shall be paid
- source of payment was transit chief

- Norman meeting -

① Program end date
② funding shortfalls not increase beyond certain date.

Steve - need concept of funding obligt.
- Gyis could say absolute assignee shall perform funding obly.

page 21 - right of ESO to record assig

- end date always.

- ESO mechanic - put in
  - right of recovery
  - at meeting ESO not sm

pg. 10 - keep def'n
- investment interest - amt pay [illegible]

-

Measurement date - when set curve defined on measurement date

- Period transit changes -
  - hold off drafting.

- rate paper - retail. conser.

- regulatory asset - tweaks

3 - 5 - very little change.

5 - 6 - LESO recovery

5 - 9 - deletion of (C)

- assuming rights to LESO

Art 2 -

(5) perfect - rather than dem. perfect of PPSA - say intangible

FAP - unrecovered transit costs
future benefits.

- principles and parameters -
- editing of FH

- rather than setting curve - don't
acknowledge - need phase to
take int account pre-2017
issues. ($3.5 B + consum.
costs.)

- Z(4) amends.
- IESO retained interest
(1)
(2)
(3) IESO affect dispost to trust
if trust agrees to be bad.

SIE - whether legis needs to codify
rights on a certain way.
- agreement terms get repatriated
- could equally say, any
agreement recognized as
enforceable
(concept of FPSA agreement being valid)

DS - if consumers aren't pay bills, how does LESO determine who gets paid?

SA - actual collections get remitted
- how ultimately paid
- if shortfall - I get some, U get some
(money goes to admin adjoint).

8(3) - disposit asset, collective rights.
- net proceed - LESO can't sell more than it has.

- LESO doesn't have interest once sold.

(5) - LESO add costs get recovery.

(6) - ~~Ees~~ if LESO needs recovery this impt

(9) - substantially revampted

& - once there is an asset they have to finance in accordance w/ plan.

- no obligat to finance. - not entitled to finance.

OPG auth to set up plan.

put in post to finance asst

once have asset need to finance in accordance w/ CAP.

---

if OPG unwilling to be services agent -

[plan has to be issued before debt.

- plan has to be shortfall
  ↳.
- backed off stuff on financing plan

Compliance matters.
  ↳ OEB has limited rights
  → rights to look at records

---

amendment to OEBA - enforceable provision

OPG rate setting
  → unregulated source of cost.
  → ~~[illegible]~~ admin fee.

---

undertaking.

---

regulating power,
  ↳ types of things need to cover.

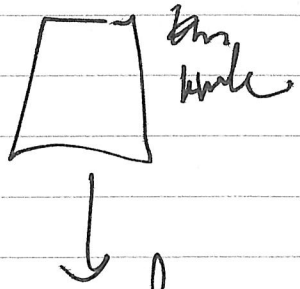
- RPP has to go down in amort the FAP.

- structure facilities transact
  - ↳ if you do following steps, IESO can create regulatory asset
  - ↳ piggy bank part of FAP.
  - → so if legis. it - there is no tie in

- Steves doc.
  - → 1st pg. 11 → overassessed amt
  - →
  - together generate amt spend over.

- overassessed amt
  - ↳ day 1
  - → part of FAP

Sb - key is links costs / benefit
looks like majority chrg.
- when won't they add up.
- formula - must bow
by yr 10
as follows



general
form
allocat.

- these years spent.
- FAP pushed down
for 5 yrs to recognize
costs overpaid.
- pick up overpaid / future
rent.

Constitut. open.
- impt for balance sheet audit

- whether maps out first 1-5 yrs
in keys
- risk - that puts pressure
on accounting

CC -
Many I doesn't to TB identify risks
↳ accent. treatment
↳ legal risks
- will have opp. to discuss prob. with curve.
- if consit. will say thank you
- leg. drafted to protect you in future, short term

SA - legis liable in long term
→ to deal w/ zap issue → pressure

DS - cultural drop, a couple pts of CPI.
CC - identify risk can't go beyond

SA - do we leave to show overcharge

= as a result of this less money coming in

calculated based on old way of doing GA.

↳ provis. is manner implicity first five years

↳ in reg. Δ made to implement FAP,

7.1 - 7.5 → move back out into Reg

FAP ⇒ principles

- May 1 - Oct 31 - ask OEB to take it out of RPP.

- 7.2 is yr 1

- move rate of inflat. increases to reg.

-

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

B - whether adjustment to plan overrides req?

CC req - mot. ack.

d plan can't override reqs
↳ rate of inflat. has to be somewhere
↳ ~~req~~ leg. deals w/ 1st yr
↳ req power for 2+.
↳ tbd. inflation increases

- disclosing what be know to be in plan in a req.

- mkt sees FAP -

CC - gov't needs to show needy count.

legs: year 1 this way
// 2-5 in a reg
→ one at a time.
→

SA - by pumpreder. →

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Fair Hydro Act, 2017

EXPLANATORY NOTE

The Bill enacts a new Act and makes amendments to the *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998*.

SCHEDULE 1
ONTARIO FAIR HYDRO PLAN ACT, 2017

The Schedule enacts the *Ontario Fair Hydro Plan Act, 2017*. The Act establishes a framework under which the costs and benefits associated with the "clean energy initiative" are to be allocated among present and future consumers of electricity. The "clean energy initiative" is defined in Part I as consisting of the policies of the Government of Ontario related to such matters as eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies.

Under Part II, the Ontario Energy Board is required to determine reduced electricity rates and to determine other adjustments to be made for certain classes of consumers in respect of specified periods of time. For example, for the class of consumers referred to as "regulated rate consumers", the electricity rates payable for the period beginning on July 1, 2017 and ending on April 30, 2018 are the rates, as determined by the Board, that would achieve a 25 per cent reduction in certain costs for a hypothetical member of the class who meets prescribed criteria. Details regarding the determinations are prescribed by regulations.

Part III requires certain electricity consumers to pay an amount in respect of the "clean energy adjustment". The clean energy adjustment is determined by the Financial Services Manager in accordance with rules set out in the Act and the regulations. (Section 18 of the Act appoints Ontario Power Generation Inc. as the Financial Services Manager.) Part III also specifies the roles and responsibilities of electricity vendors and the Independent Electricity System Operator ("IESO") with respect to the collection and remittance of amounts in respect of the clean energy adjustment.

Part IV requires the Minister of Energy to calculate a "fair allocation amount" by taking specified steps in accordance with principles and assumptions set out in the Act. For example, the Act provides that the purpose of calculating the fair allocation amount is to measure and allocate the estimated clean energy costs and estimated clean energy benefits fairly among certain consumers. Part IV also requires the Financial Services Manager to prepare a written

plan entitled the "Financing Plan", which is to be used to evaluate whether potential funding obligations should be incurred. Principles and limitations regarding the preparation and implementation of the plan are provided.

Part V requires the IESO to determine the "IESO deferral" in accordance with the regulations and to establish and maintain a variance account in which it records the IESO deferral each month. A "regulatory asset" is created under section 25; the IESO has the right to recover the balance recorded in the variance account from certain consumers. The IESO is authorized to transfer a specified portion of the regulatory asset to a financing entity; this transfer results in the creation of the investment asset and the acquisition by the transferee of a corresponding "investment interest". Various rules respecting the validity and priority of such a transfer are set out.

In Part VI, rules in respect of the "investment asset" are provided. Section 29 provides that the investment asset constitutes a current and irrevocable property right and interest, consisting collectively of various specified rights and interests of investment interest owners. Rules respecting the validity and priority of such a transfer and the granting of a security interest by an investment interest owner are included.

Part VII deals with various miscellaneous matters, including regulation-making authority of the Lieutenant Governor in Council.

The *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998* are amended to address various matters relating to the enactment of the new Act. For example, the objects of the IESO and Ontario Power Generation Inc. are expanded to address powers and duties under the new Act.

SCHEDULE 2
AMENDMENTS TO THE ONTARIO ENERGY BOARD ACT, 1998

The *Ontario Energy Board Act, 1998* is amended. Among the amendments:

1. Section 79 of the Act is amended so that compensation for the rate protection provided to certain classes of rural or remote consumers may be funded out of money appropriated by the Legislature, rather than by consumers.

2. Section 79.2 of the Act, which governs the Ontario Electricity Support Program, is repealed and replaced. The program is continued, but will be funded out of money appropriated by the Legislature after the variance account maintained by the Independent Electricity System Operator, formerly established under the Plan, is exhausted, rather than by consumers. There are provisions relating to the sharing, use and disclosure of information relating to the administration of the Ontario Electricity Support Program.

3. Programs are established to aid certain distribution rate-protected residential consumers and on-reserve consumers.

4. Various amendments of a technical and administrative nature are made to support the implementation and oversight of these programs including provisions related to auditing, record-keeping, inspections and inquiries, offences and penalties.

Bill **2017**

GA Smoking

An Act to enact the Ontario Fair Hydro Plan Act, 2017 and to make amendments to the Electricity Act, 1998 and the Ontario Energy Board Act, 1998

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

Contents of this Act

1. This Act consists of this section, sections 2 and 3 and the Schedules to this Act.

Commencement

2. (1) Subject to subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.

Schedules

(2) The Schedules to this Act come into force as provided in each Schedule.

Different dates for same Schedule

(3) If a Schedule to this Act provides that any of its provisions are to come into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.

Short title

3. The short title of this Act is the *Fair Hydro Act, 2017*.

SCHEDULE 1
ONTARIO FAIR HYDRO PLAN ACT, 2017

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Preamble

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

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

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

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

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

PART I
GENERAL

Interpretation

Definitions

1. (1) In this Act,

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

"clean energy adjustment" means the amount determined under section 15 and payable by specified consumers; ("ajustement pour l'énergie propre")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("avantages de l'énergie propre")

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

(a) the amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts or amounts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed,

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

(c) such other costs or estimated costs as may be prescribed; ("coûts de l'énergie propre")

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

(a) eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies,

(c) promoting conservation, demand management and energy efficiency, and

(d) investing in energy infrastructure to ensure a clean, modern and reliable system; ("initiative pour l'énergie propre")

"electricity vendor" means,

(a) a licensed distributor,

(b) a licensed retailer,

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

(d) such other person as may be prescribed; ("vendeur d'électricité")

"fair allocation amount" means an amount calculated under section 20; ("French")

"finance amount" means the finance amount determined in accordance with the regulations; ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 18; ("gestionnaire des services financiers")

"financing entity" means an entity established or caused to be established by the Financial Services Manager as described in subsection 22 (2); ("entité de financement")

"Financing Plan" means the plan prepared under section 21; ("plan de financement")

"funding obligation" means a payment obligation incurred by or on behalf of an investment interest owner to fund its ownership of an investment interest or a payment obligation that meets such other criteria as may be prescribed; ("obligation financière")

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

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

"IESO deferral" means the amount determined under section 23; ("French")

"investment asset" means the rights and interests described in section 29; ("actif d'investissement")

"investment interest" means,

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

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

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("propriétaire de l'actif d'investissement")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system within the meaning of that Act; ("distributeur titulaire d'un permis")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("détaillant titulaire d'un permis")

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

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

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

"reference period" means,

(a) the period beginning on July 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on either April 30, 2047 or such later day as may be prescribed,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("période de référence")

"refinancing" means, subject to the regulations, the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation; ("refinancement")

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

"regulatory asset" means the right established under section 25; ("actif réglementaire")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2), or

(b) such other person as may be prescribed; ("consommateur déterminé")

"transfer" includes, when used in relation to an investment interest, the assignment, conveyance, disposition or sale of the investment interest; ("transfert")

"true up amount" means a true up amount determined in accordance with the regulations; ("French")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010;* ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010;* ("fournisseur de compteurs divisionnaires d'unité")

"variance account" means the variance account established by the IESO under subsection 24 (1). ("French")

Specified consumer

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

1. The person has a demand for electricity of not more than 50 kilowatts, or such other amount as may be prescribed.

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

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

obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Transfer of regulatory asset

(3) In this Act, a reference to the transfer of a specified portion of the regulatory asset is a reference to the following, as provided for in subsection 26 (3):

1. A reduction in the balance in the variance account.

2. The adjustment of the regulatory asset.

3. The acquisition by a financing entity of the investment interest corresponding to the specified portion of the regulatory asset.

Effect of invalidity

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

Same, funding obligation

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

Purposes

3. The purposes of this Act are,

(a) to ensure that clean energy costs and clean energy benefits are fairly allocated among present and future specified consumers;

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province; and

(c) to align clean energy costs with clean energy benefits, in order to provide fairness for specified consumers over time.

Crown bound

4. This Act binds the Crown.

Protection and assurances

Prohibition

5. (1) No action or omission by the Board, the Minister or the Crown shall be effective to reduce, impair, postpone or terminate the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or to impair or postpone the invoicing, collection or remittance of the clean energy adjustment.

Agreements

(2) The Minister and the Minister of Finance may together, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of the IESO or electricity vendors under this Act or related transactions.

Guarantee, indemnification

(3) The Lieutenant Governor in Council may by order,

(a) authorize the Minister and the Minister of Finance, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity;

(b) specify terms and conditions that must be included in any guarantee or indemnity given by the Minister and the Minister of Finance; and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT

Definitions

6. In this Part,

"regulated rate consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer would, if the consumer were not subject to this Act, be invoiced the rates determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*. ("French")

Regulated rate consumers, first adjustments

7. (1) Despite any order under subsection 78 (3.1) of the *Ontario Energy Board Act, 1998* and despite section 79.16 of that Act, the electricity rates payable by regulated rate consumers for the period beginning on July 1, 2017 and ending on April 30, 2018 are the rates, as determined by the Board, that would result in a hypothetical regulated rate consumer who meets the prescribed criteria being charged an invoice amount that is 25 per cent less than the invoice amount that would have been charged to that consumer under the comparison rates described in subsection (2).

Comparison rates

(2) The comparison rates are the rates that would have been effective May 1, 2017 if they had been determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, without taking into account any forecasted impact of any other provisions of this Act.

Invoice amounts

(3) The types of amounts to be included or excluded in each invoice amount mentioned in subsection (1) are the types of amounts specified in the regulations.

Other specified consumers, first adjustments

8. (1) For the period beginning on July 1, 2017 and ending on April 30, 2018, the adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998* shall, with respect to specified consumers who are not regulated rate consumers, be further adjusted

by electricity vendors in accordance with the determinations of the Board under subsection (2).

Board to make determinations

(2) The Board shall, in accordance with the regulations, determine the adjustments to be made by electricity vendors.

Same, regulations

(3) The regulations may specify different adjustments to be made in respect of prescribed classes of specified consumers who are not regulated rate consumers.

Determinations by Board

9. The Board shall make the determinations mentioned in sections 7 and 8 no later than 15 business days after the day this section receives Royal Assent and, regardless of whether the Board makes the determinations before or after July 1, 2017, the determinations shall be effective as of July 1, 2017.

Implementation by electricity vendors

10. (1) As soon as possible after the Board makes determinations under section 9, each electricity vendor shall, in respect of electricity used on or after July 1, 2017, ensure that its invoices reflect the determinations of the Board.

Same

(2) The electricity vendor shall ensure that, if any of its customers who are specified consumers have been invoiced in a manner that does not reflect the determinations of the Board under section 9, the specified consumer receives the difference between the amounts shown on the invoice and the amounts reflecting the Board's determinations, provided as a lump sum credit on the first invoice issued after the electricity vendor has adapted its invoices or by such other means as may be prescribed.

Subsequent adjustments

11. (1) Despite clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998* and subject to subsection (2), the Lieutenant Governor in Council may prescribe the methodology to be applied by the Board after April 30, 2018 for the purpose of determining,

(a) electricity rates for regulated rate consumers; or

(b) adjustments to be applied by electricity vendors to the adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998* in respect of prescribed classes of specified consumers who are not regulated rate consumers.

Limitation

(2) Any prescribed methodology shall have regard to the following:

1. The purposes of this Act.

2. The clean energy costs borne by specified consumers over time.

3. Such other matters as may be prescribed.

Sub-metering

12. (1) This section applies if a specified consumer provides to another person electricity in respect of which a determination of the Board referred to in section 9 or 11 applies.

Same

(2) If an invoice for the electricity is issued to the person by the specified consumer or a unit sub-meter provider providing unit sub-metering for the specified consumer, the amount payable for the electricity by the person who is liable to pay the invoice shall be determined in accordance with the regulations.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

13. (1) Upon receipt of an invoice from an electricity vendor that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor as agent of the investment interest owners.

Same

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

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan, including in a manner that failed to provide for the reasonable alignment of the estimated finance amount with the fair allocation amount.

Terms

(3) The payment shall be made in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Indebtedness of specified consumer

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

Same

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

Unit sub-metering

(6) A specified consumer who provides electricity through unit sub-metering may collect amounts in respect of the clean energy adjustment payable under this section in accordance with the regulations.

Irrevocability of amount

14. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or bypassed.

Exception

(2) Subsection (1) does not apply to the extent that the invoice reflects a clerical, typographical or calculation-related error.

Determination of clean energy adjustment

Financial Services Manager to determine

15. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by taking the following steps:

1. Calculate the sum of the following:

   i. The estimated finance amount in respect of the reference period.

   ii. The true up amount in respect of the reference period.

2. Divide the sum calculated under paragraph 1 by the number of months in the reference period.

Regulations re true up amount

(2) The Lieutenant Governor in Council shall, in making regulations with respect to the determination of the true up amount, have regard to the following principles:

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

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

   i. differences between the estimated and actual finance amount for the applicable reference period,

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

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

Financial Services Manager to notify Board

(3) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment in respect of a reference period and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(4) Without changing the clean energy adjustment, the Board shall, in accordance with the regulations, determine the rates at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

16. (1) The IESO shall, as agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the market rules made under section 32 of the *Electricity Act, 1998* or the regulations.

Account

(2) All of the following amounts received by the IESO shall, until remitted to or for the benefit of the investment interest owners in accordance with subsection (4), be

deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection (1).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 13 (1).

3. Proceeds of amounts described in paragraphs 1 and 2.

Same, held in trust

(3) All amounts received by the IESO in respect of the clean energy adjustment shall, until remitted to or for the benefit of the investment interest owners, be held in trust by the IESO for the investment interest owners.

IESO to remit

(4) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the amounts referred to in subsection (1), to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

17. (1) Each electricity vendor shall issue an invoice to each of its customers who is a specified consumer for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 15 (4) and in accordance with the regulations.

Electricity vendor to report

(2) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its customers who are specified consumers in respect of the clean energy adjustment, the amount collected and such other information as may be prescribed.

Electricity vendor to collect

(3) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

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

Held in trust

(5) Payments received by an electricity vendor from or on behalf of specified consumers in respect of the clean energy adjustment and all proceeds of the payments shall, until remitted to the IESO for the benefit of the investment interest owners in accordance with subsection (6), be held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(6) Each electricity vendor shall remit amounts in respect of the clean energy adjustment to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

18. Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Duties and powers

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

Same

(2) The administration of the investment asset may include providing information to the IESO in respect of obligations under Part III and such other activities as may be prescribed.

Fees

(3) Subject to any prescribed limitations, the Financial Services Manager may establish and charge fees in relation to such matters as may be prescribed in accordance with the regulations, which regulations may provide for the ability to recover costs and expenditures and to earn a return.

Same, Board approval

(4) Before establishing fees under subsection (3), the Financial Services Manager shall submit them to the Board for approval in accordance with the regulations.

limit on what OPG can do/go to what for
- don't push more costs into future - fair allocat

align costs w/ benefits to people in future
- deal w/ immediate reduct in future

FAIR ALLOCATION AMOUNT

Minister to calculate fair allocation amount

20. (1) Subject to subsections (2) and (3), before the first funding obligation is incurred the Minister shall calculate a fair allocation amount in respect of each reference period, applying such method as the Minister considers appropriate and in accordance with the following steps:

- FAA will set out matrices

1. Determine the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period.

2. Determine the estimated reduction in the amounts payable by specified consumers as a result of determinations of the Board under Part II in respect of all previous reference periods, including the estimated reduction in clean energy costs described in clause (a) of the definition of "clean energy costs" in subsection 1 (1) that would otherwise have been payable by specified consumers in the absence of this Act.

3. Determine the amount, if any, by which the determination under paragraph 1 exceeds the determination under paragraph 2.

4. Calculate the sum of the amount determined under paragraph 3 and such other amounts as may be prescribed.

Principles

(2) In calculating the fair allocation amount, the Minister shall have regard to the following principles:

1. The purpose of calculating the fair allocation amount is to measure and allocate the estimated clean energy costs and estimated clean energy benefits fairly among the specified consumers in respect of each reference period.

2. Calculations should be made having regard to the need to align each fair allocation amount with the estimated finance amount payable during the reference period.

3. Estimated clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the estimated clean energy benefits attributed to the specified consumers in respect of the reference period.

4. Such other principles as may be prescribed.

Assumptions

(3) In calculating the fair allocation amount, the Minister shall make such assumptions as the Minister considers to be reasonable regarding the following:

1. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

2. The expected number of specified consumers in respect of each reference period.

3. The expected electricity consumption rates in respect of each reference period.

4. Such other assumptions as may be prescribed.

Minister to provide amount to Financial Services Manager

(4) The Minister shall provide the fair allocation amount in respect of each reference period to the Financial Services Manager.

Recalculation

(5) A calculation of the fair allocation amount under this Part may be changed by such person as may be prescribed in accordance with such requirements as may be prescribed.

Same

(6) No change under subsection (5) shall affect any clean energy adjustment that has already been determined under section 15 or any funding obligations that have already been incurred before the change.

Information

(7) The Minister, the IESO, the Financial Services Manager, the Board and electricity vendors shall provide such information as may be prescribed in accordance with the regulations for the purposes of facilitating a change to a calculation of the fair allocation amount.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

21. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring and financing an investment asset in accordance with this Act or for the purposes of a refinancing.

Plan to be provided to Minister

(2) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

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

1. Funding obligations should be incurred such that, along with any funding obligations already incurred, the estimated finance amount that would, subject to any refinancing, become due and payable during a reference period will reasonably align with the fair allocation amount determined in respect of the reference period, in each case after reducing the fair allocation amount to reflect determinations of the Board under Part II in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

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

4. Such other principles as may be prescribed.

Limitation

(4) In respect of each reference period from July 1, 2017 to April 30, 2021, no funding obligation shall be incurred that would result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) the amounts are payable in respect of a reference period in respect of which the Board has not made any determinations under Part II; or

(b) if the Board has made a determination under Part II in respect of the reference period, the funding obligations incurred would not result in amounts payable in respect of the clean energy adjustment during the reference period in an amount that exceeds the limit determined in accordance with the regulations.

Other reports

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

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this Act to the Financing Plan is deemed to be a reference to the plan as amended.

Incurrence of funding obligations

22. (1) The Financial Services Manager shall ensure that funding obligations incurred for the purposes of this Act are incurred in a manner that is consistent with the applicable Financing Plan.

Financing entities

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

Prohibition

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

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and to provide for the reasonable alignment of the estimated finance amount with the fair allocation amount.

Same

(5) For greater certainty, subsection (4) applies despite the failure of the Financial Services Manager to comply with subsection (1).

PART V
THE REGULATORY ASSET

IESO deferral

23. (1) The IESO deferral for each month, commencing May 1, 2017, shall be determined by the IESO in accordance with the regulations.

Same, retrospective amounts

(2) For greater certainty, the regulations may provide for the IESO deferral to include an amount that was incurred by the IESO on or after May 1, 2017 and before the day this section comes into force.

Electricity vendors to provide information

(3) Electricity vendors shall provide to the IESO such information as the IESO may reasonably request for the purposes of determining the IESO deferral under subsection (1) and such further information as may be prescribed.

Same

(4) The IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

24. (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Rights of investment interest owner

(3) No change made by the IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 26, affect the rights acquired by the investment interest owner under the transfer.

Regulatory asset established

25. (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Transfer of regulatory asset

26. (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.

Validity of transfer

27. (1) A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.

Same

(2) Without limiting subsection (1), any transfer agreement that states an intention of the parties for the IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of the IESO's right to

recover the corresponding amount in the variance account and not merely as a security interest.

Deemed perfection, etc.

(3) At the time a transfer of the regulatory asset is made under section 26, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

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

PART VI
THE INVESTMENT ASSET

Investment asset established

28. (1) The transfer of a specified portion of the regulatory asset under section 26 creates an investment asset or, if it is not the first transfer, adds to the investment asset.

Same

(2) Upon transfer of a specified portion of the regulatory asset under section 26 to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim.

Investment asset, irrevocable rights and interests

29. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right and interest to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover the clean energy adjustment that is imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors, the IESO and other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor and the IESO to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by any electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest, including any rights to receive funding rebates.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

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

No set off, etc.

(3) The investment asset shall not be set off, protect aut,

(a) by a consumer, an electricity vendor, the IESO, an agent of the investment interest owners or an owner in the Province of a distribution system within the meaning of the *Electricity Act, 1998*;

(b) in connection with any default of a person mentioned in clause (a); or

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

Exercise of rights

(4) The rights of the investment interest owners to collect the clean energy adjustment and enforce their rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

- clear invest interest owners can go after & can transfer & sell forth

Collective action required

(5) If one investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the

investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owners as a collective in accordance with its terms.

Transfer of investment interest

30. An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer — lived in favour of investment asset

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

Same

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

Deemed perfection, etc.

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

Priority of transfer, assignment, etc.

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

Investment interest owner may grant security interest

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

c ties into PPSA — & use process in place there to apply here.

31, 32 so people can register in

Validity

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

Perfection and priority of security interests

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

Same

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

Notice required

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

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act.*

PART VII
MISCELLANEOUS

Appointment of agent, invoicing or collection

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

Same, not Crown agent

(2) For greater certainty, a person appointed under this section is not an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Board's authority

34. (1) Each electricity vendor, the IESO and the Financial Services Manager shall maintain such accounts and provide such information to the Board as the Board may require for the purposes of carrying out its responsibilities under this Act, in the form and manner and within the time required by the Board.

No hearing required

(2) Despite anything to the contrary in the *Ontario Energy Board Act, 1998*, the Board may exercise any of its responsibilities under this Act without a hearing.

Sequestration

35. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections or 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.

Same

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

Choice of law

36. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to a transfer under this Act or the creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section 5 shall be the laws of the Province.

Conflict

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

No further approvals, etc.

38. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required under the Financing Plan or in relation to the determination of the fair allocation amount.

Liability

39. (1) No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty.

Same

(2) Nothing in subsection (1) shall be read as limiting the effect of subsection 19 (1) of the *Electricity Act, 1998* or subsection 11 (1) of the *Ontario Energy Board Act, 1998.*

Same

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

References in marketing materials and offering documents

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

Regulations

41. (1) The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

3. Governing the incurrence of debt for the purposes of the definition of "refinancing" in subsection 1 (1).

4. Governing the inclusion of information under this Act on or with invoices, which may include requiring notice to be provided by electricity vendors to specified consumers and other prescribed persons regarding the adjustments, including providing for different requirements in different circumstances and for different classes of specified consumers.

5. Governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on or with invoices issued to specified consumers, including the form that the information must take and the form of the invoices and the form of any notice to be provided to the specified consumer under this Act.

6. Governing the manner by which invoices or notices provided for under this Act are to be provided to specified consumers and other prescribed persons.

7. Providing for a right of compensation for investment interest owners affected by a breach under section 29 and the manner in which such a right may be enforced under this Act.

8. Prescribing the time within which any action required by this Act may be required to be done.

9. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

Limitation

(2) Despite subsection (1) or any other Act, no regulation under this Act shall have the effect of reducing, impairing, postponing or terminating the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or impairing or postponing the invoicing, collection, remittance or recovery of the clean energy adjustment.

PART VIII
AMENDMENTS TO OTHER ACTS

Electricity Act, 1998

42. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clause:

(q.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*,

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and related settlement activities,

(iii) engaging in activities related to the transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(A) incurring liabilities in relation to the regulatory asset,

(B) transferring the regulatory asset under section 26 for consideration, and

(C) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

(2) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

(c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the *Ontario Fair Hydro Plan Act, 2017*.

(3) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

(c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the *Ontario Fair Hydro Plan Act, 2017*.

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

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

(6) Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

(1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships, limited 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 *Ontario Fair Hydro Plan Act, 2017.*

Ontario Energy Board Act, 1998

43. (1) Subsection 70 (2.1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

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

(2) Section 70 of the Act is amended by adding the following subsection:

Deemed condition of licences, unit sub-meter provider, *Ontario Fair Hydro Plan Act, 2017*

(2.4) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Fair Hydro Plan Act, 2017* and the regulations made under it.

(3) Section 78.1 of the Act is amended by adding the following subsections:

Same, limitation re Ontario Power Generation Inc.

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

Same

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

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017.*

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

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

(4) Subsection 79.16 (3) of the Act is repealed.

PART IX
COMMENCEMENT AND SHORT TITLE

Commencement

44. This Schedule comes into force on the day the *Fair Hydro Act, 2017 receives* Royal Assent.

Short title

45. The short title of the Act set out in this Schedule is the *Ontario Fair Hydro Plan Act, 2017*.

SCHEDULE 2
AMENDMENTS TO THE ONTARIO ENERGY BOARD ACT, 1998

1. (1) Subsection 79 (4) of the *Ontario Energy Board Act, 1998* is repealed and the following substituted:

Liability

(4) All consumers are required, in accordance with the regulations, to contribute towards the amount of any compensation required under subsection (3) that is not otherwise provided under subsection (4.1).

Payments for certain classes

(4.1) Compensation required under subsection (3) may be provided with respect to one or more prescribed classes of consumers who receive rate protection under this section, in a manner provided for in the regulations.

Money appropriated by the Legislature

(4.2) The compensation provided for in subsection (4.1) shall be paid for out of the money appropriated for those purposes by the Legislature.

Information, etc.

(4.3) If provided for in the regulations, the Board, the IESO and distributors, or any of them, shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of the rate protection or of anything else provided for in this section.

(2) Clause 79 (5) (e) of the Act is repealed and the following substituted:

(e) prescribing rules respecting the amounts that must be collected to compensate distributors, taking into account any compensation provided under subsection (4.1), including rules,

(i) respecting the calculation of those amounts,

(ii) respecting the calculation of any off-set to the liability of consumers under subsection (3) having regard to those amounts,

(iii) establishing the time and manner of collection,

(iv) requiring the amounts to be paid in instalments and requiring the payment of interest or penalties on late payments,

(v) prescribing methods of ensuring that the amounts required cannot be bypassed, and

(vi) respecting the distribution of those amounts to consumers;

(e.1) prescribing classes of consumers for the purposes of subsection (4.1), and governing how and when the compensation is to be provided with respect to the rate protection provided to them, including, without restricting the generality of the foregoing, requiring the IESO to receive payments or amounts from the Minister of Energy and to make payments to licensed distributors or to prescribed persons and prescribing how and when payments are to be made;

2. Section 79.2 of the Act is repealed and the following substituted:

Rate assistance

79.2 (1) The Minister shall make provision for rate assistance for rate-assisted consumers having regard to their economic circumstances, and where the Minister makes such provision, shall do so out of the money provided for in subsection (4).

OESP

(2) The program known as the "Ontario Electricity Support Program" in English and "Programme ontarien d'aide relative aux frais d'électricité" in French is continued for the purpose of providing rate assistance to rate-assisted consumers having regard to their economic circumstances.

Administered by Board

(3) The Ontario Electricity Support Program shall be administered by the Board, or when the regulations so provide, by a Minister of the Crown or other entity provided for in the regulations.

Money appropriated by the Legislature

(4) The money required for the purposes of the Ontario Electricity Support Program shall be paid out of the money appropriated for those purposes by the Legislature, once the amounts recorded in the variance account referred to in subsection (5) are no longer sufficient to provide for the funding of the program when taken on their own.

Variance account

(5) The money required for the purposes of the Ontario Electricity Support Program shall be provided out of the credit balance in the variance account maintained by the IESO under the Program as it existed before the coming into force of section 2 of Schedule 2 to the *Fair Hydro Act, 2017* until the amounts recorded in the account are no longer sufficient, when taken on their own, to fund the Program.

Variance account depleted

(6) The IESO shall provide the Ministry of Energy with advance notice, on a timely basis, of the time the IESO estimates that the amounts reflected in the variance account would be less than the amount required to meet its obligations related to funding the Ontario Electricity Support Program for the upcoming month.

How provided

(7) Rate assistance provided under this section shall be provided with respect to consumers prescribed in the regulations, and shall be provided at the times provided for in the regulations and in the amounts and in the manner provided for in the regulations.

Payments with respect to prior use

(8) The regulations may require provision of rate assistance to prescribed classes of rate-assisted consumers with respect to electricity consumed during a period prior to the date of the making of the regulation, but no such rate assistance shall be required under the regulations with respect to electricity consumed before January 1, 2016.

Transitional

(9) The regulations may require the provision of rate assistance for a rate-assisted consumer with respect to a period prior to the date on which the consumer became a rate-assisted consumer if the consumer meets all of the criteria prescribed by the regulations.

Distributors, etc.

(10) A distributor, a unit sub-meter provider and any other person or entity that may be prescribed is entitled to be compensated from the money referred to in subsection (4) or subsection (5), as the case may be, for any lost revenue resulting from the provision of rate assistance under the Ontario Electricity Support Program.

Deemed licence conditions, IESO, settlements, payments, etc.

(11) Every licence issued to the IESO, a distributor or unit sub-meter provider or a retailer of electricity shall be deemed to contain conditions requiring the licensee to do anything necessary to implement and administer the provision of rate assistance under this section as may be required by the regulations or the Board, including requirements with respect to,

(a) making payments to the IESO, distributors, unit sub-meter providers and other persons and entities identified by the regulations;

(b) receiving payments or other amounts from the IESO, distributors, unit sub-meter providers and other persons and entities identified by the Minister;

(c) requiring licensees to pass any rate assistance provided for under this section through to rate-assisted consumers in the manner provided for in the regulations;

(d) engaging in settlement activities;

(e) providing information to and receiving information from the Ministry of Energy, the Board, the IESO, distributors, unit sub-meter providers, retailers of electricity and any other prescribed persons and entities in the time and in the manner provided for by the Board or as may be prescribed; and

(f) entering into agreements or arrangements with licensees and other persons.

Information, etc.

(12) If provided for in the regulations, the Board, the IESO, distributors, retailers of electricity and unit sub-meter providers, or any of them, shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of rate-assistance or of anything else required under this section.

Conflicts, etc.

(13) Where any conflict exists between an order of the Board, a code issued by the Board or a licence condition and this section or a regulation made under this section, this section or the regulation made under this section shall prevail to the extent of the conflict.

Regulations

(14) The Lieutenant Governor in Council may make regulations governing anything dealt with in this section and without limiting the generality of the foregoing, may make regulations,

(a) governing anything that is described in this section as being prescribed or as being provided for in the regulations or that is required to be done in accordance with the regulations;

(b) governing the time or times at which rate assistance shall be paid or become payable to rate-assisted consumers;

(c) governing the determination of classes of consumers who are rate-assisted consumers, including providing for different classes of rate-assisted consumers;

(d) requiring that certain costs and expenditures related to the Ontario Electricity Support Program be only incurred with the prior approval of the Minister, and governing those costs and expenditures;

(e) establishing rules for the calculation of the amount of the rate assistance to be provided;

(f) governing payments under this section, including determining the method or methods of calculating the amount of rate assistance to be provided;

(g) setting maximum amounts of the total annual value of rate assistance that may be provided;

(h) requiring a distributor, the IESO or a unit sub-meter provider or other prescribed person or entity to make or receive payments in respect of rate assistance, including requiring them to make or receive payments directly to or from the Ministry of Energy or to receive overpayments directly or indirectly from consumers or other persons entitled to receive the rate assistance and prescribing the circumstances in which such payments are to be made and received and such overpayments are to be received as well as methods for determining the amounts payable or to be received;

(i) requiring the IESO to receive payments from the Minister and requiring the IESO to make payments to the Board, to licensed distributors, to unit sub-meter providers or to prescribed persons, in respect of the rate assistance provided under this section and governing methods for determining the amounts payable;

(j) governing the Board's or other prescribed entity's administration and program-related costs in administering the Ontario Electricity Support Program;

(k) governing transitional matters arising from the changes made to the Ontario Electricity Support Program as a result of the enactment of the *Ontario Fair Hydro Plan Act, 2017*.

Retroactivity

(15) A regulation made under this section is, if it so provides, effective with reference to a period before it is filed.

General or particular

(16) A regulation under this section may be general or particular in application, may provide for different classes of persons and entities and may prescribe different rules for different persons or entities or different classes of persons or entities.

Verification of eligibility

(17) Section 11 of the *Ministry of Revenue Act* applies with respect to the Ontario Electricity Support Program as a government assistance program administered by the Board.

Definitions

(18) In this section,

"Government assistance program" has the meaning provided for in subsection 11 (2) of the *Ministry of Revenue Act*; "(programme d'aide gouvernementale)"

"rate-assisted consumer" means a consumer referred to in subsection (7). "(consommateur admissible à l'aide tarifaire)"

3. The Act is amended by adding the following section:

Confidentiality, information sharing, etc.

79.2.1 (1) For the purposes of section 79.2, the Board or the Minister or entity having responsibility for administering the Ontario Electricity Support Program may enter into an agreement with the Minister of Community and Social Services to provide the services to the public listed in subsection (2) on behalf of the Board, Minister or the entity, as the case may be, in relation to the administration of the Ontario Electricity Support Program.

Agreement, etc.

(2) The services that may be included in an agreement referred to in subsection (1) are the following:

1. Providing documents and information about the Ontario Electricity Support Program.

2. Processing applications for the Ontario Electricity Support Program.

Arrangements with others

(3) The Minister of Community and Social Services may arrange with another person or entity to provide, on behalf of that Minister, services that that Minister is authorized to provide under an agreement referred to in subsection (1).

Personal information

(4) The Minister of Community and Social Services is authorized to collect, use, disclose and retain personal information necessary to provide the services authorized by

an agreement referred to in subsection (1), but shall not collect, use, disclose or retain more personal information than is reasonably necessary to provide the services.

Limitation

(5) Except where otherwise authorized under subsection (7), the Minister of Community and Social Services shall not collect, use, disclose or retain personal information provided for in subsection (4) without the consent of the individual to whom the information relates.

Duty to transfer personal information

(6) The Minister of Community and Social Services shall transfer an individual's personal information provided for in subsection (4) into the control of the Board, Minister or entity responsible for administering the Ontario Electricity Support Program promptly after processing an application for the Ontario Electricity Support Program, but may retain such personal information as is reasonably necessary to confirm that an individual has been provided a service.

Use of personal information, etc.

(7) The Minister of Community and Social Services may use personal information maintained by that Minister in connection with the administration of the Ontario Disability Support Program and the program established pursuant to the *Ontario Works Act, 1997*, for the purpose of identifying and contacting individuals eligible for the rate assistance provided under the Ontario Electricity Support Program, and to provide services authorized under an agreement referred to in subsection (1).

Deemed compliance

(8) The use of personal information as allowed by subsection (7) is deemed to comply with section 41 of the *Freedom of Information and Protection of Privacy Act*.

Disclosure of list

(9) In order to assist the Minister of Community and Social Services to identify individuals eligible for rate assistance, the Board or the Minister or entity having responsibility for administering the Ontario Electricity Support Program shall, as soon as practicable after the coming into force of this section, disclose to the Minister of Community and Social Services a list of individuals who are enrolled in the Ontario Electricity Support Program, together with their mailing address and other contact information.

Use of list

(10) The Minister of Community and Social Services may use the information on the list provided under subsection (9) to determine whether an individual who is currently enrolled in the Ontario Disability Support Program or the program established under the *Ontario Works Act, 1997* is also enrolled in the Ontario Electricity Support Program.

Destruction of list

(11) The Minister of Community and Social Services shall destroy the list provided under subsection (9) no later than one year after receiving the list.

Notification about the management of personal information

(12) The Minister of Community and Social Services shall ensure that a notice is published on a website describing,

(a) the purpose for which that Minister collects, uses, discloses and retains personal information in connection with the Ontario Electricity Support Program;

(b) the types of personal information that may be collected, used, disclosed and retained in connection with the Ontario Electricity Support Program, and the circumstances in which the personal information may be collected, used, disclosed and retained in connection with that Program; and

(c) the title, and contact information, including an email address, of an employee who can answer an individual's questions about the use of the personal information under this section.

4. The Act is amended by adding the following sections:

Distribution rate-protected consumers

79.3 (1) The Minister shall provide for distribution rate protection to distribution rate-protected residential consumers having regard to the costs of the distribution of electricity to such consumers with respect to electricity consumed on or after the date prescribed by the regulations.

Money appropriated by the Legislature

(2) The money required for the purposes of the provision of distribution rate protection under this section shall be paid out of the money appropriated for those purposes by the Legislature.

Maximum charge

(3) Despite any order of the Board, or anything else under this Act, where the regulations so provide, a prescribed distributor who distributes electricity to distribution rate-protected residential consumers shall not charge those consumers, or a prescribed class of those consumers, any amount for monthly base distribution charges more than,

(a) the maximum amount for the charge that is provided for in the regulations; or

(b) the amount determined by the Board after applying any calculations, processes or methods provided for in the regulations.

Distributors

(4) A distributor who is prescribed under this section is entitled to be compensated from the money referred to in subsection (2) for lost revenue resulting from the provision of the distribution rate protection to distribution rate-protected residential consumers under this section.

Information, etc.

(5) If provided for in the regulations, the Board, the IESO and distributors, or any of them shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of distribution rate protection or of anything else required under this section.

Limitation periods for distribution rate protection, consumer

(6) Despite any past entitlement of a consumer who is eligible to distribution rate protection under this section, no distribution rate protection is payable to a consumer after a limitation period prescribed by the regulations in respect of the consumer, other than in such circumstances as may be prescribed by the regulations.

Limitation, reimbursement of distributor, etc.

(7) Despite any requirement under this Act to reimburse a prescribed distributor or other person for distribution rate protection provided by them to distribution rate-protected residential consumers under this section, no amounts for reimbursement are payable to the prescribed distributor or other person after a limitation period prescribed by the regulations in respect of the prescribed distributor or other person, where such reimbursement is based on a consumer's past entitlement under this section which has not yet been paid or reimbursed under this section, other than in such circumstances as may be prescribed by the regulations.

Transitional

(8) If, for technical or operational reasons, a distributor referred to in subsection (3) is unable to adapt its invoices to comply with this section and the regulations by the time it issues its first invoice for electricity consumed after the prescribed date in respect of an account of a consumer who is eligible for distribution rate protection under this section,

(a) the distributor shall adapt its invoices as soon as possible and, in any event, no later than a date prescribed in the regulations; and

(b) consumers continue to be entitled to receive the distribution rate protection to which they are entitled under this Act and may receive it as a lump sum credit

on the invoice for the first billing period after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Regulations

(9) The Lieutenant Governor in Council may make regulations,

(a) prescribing consumers or classes of consumers as distribution rate-protected residential consumers for the purposes of this section;

(b) prescribing dates for the purposes of subsections (1) and (8);

(c) prescribing distributors for the purposes of this section;

(d) governing anything that is described in this section as being prescribed or as being provided for in the regulations or that is required to be done in accordance with the regulations;

(e) governing the provision of distribution rate protection by the Minister in respect of distribution rate-protected residential consumers under this section including determining the method or methods of calculating the amount of rate protection to be provided;

(f) requiring the IESO to receive payments from the Minister and to make payments to licensed distributors, or to persons prescribed by the regulations, in respect of the distribution rate protection provided for under this section and prescribing methods for determining the amounts payable to distributors or distribution rate-protected residential consumers in respect of that protection.

Interpretation

(10) In this section,

"distribution rate-protected residential consumer" has the meaning provided for in the regulations; **(French)**

"monthly base distribution charges" has the meaning provided for in the regulations. (frais de distribution mensuels de base)

Delivery credit for on-reserve consumers

79.4 (1) The Minister shall provide a delivery credit to on-reserve consumers who meet the criteria prescribed under this section with respect to electricity consumed on or after the date prescribed by the regulations.

Money appropriated by the Legislature

(2) The money required for the purposes of the provision of the credits required under this section shall be paid out of the money appropriated for those purposes by the Legislature.

Eligible costs

(3) The eligible costs for the delivery credit referred to in subsection (1) are,

(a) the sum of the following charges for which the consumer would otherwise be liable,

(i) all variable and fixed distribution charges,

(ii) all charges based on the retail transmission network service rate,

(iii) all charges based on the retail transmission connection service rate,

(iv) all charges related to losses incurred in the distribution of electricity, except for such amounts that are included in regulatory charges provided for in the regulations, and

(v) any other charges that may be prescribed in the regulations; or

(b) where no separate charges for delivery are provided for by the distributor or other person or entity that may be prescribed in the regulations, the monthly service charge or such other amount as may be prescribed for or in respect of a prescribed distributor.

Delivery credit

(4) A distributor, person or entity shall, unless the regulations provide otherwise, provide the delivery credit referred to in subsection (1) by crediting the account of an on-reserve consumer.

Same

(5) The regulations may require that distributors and any other persons or entities provide a delivery credit to an on-reserve consumer who is entitled to a delivery credit under subsection (1) in such manner or in accordance with such methods as may be prescribed.

Same

(6) A distributor or any person or entity as may be prescribed is entitled to be compensated from the money referred to in subsection (2) for any lost revenue resulting from the provision of the delivery credits under this section.

Information, etc.

(7) If provided for in the regulations, the Board, the IESO and distributors, and other persons or entities, or any of them, shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of the delivery credits or of anything else required under this section.

Limitation periods for delivery credit, consumer

(8) Despite any past entitlement of an on-reserve consumer who is eligible for a delivery credit under this section, no delivery credit is payable to an on-reserve consumer after a limitation period prescribed by the regulations in respect of the on-reserve consumer, other than in such circumstances as may be prescribed by the regulations.

Limitation, reimbursement of distributor, etc.

(9) Despite any requirement under this Act to reimburse a distributor or other persons or entities for delivery credits provided by them to on-reserve consumers under this section, no amounts for reimbursement are payable to the distributor or other persons or entities after a limitation period prescribed by the regulations in respect of the distributor or other persons or entities, where such reimbursement is based on an on-reserve consumer's past entitlement under this section which has not yet been paid or reimbursed under this section, other than in such circumstances as may be prescribed by the regulations.

Transitional

(10) If, for technical or operational reasons, a distributor referred to in subsection (4) is unable to adapt its invoices to comply with this section and the regulations by the time it issues its first invoice for electricity consumed after the prescribed date in respect of an eligible account,

(a) the distributor shall adapt its invoices as soon as possible and, in any event, no later than a date prescribed in the regulations; and

(b) on-reserve consumers continue to be entitled to receive the delivery credit to which they are entitled under this Act and may receive it as a lump sum credit on the invoice for the first billing period after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Regulations

(11) The Lieutenant Governor in Council may make regulations,

(a) governing who is an on-reserve consumer for the purposes of this section and, without limiting the generality of the foregoing, may provide that consumers

who occupy certain areas are on-reserve consumers, and may do so without regard to whether those areas constitute a "reserve" under any other Act or law;

(b) prescribing dates for the purposes of subsections (1) and (10);

(c) governing provision of the delivery credits provided to on-reserve consumers under this section and, without restricting the generality of the foregoing, governing anything that under this section is to be prescribed or provided for in the regulations, or that is to be done in accordance with the regulations;

(d) determining the method or methods of calculating the amount of the delivery credits to be provided by the Minister in respect of on-reserve consumers under this section;

(e) requiring the IESO to make and receive payments to and from the Minister and to make payments to licensed distributors, or to persons prescribed by the regulations, in respect of the delivery credits provided for under this section and prescribing methods for determining the amounts payable to distributors or on-reserve consumers in respect of the credits provided.

Interpretation

(12) In this section,

"on-reserve consumer" has the meaning provided for in the regulations.

Application

79.5 Sections 79.6 through 79.11 apply to the programs provided for under sections 79, 79.2, 79.3 and 79.4 to the extent that they are funded by money appropriated for those purposes by the Legislature.

Definition

79.6 In sections 79.7 to 79.11,

"Finance Minister" means the Minister of Finance or such other member of the Executive Council to whom the administration of those sections is assigned under the *Executive Council Act*.

Records

79.7 (1) Every distributor and every other person prescribed by regulation shall keep at a location in Ontario such records as are necessary to determine and verify compliance with sections 79, 79.2, 79.3 and 79.4 and the regulations associated with them and any records required by those regulations to be kept.

Electronic records

(2) If a person keeps records in an electronic form, the person shall ensure that, from the time the records are first made and for as long as they are required to be retained,

(a) they remain complete and unaltered, apart from any changes or additions made in the normal course of communication, storage or display; and

(b) they are capable of being printed and of being produced in electronically readable format for inspection, examination or audit.

Retention of records

(3) Records required to be kept under subsection (1) shall not be destroyed unless authorization has been given in writing by the Finance Minister.

Offence

(4) Every person who fails to keep records in accordance with this section is guilty of an offence and, on conviction, is liable to a fine of not less than $50 and not more than $5,000.

Inspections and inquiries

79.8 (1) The Finance Minister may appoint one or more inspectors who are authorized to exercise any of the powers and perform any of the duties of a person authorized by the Minister under subsection 31 (1) of the *Retail Sales Tax Act* for any purpose related to the administration and enforcement of sections 79, 79.2, 79.3 and 79.4 of this Act.

Same

(2) Subsections 31 (1), (2), (2.1) and (2.2) of the *Retail Sales Tax Act* apply, with necessary modifications, with respect to the administration and enforcement of sections 79, 79.2, 79.3 and 79.4 of this Act.

Admission of evidence

(3) The Finance Minister, or a person authorized by the Finance Minister, may, for any purpose related to the administration of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them, reproduce from original data stored electronically any information previously submitted as required under those sections or regulations in any form by any person, and the electronically reproduced document shall be admissible in evidence and shall have the same probative force as the original document would have had if it had been proved in the ordinary way.

Inquiry

(4) The Finance Minister may, for any purpose related to the administration of sections 79, 79.2, 79.3 and 79.4 of this Act or the regulations made in association with

them, authorize any person, whether or not the person is an employee in the Ministry of the Finance Minister, to make such inquiry as the Finance Minister considers necessary with reference to anything relating to the administration of this Act or the regulations.

Copies

(5) If a book, record or other document is examined or produced under this section, the person by whom it is examined or to whom it is produced or any officer of the Ministry may make, or cause to be made, one or more copies of it, and a document purporting to be certified by the person to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have if proved in the ordinary way.

Compliance

(6) No person shall hinder or molest or interfere with any person doing anything that the person is authorized by this section to do or prevent or attempt to prevent any person doing any such thing.

Same

(7) Despite any other law to the contrary, every person shall, unless the person is unable to do so, do everything the person is required by this section to do.

Administration of oaths

(8) Declarations or affidavits in connection with statements of information submitted pursuant to this section may be taken before any person having authority to administer an oath or before any person specially authorized for that purpose by the Lieutenant Governor in Council, but any person so specially authorized shall not charge any fee for doing so.

Application of *Public Inquiries Act, 2009*

(9) Section 33 of the *Public Inquiries Act, 2009* applies to an inquiry under subsection (4).

Recovery of overpayments

Definitions

79.9. (1) In this section,

"inspector" means an inspector referred to in section 79.8; ("inspecteur")

"overpayment" means an amount received by a person in excess of that to which the person is entitled under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them. ("trop-perçu")

Notice of overpayment

(2) If it appears to an inspector that a person has received an overpayment, the Finance Minister may send a written notice to the person advising the person of the following:

1. That the person has received an overpayment.

2. The amount of the overpayment and how it was calculated.

3. The required steps to be taken by the person with respect to the overpayment.

4. The date, not more than six months after the date of the notice, by which these steps must be completed.

5. That the Finance Minister has the authority to assess the person for the amount of the overpayment, plus interest, if the person fails to complete the required steps by the specified date.

Calculation of amount of overpayment

(3) For the purposes of this section, an inspector shall calculate an overpayment or the outstanding balance of an overpayment in the manner and form and using such procedures as the Finance Minister considers adequate and expedient.

Assessment

(4) If a person fails to complete the steps required in a notice under subsection (2) within the time specified in the notice, and any additional time requested by the person and permitted by the Finance Minister, the Finance Minister may assess or reassess the amount of the overpayment, or the outstanding balance of the overpayment, based on the inspector's calculation described in subsection (3).

Penalty

(5) If the Finance Minister makes an assessment or reassessment under subsection (4) and is satisfied that the person's non-compliance with the required steps in the notice was attributable to neglect, carelessness, wilful default or fraud, the Finance Minister may assess a penalty against the person equal to the outstanding balance of the overpayment when the penalty is assessed.

Time limit

(6) The Finance Minister shall not assess or reassess under subsection (4) more than 48 months after the end of the month in which the person received the overpayment.

Exception, where misrepresentation, etc.

(7) Subsection (6) does not apply if the Finance Minister establishes that the person has made a misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in supplying information under this Act or the regulations or in omitting to disclose information.

Deeming

(8) An amount assessed or reassessed by the Finance Minister under this section is deemed, for the purposes of the administration and enforcement of this Act, to be a debt retirement charge owing and payable, as defined in subsection 85 (1) of the *Electricity Act, 1998,* that has been collected, on the last day of the month in which the person received the overpayment, by the person as a collector appointed under subsection 85.3 (1) of the *Electricity Act, 1998* and, for those purposes,

(a) sections 85.11, 85.12, 85.14, 85.17 and 85.30 of that Act apply with necessary modifications;

(b) in the application of sections 85.11 and 85.14 of that Act and without limiting the generality of clause (a) of this subsection, references to the Financial Corporation are read as references to the Minister of Finance and references to the Minister of Finance are read as references to the Finance Minister as defined in section 79.6 of this Act;

(c) the regulations made under that Act for the purposes of calculating the rate or rates of interest payable under section 85.11 of that Act and the manner of calculating the amount of interest apply with necessary modifications; and

(d) sections 23 and 36, subsections 37 (1), (1.1) and (2) and sections 37.1, 38 and 39 of the *Retail Sales Tax Act* apply with necessary modifications.

Disposition of repaid amounts

(9) If all or part of an overpayment is repaid to the Finance Minister, the Minister of Energy shall make such financial arrangements and payments as may be necessary to ensure that any person entitled to all or part of the overpayment receives the appropriate amount.

Confidentiality

79.10 (1) Except as authorized by this section, no person employed by the Government of Ontario shall,

(a) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister of Energy or

the Finance Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them; or

(b) knowingly allow any person to inspect or to have access to any record or thing obtained by or on behalf of either Minister for the purposes of this Act.

Testimony

(2) No person employed by the Government of Ontario shall be required, in connection with any legal proceedings,

(a) to give evidence relating to any information obtained by or on behalf of the Minister of Energy or Finance Minister for the purposes of this Act; or

(b) to produce any record or thing obtained by or on behalf of either Minister for the purposes of this Act.

Exception

(3) Subsections (1) and (2) do not apply in respect of,

(a) criminal proceedings under any Act of the Parliament of Canada;

(b) proceedings in respect of the trial of any person for an offence under an Act of the Legislature; or

(c) proceedings relating to the administration or enforcement of this Act or Part V.1 or VI of the *Electricity Act, 1998*.

Communication

(4) A person employed by the Government of Ontario may, in the course of duties in connection with the administration or enforcement of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them,

(a) communicate or allow to be communicated to another person employed by the Government of Ontario in the administration or enforcement of any law or to an employee of the Board information obtained by or on behalf of either Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them; and

(b) allow another person employed by the Government of Ontario in the administration or enforcement of any law or an employee of the Board to inspect or have access to any record or thing obtained by or on behalf of either Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

Reciprocal communication

(5) A person who receives information or obtains access to any record or thing under subsection (4) has a duty to communicate or furnish to that Minister on a reciprocal basis any information, record or thing obtained by the person that affects the administration or enforcement of this Act.

Use of information

(6) Any information, record or thing communicated or furnished under this section may be used only for the administration or enforcement of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them or an Act that is administered or enforced by the person receiving the information, record or thing.

Same

(7) The Finance Minister may permit information or a copy of any record or thing obtained by or on behalf of the Finance Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them to be given to,

(a) the person from whom the information, record or thing was obtained;

(b) any person by whom an amount is payable or has been paid under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them; or

(c) the legal representative of a person mentioned in clause (a) or (b) or the agent of the person authorized in writing in that behalf.

Information

(8) The Finance Minister may permit information or a copy of any record or thing obtained by or on behalf of the Finance Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them to be given to any person employed by any government if,

(a) the information, record or thing obtained by that government for the purpose of any Act that imposes a tax or duty are communicated or furnished on a reciprocal basis to the Minister; and

(b) the information, record or thing will not be used for any purpose other than the administration or enforcement of a law that provides for the imposition of a tax or duty.

Offence

(9) Every person who contravenes any provision of this section is guilty of an offence and on conviction is liable to a fine of not more than $2,000.

Offences

False statements, etc., and fraud

79.11 (1) Every person who engages in any of the following acts or omissions is guilty of an offence:

1. Making, participating in, assenting to or acquiescing in the making of a false or deceptive statement in any document or answer required or submitted under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

2. Destroying, altering, mutilating, hiding or otherwise disposing of information or records of any person, for the purpose of evading compliance with sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

3. Making, assenting to or acquiescing in the making of a false or deceptive entry of a material particular in a record of any person required to maintain records for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

4. Omitting to make or assenting to or acquiescing in the omission of an entry of a material particular in a record of any person required to maintain records for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

5. Wilfully evading or attempting to evade, in any manner, compliance with an obligation under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

Penalty upon conviction

(2) A person convicted of an offence under subsection (1) is liable to either or both of the following penalties in addition to any other penalty assessed under this Act:

1. A fine in an amount that is not less than $1,000 and not more than $10,000.

2. Imprisonment for a term of not more than two years.

General offence

(3) Every person who contravenes, by any act or omission, any other requirement imposed under sections 79, 79.2, 79.3 and 79.4 is guilty of an offence and, on conviction, is liable, where no other penalty is provided for the offence, to a fine of not less than $50 and not more than $5,000.

Limitation period

(4) A proceeding to prosecute an offence provided for in this section must be commenced within six years after the date on which the matter of the offence arose.

Payment of fines

(5) Fines imposed on conviction of an offence provided for in this section are payable to the Finance Minister on behalf of the Crown in right of Ontario.

Commencement

5. (1) Subject to subsection (2), this Schedule comes into force on the day the *Fair Hydro Act, 2017* receives Royal Assent.

(2) Section 2 comes into force on a day to be named by proclamation of the Lieutenant Governor.

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 amongst consumers, today and in the future.

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

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

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

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

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

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2. Effect of invalidity, etc.

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[1] FLS: please see the preamble of the *Green Energy Act, 2009.*
[2] FLS: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL

Interpretation
Definitions
1xx. (1) In this Act,

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

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

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

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

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

(i) renewable energy generation or capacity,

(ii) conservation and demand management, including storage,

(iii) energy efficiency,

(iv) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

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

(b) such other estimated costs as may be prescribed; ("French")

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

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[3] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")
[OLC Note: Need to ensure inclusion of IESO in definition of EV works in each case where the defined term is used.]

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

"financing entity" means the entity referred to in section 15 or a regulation prescribed under that section [TBC]; ("French")

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

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

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner pursuant to Part V or Part VI of this Act; ("French")
[OLC Note: Does the definition of "funding obligation" need to be scoped a bit more narrowly; for example, incurrences for a particular purpose?]

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

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

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section 20xx in respect of the reference period; ("French")

"investment asset" means the investment asset created as described in section 22xx; ("French")

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

"investment interest" means an ownership interest in the investment asset, which entitles an investment asset owner to the rights and benefits specified in the agreement under which the ownership interest is transferred; ("French")

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

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

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

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

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

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

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

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

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

"regulatory asset" means the right established under section 21xx to recover the IESO funding shortfall; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

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

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

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

Specified consumers

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

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

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

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

ii. a property within the meaning of the *Condominium Act, 1998*,

iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

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

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

   i. The commodity price of the electricity used during the invoice period.

   ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

   iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

   iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada) in respect of amounts that are included in the invoice amount by reason of sub-paragraphs i through iii;

   v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or by a unit sub-meter provider or other prescribed entity, such amounts as may be prescribed. ("French")

Same, exclusions

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

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

    iii. A rate rider of the type or class prescribed by the regulations.

5. Any other prescribed amounts.

Transfer

(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the IESO purports to dispose of its interest in the regulatory asset with the result of a named person becoming the owner of an investment interest.
[OLC Note: Consider the awkwardness of this term vs. "investment *asset* owner".]

Effect of invalidity, etc.[4]

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

Same, funding obligation

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

Purpose

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

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[4] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*
[5] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

(a) to ensure that clean energy costs are fairly allocated among specified consumers over time and that the process by which the Province raises money to fund the costs reflects the fair allocation to 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.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

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

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

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

Agreements for compensation

(3) The Minister of Finance may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding financial commitments, financial arrangements, indemnities or similar transactions.

PART II
FAIR ADJUSTMENT

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

Definitions

6xx. (1) In this section,

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

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

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

1. The consumer purchases electricity directly from Toronto Hydro.

[OLC Note: What does "directly" add here? Is this supposed to convey that it is a "non-retail" context because I don't think that is sufficiently clear.]

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

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

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

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

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

[OLC Note: Do you think it's necessary to clarify that purchasing from a licensed retailer may include being invoiced by Toronto Hydro on behalf of the retailer, or is that sufficiently clear given that para. 2 above applies? This relates to my question above about what we mean by "directly" in para. 1 of the previous definition. Would the purchase in the "retail" context be considered to be "indirect"? I don't think these words bring sufficient clarity.]

"Toronto Hydro" means Toronto Hydro-Electric System Limited or its [legal] successors or assigns which are licensed by the Board pursuant to Part V of the *Ontario Energy Board Act, 1998* to distribute electricity in the Toronto Hydro service area. ("French")

Rate determination

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

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

1. In the case of a specified consumer who purchases electricity directly from Toronto Hydro, the rate is the average rate that would be payable by the representative non-retail consumer in order for the representative non-retail consumer to receive a monthly invoice amount that is 25 per cent less taking into account the benefits received by such consumer pursuant to the *Ontario Rebate for Electricity Consumers Act, 2016,* than the average baseline invoice amount.

2. In the case of a specified consumer who purchases electricity from a licensed retailer, the rate is the average rate that would be payable by the representative retail consumer in order for the [global adjustment charge included in the representative retail consumer's monthly invoice amount] to be reduced by the same amount as the reduction calculated under paragraph 1.

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

Sub-meter customers

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

Determining rates

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

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

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

[OLC Note: Just thinking through subs. (4), does clause (b) say that if the Bill receives RA on June 1st… then the Board must determine the rates by June 8th…and the rates

would be effective as of July 1st. This isn't the outcome you want, is it? Don't you want the rates be effective May 1st?]

Transition

(5) Subsection (6) applies if,

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

(b) an electricity vendor, specified consumer or unit sub-meter provider issues its first invoice for electricity consumed on or after May 1, 2017 on a day before the day the Board determines rates under subsection (4).

Same

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

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

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

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

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

8xx. (1) Upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the investment asset owners, in accordance with such terms of payment as may

be specified in the invoice, which may include terms relating to late payment fees and interest charges.

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

Same

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

(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation applicable at the time when the payment is due; and

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

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

Same

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

Recovery from sub-meter consumers

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

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

Irrevocability of clean energy adjustment

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

Exception

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

Determination of clean energy adjustment

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

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

2. Add the true up amount in respect of the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1.

True up amount

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

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

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

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

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

[OLC Note: What is the difference between "billings" and "invoices"… also "amounts billed" vs. "amounts invoiced"? Can we just use "invoicing"?]

IESO to issue remittance notice to electricity vendors

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

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

IESO to collect

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

NTD: Should this refer instead to the settlement processes established for the purposes of E.A s.25.33?.

Collection account

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

1. Amounts described in subsection 12 (4).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

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

Collection of outstanding amounts, regulatory asset

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

Electricity vendor to invoice specified consumers

12xx. (1) The electricity vendor shall issue an invoice to each specified consumer for the consumer's amount of the clean energy adjustment in accordance with the regulations.

[OLC Note: Do you want the regulations here to deal with: (1) the way in which invoice is issued; (2) the way the consumer's amount is calculated; or (3) both 1 and 2?]

Electricity vendor to collect

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

Pro rating of payments

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

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

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

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

Remittance to IESO

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

Regulations

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

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

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

Termination

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

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in subsection 16xx (2);

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

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

Duties and powers

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

Same

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

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

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

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate the fair allocation amount for the purposes of,

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

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

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

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

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made thereunder~~[the global adjustment]~~ that would be borne by the specified consumers in respect of clean energy costs when measured against the specified consumer's proportionate share of the clean energy benefits properly allocated to the consumer?] [in the absence of this Act].

[OLC Note: The above needs some work… in particular we would need to say more than just "in the absence of this Act" because I think we would also need to specify that under the proposed scenario, the current Global Adjustment rules would continue to be in place. We also need to be clear what we mean by global adjustment etc.]

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

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

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Allocation of fair adjustment

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

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.
[OLC Note: Here and throughout, I'm not quite sure whether we should be referring to the "calculation" or the "amount".]

Submission of fair allocation to Minister

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

Effective date

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

Publication

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

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

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

Principles

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

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

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

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

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

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

[OLC Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of

mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section however the Financial Services Manager shall provide the Minister the amended plan in the same manner as provided for in subsection (1).

Limitation, first five year period

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

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

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

Other reports

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

Confidentiality of plan, reports

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

Implementation of Financing Plan

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

Same

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

Financing entities

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

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, 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.

Effect of amendment to Fair Allocation Plan

(4) No funding obligation incurred and no transfer made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.
[OLC Note: This is meant to assist with clarity in the subsequent provisions. Will consider further as drafting settles.]

Variance account

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

1. Create a variance account for the purposes of this Act.

2. Record the IESO funding shortfall in the variance account from time to time.

3. Recover the IESO funding shortfall in accordance with section X and the regulations.

No hearing

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

No appeals, etc.

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

IESO funding shortfall

20xx. (1) The IESO shall determine the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts issued to specified consumers for the month if Part II of this Act did not apply.

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

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

Recording of IESO funding shortfall

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

Recording determinative

(4) A recording of the IESO funding shortfall in the variance account is determinative of the amount of IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the IESO funding shortfall.

Same, restrictions

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

1. The IESO shall not be entitled to collect the IESO funding shortfall from specified consumers before May 1, 2022.

2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].

3. Such other restrictions as may be prescribed.

Transfer of regulatory asset

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

Same

(2) Upon receipt of any payment in consideration for the transfer,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) unless otherwise provided for in this Act, the IESO shall have no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the related investment asset created by the transfer.

Same

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

Validity of transfer

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

Same

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

Deemed perfection, etc.

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

Priority of transfer

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

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

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

Investment asset established

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

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

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

No set off, etc.

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

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

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

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

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

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

Exercise of rights

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

Collective action required

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

[OLC Note: It seems that successors may need to be addressed here.]

Transfer of investment interest

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

[OLC Note: Please compare the language underlined above vs. the language of subs. 23 (1) above. Here we are talking about transfer of "rights and interests" in an investment interest whereas above we refer to a transfer of "the RA". Why are we not saying transfer of "the IA" here? Can one have a "right or interest" in an "interest"? Still need to clarify how these concepts work together.]

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.
[OLC Note: Awkward that we occasionally have references to "owner of the investment interest" vs. "investment *asset* owner".]

Same

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

Deemed perfection, etc.

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

Priority of transfer, assignment, etc.

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

Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.
[OLC Note: This section had become a bit confused through multiple rounds of changes. I have now attempted to remove duplication. Please review carefully to ensure that it contains the correct provisions.]

Validity

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

Perfection and priority of security interests

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

Proceeds

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

Perfection

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

Same

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

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

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

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

Not Crown agent

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

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

Sequestration

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

Same

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

Same

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

Choice of law

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

Conflict

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

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

No further approvals, etc.

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

Immunity

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

Same

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

References in marketing materials and offering documents

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

Non-application, Financial Administration Act, s. 28[6]

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

Regulations

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

(a) defining any term used in this Act....

(b) prescribing types of payment obligations that constitute funding obligations;

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

(c) governing the inclusion of information about the clean energy adjustments 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. *[NTD: Please refer to OEBA s.79.17 and 88(1)(z.11) and (z.12). Thank you.]*

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

[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:

(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 and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

[OLC Note: Why is "creation" listed above? Isn't that fully accomplished through the statute?]

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

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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).

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

(c) amounts paid to or received from a [prescribed?] financial services entity or [a financing entity prescribed under?] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of?] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

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

(c) amounts paid to or received from a [prescribed?] financial services entity or [a financing entity prescribed under?] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of?] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

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

4. A consumer who is,

   i. a [specified consumer within the meaning of?] the *Ontario Fair Hydro Plan Act, 2017,* or

   ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998].*

[OLC Note: I'm not sure who the consumers under 4 ii would be... why wouldn't they be prescribed under the EA? Or can we specify which consumers we're talking about? We can't give OEBA reg-making authority under the EA... would need to do so under the OEBA.] *NTD: It's a fair point. My concern is that there may end up being RPP-esq consumers that have to be added to the RPP regime and then added to the EA regime. Frankly, it's a bit of a guess on my part and if after further thinking we decide its just not necessary, it can come out. Thanks for considering it with me.*

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

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

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

Same, *Ontario Fair Hydro Plan Act, 2017*

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

~~1. Providing services on behalf of financing entities for the purposes of carrying out its obligations and activities in respect of that Act, subject to the right to be paid by a financing entity for services, including those services described in subsection (1.2).~~

~~2. Providing equity contributions and loans to a financing entity.~~

~~3. Exercising the powers and performing the duties of the Financial Services Manager under that Act.~~

~~4. Issuing non-equity securities in Ontario Power Generation Inc. or one of its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations under that Act.~~

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

~~Same, services~~

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

~~1. The purchase and administration of investment assets on behalf of a financing entity and the negotiation, execution and delivery of any related agreements.~~

~~2. The negotiation, execution and delivery on behalf of a financing entity of constating documents, financial services agreements, administrative services~~

~~agreements, purchase and sale agreements, trust indentures, hedging agreements, credit enhancement agreements, servicing agreements, loan agreements, subordinated loan agreements, security agreements, underwriting agreements, agency agreements and any similar agreements.~~

~~3. The negotiation, execution and delivery of any documents relating to a sale or offering of securities by a financing entity.~~

~~4. The implementation and administration of any agreements to which a financing entity is a party.~~

~~5. The acquisition, administration and sale of any other investments that may from time to time be made by a financing entity.~~

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

~~6. The borrowing of money [on behalf of?] a financing entity.~~

~~7. Administering the activities of a financing entity and preparing reports on behalf of a financing entity.~~

~~8. Enforcing the rights of a financing entity.~~

~~9. Engaging or employing any persons to assist in providing services to a financing entity and delegating its powers and duties to such persons.~~

~~10. Performing any service that is incidental to the services set out in paragraphs 1 to 9.~~

Subsidiaries, etc.

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

Deemed assets, entity

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

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

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

Exception

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

Definition, financing entity

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

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

Exception

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

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

Exception

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

[OLC Note: See subs. 14xx (3) of the main Bill above -- do you want to move this to become a consequential amendment or should it stay where it is? ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

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

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

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

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

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

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

Same, limitation re Ontario Power Generation Inc.

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

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

Same

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

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

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

PART VII
COMMENCEMENT AND SHORT TITLE

Commencement

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

Short title

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

SCHEDULE 1
ESTIMATED FINANCE AMOUNT

Estimated finance amount

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

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

2. The sum of all funding costs in respect of the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under subparagraph ii from the amount calculated under subparagraph i.

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

4. The balance of the finance reserve at the end of the reference period, determined as follows:

i. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

ii. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in subparagraph i.

iii. Subtract the amount calculated under subparagraph ii from the amount calculated under subparagraph ii.

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

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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?]residential 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 residential consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

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

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

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

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

(a) the ~~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 or amounts 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")

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

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

"funding obligation" means a payment obligation incurred by or on behalf of an investment interest owner to fund its ownership of an investment interest or a payment obligation that meets such other criteria as may be prescribed; ("French")

"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")
NTD: We note that Carolyn's instructions on 04_27_2017 at 1:56 on pages 5&6 were to replace 'IESO Funding Shortfall with 'IESO deferral'. There are still a few instances of IESO funding deferral in the draft.

NTD: The following definitions did not make it into this draft (included in Carolyn's instructions on 04_27_2017 at 1:56pm on page 5&6)

"fair adjustment" means, for any reference period until April 30, 2021, the rate determined in accordance with Part II;

NTD: the outside lawyers keep wanting to add in "finance amount" means an amount determined in accordance with the regulations. We don't think that is necessary because of the ability to define words by regulation. Please include if we need it.

"funding rebate" means an obligation assumed by IESO as part of the transfer of a regulatory asset;

NTD: funding rebate is important because it signals how OPG interest costs will be paid in the short term.

"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.]Looks good! We are running it by outside counsel. You were very true to their drafting. Thank you!

"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.] We will get back to you with the feedback we receive from outside counsel

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

[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 specified consumers.

[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.

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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.

Protection and assurances

Prohibition

5xx. (1) No action or omission by the Board, the Minister, the Board 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. 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

(23) 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

(43) 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

NTD: PLEASE SEE DAN'S INSTRUCTIONS FOR THIS PART. WE HAVE BROUGHT FORWARD A FEW. HIS VERSION SHOULD PREVAIL IN THE EVENT OF INCONSISTENCY

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"regulated rate consumer" means a deemed 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")

NTD: Insertion of the word 'deemed' above as per Dan's instructions on 04_27_2017 at 4:32pm on page 13 of Dan's instructions

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.

NTD: Deletion of the word 'used' above as per Dan's instructions on 04 27 2017 at 4:32pm on page 9 of Dan's instructions.

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~~ fifteen business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor shall, no later than ~~fifteen~~ seven business days after the day on which the Board makes its determination under section 6.3xx, adapt its invoices accordingly.

NTD: Deletion of the word 'seven ' and replaced with 'fifteen' above as per Dan's instructions on 04 27 2017 at 4:32pm – page 16 of Dan's instructions

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 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 fair allocation or 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.]Yes please

[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?]Yes, we should be consistent

Irrevocability of amount

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

Exception

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

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period and dividing the sum by the number of months in 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 adjustments 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 adjustments in respect of the reference period.

IESO to receive amounts

11xx. (2) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

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

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

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 (52) 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 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.

NTD: We want to make sure that this is sufficient to enable a process akin to EA s. 25

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The ~~Minister~~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 estimated 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 fairly among the specified consumers in respect of ~~the~~ each reference period.

Timing of calculation

(1.1) The ~~Financial Services Manager~~Minister shall calculate a fair allocation amount in respect of each reference period before ~~any~~ the first funding obligation is incurred by a financing entity ~~during the reference period~~.

(x) The Minister shall provide the financial allocation to the Financial Services Manager.

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 ~~exceed~~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 ~~if this Act had not been enacted~~.

[OLC Note: As noted in the purpose clause (s. 3xx), are clean energy *benefits* being "allocated"? Or is it just the clean energy *costs* that are being allocated?] Both are being allocated,or attributed to people at points in time.

[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.]We think we capture that with ref. to 25.33 and the regs

2. ~~The estimated aggregate amount of the fair adjustment 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.]

3. Such additional amounts as may be prescribed.

Principles

(2) In calculating the ~~fair allocation~~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~~Minister shall have regard to the following principles:

1. Estimated cClean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the estimated clean energy benefits attributed to the specified consumers in respect of the reference period.

2. ~~The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with~~ Such other principles as may be set out in 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?]

(x) ~~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.

iv4. Such other ~~principles~~ assumptions as may be prescribed.

Method

(3) The ~~Financial Services Manager~~Minister shall calculate a fair allocation amount in accordance with such methods as the ~~Financial Services Manager~~Minister considers appropriate, having regard to the requirements of this Act.

Recalculation

(4) The fair allocation may be recalculated at such time and by such person as may be set out in the regulations.

(5) The regulations may provide that the Minister, the IESO, the Financial Services Manager, the Board and electricity vendors to provide such information as may be required to re-calculate the fair adjustment in such manner at and at such time as the regulation may prescribe.

~~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 these 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.NTD: not intended to have this degree of formality~~

~~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.NTD: Not intended to be published, but will be publicly available as the FSM goes to market with its bonds.~~

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 interest~~ 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 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 adjustments 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).]Thanks

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?]No. We create the investment asset the 1st time and then we grow it.

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."]OK

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.]This does not work. This is a light touch approach to ensuring that a stream of money is paid. Please revert to original instructions

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 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. For greater certainty, [a financing entity?] person appointed under 29 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.]

(x) Each electricity vendor, the IESO, 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.

(x) 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.

Immunity [should we change title to liability?]

35xx. (1) No action or other civil proceeding ~~for damages~~ shall be commenced ~~instituted~~ against any employee of the Province or the ~~, IESO,~~ Ontario Power Generation Inc. ~~or OEB~~ for any act done in good faith in the exercise or performance or the ~~execution or~~ intended exercise or performance ~~execution~~ of a power or ~~any~~ duty ~~or authority~~ under this Act, the regulations under this Act, or for any alleged neglect or default in the exercise or performance ~~execution~~ in good faith of such a ~~any~~power or duty ~~or authority under this Act~~.

(New Subsection)
Nothing in section 35xx(1) limits subsection 19(1) of the Electricity Act, 1998 and subsection 11(1) of the Ontario Energy Board Act,1998.

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. (1) The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [5]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

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]

(2) Notwithstanding subsection (1) or any other Act, the Lieutenant Governor in Council may not make any regulation which has the effect of reducing, impairing, postponing or terminating the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or impairing or postponing the invoicing, collection or remittance of the clean energy adjustment.

---

[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)*

NTD: New subsection from Paul as of 04 27 2017 6 09pm. Still waiting for ok from Tom.

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,

[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*;

---

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

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?]

NEW Section:
205.1x Section 70 of the Ontario Energy Board Act, 1998 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.

NTD: New section proposed by OEB in comments sent 04_26_2017 11_16pm

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.

NEW SECTION:
207xx.Section 79.16 of the Ontario Energy Board Act, 1998 is amended by deleting subsection (3).

NTD: New section proposed by OEB in comments sent 04_26_2017 11_16pm. OEB was concerned that, with the different changes set out in the Act (including notably the

changes to 25.33 above), the impact of which is not yet known, the obligation to clear variance accounts will not be feasible in the way that it is today, and could cause the OEB to act in violation of this subsection. If it is relevant in the future, it can be added to O. Reg. 95/05].

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*.

Osler's comments 11:00 AM

Kacaba, Jennifer (ENERGY)

From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 28, 2017 11:08 AM
To: Rehob, James (ENERGY); Kacaba, Jennifer (ENERGY); Huang, Jackson (MEDG/MRIS)
Subject: FW: Transfer Concept & Clean Energy Definitions Clean-up
Attachments: Fair Allocation Amount Comments - April 27.pdf

Hi – please look at the proposed amendments to the definitions of "clean energy costs" and "clean energy benefits" and see if this adds anything.

If you like the changes, please do not introduce the new term "clean energy investments" – we can just say "investments in clean energy initiatives", which will be more consistent with our preamble and purpose.

From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: April-27-17 7:20 PM
To: ASHBOURNE, STEPHEN; Sebastiano, Rocco
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); JACKSON, ADAM
Subject: Transfer Concept & Clean Energy Definitions Clean-up

Thanks Stephen – we're good with this language on the transfer concept (other than a few nits where references to "a portion of the regulatory asset" should be to "a **specified** portion...").

As discussed, I have attached a mark-up that reflects our attempt at cleaning up the concepts of clean energy benefits and clean energy costs. In short, "clean energy costs" are the costs that are currently allocated to specified consumers based on the payment terms of the contracts entered into. These costs are reflected in the global adjustment and allocate these costs over a shorter period than the useful life. The result is that the clean energy costs are too high in the near term reference periods and too low (eventually zero) in respect of longer term reference periods. This number for each reference period can probably be calculated fairly accurately.

"clean energy benefits" are the costs of the "clean energy investments" (a new term which I think is useful) allocated over useful life rather than in accordance with the contracts. This results in a lower amount (in comparison to clean energy costs) for near term reference periods and a higher amount for longer term reference periods. We left in the ability to adjust this number – because it may need some adjusting. While the cost of the investments might be allocated relatively accurately, it may not produce the expected number and so will have to be subject to adjustment upwards for some intangible benefits – like the future value of clean air etc.

The "fair allocation amount" for a reference period is the amount by which the clean energy benefits exceed the clean energy costs for a reference period. For the longer term reference periods this is a positive number.

In the future, when we are recovering the clean energy adjustments (finance amounts), the goal is to have the clean energy adjustments "align" with the fair allocation amounts.

Elliot

OSLER

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From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: Thursday, April 27, 2017 5:24 PM
To: Sebastiano, Rocco <RSebastiano@osler.com>; Smith, Elliot <ESmith@osler.com>
Cc: Carolyn.Calwell@ontario.ca; JACKSON, ADAM <ADAM.JACKSON@blakes.com>
Subject: FW: Torys' Comments

FYI, this is where we are on the "transfer" concept.

Stephen R. Ashbourne
Partner
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Blakes

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Version 4

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A proposal to create Legislation.

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

A proposal to create Legislation.

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

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

Preamble

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

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

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

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

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

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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, in respect of a reference period, the value of the benefits ~~determined~~ to be derived by or accruing to ~~the~~all specified consumers as a result of the clean energy investments and the clean energy initiative, ~~including as a result of clean energy costs~~which value shall include the value at cost of the clean energy investments allocated over the useful life of the clean energy investments notwithstanding the payment terms of the contracts governing the procurement of the clean energy investments; ("French")

"clean energy costs" means ~~the value of~~, in respect of a reference period, the costs to be allocated to all specified consumers as a result of the clean energy investments and the clean energy initiative, ~~including as a result of past, present and expected costs incurred in respect of~~,which value shall include the value at the cost of the clean energy investments allocated in accordance with the payment terms of the contracts governing the procurement of the clean energy investments as reflected in:

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

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

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

(b) such other estimated costs as may be prescribed; ("French")

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

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"clean energy investments" means the investments made to provide Ontario with a clean and reliable electricity generation, transmission and distribution system;

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

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

"fair allocation amount" means the amount determined in under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

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

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

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

"funding obligation" means,

(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

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

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 22xx; ("French")

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

"investment interest" means,

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

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

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

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

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

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

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

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

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, a redemption, repayment or repurchase of a funding obligation; ("French")

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

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

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

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

"transfer" means [TBD]; ("French")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

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

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

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

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity used.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

    v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

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

Same, funding obligation

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

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that the costs of the clean energy ~~costs~~investments are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

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

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

[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.

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

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

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*.

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

Specified consumers (non-RPP), first fair adjustment

6.2xx The rate for electricity payable by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1).

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt is billing practices and invoices to reflect the new rates.

Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

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

Same

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

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

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

Same

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

Recovery from sub-meter consumers

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

Irrevocability of amount

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

Exception

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

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

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

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

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

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

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

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

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

IESO to receive amounts

11xx. (2) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

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

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

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

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

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

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

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

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

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

Same

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

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

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

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 costs of the clean energy ~~costs~~investments and clean energy initiative and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of calculation

(1.1) The ~~Financial Services Manager~~Minister 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].~~by the date that is [20] business days after the day this Act receives royal Assent.

Amount

(1.2) The fair allocation amount in respect of ~~a reference period is the sum of the following amounts:~~each reference period shall be the* amount, if any, by which* estimated clean energy benefits in respect of the reference period exceed the clean energy costs in respect of the reference period.

~~1. The* amount, if any, by which*, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.~~

~~2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.~~

~~**Principles**~~

~~(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:~~

1. ~~Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.~~

2. ~~The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.~~
3. ~~The fair allocation calculation should include reasonable assumptions regarding the following:~~

    i. ~~The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.~~

    ii. ~~The expected number of specified consumers in respect of each reference period.~~

    iii. ~~The expected electricity consumption rates in respect of each reference period.~~

~~**Method**~~

~~(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.~~

~~**Notification to Minister**~~

~~(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.~~

~~**Effective date**~~

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

Publication

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

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

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

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

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

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

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

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

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would ~~become payable during the reference period and~~ result in ~~amounts payable in respect of the~~ clean energy adjustments in respect of ~~the~~any such reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the clean energy adjustment for the reference period resulting from the funding obligations ~~incurred would not be payable during the reference period~~

~~in an amount that exceeds the [difference between the fair allocation amount in respect of~~would not exceed an amount equal to the estimated clean energy benefits for the reference period ~~and the amount of~~plus the fair adjustment ~~in respect of~~for the reference period~~]~~. minus the estimated clean energy costs for 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 incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

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

Prohibition

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

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) Subject to any finding of [manifest error], a recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

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

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

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

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

Same

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

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

Same

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

Deemed perfection, etc.

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

Priority of transfer

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

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) The first transfer of the regulatory asset or a portion of it creates the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

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

No set off, etc.

(2) The investment asset shall not be set off,

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

(b) in connection with any default of a person mentioned in clause (a); or

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

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

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

Transfer of investment interest

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

Validity of transfer

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

Same

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

Deemed perfection, etc.

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

Priority of transfer, assignment, etc.

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

Investment interest owner may grant security interest

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

Validity

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

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, 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, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

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

Same

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

Choice of law

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

Conflict

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

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation ~~amount~~amounts in respect of each reference period.

Immunity

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

Same

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

References in marketing materials and offering documents

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

Non-application, Financial Administration Act, s. 28[5]

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

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

x. governing the 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[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

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

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

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

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

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

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

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

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

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

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

4. A consumer who is,

i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017,* or

ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998].*

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

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

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

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

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

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

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

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

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017.*

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

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

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

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

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

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

Same, limitation re Ontario Power Generation Inc.

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

Same

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

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017.*

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

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

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

Document comparison by Workshare Compare on Thursday, April 27, 2017 9:57:45 AM

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Total changes	73

Caroline edits

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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 amongst consumers, today and in the future.

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

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

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

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

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

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

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

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PART I
GENERAL

Interpretation
Definitions
1xx. (1) In this Act,

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

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

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

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

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

(i) renewable energy generation or capacity,

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

(#) storage,

(iii) energy efficiency,

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

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

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

(b) such other estimated costs as may be prescribed; ("French")

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

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

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

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

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

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

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

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

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

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

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

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

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means~~, in respect of a reference period,~~ the amount determined under section 20xx ~~in respect of the reference period~~; ("French") NTD: Shortfalls will occur monthly.

"investment asset" means the property rights ~~investment asset created~~ as described in section 22xx; ("French")

"investment ~~asset~~ interest owner" means a financing entity that acquires an investment interest ~~in the investment asset~~; ("French")

"investment interest" means an ownership interest in the investment asset, ~~which entitles~~ and, in the case of a transfer of an interest in an investment asset, ~~owner to~~ the rights and benefits specified in the agreement under which the ~~ownership~~ interest in the investment interest is transferred; ("French")

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be prescribed, until April 30, 2047~~set out in the Fair Allocation Plan~~; ("French")

"refinancing" means a redemption or repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment ~~asset~~interest owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx to recover the ~~IESO funding shortfall~~amount recorded in the variance account created under section xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" means (i) in relation to the regulatory asset, or any portion thereof, any act of IESO which states that it is a "transfer" of all or any portion of the regulatory asset or any other act of the IESO by which the IESO purports to dispose of its interest in all or any portion of the regulatory asset;
(ii) in relation to an investment interest, an assignment, conveyance, disposition or sale; ("French")

NTD: IESO's counsel explains the approach above: For a number of reasons it is difficult to treat the transaction between the IESO and the Financing Trust as a transaction which is in law a transfer, sale or assignment. We think that the best way of proceeding is for the Act to state specifically

that upon any "transfer", the IESO has no further rights in the Regulatory Asset, or portion thereof transferred and the Investment Asset Owner acquires the corresponding Investment Interest free of any adverse claim. Since, in both cases, these rights are a creature of statute, it is hard to see how such a stipulation could realistically be challenged. However, in order to avoid circularity, the term "transfer" needs to be defined more broadly so that it is not dependent upon there being a transfer at common law.]

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);

    v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider.

5. Any other prescribed amounts.

~~**Transfer**~~

~~(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the IESO purports to dispose of its interest in the regulatory asset with the result of a named person becoming the owner of an investment interest.~~

[OLC Note: Consider the awkwardness of this term vs. "investment *asset* owner".]

Effect of invalidity, etc.[4]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if ~~some~~ one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a the validity or enforceability of a funding obligation ~~, or any rights or obligations associated with the funding obligation that was~~ incurred under this Act before the day that the provision ~~is~~ was held to be invalid or ceased ~~ceased~~ to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[5]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers over time and ~~that the process by which the Province raises money to fund the costs~~ reflects the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

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[4] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[5] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment ~~or lower the priority of the clean energy adjustment over other debts;~~ or

(c) ~~adversely affect an investment asset or a funding obligation~~hinder, delay impair or prejudice the rights of an investment interest owner in an investment interest or the obligations of an investment interest owner under any funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister ~~of Finance~~ may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of the IESO or electricity vendors under this Act; ~~financial commitments, financial arrangements, indemnities~~ or similar transactions. NTD: Requires further elaboration of types of agreements.

(2) The Lieutenant Governor in Council may by order authorize the Minister of Finance, on behalf of Ontario, to agree to guarantee or indemnify, any debts, obligations, securities or undertakings associated with an investment interest.

Terms and conditions

(3) In respect of a guarantee or indemnity authorized under subsection (2), the Lieutenant Governor in Council may fix such terms and conditions as are considered advisable or may authorize the Minister of Finance, subject to any maximum liability specified for the guarantee or indemnity by the Lieutenant Governor in Council, to determine the terms, conditions and amount on which the guarantee or indemnity will be given.

PART II
FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018
Definitions
6xx. (1) In this section,

"average baseline invoice amount" means the average monthly invoice amount that would be payable by the representative non-retail consumer or representative retail consumer, as the case may be, under the average baseline rate; ("French")

"average baseline rate" means the average rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French")

"representative non-retail consumer" means a consumer who meets the following criteria:

NTD: there is a desire to move this definition to the regulations.

1. The consumer purchases electricity directly from Toronto Hydro.

[OLC Note: What does "directly" add here? Is this supposed to convey that it is a "non-retail" context because I don't think that is sufficiently clear.]

2. The consumer has an account with Toronto Hydro that falls within the residential service rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*.

3. The consumer is invoiced by Toronto Hydro on a monthly basis.

4. The consumer is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan.

5. The consumer uses 750 kilowatt hours of electricity each month; ("French")

"representative retail consumer" means a consumer who purchases electricity from a licensed retailer and meets the criteria set out in paragraphs 2 to 5 of the definition of "representative non-retail consumer"; ("French")

[OLC Note: Do you think it's necessary to clarify that purchasing from a licensed retailer may include being invoiced by Toronto Hydro on behalf of the retailer, or is that sufficiently clear given that para. 2 above applies? This relates to my question above

about what we mean by "directly" in para. 1 of the previous definition. Would the purchase in the "retail" context be considered to be "indirect"? I don't think these words bring sufficient clarity.]

"Toronto Hydro" means Toronto Hydro-Electric System Limited. ("French")

Rate determination

(2) [To more fairly recognize clean energy benefits ~~measure~~ and allocate the clean energy costs ~~and clean energy benefits~~ among present and future generations of specified consumers,] the rate for electricity payable for the period beginning on May 1 and ending on April 30, 2018 is as follows:

[OLC Note: Consider whether you want/need to include the phrase in square brackets here, given the proposed purpose provision, the preamble and the definitions of the various relevant terms. If we keep this text here, we will want to double-check to ensure consistency throughout. NTD: Yes, we would like to keep this language.]

1. In the case of a specified consumer who purchases electricity directly from Toronto Hydro, the rate is the average rate that would be payable by the representative non-retail consumer in order for the representative non-retail consumer to receive a monthly invoice amount that is 25 per cent less than the average baseline invoice amount.

2. In the case of a specified consumer who purchases electricity from a licensed retailer, the rate is the average rate that would be payable by the representative retail consumer in order for the [global adjustment charge included in the representative retail consumer's monthly invoice amount] to be reduced by the same amount as the reduction calculated under paragraph 1.

[OLC Note: Not quite sure I have para. 2 right. Also will need to find correct wording to capture the GAM line item on the bill but want to make sure I have the overall concept correct first.]

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rates

(4) The rates mentioned in subsection (2) shall be,

(a) determined by the Board no later than seven business days after the day this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination.

[OLC Note: Just thinking through subs. (4), does clause (b) say that if the Bill receives RA on June 1st… then the Board must determine the rates by June 8th…and the rates would be effective as of July 1st. This isn't the outcome you want, is it? Don't you want the rates be effective May 1st?]

Transition

(5) Subsection (6) applies if,

(a) an electricity vendor, specified consumer or unit sub-meter provider is unable, for technical or operational reasons to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017; or

(b) an electricity vendor, specified consumer or unit sub-meter provider issues its first invoice for electricity consumed on or after May 1, 2017 on a day before the day the Board determines rates under subsection (4).

Same

(6) In the circumstances described in subsection (5),

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly recognize clean energy benefits~~measure~~ and allocate the clean energy costs ~~and clean energy benefits~~ among present and future generations of specified consumers,] make regulations prescribing the rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

8xx. (1) Upon receipt of an invoice that includes a an amount in respect of clean energy adjustment, a specified consumer shall pay the ~~clean energy adjustment~~amount to the electricity vendor, as agent of the investment ~~asset~~ interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

[OLC Note: In all places in the draft where we refer to "as agent of the investment asset owner", are we sure that there will always be an investment asset owner in existence at the time when these provisions need to be relied upon?] NTD: Yes.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation made by the Financial Services Manager under Part IV applicable at the time when the payment is due; and

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity~~inconsistent~~ with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid amount in respect of a clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment ~~asset~~ interest owner to the extent of ~~in respect of~~ each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer ~~under the invoice or otherwise~~.

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may recover the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

[OLC Note: Consider whether you want to say more about what we mean by "pro rata basis" or whether you want to provide for details to be included in the regulations.]

Irrevocability of clean energy adjustment

9xx. (1) The amount of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation, clerical or typographical error by the electricity vendor.

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows:

1. The Financial Services Manager shall ~~Calculate the~~ estimated the finance amount in respect of the reference period in accordance with ~~Schedule 1 and~~ such ~~additional~~ rules as may be prescribed.

NTD: Schedule 1 should go in the regulations

2. The Financial Services Manager shall calculate~~Add~~ the true up amount in respect of the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1. NTD: true up could be positive or negative.

3. The Financial Services Manager shall advise the Board of the estimated finance amount and the true up amount in accordance with the regulations.

(x) The Board shall determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in repect of the reference period in accordance with the regulations.

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

i. differences between the estimated and actual finance amounts for the immediately preceding reference period;

differences between amounts invoiced~~billed~~ and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

ii. variations in billings due to variations in electricity consumption.

[OLC Note: What is the difference between "billings" and "invoices"… also "amounts billed" vs. "amounts invoiced"? Can we just use "invoicing"?] Yes, invoicing please

~~**IESO to issue remittance notice to electricity vendors**~~

~~11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion of the clean energy adjustment in respect of a reference period.~~

[OLC Note: I have removed the reference to the EV's portion of the CEA being determined in accordance with the regulations. Please confirm this works.]

IESO to collect

(2) The IESO shall, as an agent of the investment interest~~asset~~ owners, receive~~collect~~ the clean energy adjustment paid to it from electricity vendors [in accordance with the regulations and the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment ~~asset~~ interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving~~collecting~~ those ~~accounts~~amounts:

1. Amounts described in subsection 12 (4) and 11(2). NTD: I think these are the same amounts, just described in different hands.

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment ~~asset~~ interest owner in accordance with subsection (6), be received and held in trust by the IESO for the investment ~~asset~~ interest owners or a secured party to whom a security interest in an investment interest is granted under this Act and for greater certainty any trust created or established in accordance with this Act shall be a true trust and not a deemed trust.NTD: Same addition re: true trust in 12xx(4) – consider moving to s. 1xx

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment ~~asset~~ interest owners in accordance with the regulations.

~~**Collection of outstanding amounts, regulatory asset**~~

~~(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO [may? Shall?] collect the difference from specified consumers.~~NTD: Fully addressed in Part V

Electricity vendor to invoice specified consumers

12xx. (1) Each~~The~~ electricity vendor shall issue an invoice to each specified consumer with an account with such electricity vendor for amount payable by such the consumer's ~~amount~~ in respect of the clean energy adjustment as determined by applying the rate set by the Board under section 10xx(2) and in accordance with the regulations. [OLC Note: Do you want the regulations here to deal with: (1) the way in which invoice is issued; (2) the way the consumer's amount is calculated; or (3) both 1 and 2?]

Electricity Vendor to Report

(x) Each electricity vendor shall promptly report to the IESO the aggregate amount invoiced to its customers in respect of the Clean Energy Adjustment, the amount collected and such further information and in such manner as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as ~~an~~ agent ~~of the IESO~~ and the investment ~~asset~~ interest owners, collect the clean energy adjustment from specified consumers [in accordance with ~~the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998*~~codes of the Board].

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment ~~asset~~interest owner in accordance with subsection (5), be received and held by each electricity vendor in trust for the benefit of the investment ~~asset~~ interest owners ~~or a secured party to whom a security interest in an investment interest is granted under this Act~~: and for greater certainty any trust created or established in accordance with this Act shall be a true trust and not a deemed trust:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

Payments received from or on behalf of specified consumers under 12xx(2) or (3)

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor ~~other than the IESO~~ shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest~~asset~~ owners ~~or secured parties~~ in accordance with the regulations.

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) Subject to subsections (2) and (3), Ontario Power Generation Inc. is deemed to be appointed as the Financial Services Manager for the purposes of this Act.

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in subsection 16xx (2);

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment ~~interestasset~~ owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to ~~electricity vendors, including~~ the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager, prior to incurring any funding obligation, shall calculate ~~a~~the fair allocation amount in respect of each reference period for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of such~~each~~ reference period; and

(b) aligning the finance amounts becoming payable in such reference period under funding obligations that may be incurred ~~during each reference period~~ with the fair allocation amount for such reference period ~~of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers~~.

Amount

(1.1) The fair allocation amount determined in subsection (1) in respect of a reference period is the sum of the following amounts:

[OLC Note: I'm struggling a bit to understand the distinction between the "calculation" and the "amount" when it comes to fair allocation. I expect these provisions and all references to "fair allocation" will need revision to ensure we are articulating the desired policy.]

1. The amount, if any, by which the estimated ~~[~~clean energy costs and ~~]~~clean energy benefits~~] to be~~ allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs for the reference period [in the absence of this Act].

[OLC Note: The above needs some work… in particular we would need to say more than just "in the absence of this Act" because I think we would also need to specify that under the proposed scenario, the current Global Adjustment rules would continue to be in place. We also need to be clear what we mean by global adjustment etc.]NTD: We will continue to work on this. Not sure the reference to GA works.

2. An allocable portion of the value of any fair adjustment, determined for the reference period in accordance with subsection (3).

[OLC Note: Consider whether para. 2 above and subs. (3) below should be combined somehow. I haven't had a chance to think this through yet.]

Principles

(2) In calculating estimated clean energy costs and clean energy benefits to be allocated to specific consumer in a reference period ~~the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3),~~ the Financial Services Manager shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined in accordance with the regulations~~based on [Insert principles]~~.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation in respect of each future reference period. [OLC Note: Not sure I understand subs. (3) -- if the fair adjustment is done in advance, why wouldn't it be included as part of the current fair allocation calculation as well (i.e. not just future calculations)?]

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

[OLC Note: Here and throughout, I'm not quite sure whether we should be referring to the "calculation" or the "amount".]

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the basis for the fair allocation calculation and any ~~amendments to the~~ fair allocation re-calculation.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred ~~or potential transfers should be made~~ for the purposes of acquiring an investment interest in accordance with this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the ~~expected~~ estimated finance amount determined under in accordance with the regulations~~Schedule 1~~ that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

[OLC Note: Need to consider further how para. 1 overlaps/conflicts with elements set out in s. 15xx above.]

[OLC Note: Please confirm that the underlined "during a reference period" is correct.]

2. Incurrences ~~and transfers~~ should be implemented in a manner that, ~~as~~ the Financial Services Manager considers to be reasonable, to be~~is~~ cost effective and to reflect~~s~~ prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

[OLC Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment in respect of the reference period unless, [OLC Note: Please confirm that the underlined "during a reference period" is correct.]

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

[OLC Note: Please confirm that the underlined "during a reference period" is correct.]

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Confidentiality of plan, reports

(4) The Financing Plan and any report referred to in subsection (3.1), including any document used in the preparation of the plan or a report, is deemed to be a record subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations ~~and make transfers~~ in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, section ~~[paramountcy of funding obligations]~~ 17xx(5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations and make transfers.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to Fair Allocations ~~Plan~~

(4) Each ~~No~~ funding obligation incurred and ~~no~~each transfer made by ~~the Financial Services Manager~~ a financing entity shall be considered to be consistent with the Financing Plan and the fair allocation. ~~affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.~~

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If any transfer ~~under this Part~~ provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.

[OLC Note: This is meant to assist with clarity in the subsequent provisions. Will consider further as drafting settles.]

[NTD: "IESO funding shortfall" throughout to denotes the monthly amount and the "variance account" records the cumulative balance.]

~~**Variance account**~~

~~**19xx.** (1) The Board shall issue an accounting order to authorize the IESO to do the following:~~

~~1. Create a variance account for the purposes of this Act.~~

~~2. Record the IESO funding shortfall in the variance account from time to time.~~

~~3. Recover the IESO funding shortfall in accordance with section X and the regulations.~~

~~**No hearing**~~

~~(2) The order of the Board shall be made in writing and without holding a hearing.~~

~~**No appeals, etc.**~~

~~(3) No appeal lies from the order of the Board.~~

IESO funding shortfall

20xx. (1) The IESO ~~shall determine the IESO~~ funding shortfall for each month ~~in the following manner~~shall be equal to A – B + C where:

1. A = ~~Calculate~~ the sum of all invoice amounts (not including HST) which would have been issued to specified consumers for the month if Part II of this Act did not apply.

2. B = ~~Calculate~~ the sum of all invoice amounts(not including HST) actually issued to specified consumers for the month.

3. C = the sum of all financing costs related to all IESO funding shortfalls incurred by IESO for the month. ~~Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.~~

(x) For the purposes of calculating A and B of section 20xx(1), the electricity vendors shall provide to IESO such information as IESO may reasonably require and such further information as may be prescribed and the IESO shall be entitled to rely on such information.

20.xx (1) The IESO shall establish and maintain a variance account and shall record in such variance account the amount of the IESO funding shortfall for each month.

Same

(2) To the extent that the IESO funding shortfall for any month is determined based on an estimate of the electricity used by specified consumers or an error in the information provided by an electricity vendor, the IESO shall record ~~an adjustment~~ in the variance account ~~in the following month~~ an adjustment to reflect the difference between the estimate or the erroneous information and the electricity actually used by specified consumers.

(x) The IESO shall record in the variance account such other adjustments as may be prescribed by the regulations.

Recording of IESO funding shortfall

(3) IESO shall record in the variance account all payments received by the IESO ~~funding shortfall from time to time, including adjustments~~ resulting from the exercise of the right of recovery under section 21 and any transfer under section 22~~, in the variance account~~.

Recording determinative

(4) A recording ~~of~~by the IESO ~~funding shortfall~~ in the variance account is determinative ~~of the amount of IESO funding shortfall~~ at the time of the and the balance recorded by the IESO in the variance account from time to time is determinative of such balance at such time, absent manifest error~~recording~~.

Rights of Investment Interest Owner

(6) An investment interest owner may rely, without inquiry, upon the balance in the variance account certified by the IESO and no error in such certification and no subsequent adjustment to the balance in the variance account shall affect the rights of the investment interest owner acquired pursuant to a transfer under section 22xx.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover ~~the IESO funding shortfall~~ from specified consumers the balance from time to time recorded in the variance accounts.

(2) The Board shall, from time to time, in accordance with this Act and as further prescribed by regulation, determine and set rates payable by specified consumers so that IESO is able to recover the balance recorded in the variance account.

Same, restrictions

(2) ~~The IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:~~

1. The IESO shall not be entitled to collect ~~the~~ all or any part of the balance recorded in the variance account ~~IESO funding shortfall~~ from specified consumers before May 1, 2022.

~~2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].~~

~~3. Such other restrictions as may be prescribed.~~

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity ~~under the Financing Plan, which transfer creates the investment asset.~~

Same

(2) Upon receipt of any payment in consideration for the transfer,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) unless otherwise provided for in this Act, the IESO shall have no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity ~~becomes an investment asset owner~~ and acquires an investment interest becomes an investment interest owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest ~~asset~~ owner of the regulatory asset, ~~and the investment asset created by the transfer shall be immediately vested in the transferee~~.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

(x) The transfer of a regulatory asset or a portion thereof creates an investment asset.

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests ~~without duplication~~of investment interest owners:

[OLC Note: Still need to review the language below carefully.]

1. The right to impose, bill, invoice, collect, ~~and~~ receive and recover the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive, ~~and~~ collect and recover all amounts in respect of the clean energy adjustment that are imposed, billed, ~~and~~ invoiced and recoverable under this Act, including any ~~amounts that~~ and all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the ~~regulatory asset~~ investment interest owner's ~~regulatory~~investment ~~interestasset~~.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

(x) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off ~~or reduced by any person in any circumstance, including~~,

[OLC Note: I wonder if subs. (2) is worded more broadly than intended -- the idea is that eventually the investment asset could be set off/reduced through payments, right?] Yes, that's right. The investment asset will be paid down over time

(a) by a consumer, an electricity vendor, an agent of the investment ~~asset~~ interest owner or an owner of distribution system assets in the Province;

[OLC Note: Consider whether underlined term should be defined.]

(b) in connection with any default, ~~bankruptcy, reorganization or other insolvency proceeding~~ of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

Collective action required

(4) If the investment ~~asset interest~~ owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment ~~asset interest~~ owner collectively and in coordination with all other investment ~~asset~~interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment ~~asset~~interest owner as a collective in accordance with its terms.

[OLC Note: It seems that successors may need to be addressed here.]NTD: Nothing further required to deal with successors.

Transfer of investment interest

26xx. An investment ~~asset interest~~ owner may transfer all or a portion of its rights and interests in an investment interest to any other investment ~~asset interest~~ owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

[OLC Note: Please compare the language underlined above vs. the language of subs. 23 (1) above. Here we are talking about transfer of "rights and interests" in an investment interest whereas above we refer to a transfer of "the RA". Why are we not saying transfer of "the IA" here? Can one have a "right or interest" in an "interest"? Yes. Wording is admittedly less than perfect. Still need to clarify how these concepts work together.]NTD: we want to distinguish the RA from the IA and we are trying to convey different rights associated with each asset. The securities lawyers feel it is important to refer to rights and interests for the purposes of the IA.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the ~~owner of the investment interest~~ owner acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

[OLC Note: Awkward that we occasionally have references to "owner of the investment interest" vs. "investment *asset* owner".]NTD: We have tried to refer consistently to "investment interest owner" rather than "investment asset owner".

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment ~~asset interest~~ owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment ~~asset~~interest owner shall have priority over any liens in favour of such other persons.

Investment ~~asset~~interest owner may grant security interest

28xx. (1) An investment interest~~asset~~ owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

[OLC Note: This section had become a bit confused through multiple rounds of changes. I have now attempted to remove duplication. Please review carefully to ensure that it contains the correct provisions.]

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest~~asset~~ owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject

to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ~~[investment asset account] or other~~ account of any electricity vendor~~, the IESO~~, an agent of an electricity vendor ~~or the IESO~~ or other person who may have commingled such revenues or other proceeds with other funds.

(7) The secured party shall be entitled to exercise the rights of an investment interest owner under the Act only after it has given notice of the enforcement of its security interest to the IESO.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

[OLC Note: ENE LSB to consider whether this section should apply to unit sub-meter providers.]

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

[OLC Note: would there be any doubt about whether any investment asset owner is a Crown agent? Is that where this needs to be articulated instead?]

Sequestration

31xx. (1) A court in the Province may, upon application by an investment ~~interestasset~~ owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment ~~interestasset~~ owner or secured party by any person or entity authorized to collect the clean energy adjustment, including defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any ~~bankruptcy, reorganization or other insolvency~~ proceedings with respect to the person or entity who is subject to the order.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.
[OLC Note: Please confirm that the underlined list of verbs is correct, taking into consideration the defined terms we are using in the draft Bill.]

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the ~~establishment~~ determination of ~~the F~~fair ~~A~~allocations ~~Plan~~.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under ~~this~~ section 5 unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[6]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(b) governing the inclusion of ~~adjustments~~ information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[OLC Note: reg-making powers to be dealt with in subsequent draft]

PART 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,

[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).]

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[6] FLS - see s. 51 of the Electricity Act, 1998

[7] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

[OLC Note: Why is "creation" listed above? Isn't that fully accomplished through the statute?]

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed?] financial services entity or [a financing entity prescribed under?] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of?] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed?] financial services entity or [a financing entity prescribed under?] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of?] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

   i. a [specified consumer within the meaning of?] the *Ontario Fair Hydro Plan Act, 2017,* or

   ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998].*

[OLC Note: I'm not sure who the consumers under 4 ii would be... why wouldn't they be prescribed under the EA? Or can we specify which consumers we're talking about? We can't give OEBA reg-making authority under the EA... would need to do so under the OEBA.]

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including the following:

1. Providing services on behalf of financing entities for the purposes of carrying out its obligations and activities in respect of that Act, subject to the right to be paid by a financing entity for services, including those services described in subsection (1.2).

2. Providing equity contributions and loans to a financing entity.

3. Exercising the powers and performing the duties of the Financial Services Manager under that Act.

4. Issuing non-equity securities in Ontario Power Generation Inc. or one of its subsidiaries, for the purpose of raising funds to acquire debt or equity interests

in a financing entity whose activities are limited to the incurrence of funding obligations under that Act.

[OLC Note - ENE LSB advises that it wishes to confirm whether OPG/Tory's still needs or wants this provision.]

Same, services

(1.2) For the purposes of paragraph 1 of subsection (1.1), Ontario Power Generation Inc. may provide services including the following:

1. The purchase and administration of investment assets on behalf of a financing entity and the negotiation, execution and delivery of any related agreements;

2. The negotiation, execution and delivery on behalf of a financing entity of constating documents, financial services agreements, administrative services agreements, purchase and sale agreements, trust indentures, hedging agreements, credit enhancement agreements, servicing agreements, loan agreements, subordinated loan agreements, security agreements, underwriting agreements, agency agreements and any similar agreements.

3. The negotiation, execution and delivery of any documents relating to a sale or offering of securities by a financing entity.

4. The implementation and administration of any agreements to which a financing entity is a party.

5. The acquisition, administration and sale of <u>any other investments</u> that may from time to time be made by a financing entity.

[OLC Note: By "any other investment", do you mean "any investment other than an investment interest within the meaning of the OFHPA"?]

6. The borrowing of money [on behalf of?] a financing entity.

7. Administering the activities of a financing entity and preparing reports on behalf of a financing entity.

8. Enforcing the rights of a financing entity.

9. Engaging or employing any persons to assist in providing services to a financing entity and delegating its powers and duties to such persons.

10. Performing any service that is incidental to the services set out in paragraphs 1 to 9.

Subsidiaries, etc.

(1.3) Ontario Power Generation Inc. may create one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.4) Subject to subsection (1.5) and despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Exception

(1.5) Subsection (1.4) does not apply to a subsidiary of Ontario Power Generation Inc. in the case where the subsidiary is a special purpose financing entity.

Definition, financing entity

(1.6) For the purposes of this section, "financing entity" and "investment interest" have the meanings provided for in the *Fair Hydro Plan Act, 2017.*

202x. Section 89 of the Act is amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017.*

203x. Section 90 of the Act is amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017.*

[OLC Note: See subs. 14xx (3) of the main Bill above -- do you want to move this to become a consequential amendment or should it stay where it is? ***All fees charged by***

OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017.*

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017.*

[OLC Note: Not sure why this needs to be specified as a condition of the licence if the requirements are already clearly imposed on these licensees under the OFHPA - am I missing something?]

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017.*
[OLC Note: It seems to me that the rule is more about what can be included in the "amount of the payment", so I have drafted it as a limitation on the "amount of payment" rather than a limitation on the Order itself. Does this work?]

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017.*

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

PART VII
COMMENCEMENT AND SHORT TITLE

Commencement

103x. This Act comes into force on [insert commencement rule]

Short title

104x. The short title of this Act is the *Ontario Fair Hydro Plan Act, 2017.*

SCHEDULE 1
~~ESTIMATED~~ FINANCE AMOUNT

~~Estimated~~ finance amount

1. The ~~estimated~~ finance amount in respect of a reference period shall ~~be determined by estimating, prior to the start of a reference period,~~ the sum of the following:
[OLC Note: Who is responsible for doing the "estimate"?] Financial Services Manager determines the finance amount.

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

[OLC Note: Throughout this section, please confirm that the underlined "during a reference period" is correct in each case.]

2. The sum of all funding costs in respect of the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

iii. Subtract the amount calculated under subparagraph ii from the amount calculated under subparagraph i.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, determined as follows:

   i. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

   ii. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in subparagraph i.

   iii. Subtract the amount calculated under subparagraph ii from the amount calculated under subparagraph ii.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro" – Part V.2

Article 1 – Purpose

IESO has entered into Power Contracts with Generators. The agreed-upon reference prices and future quantities set out therein were determined based on commitments made by IESO to provide Generators with long-term price certainty, so as to encourage the long-term construction and development of facilities for the purpose of generating electricity using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer and feed in tariff programs (the "Green Generation Initiative"). The terms of the Power Contracts were intended to approximate the anticipated useful life of the related generation assets; however, it has been determined that the useful life of many of these assets will be well in excess of the actual term of the related Power Contracts and will extend over more than one generation of ratepayers. The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will benefit present and future ratepayers of the Province. Currently, market prices for electricity are less than the reference prices set out in the Power Contracts, leaving a gap in funding which is funded by charging ratepayers a "Global Adjustment" (part of which is available to IESO to pay this shortfall).

Each month, the IESO determines the Global Adjustment payable by consumers for the consumption of electricity in the Province. A component of the Global Adjustment is the amount by which the reference prices in the Power Contracts exceed the market price for electricity for the quantities of electricity specified under the Power Contracts for the relevant period. The relationship between the past, present and future benefits to Ratepayers from the Green Generation Initiative, on the one hand, and the costs of the Green Generation Initiative borne by past, present and future Ratepayers through their respective allocations of the Global Adjustment, on the other hand, do not necessarily reflect an equitable allocation of such benefits and costs over time, with the result that an adjustment may be appropriate to address inter-generational fairness considerations. Such an adjustment should reflect principles and parameters that can be applied from time to time in order to establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative across present and future Ratepayers. A plan to allocate such costs and benefits equitably across present and future Ratepayers may be developed based on those principles and parameters (a "Fair Allocation Plan").

If a Fair Allocation Plan determines that the equitable allocation of the Global Adjustment to the Ratepayers of a particular time period in respect of the Power Contracts should be reduced below the amount otherwise determined, the amount payable by such Ratepayers to Electricity Distributors in respect of such period, and in turn by the Electricity Distributors to the IESO, would, in the aggregate, be less than the amount payable by the IESO to the Generators under the Power Contracts in respect of such period. If the difference is greater than any net Power Contract surpluses available to IESO from earlier periods, IESO will have a funding shortfall. In order for IESO to cover such a funding shortfall for a period, IESO will need to obtain funding from another source, which could include funding from third party sources operating in public and private capital markets. If a funding obligation is incurred in order to enable the IESO to cover a funding shortfall during one period, the repayment of such funding obligation will be

required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs will be incurred and may become payable in one or more other periods.

It will be necessary to provide a reliable and committed source of cash flows to enable IESO to repay such funding obligations and to pay related funding costs with certainty when the funding obligations become due and payable. This Part imposes irrevocable and non-bypassable financial obligations of Ratepayers to pay amounts incurred in respect of such funding obligations when they become due and payable. Such financial obligations will constitute property rights and interests, which will take the form of the Regulatory Asset contemplated in this Part. The Regulatory Asset will be sold and absolutely assigned and will belong to one or more newly created financing entities, which in turn will finance their purchase of such Regulatory Asset by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf the financing entities by an administrative agent (initially OPG), under the Treasury Plan contemplated in this Part. The Treasury Plan will seek to reasonably match the payment obligations arising under funding obligations and borne by the future Ratepayers of the period in which such payment obligations become due, with the costs and benefits of the Green Generation Initiative attributed to such future Ratepayers under the Fair Allocation Plan.

The purpose of this Part is to establish the basis upon which intergenerational fairness can be achieved by attributing the costs and benefits of the Green Generation Initiative to present and future Ratepayers on an equitable and cost effective basis.

Article 2 - Definitions

In this Part:

> "Absolute Assignee" means a person to whom a Regulatory Asset Owner assigns, transfers, conveys, sells, contributes, sets over, exchanges or disposes all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the transferring Regulatory Asset Owner's right, title and interest in, to and in respect of the Regulatory Asset.
>
> "Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Administrative Agent whose records shall be determinative for the purposes of this Part in the absence of a manifest calculation error.
>
> "Additional Funding Charges" means, for a Reference Period, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by the Regulated Asset Owner during the Reference Period and that were incurred or committed to directly or indirectly in connection with the incurrence of Funding Obligations under the Treasury Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including (without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the Administrative Agent on behalf of, the Regulatory Asset Owner under the Treasury Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on the Regulatory Asset Owner or incurred by on behalf of the

Regulatory Asset Owner under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Administrative Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Treasury Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Invoicing Agent, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of the Regulatory Asset Owner; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any placement fees, underwriting fees, fees and related issuing expenses; (m) any rating agency fees; and (n) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith for recovery and payment under the Treasury Plan.

"Administrative Agent" means [OPG] or, following any Replacement Event, such other person or persons who may be appointed as the administrative agent of the Regulatory Asset Owner under the Treasury Plan in compliance with the requirements set out in Schedule 2.

"Alternative Collection Agent" means a person appointed under Section 5(11) and in compliance with the requirements set out in Schedule 2 to assume the collection activities and activities of any Electricity Distributor or IESO under Article 5, as agent for and on behalf of the Regulatory Asset Owner.

"Alternative Invoicing Agent" means a person appointed under Section 4(8) to assume the invoicing and other activities of any Electricity Distributor under Article 4, as agent for and on behalf of the Regulatory Asset Owner.

"Attribution Methodology"[1] means the methodology specified in the Fair Allocation Plan for allocating the Period Transition Charges for a Reference Period to the individual Ratepayers of the applicable Ratepayer Group.

"Collected Amount Adjustment" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Administrative Agent equal to (a) the Estimate of the Finance Amount for the ~~Reference~~True-Up Period, minus (b) the sum of all Transition Charge Collections for the ~~Reference~~True-Up Period.[2]

["Consumer Base" means, for a Reference Period, the total number of Ratepayers in the Ratepayer Group determined by the Administrative Agent as of the [~~third] Business Day~~30th] day immediately preceding the first day of the Reference Period.]

[1] A key question will be how the overall costs will be spread across the rate base. For simplicity, overall costs could be spread across the rate base based on a *per capita* (ratepayer) concept. This would generally mean that all consumers who are invoiced in a month would pay the same Transition Charge, and to the extent that the invoiced amounts (i.e., the Transition Charges billed for a month) are higher or lower than the actual costs, due to a change in the Consumer Base, that difference should (among other things) be reflected in the True-Up calculation for the relevant reference period (see "Collected Amount Adjustment"). To the extent that a different allocation method is adopted (such as based on actual electricity use by individual consumers), the divisor for the Transition Charge will need to be modified.

[2] This would pick up adjustments based on actual collection experience, changes in the Consumer Base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of a Regulatory Asset Owner's right, title and interest in, to and under the Regulatory Asset to an Absolute Assignee.

"Electricity Distributor" means, in respect of a Service Area, the distributor of electricity to residences located in such Service Area.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to IESO or if applicable the Alternative Collection Agent in accordance with Section 5(3) , including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by an Electricity Distributor (or in its stead, an Alternative Invoicing Agent) in respect of electricity charges and related services and amounts incurred, assessed or attributed in respect of a residence located in the Electricity Distributor's designated Service Area.

"Estimate" means, in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Administrative Agent having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Part in the absence of a manifest calculation error.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, in respect of a Reference Period, the sum (without duplication) of the following amounts for the Reference Period: (a) Repayments; (b) Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Receipts" means, for a Reference Period, all amounts received by or on behalf of the Regulatory Asset Owner during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Regulatory Asset Owner under derivatives and any withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a Funding Obligation.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Treasury Plan, exceed (b) any Finance Reserve Withdrawals.

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Treasury Plan.

"Funding Costs" means, for a Reference Period, the amount by which (a) the aggregate of all interest and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Regulatory Asset Owner during the Reference Period in respect of all Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a Funding Obligation, exceeds (b) the aggregate of all Finance Receipts for the Reference Period.

"Funding Obligation" means each payment obligation (including indebtedness, payment obligations arising under or in respect of derivatives, payment obligations owing to service providers, administrative agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies) incurred by or on behalf of the Regulatory Asset Owner under the Treasury Plan in order to fund a Funding Shortfall for a Reference Period, including any Refinancing of another such payment obligation.

"Funding Shortfall" means, for a Reference Period, (a) the amount, if any, by which (i) the IESO Power Contract Net Payment for the Reference Periods, exceeds (ii) the GA Power Contract Contribution for Reference Period, minus (b) the IESO Applied Surplus for the Reference Period.

"GA Power Contract Contribution" means, for a Reference Period, the aggregate of the payments to be made by the applicable Ratepayer Group in respect of the portion of the Global Adjustment attributable to the Power Contracts in accordance with the Fair Allocation Plan.

"Generator" means a generator of electricity that is subject to this Act.

"Global Adjustment" means the amount calculated from time to time under [Section • of the *Electricity Act*], which includes among other things an amount determined in respect of the costs associated with the Green Generation Initiative, including amounts attributable to the Power Contracts.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO Applied Surplus" means, for a Reference Period, the lesser of (a) the amount, if any, by which (i) the IESO Power Contract Net Payment for the Reference Periods, exceeds (ii) the GA Power Contract Contribution for Reference Period and (b) the IESO Unapplied Surplus on the last day of the immediately preceding Reference Period.

"IESO Power Contract Net Payment" means, for a Reference Period, the amount by which (a) the sum of amounts payable by IESO to the Generators to IESO under all Power Contracts for the Reference Period, exceeds (b) the sum of amounts payable by the Generators to IESO under all Power Contracts for the Reference Period.

"IESO Power Contract Net Receipt" means, for a Reference Period, the amount by which (a) the sum of amounts payable by the Generators to IESO under all Power Contracts for the Reference Period, exceeds (b) the sum of amounts payable by IESO to the Generators to IESO under all Power Contracts for the Reference Period.

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owner in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO Unapplied Surplus" means, at a particular time, the amount, if any, by which (a) the sum of (i) all IESO Power Contract Net Receipts for Reference Periods occurring prior to the time, and (ii) all GA Power Contract Contributions for Reference Periods occurring prior to the time, exceeds (b) the sum of (i) all IESO Power Contract Net Payments for Reference Periods occurring prior to the time, and (ii) all IESO Applied Surpluses for Reference Periods occurring prior to the time.

"Period Transition Charge" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount and (b) the True-Up Amount in respect of the immediately preceding Reference Period.

"Pledge" means a lien, mortgage, charge, right of set-off or security interest granted to or in favour of a Pledgee by a Regulatory Asset Owner in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Regulatory Asset.

"Pledgee" means a person to whom [or for whose benefit] a Regulatory Asset Owner grants a Pledge.

"Power Contracts" means long-term power contracts entered into by IESO with certain Generators, under which IESO has agreed to pay such Generators amounts, determined in respect of quantities of electricity over specified periods, to the extent that applicable market prices for such quantities of electricity during a specified period are less than specified reference prices for such quantities of electricity, and, correspondingly, Generators have agreed to pay IESO amounts if the market prices for such quantities exceed the applicable reference prices for such quantities.[3]

"Province" means ~~Her Majesty~~ the ~~Queen in right~~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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Rendering set	Standard

Legend:	
Insertion	
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Format change	
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Moved to	6
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I am writing to provide the Ontario Energy Board (OEB) with additional detail regarding elements of the government's proposed Ontario Fair Hydro Plan. These proposed details are being set out for the OEB at this time so that they can be considered as inputs into the OEB's review of Regulated Price Plan (RPP) prices for May 1, 2017, as the OEB considers appropriate and in keeping with its normal forecasting activities. Additional information regarding the government's proposed Plan is included in the attached Appendix, and underlying consumption assumptions can be provided to the OEB by Ministry staff. ~~I understand the OEB per the March 23rd order has instructed that the OESP charge will be zeroed out on electricity bills and the program will continue to be financed through the variance account.~~

The government proposes to take steps to lower electricity bills on an after-tax basis by 25% for a typical residential customer relative to what those bills would otherwise have been without the Ontario Fair Hydro Plan. 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 the proposed shifting of Ontario Electricity Support Program (OESP) and the Rural or Remote Electricity Rate Protection program (RRRP) costs from ratepayers to Provincial revenues.

Along with changes to the OESP and RRRP, changes to the Global Adjustment (GA) are proposed to be a component of the 25% rate relief. Under current forecasts, this would mean a reduction in the GA of approximately $2.5 billion during the period May 1, 2017 to April 30, 2018. The resulting savings are expected to benefit 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 as well as non-RPP eligible customers that are eligible for the 8% rebate. The government's intention is that the 25% rate relief measure will be designed with reference to a set of assumptions based on a proxy residential customer.

I understand that the OEB will continue to review RPP prices as per its existing practice~~again in the fall~~, and will make such further adjustments effective November 1 as required, in accordance with the legislation in place at that time.

Ontario Power Generation will be responsible for managing and financing the GA refinancing aspect of the proposed Plan. The proposed Plan is not intended to 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 or just and reasonable rates for transmission and distribution. The government fully expects that the OEB will continue exercising its mandate in the public interest as it does today.

DRAFT

The government will rely heavily on the OEB's expertise in moving forward with the proposed Ontario Fair Hydro Plan, and anticipates that the OEB will want to focus on the elements of the proposed Plan described above before turning in 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

Kacaba, Jennifer (ENERGY)

From:	Partington, Tara (MAG)
Sent:	April 28, 2017 1:09 PM
To:	Calwell, Carolyn (ENERGY/MEDEI/MRI); Rehob, James (ENERGY); Shear, Dan (ENERGY)
Cc:	Kacaba, Jennifer (ENERGY); Huang, Jackson (MEDG/MRIS); Johnson, Paul (ENERGY/MEDEI/MRI)
Subject:	Reg-making powers

We haven't really talked about section 38 yet, and we probably need to as soon as possible after I send Draft 16 (hoping to send it soon). Here is one issue that came up in the context of your instructions on subs. 14xx (3). I am proposing to remove this note from the draft for now and will await your instructions for the purposes of section 38.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

[OLC Note: You said you want subs. (3) to allow for regulations that cover the same subject matter as s. 25 of the EA. This requires further consideration…you could do something like the following in the reg-making powers but I don't know if this would get everything you want. The process in section 25 seems to include "approval" by the Board and consequences that flow from that decision… if you want something like that, then I think you'd want to either include it in the Act or else be more specific about what the regs are going to cover. So it really depends on how much of the s. 25 process is in play here. Same reg-making power:

(x) governing the process to be followed in respect of a review of administrative costs for the purposes of subsection 14xx (3), which may include requiring the Financial Services Manager and the Board to do certain things within specified time periods in order to facilitate the review;]

Tara Partington
Legislative Counsel
(416) 326-6045

Hi Jennifer - would you please make these edits? I don't have a copy of the letter to MPPs - Kelsey can get it for you - just ask. Thanks! C

April [X], 2017

[CLIENT TO INSERT LETTERHEAD]

[CLIENT TO INSERT ADDRESSEE]

As announced on March 2, 2017, Ontario's Fair Hydro Plan would lower electricity bills by 25% on average for eligible residential customers across the province, and would also benefit those living in rural communities and those with low incomes. This proposed 25% rate relief measure would be inclusive of the 8% rebate that is already in effect under the Ontario Rebate for Electricity Consumers Act, 2016.

In order to raise awareness and communicate information about programs and services that would be rolled out as part of Ontario's Fair Hydro Plan, Ontarians need to be informed of changes to their electricity bills so that they can use this information to plan for the future as they manage their household budgets.

As with any legislative initiative, we must take care to respect the role of the ~~Legislature~~ Legislative Assembly of Ontario in legislative matters and not take actions that could be seen to suggest the Legislature's role is irrelevant, tangential or *pro* forma. Accordingly, those participants who are working with us to implement Ontario's Fair Hydro Plan programs and services are asked to be mindful, in their communications with their customers, not to include unqualified statements that could have the effect of predicting or presuming that legislation related to Ontario's Fair Hydro Plan will pass and become law.

We must all recognize that the importance of informing Ontarians of the Government's proposed Ontario Fair Hydro Plan is equally as important as ensuring that the message gets delivered in a manner which respects the Legislature's ultimate authority to approve the legislation.

Thank you for your attention to this issue.

" including Energy Agencies, and by extension LDC's..."

[ETC]

ADD in text from letter to MPPs re: same aspects done via regs etc. List of 3 things.

3. I am not familiar with procurement processes - please review all language that describe the process.

(2) Despite subsection (1), this Act does not apply to a procurement contract if the procurement process was started before X date.

[NTD: There may be consequential changes to this subsection depending on the approach taken with 2(1)]
OLC NOTE: Is the above what you mean by "pending bids, requests for proposal" etc.?

Offending American jurisdiction

3. (1) The Lieutenant Governor in Council may make regulations designating an American jurisdiction as an offending American jurisdiction if, in the Minister's opinion, the American jurisdiction has enacted legislation or otherwise provided direction to entities under its authority to apply requirements, restrictions, policies or sanctions that may inhibit or prevent Ontario suppliers from participating in a procurement process with an offending American jurisdictions or succeeding in such a process.

OLC NOTE:
1. See underlined: Is it correct to say the procurement process is "with" a jurisdiction? Should it say "by" or "conducted by" or something else to explain what the jurisdiction's role is vis-à-vis the procurement process? NTD: This point is well taken. Ontario would seldom, if ever, contract with a foreign government. Commercial contracts are typically with corporations or, in limited instances, individuals or partnerships.
2. According to our phone conversation (and contrary to some parts of the instruction document), it appears that all decisions and actions should be done by regs made by LGC, based on the Minister's opinions. This is reflected here.
3. Instructions said in several places that the regulations can be made only if certain conditions were met (i.e., reg designating offending US jurisdiction can be made if Minister has opinion that US jurisdiction has imposed restrictive procurement policies; or exemption can be given if the Minister believes certain conditions exist). If the main or only purpose of including the condition is just informational (e.g., to let the reader know the context in which a regulation would be made or an exemption given), the information should not be conveyed in a Bill. Since the Bill is a legal document, anything in it would have the force of law and it is presumed that it was intended to be enforceable. It is highly unusual to include a condition on a regulation-making power and I am not sure if there is any wording that can completely immunize the Minister from potential litigation in which the Minister would have to show that (a) he/she had the opinion in question and (b) there was reasonable evidence to support the opinion. Note that this issue is currently under litigation (the government won at Court of Appeal but the case has been appealed to Supreme Court):
http://www.canlii.org/en/on/onca/doc/2016/2016onca741/2016onca741.html

If you wish, you can still include these conditions, but note that by including them, you are making them conditions that must legally be met, and that there could be challenges to the validity of the entire regulation based on whether the condition has been met. The Ministry should be prepared to document and justify its reasons.

Regulations re actions against suppliers

(2) The Lieutenant Governor in Council may make regulations that establish and govern requirements that shall apply to the Government and to broader public sector entities regarding the participation in their procurement processes of suppliers from offending American jurisdictions.

OLC NOTES: I wasn't sure if the regulation would itself set out the rules e.g., "US suppliers are prohibited from bidding" or if the regulations would say "Govt and BPS entities must prohibit US suppliers from bidding". It appeared you meant the latter, so that is reflected here.

Same

(3) A regulation made under subsection (2) may require the Government and broader public sector entities to take specified actions or other measures against suppliers from offending American jurisdictions, including the following actions:

1. Excluding suppliers from offending American jurisdictions from participating in procurement processes or being awarded procurement contracts.

2. Requiring suppliers from offending American jurisdictions to provide additional information or meet additional requirements when participating in procurement processes or to be awarded procurement contracts.~~submitting proposals for a procurement contract~~.

OLC NOTE: Is the underlined wording correct? Should it say "proposals for a procurement process"?[NTD: see proposed change above which is intended to make the wording in subsection 2 consistent with subsection 1.]

Formatted: Font: Not Italic

3. Evaluating proposals from offending American jurisdictions according to additional or more stringent criteria than applies to other proposals, including penalizing the proposals.

OLC NOTES:
1. Instructions included some very specific actions that could be taken against US suppliers, e.g., deducting a percentage of marks, certification requirement re whether products are made substantially in US, specifying dollar thresholds. I think you do not need to specify these actions and doing so could later limit your ability to do things other than what's specified. The general powers as drafted above would cover what you want.

2. You had a reg-making power re "imposing penalties" if someone gives false information. Do you mean to create an offence under the Act? If so, this should not be left to regulations but should be stated in the Act. If the penalty would just be applied within the context of evaluating the proposal, that would be covered by the existing language above.

Exemptions

(4) A regulation made under subsection (2) may exempt a supplier or class of suppliers from any provision of the regulation if, in the Minister's opinion,

OLC NOTE: As mentioned above, these conditions should not be included unless you truly intend them to be legally enforceable limits on the ability to grant an exemption.

(a) the exemption would serve the best interests of Ontario due to an immediate or emergency need for the good or service, or a need to protect the health, safety or welfare of Ontarians;

(b) the procurement contract is subject to funding from the government of Canada funding or another Canadian province and the requirements of such federal or provincial funding supersede this section;

(c) the procurement contract is the result of a joint procurement between Ontario [and BPS entities?] and the federal government or between the Government and another Canadian province and the requirements of the contract supersede this section;

OLC NOTE: Can you explain the situation mentioned in (c) and how is it different from what is described in (b)?

(d) the offending American jurisdiction is the only jurisdiction in which it is possible to obtain a particular good or service of the quality, in the quantity or within the time required by the Government or broader public sector entity;

(e) obtaining the specified good or service anywhere other than the offending American jurisdiction would increase the cost of the procurement contract *[cost of the good or service?]* by an unreasonable amount.

NTD: exemptions will likely be sought on a supplier by supplier basis and so use of the word "jurisdiction" is probably not correct as it is unlikely that we will need a blanket exemption for the entire jurisdiction. "Supplier from the offending American jurisdiction" might work better.

OLC NOTES:

1. Instructions included a provision that said "nothing in this Act is intended to contravene any existing laws etc." I did not include this (a) it contradicts other language given in instructions that this Act applies despite any other Act (b) if the Act did in fact contravene or require a contravention of an existing treaty law or other law, unclear whether such a provision would actually resolve the conflict. Please advise how you want to address this issue, if at all.
2. Instructions requested a provision saying the LGC shall revoke a regulation if certain conditions are met. I did not include this as courts generally do not enforce the making (or revoking) of executive legislation, so such a provision would give the impression that there is a legal requirement to revoke when in fact the requirement is unenforceable. In addition, the power to make a regulation always includes the power to revoke it (see Legislation Act, s. 54), so saying that a revocation can be made only if conditions are met would actually be cutting down that power. However, if that is in fact what you want to do, then note the previous concerns re conditions for making regulations.

Limitations on remedies[2]

4. (1) No cause of action arises against the Crown, or any of the Crown's ministers, agents, appointees and employees, or an organization subject to this Act, as a direct or indirect result of,

(a) the enactment or repeal of any provision of this Act;

(b) the making or revocation of any provision of the regulations, directives or guidelines made under this Act; or

(c) anything done or not done in accordance with this Act or the regulations or the directives or guidelines.

Same

(2) Without limiting the generality of subsection (1), that subsection applies to an action or other proceeding claiming any remedy or relief, including specific performance, injunction, declaratory relief, any form of compensation or damages, including loss of revenue and loss of profit, or any other remedy or relief.

Proceedings barred

(3) No proceeding, including but not limited to any proceeding in contract, restitution, tort, trust, fiduciary obligation or otherwise, that is directly or indirectly based on or related to anything referred to in clause (1) (a), (b) or (c) may be brought or maintained against the Crown or any of the Crown's ministers, agents, appointees and employees or an organization subject to this Act.

---

[2] FLS: See Broader Public Sector Accountability Act

No judicial review

(4) Despite any other Act or law, no person may bring an application for judicial review of a directive issued under Part V or a procurement process undertaken under a directive.

Rights preserved

(5) Subsections (1), (2), (3) and (4) do not prevent the Attorney General from bringing an application or commencing proceedings to require an organization subject to this Act to comply with this Act and its regulations and directives.

Other regulations

5. The Lieutenant Governor in Council may make regulations,

OLC NOTE: This section includes reg-making powers that were included in the instruction draft and that aren't addressed elsewhere, but unclear at this point if any of them are in fact needed or how they would connect to the rest of the Act - they are just placeholders for now.

(b) prescribing what constitutes a bidder [and/or supplier];

(c) establishing procedures and criteria for determining whether a bidder or contractor's goods or services are substantially made or substantially from an offending American jurisdiction;

(d) prescribing a the process for imposing penalties or fines on contractors or proposers who make false or misleading statements with respect to whether their products are made in an offending American jurisdiction.

Commencement

6. This Act comes into force on [insert commencement rule].

Short title

7. The short title of this Act is the *Fairness in Procurement Act, 2017*.

Ontario's Fair Hydro Plan (OFHP)

Illustrative Deck to Understanding Ontario's Fair Hydro Plan

March 27, 2017

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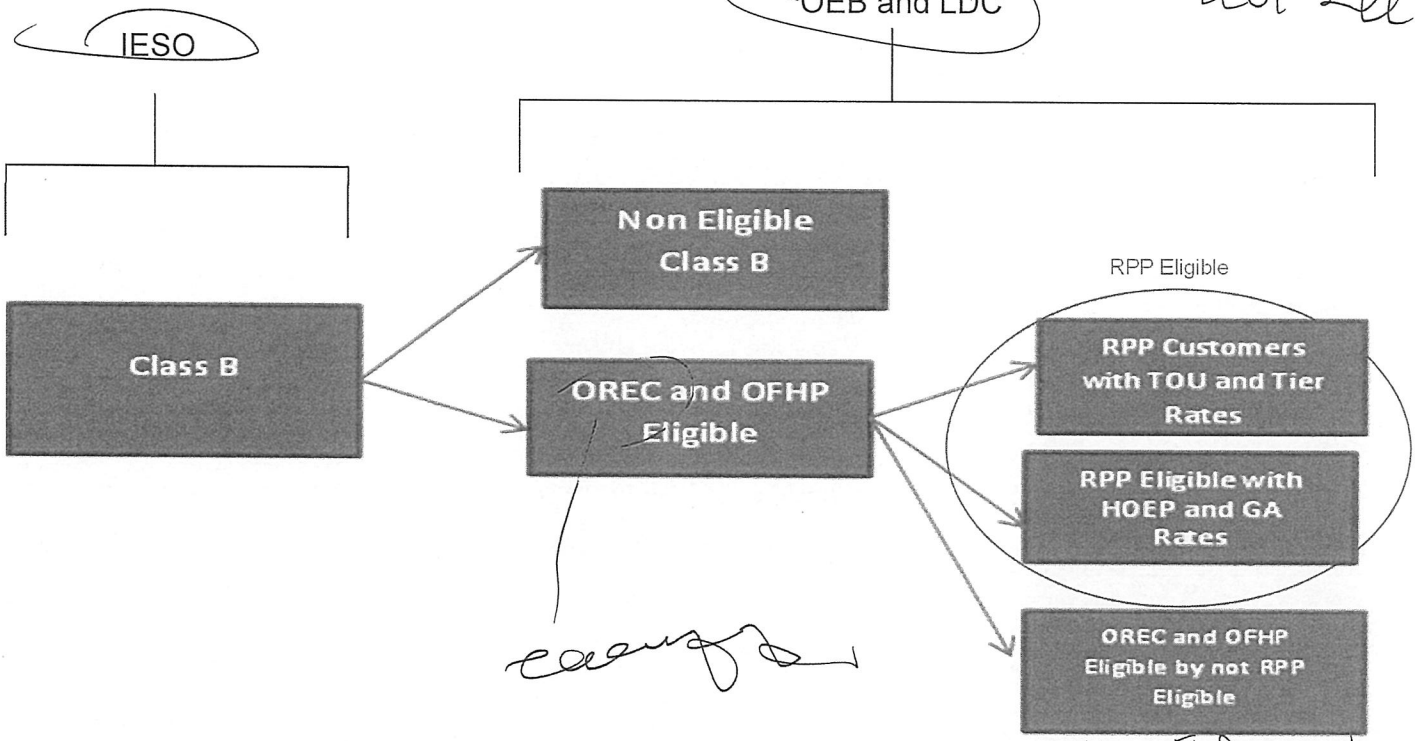
Purpose

- Illustrative presentation to understand of how the Ontario Fair Hydro Plan could possibly operate

- To be used only for discussion purposes
  - To develop a consensus in our understanding
  - Identifies additional questions that need a response

Not all Class B customers are eligible for Ontario's Fair Hydro Plan



- No change to GA Class A and Class B cost calculation
- IESO role is the GA area, of calculating Class A and Class B for market participants
- No change to GA Class B rate as it is still required for non-eligible OREC and OFHP customers

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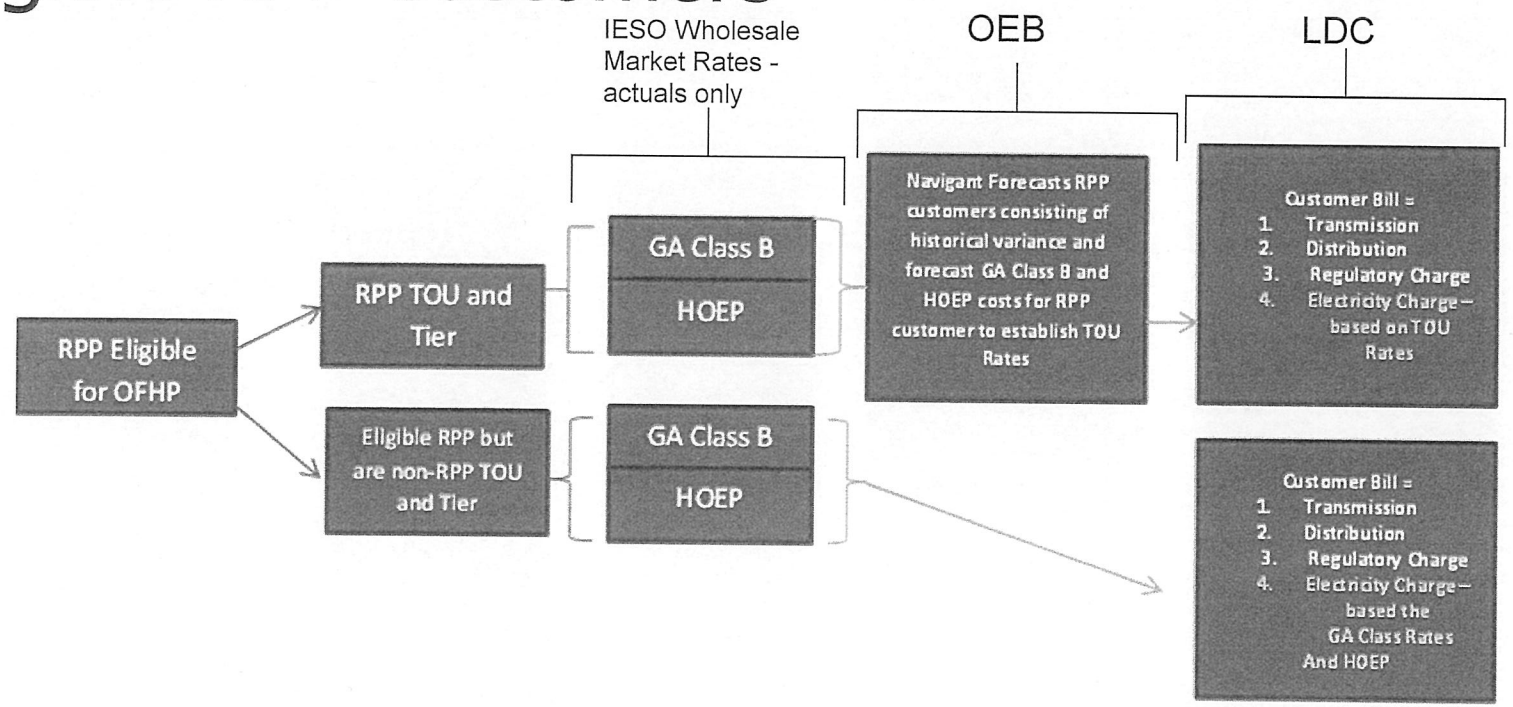
Flow of Generation Costs to Customer's bill for Eligible RPP Customers



- Cost adjustment for Ontario Fair Hydro Plan will flow to customer through the electricity portion of the bill
- For RPP customers can obtain a the OFHP via new TOU rates that incudes a GA credit, or as bottom line rate credit. Likely a one-line rate credit
- Eligible RPP but non-RPP TOU and Tier customers, it is likely via a rate credit
- OFHP Eligible but not RPP Eligible will also need a rate credit

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RPP Customer Bill to determine the targeted residential monthly bill reduction of 25%, by MOE analysis it is based on Toronto Hydro 750KWh/Mth in 2017

- Example: below of 25% decline based on 2017 Toronto Hydro Bill as per MOE analysis
- If based on prior year's bill, base bill may differ but mechanics will be the same
- Questions: What should the base bill be, 2017 Forecast or Actuals (Apr 2016 to May 2017)?
  - Should there be a true up? And how frequent? If so who carries the variance?

Base Bill is Toronto Hydro 750 KWh/Mth in 2017

item	Toronto Hydro Residential Monthly Bill (750KWh/Mth)		2017
1	Distribution	$	41.61
2	Transmission	$	13.10
3	Regulated Charges (includes OESP and RRRP)	$	5.72
4	Commodity	$	85.00
5	Total Bill before Taxes	$	145.43
6	HST	$	18.91
7	**Total Bill with Taxes - Base Bill for targeting a 25% reduction from**	**$**	**164.34**
	Target Bill = Reduce Total Bill shown in item 7 by 25%	**$**	**123.26**

How to figure out amount of the biill from FINANCING PLAN

item 6	**Total Bill Before Taxes**	**$**	**145.43**	
	Adjustments			
	Portion of RRRP and OESP moved to Gov't		-$2.00	Move from Ratepayer to Gov't
	Pre-Tax Financing Required		-$26.04	Goal seeked to obtain New Bill Target
	Pre-Tax Sub-Total		$117.39	
	8% Rebate from Gov't		-$9.39	Gov't Funds 8% Rebate
	HST		$15.26	
	New Bill after Taxes		**$123.26**	

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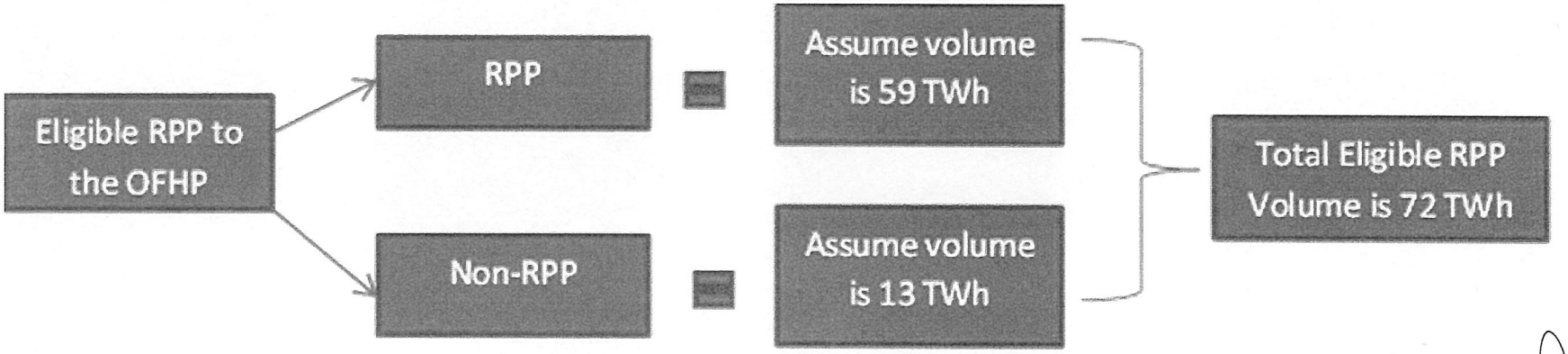
Estimated Volumes for illustration to calculate the GA Financing Amounts

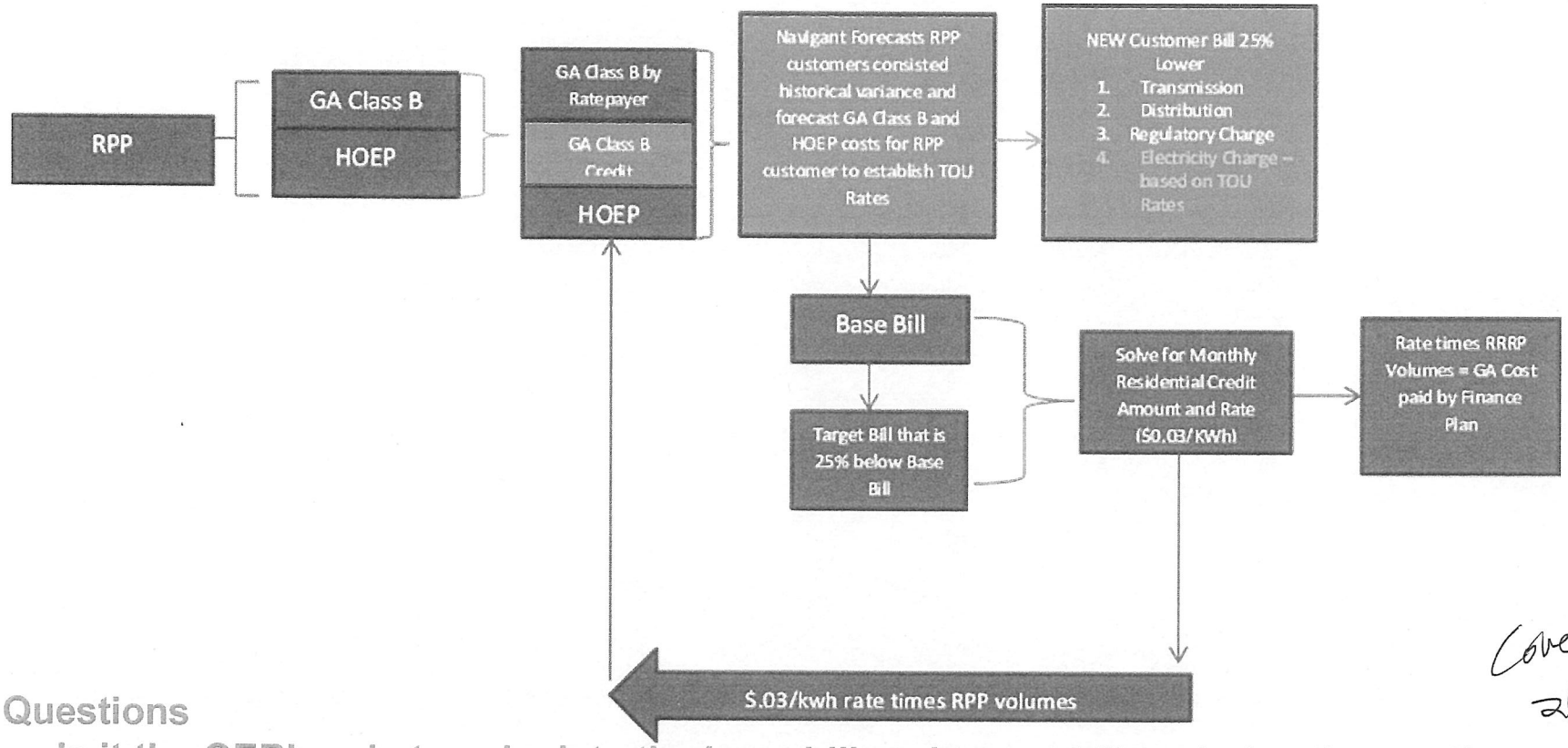
Assume the following volumes



- federal tax benefit associated.

- certain financial prog have - characteristic is whether or not to benefit.

RPP rate credit flows back via the TOU process or could be a separate credit line



Questions

- Is it the OEB's role to calculate the base bill and target bill to derive the credit rate?
- Is the credit rate used as a bottom line adjustment on LDC bills?
- Would this credit rate be used for all the other eligible OFHP customer bills?

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Translate the Monthly Bill Reduction into the Financing GA amount

OEB does RRP

- The $26.04/Month credit from FINANCING is converted into a unit rate by dividing by 750/KWh, which is equal to $0.03472 / kWh.
- Take the rate of $0.03/KWh times all eligible RPP volumes of 72 TWh to calculate the total amount of the GA is required to finance 25% bill reduction for all the eligible customers
- This is about $2.5 Billion per annum as shown below

	2017
Monthly Bill Amount to be Financed	$26.04
Based on 750 KWh Monthly Bill	750
Rate ($/KWh)	$0.03472 $/kWh
Assume All Eligible RRP volumes	72 TWh
GA Amount Required from FINANCING	$2,500,172,626

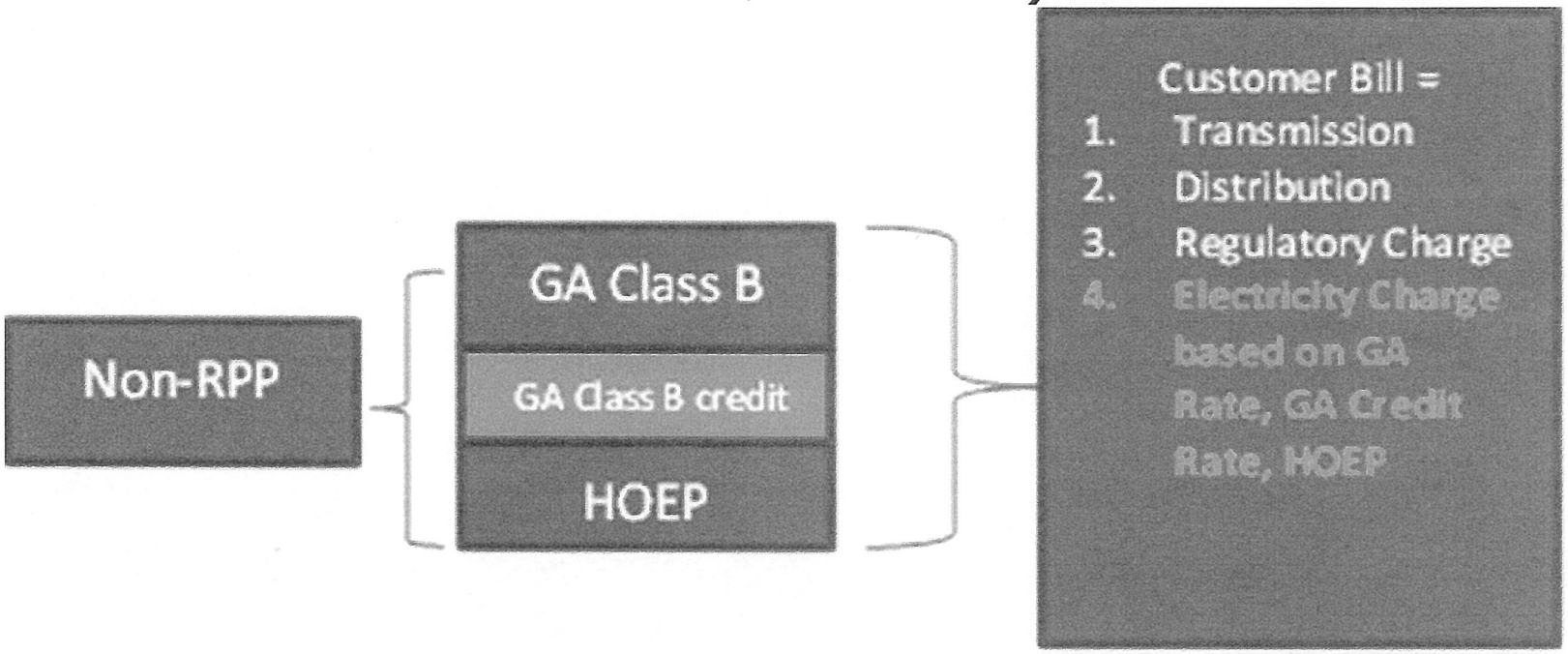
Questions:

Is the rate based on the forecast volumes or actual volumes?

True up or no-true up in subsequent periods?

Who establishes the non-RRP customer rate?

Other Eligible OFHP customers (including Eligible RPP without TOU and Tier Rates)



- Rate credit from the bill calculation could be used as the GA Class B credit for the eligible OFHP customers
- Or the credit rate could be used as a single line adjustment after the bill normal bill calculation

Illustration of residential bill calculation for 2018 with the 2% bill cap from the prior year

Base Bill is Toronto Hydro 750 KWh/Mth in 2017

2% Cap increase from 2017

item	Toronto Hydro Residential Monthly Bill (750KWh/Mth)	2017	2018
1	Distribution	$ 41.61	$ 43.26
2	Transmission	$ 13.10	$ 13.40
3	Regulated Charges (includes OESP and RRRP)	$ 5.72	$ 5.89
4	Commodity	$ 85.00	$ 85.31
5	Total Bill before Taxes	$ 145.43	$ 147.86
6	HST	$ 18.91	$ 19.22
7	**Total Bill with Taxes - Base Bill for targeting a 25% reduction from**	**$ 164.34**	**$ 167.08**
	Target Bill = Reduce Total Bill shown in item 7 by 25%	$ 123.26	$ 125.72

2018 target is 2% increase from prior year

How to figure out amount of the biill from FINANCING PLAN

item 6	**Total Bill Before Taxes**	**$ 145.43**	**$ 147.86**	
	Adjustments			
	RRRP and OESP moved to Gov't	-$2.00	-$2.00	Move from Ratepayers to Gov't
	Pre-Tax Financing Required	-$26.04	-$26.12	Goal seeked to obtain New Bill Target
	Pre-Tax Sub-Total	$117.39	$119.73	
	8% Rebate from Gov't	-$9.39	-$9.58	Gov't Funds 8% Rebate
	HST	$15.26	$15.57	
	New Bill after Taxes	$123.26	$125.72	

Questions:

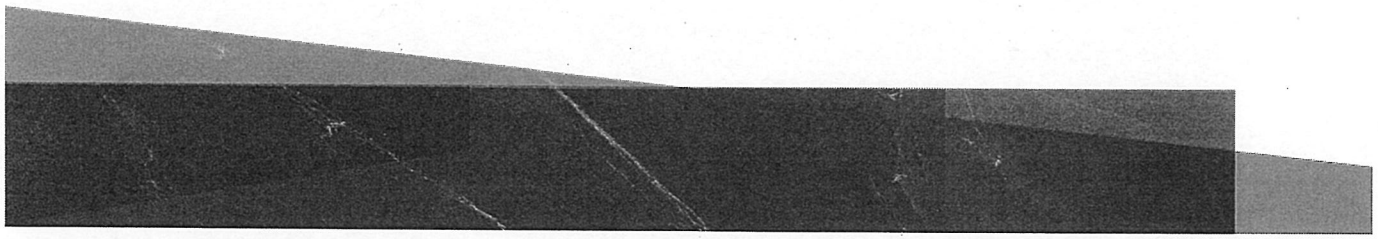
Is there a global detailed calculation of the bill – not a line item calculation of the 2% cap increase?

Could there be need for a greater amount than the 25% reduction cost to accommodate the cap?

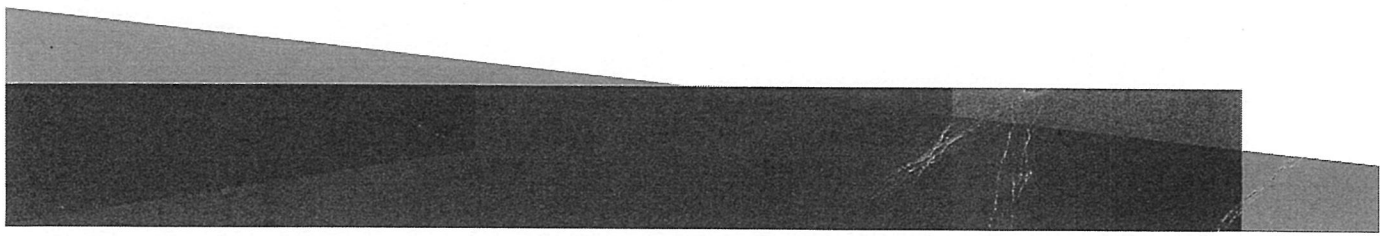


GA Finance Amount for 2018

	2017	2018	
Monthly Bill Amount to be Financed	$26.04	$26.12	
Based on 750 KWh Monthly Bill	750	750	
Rate ($/KWh)	$0.03472	$0.03483	$/kWh
Assume All Eligible RRP volumes	72	72	TWh
GA Amount Required from FINANCING	$2,500,172,626	$2,507,959,732	



Discussion and Next Steps



"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").

Ratepayers Project onto future not to be obligated to pay plan.

as project funded have to project based on share - otherwise get a tax

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.

May 11/2017

OFHP - Next Steps

1. Committee

- Gov't motion - 12 based on Carolyn's count.
  - motion template - binders
  - voting chart - paper work
  - clause by clause
- Opposition motions - pdf.

goes into binder for committee members

printing of binder

- Andrew Pastori - point person when dropping off stuff.

- weekend of 27/28 - will be jammed -
  - working on motions

2. Regulations
- Posting - SNAP sent up
  - ESDP [illegible] for [illegible]

- Tracke 1 & 2.
- ideally 2 tracks - 14th then a week bet
  2 sitting in Jones Cab → 27th.
  → 14th.

(1) Social programs - 14th.
  Part II - 14th.
  - focus.

(2) OPG reg - 27th. - True up
  - financing mechanism
  - refinancing.

Ingrid Hall
- Cascade
- leave as much to commercial agents as can -

- Michael, Les, Martin - / bankers
  lawyers
- More targeted
- Sent reg product.
- post friday closes. Sat 12th.
  vs.
  post monday close Tues 13th.

(3) Agencies.

(4) Working Group - LDC
- next wed - walk through
  posting.

- Non-RPP - potential issues

5. Navigant →
- spreadsheet
- results in line in analysis
- actual report in June
- prove argument addit 5 yrs on opert. that don't require addit. must.

- from allocat. done - not through reg - finalised before go to market
- rating agencies need to see in June.

6. Weekly Rate Mitigat.
- agencies.
- TB reports backing
- in advance of reg.
- quarterly report back
- general report backs - ICC report

re-jury - Status of OPG entity
creation etc.

2. Misc. Item.

- IESO / OPG Summaries of [illegible]
  → test 1 - adequate sum of opinion so satisfied & don't have to release opin.
  - how will [illegible] feel when they see these
- desire to release
- no sense of timing
- who from / who to,
- CFO to Hamilton.

- OFA / IESO line of credit
  - OIC - up to $3B
  - need to go to LRC
  - part of Staff tranche to go in
  - not immediate - confirm will

- S.28 indentures - get to TB
  - ESTDP recon. later this week

- Commercial agreements
  - Energy role(?)
  - piece in [illegible]
  - can rely on blades to carry water
  - observe.
  - OPG / IESO and then OPG / Market

- Rating agencies.
  - provincial assurances.
  - LOAITY

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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).*

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(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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[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.

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[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/ 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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Confidential OEB Advice to Government
For Discussion Purposes Only
March ~~16~~24, 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 lower ~~that~~ electricity bills ~~will be lowered~~ on an after-tax basis by 25% ~~on average~~ for a typical~~all~~ residential customer~~s~~ relative to what they would otherwise have been. ~~This~~ 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 the proposed shifting of 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 proposal to expand ~~planned expansion of~~ the RRRP are intended to be incremental to the 25% rate relief measure.

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, this ~~we estimate that this~~~~This~~ will translate to ~~an immediate~~an annual 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~~.~~ as well as non-RPP eligible customers~~consumersnd select consumers~~ that are eligible for the 8% rebate. 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 the portion of the estimated total GA reduction that should be included as an input to RPP prices when it sets those prices effective May 1, 2017. ~~thet~~~~The calculation of the GA reduction will be based on a Toronto Hydro consumer that uses 750 kWh per month and has a standard load shape as a proxy for a typical consumer. The OEB will need to determine whichestimate the amount of the total reduction in GA required to achieve the overall 25% reduction based for this proxy consumer, including the 8% rebate and shifting of the cost of the above noted programs to Provincial revenues, as well as whichthe portion of the estimated total GA reduction that should be included as an input to RPP prices. for May 1, 2017 RPP rates.~~ ~~The government anticipates that the r~~Rate relief intended for

Comment [MB1]: As discussed, we are proposing to revert back to the approach that was captured in our original version, which I think was also generally endorsed on Thursday.

Comment [MB2]: This is of some value to us in terms of explaining to consumers what the 25% is (or isn't), and the concept of this being incremental I think has a basis in some of the announcements made about the Plan.

Comment [CD(3]: Meant to capture long term care homes, university residences, etc.

Comment [MB4]: We don't not have consumption estimates for customers that are not on the RPP but intended to be included in the GA smoothing. We understand that the Ministry has – or has access to – such information. This is a necessary input so that we can assess which portion of the GA reduction is for RPP customers.

customers that are not eligible for the RPP (but eligible for the 8% rebate) or that ~~eligible for -- but~~ have opted out of ~~--~~the RPP is proposed to ~~will~~ be addressed ~~separately~~ by separate means that do not involve the OEB~~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. The government's intention is that achievement of the 25% rate relief measure will ultimately be gauged by reference to the bill impact for a proxy customer; specifically, a Toronto Hydro residential customer that uses 750 kWh of electricity per month with the time-of-use load profile of the "typical" residential customer against which the OEB measures and illustrates bill impacts.

Comment [MB5]: This is also of some value to us to confirm that there isn't anything you are looking for us to do in relation to these customers. We have made this more general in anticipation that you may not wish to identify right now any details of how this may be intended to work.

Comment [MB6]: We understand the benefit if referring to the TH proxy customer in this letter, but it needs to be positioned as sharing of information regarding intent and not by way of prescribing how May 1 RPP prices will be set.

~~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.~~

Comment [MB7]: We are OK with this deletion, on the understanding that this element of the Plan will not kick in until later and there is nothing we are required to do now that would in essence require us to know this today.

~~C.~~B. Ontario Electricity Support Program

On March 9, 2017, the government posted a proposal on the Regulatory Registry to, if approved, increase the level of benefits to be provided under the OESP by 50% and to expand eligibility for the program by modifying the current household income and size categories. ~~The Ministry is also exploring automatic qualification and credit amounts for customers who are enrolled in other provincial low-income social programs, such as Ontario Works and the Ontario Disability Support Program. The government also intends to introduce legislation that would, if passed, shift all of the funding and administration costs of this program from ratepayers to Provincial revenuesa Government-funded source.~~

I understand that the OEB is working with distributors, the central service provider and others as required with a view to facilitating a smooth and timely transition to the enhanced and expanded OESP benefits proposed in the government's Regulatory Registry posting, if passed. ~~with Ministry of Finance, local distribution companies, unit sub-metering providers, and your~~

Comment [MB8]: The principal reason for deleting this sentence was to avoid any confusion about whether what the OEB is referred to as working towards in the next paragraph includes this. If there is some reason you need to refer to it (we don't need it) then we suggest it be moved. For that matter, the next sentence about shifting costs to the tax base that we had originally included also isn't necessary so we are proposing to delete that as well.

Comment [MB9]: The regulatory posting does not appear to have an effective date, and we have therefore not included one here either. But we are supportive if you want to add a reference to May 1.

~~central service provider to implement a 50% increase in credit amounts, and expand eligibility for the program by modifying the current household income and size categories, and that these changes would be effective May 1, 2017.~~

Comment [CS(10]: Question for OEB Legal: We understand that the OEB has statutory provisions to make these changes. Are there any other changes or processes that OEB will need to conduct (eg. Hearings) to implement?

~~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 taking into account 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 is expected to be issued in the near term to meet this date.~~

Comment [MB11]: The OEB's Decision and Order rescinding the charge effective May 1 was issued on March 23rd, so we have deleted this paragraph.

As noted above, the proposed 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 in a manner ~~so~~such that they are funded by Provincial revenues~~to Provincial revenues~~. As such, the proposed Plan would ~~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~~ their mandate in the public interest as it does today.

Comment [MB12]: This statement is of value to us in responding to questions from consumers about why the OEB is still engaged in the process of setting rates.

~~In addition to proposed changes to the Global Adjustment and OESP, the proposed Fair Hydro Plan would includes broadening the Rural or Remote Rate Protection (RRRP) to provide distribution rate protection for residential customers served by high-cost distributors, as well as a 100% delivery credit for on-reserve First Nations customers. My Ministry will follow up with the OEB with further details on these programs to ensure that appropriate frameworks are in place to begin delivering these programs by the summer of 2017.~~

Comment [MB13]: The issue of the FN delivery charge is being addressed in a separate letter (and some elements – like eligibility – I believe are still unknown), and the RRRP expansion is already referred to above. We are therefore suggesting that this paragraph be deleted. The last sentence is of concern as we don't have clarity yet as to what might be expected of the OEB on this by the summer, nor what "by the summer" might mean in terms of actual timing.

The government will rely heavily on the OEB's expertise in moving forward with the proposed Fair Hydro Plan, and anticipates that the OEB will want to focus ~~its immediate efforts~~ on the elements of the proposed 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.

rate relief measure will ultimately be gauged by reference to the bill impact for a proxy customer; specifically, a Toronto Hydro residential customer that uses 750 kWh of electricity per month with the time-of-use load profile of the "typical" residential customer against which the OEB measures and illustrates bill impacts.

B. Ontario Electricity Support Program

On March 9, 2017, the government posted a proposal on the Regulatory Registry to, if approved, increase the level of benefits to be provided under the OESP by 50% and to expand eligibility for the program by modifying the current household income and size categories.

I understand that the OEB is working with distributors, the central service provider and others as required with a view to facilitating a smooth and timely transition to the enhanced and expanded OESP benefits proposed in the government's Regulatory Registry posting, if passed.

As noted above, the proposed 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 in a manner such that they are funded by Provincial revenues. As such, the proposed Plan would 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 their mandate in the public interest as it does today.

The government will rely heavily on the OEB's expertise in moving forward with the proposed Fair Hydro Plan, and anticipates that the OEB will want to focus on the elements of the proposed Plan described above before turning in 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

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 would, if passed, give full effect to that Plan. Some of these proposed details are being 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.

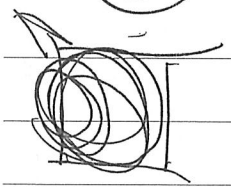
A. Reducing average residential electricity bills by 25%

The government is to take steps to lower electricity bills on an after-tax basis by 25% for a typical residential customer 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 the proposed shifting of 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 Rural or Remote Electricity Rate Protection program (RRRP) are intended to be incremental to the 25% rate relief measure.

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, this would translate to a reduction in the GA on the order of $2.5 billion during the period starting May 1, 2017 to April 30, 2018. The resulting savings will accrue to 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 as well as non-RPP eligible customers that are eligible for the 8% rebate. Under current forecasts, we also estimate that annual consumption by these customers is in the order of **72 terawatt-hours (TWh)**. Using its own forecasts of consumption for customers that are on the RPP, the OEB will need to determine the portion of the estimated total GA reduction that should be included as an input to RPP prices when it sets those prices effective May 1, 2017. For greater clarity, we expect OEB to its own forecasts and information to calculate the required adjustments that would achieve the 25% reduction for customers that are on the RPP. Rate relief intended for customers that are not eligible for the RPP (but eligible for the 8% rebate) or that have opted out of the RPP is proposed to be addressed separately. .

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, in accordance with such legislation as may be in place at that time. The government's intention is that achievement of the 25%

1. all it has it what OEB really needs
2. [illegible] [illegible]
3. talk throught



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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.

[Insert explanatory note.]

ELECTRICITY ACT, 1998

1. (1) Section 1 of the *Electricity Act, 1998* would be amended by adding the following clause:

[Note: GGRA provisions have been removed for now. Please confirm if they should be re-inserted.]

(2) Clause 1 (f) of the Act would be struck out and the following substituted:

(f) to protect the interests of consumers with respect to the adequacy, reliability and quality of electricity service;

(f.1) to protect the interests of consumers with respect to the prices they pay for electricity, including protection of those interests through the Hydro financing initiative;

[Note: Since the Hydro financing initiative is a defined term and is clearly required to be implemented under the new substantive provisions of the Act, I'm still not sure why this needs to be addressed in the purpose clause. However, I have included a purpose provision as per your instructions.]

x. Subsection 2 (1) of the Act would be amended by adding the following definitions:

"Financing Entity" means the trust established by Ontario Power Generation Inc. under clause XX (a) or the entity prescribed for the purposes of clause XX (b); ("French")

"hydro financing initiative" means those policies of the Government of Ontario related to its decision to refinance a portion of Global Adjustment~~ensure costs to Ontario electricity consumers are allocated fairly over time, taking into account the useful life of new sources of and technologies for electricity~~; ("French")

Comment [ESP1]: The wording needs to worked on but we are suggesting tying the definition to what we are committing to (i.e., refinancing/deferral of GA).

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[Note: I have applied the precedent of the "smart metering initiative" as per your instructions. Just want to reiterate my concern that the reference to government policies is really vague (which initiative/ policies? At which point in time?) and I think this could cause lots of confusion, particularly if the policies evolve over time. It could also have unintended consequences.]

[Note: To consider -- by describing the initiative as we have in the above definition, we are potentially linking the deferred amount to amounts that would otherwise be paid for by consumers as part of the GA. If the deferred amounts are not all about "the useful life of new sources and technologies" then the description of the initiative should likely be broadened. (For example, if some of the deferred amount may be used to cover high wholesale prices, one could argue that the initiative is NOT about allocating costs fairly over time… it's just about pushing the cost increase to future consumers without considering what is "fair" across the generations.]

x. (1) Subsection 6 (1) of the Act would be amended by adding the following clauses:

(q.1) to enter into agreements or arrangements with the Financing Entity;

(q.2) to engage in activities related to making payments to and receiving payments from the Financing Entity under Part V.2, as required under this Act, and to engage in related settlement activities;

Note: Is some of this covered already by clause (i)? Could we address this by expanding upon clause (i)? Trying to understand whether there is any potential overlap.]

(q.3) to engage in activities related to the [sale/disposition/conveyance/assignment] of the [right/regulatory asset] created under section XX, which activities may include,

[Note: As discussed, please confirm terminology.]

(i) incurring liabilities in relation to the [right/asset];

(ii) [selling/assigning/disposing of?] the [right/asset] to the Financing Entity;

(iii) assigning [the right/asset] to third parties;

[Note: I don't understand (iii) -- I thought the rights to the asset were being assigned to the trust and nobody else?]

(q.4) acting as a recovery agent for the Financing Entity in relation to [the right/asset];

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x. (1) Subsections 25.33 (1) and (2) of the Act would be repealed and the following substituted [TBD].

[Note: As per our telephone discussion today (March 27), there seems to be ongoing debate about the policy direction:

1. Do you want to amend the GAM so that the money received from the FE and the money recovered by the FE are part of the initial GA calculation?

2. Do you want to leave the GAM section as is and add a requirement (in a new section) for the IESO to conduct additional adjustments for a subset of the payments referred to in s. 25.33? This second adjustment would be engaged in after the existing GAM is calculated. So it would be a further adjustment of what has already been adjusted under the GAM.

Until this fundamental question is answered, we are removing the proposed amendments to s. 25.33.]

x. Subsection 53.1 (1) of the Act would be repealed and the following substituted:

Objects of Ontario Power Generation Inc.

53.1 (1) The objects of Ontario Power Generation Inc. include, in addition to any other objects, the following:

[Note: I know that the words "in addition to any other objects" appears in the current provision, but it seems very odd. This suggests that the objects are unlimited, which doesn't seem to be the intention but I could be wrong.]

1. Owning and operating generation facilities.

2. Establishing, operating and supervising the activities of entities for the purposes of supporting and promoting the government's hydro financing initiative.

3. Providing financial and other support to the IESO in its activities in relation to the hydro financing initiative.

4. Engaging in such financing, borrowing, lending and related activities and transactions to support the IESO with short-term or long-term financing.]

Comment [ESP2]: GA refinancing should be kept separate from existing GA calculation – GA will continue to be calculated as normal (it will need to be as Class As and Class Bs will still pay GA as they do currently).

And current position is that the OEB (i.e., not IESO) that makes adjustments to RPP consumers bills and publishes the modifier to be used for RPP-eligible bills.

IESO is responsible for the flow of money to and from the SPV to and from OEB/LDCs/Retailers.

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5. Providing equity, not exceeding the prescribed amount, to support the financing capacity of the Financing Entity.

Subsidiaries

(1.1) Ontario Power Generation Inc. may create one or more subsidiaries in order to more efficiently conduct its activities or achieve its objects.

x. Section 53.2 of the Act would be repealed and the following substituted:

Rights of the 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 would be amended by adding the following Part:

PART V.2
HYDRO FINANCING INITIATIVE

[Note: TBD where to place this Part within the Act and how to structure this Part. Temporary number (e.g. A1, A2, A3 etc.) has been used for now.]

FINANCING ENTITY

Financing Entity, established or prescribed

A1. (1) For the purpose of accomplishing the hydro financing initiative, the Minister may,

(a) direct Ontario Power Generation Inc. to establish and operate a trust; or

(b) direct Ontario Power Generation Inc. to [oversee? Administer?] an entity prescribed by the regulations.

[Note: Would the direction of the Minister include any additional instructions re timing etc.?]

Duty of Ontario Power Generation Inc.

(2) Ontario Power Generation Inc. shall comply with the direction of the Minister.

Comment [ESP3]: Is this authority necessary – would OPG not always already have to comply with such a direction?

[1] FLS - this provision is based on s. 49 of the Act

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[Note: Once OPG takes action under A1 in accordance with the Minister's direction, what happens if at some point in the future, the Minister wants a different entity to take over the role of the FE? Is this a concern that needs to be addressed?]

Object of Financing Entity

A2. (1) The object of the Financing Entity is to finance the amounts required to accomplish the hydro financing initiative.

[Note: We are imposing several obligations on the Financing Entity (FE). As a practical matter, how will these obligations be enforced? Who will be responsible for meeting these obligations? (e.g. would there be directors or officers of the trust?). Or will the OPG be responsible for meeting these obligations as the body that establishes/manages the trust or oversees the designated entity?]

Activities

(2) To achieve the object, the Financing Entity shall engage in the following activities:

[Note: Just want to confirm that this should be "shall" and not "may".]

1. Borrowing funds from the Financial Corporation or from such other persons or entities [as may be prescribed?].

2. Investing funds.

3. Making payments and loans to the IESO or such other entity as may be prescribed in accordance with the regulations [or an order of the Board].

[Note: I think it would be best to specify whether the rules would be set out in a reg or in a Board order to avoid confusion.]

[Note: Should the "loans" language be removed, since you noted that the IESO is not "borrowing" from the FE?]

4. Receiving payments from the IESO or such other person or entity as may be prescribed in accordance with the regulations.

5. Issuing securities or debt ***[in the manner prescribed?].***

6. Engaging in any activities, including entering into such transactions, agreements, or arrangements, as may be prescribed by, and in accordance with, the regulations.

Comment [ESP4]: Consider the wording re enabling the FE to engage in activties.

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

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it has charged to Ontario Power Generation Inc. or the IESO, or that it has been charged by the Financial Corporation, in relation to those operations, to the Board for review.
[Note: The list of items that have to be reported on could be more prescriptive (e.g. specifying specific amounts to be set out) or it could also allow for the Board to specify what it wants to see in the report. Let me know if you'd like to adjust the wording of the requirement.]

Board recommendations, etc.

(2) The Board may review the expenditures and charges referred to in subsection (1) and make recommendations to the Financing Entity as are appropriate in order to ensure the consistency with the governing leg./reg. requirements (i.e., the constraints on OPG borrowing) ~~most efficient operation and management of the Financing Entity~~ in order to protect consumers.
[Note: Rather than saying "in order to protect consumers", should this say "in order to achieve the object of the FE"? Or perhaps this could just be deleted altogether with no need for replacement language.]

Comment [ESP5]: We need a new section either in the Part V.2 or in the 25.33/34/35s that sets out the constraints on OPG borrowing:

1.Requirement that GA refinancing be completed within the committed to 30-year period;

2.Requirement that surpluses in collections are applied to repay GA borrowing; and

3.Cap the amount to be recovered from ratepayers in any given year at 10 per cent of the average total bill (based on IESO's forecast at the time of the calculation).

Deemed assets, entity,

A4. Despite any other provision of this Act or the *Business Corporations Act,* the assets and liabilities which are resident in and form part of the property of the Financing Entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries for any purpose.
[Note: You posed a question about excluding an OPG subsidiary from this rule. Please instruct.]

OBTAINING FINANCING

[Note: It will be important to read all of the provisions that follow against the provisions in the existing Act, to ensure there is no overlap/confusion being created due to potential interactions between existing authority and new authority. The drafting focus so far has just been to get the relevant substantive provisions into the draft without evaluating how they fit into the broader scheme of the Act.]

Ontario Power Generation Inc. to obtain financing

A5. (1) The IESO may direct Ontario Power Generation Inc. to cause the Financing Entity to engage in any of the following activities in order to accomplish the hydro financing initiative:
[Note: As a practical matter, how would OPG "cause the FE" to do these things? How is this different from "directing"?]

Comment [ESP6]: We want to ensure that OPG acts in accordance with the constraints as set out in the above.

Comment [ESP7]: Why is IESO directing OPG here? Does it have the authority to do so (other than as set out here)?

1. Financing, borrowing or lending to provide the IESO with short-term or long-term financing.

Internal Draft

2. [Purchasing/receiving/obtaining the right created under section XX] and making any payments to the IESO that relate to the IESO's activities in support of the hydro financing initiative.

[Note: Not sure if the regulated assets would always be "purchased" or if other terminology might be needed. Please advise.]

3. Collecting from the IESO amounts that the IESO is required to pay in relation to its activities in support of the hydro financing initiative.

4. Assigning its [the IESO's?] rights to all or part of the regulatory assets established under section XXXX.

[Note: What is para. 4 about? If this is about forcing OPG to make the FE do things, then does this belong in the list? I thought that it was only the IESO that would be assigning the rights to the FE]

5. Such other activities as may be prescribed.

Same

(2) Ontario Power Generation Inc. shall comply with a direction under subsection (1) within the time specified in the direction [and any prescribed rules?].

IESO to enter into transactions

A6. (1) The IESO shall, in order to support the achievement of the hydro financing initiative, enter into transactions with the Financing Entity or any other entity for such amounts as are necessary to support the hydro financing initiative.

[Note: My understanding is that the need for "or any other entity" stems from the need to allow for the IESO to obtain temporary financing in the immediate term, before it is able to access the FE. Do you want to narrow this so that the IESO is only authorized to do this before the FE is up and running? Or do you want to keep it available on an ongoing basis?]

Same

(2) In entering into transactions under subsection (1), the IESO shall comply with the regulations.

RIGHT OF RECOVERY [CREATION OF REGULATORY ASSET]

[Note re the following provisions:
I found a provision dealing with the concept of "regulatory asset" in Bill 210 from 2002 (see s. 79.13 of the OEBA). It deems certain things to be regulatory assets but does not say much more. On the phone, you noted that the term "regulatory asset" does not have any legal meaning on its own but is just an accounting term that has been used to describe

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the statutorily created right of recovery. However, you also said that there may be a need to use this term in order to convey the intended meaning from an accounting perspective.

In order to ensure that the drafting captures the policy intent, please answer/address the following questions:

1. Should we be creating a statutory right of recovery or deeming certain amounts to be a regulatory asset? You said you'd consult on whether the regulatory asset terminology is important to flag in the Bill.

2. You said you're not sure whether or not the Act will require the IESO to sell/assign the right. Please instruct. If it is optional for the IESO to sell/assign, then it seems that the right could in theory remain with the IESO (unless you are saying that the statute can just create the right of the FE to recover without any need for the right to be assigned/sold by the IESO… in which case please explain why we need to deal with the sale/assignment at all). Please clarify.

3. I'm assuming that if we are creating a right, then the right must be held by someone (e.g. the IESO) before it can be assigned/sold? So should the right be created in the Act for the IESO (e.g. the IESO has a right to recover the amounts from distributors and prescribed consumers) since the IESO would then sell/assign/transfer the right to the FE? The FE must also have the right to recover from the IESO itself, so that creates an extra complication.

4. Should there be some indication of when the right of recovery/regulatory assets will no longer continue to exist (e.g. once all of the amounts have been paid?). I notice that your instructions below about the debt indicate that the debt is no longer owing once the amounts are paid, but do we need to indicate that the regulatory asset also ceases to exist at that point?

Right of recovery created

A7. A right to recover the following amounts in full from the IESO, distributors and prescribed consumers is created.

1. The [deferred amount].

2. The amounts of costs relating to the operation or management of the Financing Entity, as are approved by the Board.

[Note: How will the Board be approving these costs? Is this related to the expenditure report submitted to the Board? That provision dealing with Board expenditures doesn't refer to any approval taking place… just a review and recommendations.]
[Note: Need to mention expenditures?]

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3. Other amounts as may be prescribed or as may be approved by the Board.

Note: Are you going to be saying anything about how the interest will be calculated?

Sale [and/or?] assignment of [right? Regulatory assets?]

A8. (1) The IESO [may? Shall?], in accordance with the regulations, sell [and/or?] convey to the Financing Entity the right to recovery created established under section A7 on such terms and conditions as are provided for by the Financing Entity.

[Note: Your instructions include the terms "sell", "assign" and "convey" -- which are correct?]

[Note: Your instructions suggested that something other than the "regulatory assets" may need to be assigned to the FE. Are you referring to the "warehousing" liabilities assumed by the IESO in the early days? What else would need to be assigned? Could these items be listed above in A7 or is there a reason why they need to be kept separate?]

Sale deemed final

(2) The sale and conveyance referred to in subsection (1) is deemed to be final for all purposes.

[Note: What is this intended to achieve? Is this based on precedent language that has been interpreted to have the desired effect?]

Debts

(3) For greater certainty, the [amounts to which the FE has a right of recovery] are debts owing by the IESO, distributors and prescribed consumers to the Financial Entity until the amounts have been fully paid and fully discharged.

[Note: Why is subs. (3) necessary? Isn't it inherent in the sale of the regulatory assets that the FE would have acquired the future right to collect these amounts? Perhaps it is unclear that the amount can be collected from not just the IESO but from others down the chain. But isn't that what the "right of recovery" section above is meant to cover?]

[Note: I haven't checked to see how other similar provisions dealing with debts are drafted. Not sure we need the "for greater certainty" and also not sure what the distinction is between "fully paid" and "fully discharged". This provision will need further consideration. You also noted that you may want to specify who determines when all obligations have been satisfied.]

IESO to recover amounts

A9. The IESO shall recover the amounts set out in section A7 from distributors and prescribed consumers, in accordance with [...]:

Note: how are the requirements that would determine recovery for this subsection meant to interact with the GAM reg?

[Note: The following two subsections are placeholders. You noted that *the provision is going to have to evolve to deal with consumers who exit the grid (disconnect) completely*

Original Draft

either because they leave the province or they decide to generate their own electricity and completely disconnect. You also want to be able to prescribe methods of ensuring that the amounts required cannot be "by-passed". I'll need to understand what is meant by "by-passed".]

Distributors liable

(x) The IESO and distributors are entitled to compensation for any shortfall in relation to the amounts the IESO must pay to generators, the Financial Corporation or other persons including prescribed persons, under section 25.33 resulting from the IESO's activities under the hydro financing initiative.

Consumers liable

(X) Prescribed consumers are required to contribute towards the amount of any compensation referred to in subsection (4) in accordance with the amounts and methods prescribed by the regulations and such amounts shall not be by-passed.

USE OF FUNDS TO REDUCE ELECTRICITY BILLS

[Note: Depending on how things land with s. 25.33, this might be a place to explain how the transactions between the IESO and the FE translate into reduction in the electricity bills of RPP consumers. Regulations could specify how the IESO would ensure that the short-term rate reductions that flow from the FE amounts are only received by the targeted class of consumers and that this same class of consumers is the only class responsible for the repayment of FE funds in the long-term.]

ONTARIO ENERGY BOARD ACT, 1998

x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [hydro financing initiative].

[Note: Would need to link with definition in the EA or else spell out the definition here - TBD.]

x. Section 27.1 of the Act would be amended by adding the following paragraph:

Hearings

(1.1) A directive may specify whether the Board is to hold a hearing, the circumstances under which a hearing may or may not be held and, if a hearing is to be held, the type of hearing to be held and the time within which it must be held.

The underlined is what makes this different from the other provisions in the Act that basically have the same wording. There are already a number of places in the Act where you have this type of hearings provision re directives (e.g., s. 27.2 (7)). If you basically want the same authority in each instance, then the wording should be consistent in each

Comment [ESP8]: Do we need this new 1.1?

Could we not use or amend existing:

27.1 (1) The Minister may issue, and the Board shall implement, directives that have been approved by the Lieutenant Governor in Council that require the Board to take steps specified in the directives to promote energy conservation, energy efficiency, load management or the use of cleaner energy sources, including alternative and renewable energy sources. 2002, c. 23, s. 4 (4).

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case. There are already some discrepancies between the current provisions (e.g., s. 27.2 (7) talks about types of hearings, whereas s. 28 (2) doesn't). Differences in wording will typically be presumed to be differences in meaning. So, the question is what you're intending to authorize in each case, and whether differences are intended. If you want the same thing everywhere, it should all be worded the same. Let me know.

[Note: Waiting for confirmation whether amendments to s. 78.7 are needed. Please advise.]

x. Section 79.16 (3) of the Act would be repealed and the following substituted:

Adjustment to eliminate variances

(3) In determining rates under clause (1) (b), the Board shall take into account balances in variance accounts established under section 25.33 of the *Electricity Act, 1998* and, subject to section X of that Act, make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct. [Note: Please let me know what section the highlighted portion is supposed to refer to… is it the provision that says the IESO has the 30 year period to pay off the amount in the variance account for the hydro financing initiative? I wonder if this is confusing and whether the amendment to subs. (3) above works… it almost seems unnecessary to say that the Board has to "take into account" this balance, given that we are setting up a bunch of very specific rules about what has to be done by various entities in order to eliminate this amount. What would the Board be expected to do with information about this variance account? For consideration.]

Timing

xx. This Act would come into force, if approved, on either a date specified in the legislation or on a later time to be stipulated by the Government.

~~**Commencement**~~

~~**xx. This Act would come into force on [insert commencement rule]**~~

Confidential Draft

COS Briefing. March 3/2017

- walk through agenda
- whether credit will apply to band councils
- implementation. — different track than 25%.
- steps on what implementation point
- Permit (?) - worry come up. Urgent one spent to this.

OPG - Ian ~~Jacobso~~ Jacobson.
Jennifer Roe (?)

ISSO - Bruce Campbell.

OEB - Mary Ann.
Neil.

HO – Imran Mayali
(someone else?)
Cos to follow up

- they want info in terms of different kinds of punits)

Q Hostrewail from Toronto Hydro.
- BN/ pre-prep
  - speaking notes — no specifics.
  - listening exercises
  - add a MPP to the note.

- Cos – Part of principle – expect that Minister is no longer sole shareholder of HO.

Speaking notes – never recent success, pivot to future how more forward what can [illegible]
- [illegible]

- Procurement policies - abnormal components

↳ No procurement policies
(need more info)
↳ Monday

- Loan guarantee.
→

- request, re. Bond Council office
↳ net network - can't do it
bc of particular local.

- first nations power authority
↳ request to have represent
on OEB
- more substantial request
in energy section
- Sam

(striker bc of funding)
more focused meeting

LESO Presentation on
- OPO.

- emergent kit - brown covers
  - creation of joint product
  - Briefing minister next Wed
    - with time through Agenda & speaking notes
  - will go back & revise based on slides

PROPOSED AMENDMENTS TO O. REG. 95/05 (RPP REGULATION):

[NTD: The proposed amendments are shown as tracked changes. Portions highlighted in yellow are "Notes to Draft"]

Definitions

1. In this Regulation,

[NTD: These are new definitions to be added to s. 1.]

"average monthly invoice amount" means the average monthly invoice amount during a specified period for,

1. the proxy consumer (TOU) in respect of the proxy consumer (TOU) account, or
2. the proxy consumer (two-tier) in respect of the proxy consumer (two-tier) account;

"base period" means the 12-month period that commences on May 1, 2016 and ends on April 30, 2017;

"bill reduction period" means the period that commences on May 1, 2017 and ends on April 30, 2018;

"bill smoothing period" means the period that commences on May 1, 2018 and ends on April 30, 2022;

"CPI" means the all items Consumer Price Index published for Ontario as published by Statistics Canada under the authority of the Statistics Act (Canada);

"cross-generational consumer" means a consumer described in subsection 4 (3);

[NTD: I understand that it would be helpful legally to use defined terms that reflect the cross-generational allocation of the GA costs that this GA mechanism is intended to achieve. Given that certain current GA costs will be allocated over a 30-year period (in total), it would not be misleading to say "cross-generational".]

"cross-generational recovery period" means the period that commences on May 1, 2022 and ends on April 30, 2047;

"invoice amount" means the sum of the amounts in respect of the following:

1. the commodity price of the electricity;
2. the rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the Act;

[NTD (for Energy Policy): My understanding is that paragraph 2 would include all of the following rates and charges, but this should be confirmed with the OEB:

- **service charge**
- **distribution volumetric rate**
- **retail transmission rate - network service rate**
- **retail transmission rate – line and transformation connection service rate**
- **wholesale market service rate**
- **RRRP charge**
- **OESP charge**
- **Standard supply service – administrative charge]**

3. any adjustment on the invoice required pursuant to 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);

but does not include any of the invoice amount exclusions:

"invoice amount exclusions" means amounts in respect of the following:

1. the balance of any amounts carried forward from previous invoices;
2. penalties and interest;
3. any charges that do not relate to the consumption of electricity;
4. the fixed monthly service charge payable by a generation facility, within the meaning of section 56 of the Act, that is classified as "microFIT" in a rate order issued by the Board under subsection 78 (3) of the Act;
5. charges labelled as "specific service charges" or "retail service charges" in the applicable rate order issued by the Board under subsection 78 (3) of the Act; and
6. rate riders set out in the applicable rate order issued by the Board under subsection 78(3) of the Act;

"proxy consumer (TOU)" means a potential consumer who satisfies all of the following conditions:

[NTD: This is not intended to be an actual consumer. Instead, this is just a "proxy" or "representative" consumer who is used for purposes of calculating rates under new section 6.1 below.

Important note: Because some (most) cross-generational consumers are on TOU pricing, and some are on two-tier pricing, we will need *TWO* proxy consumers so the Board can set both TOU rates and two-tier rates on a going-forward basis, starting in the bill reduction period.]

1. The consumer is a member of the class of consumers described in subsection 4 (3).
2. The consumer purchases electricity directly from Toronto Hydro.

[NTD: "Directly from" is intended to exclude, for e.g., a consumer whose consumption is measured by a sub-meter in a sub-metered building that purchases its electricity from TH. This avoids the need to address sub-metering fees.]

3. The consumer is billed time-of-use rates.

4. The consumer consumes, on average, 750 kilowatt hours of electricity each month, of which:

   (a) 65% is consumed during the off-peak period;

   (b) 17% is consumed during the mid-peak period; and

   (c) 18% is consumed during the on-peak period;

   [NTD (for Energy Policy): The Regulated Price Plan Price Report for the period from Nov1/16 to Oct31/17 states that the % of TOU consumption figures listed above (65% off-peak, 17% mid-peak and 18% on-peak) "are based on several years of consumption data for consumers provided by the IESO".

   Do you want to apply those %'s to the proxy consumer (TOU)?]

5. The consumer 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.

6. The consumer is not in a contract with a retailer for the purchase of electricity from the retailer.

7. The consumer is invoiced by Toronto Hydro on a monthly basis.

8. The consumer is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan.

9. The consumer is invoiced by Toronto Hydro only for the invoice amount.

"proxy consumer (two-tier)" means a potential consumer who satisfies all of the conditions applicable to a proxy consumer (TOU) except that the potential consumer:

1. is billed two-tier rates; and

2. consumes, on average, 750 kilowatt hours of electricity each month, of which:

   (a) 53% is consumed during the lower tier period; and

   (b) 47% is consumed during the upper tier period;

   [NTD (for Energy Policy): The Regulated Price Plan Price Report for the period from Nov1/16 to Oct31/17 states that "[b]ased on historical consumption, approximately 53% of RPP tiered consumption is forecast to be at the lower tier price … and 47% at the higher tier price".

   Do you want to apply those %'s to the proxy consumer (two-tier)?]

"proxy consumer account" means, in respect of the proxy consumer (TOU) or the proxy consumer (two-tier), an account with Toronto Hydro for the provision of electricity;

"rate of inflation" for a specified period means the rate calculated according to the formula:

(CPI(B) / CPI(A)) - 1

where,

CPI(B) is the all items Consumer Price Index published for Ontario as published by Statistics Canada under the authority of the Statistics Act (Canada) for the last month of a specified period, and

CPI(A) is the all items consumer price index published for the province of Ontario by Statistics Canada for the month preceding the commencement of the specified period;

"Toronto Hydro" means Toronto Hydro-Electric System Limited;

Class of consumers, s. 79.16

4. (1) REVOKED: O. Reg. 494/10, s. 2 (1).

(2) On and after November 1, 2009, the following are prescribed as ~~the~~ a class of consumers for the purposes of subsection 79.16 (1) of the Act:

1. Low-volume consumers.
2. A consumer who has a demand of 50 kilowatts or less.
3. A consumer who has an account with a distributor, if the account relates to,
   i. a dwelling,
   ii. a property as defined in the *Condominium Act, 1998*,
   iii. a residential complex as defined in the *Residential Tenancies Act, 2006*, or
   iv. a property that includes one or more dwellings and that is owned or leased by a co-operative as defined in the *Co-operative Corporations Act*.
4. A consumer who annually uses at least 150,000 but not more than 250,000 kilowatt hours of electricity.
5. A consumer who has an account with a distributor if the consumer,
   i. carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993*, and
   ii. holds a valid registration number assigned under that Act or the consumer's obligation to file a farming business registration form was waived pursuant to an order made under subsection 22 (6) of that Act. O. Reg. 58/08, s. 1; O. Reg. 115/09, s. 1 (2); O. Reg. 494/10, s. 2 (2, 3).

(3) Commencing May 1, 2017 and continuing until the end of the cross-generational recovery period, the following are prescribed as a class of consumers for the purposes

of subsection 79.16 (1) of the Act **[and sections 25.34 and 25.35 of the *Electricity Act, 1998*]**:

[NTD:

The above in square brackets is a placeholder for linking the calculation of the new GA reduction rate with the determination of the amount of GA that will be "deferred" each month (and financed by the Financing Trust) under the proposed *Electricity Act, 1998* amendments.

The list below describes those consumers who will be covered by the GA relief. It covers all consumers who are entitled to OREC except for those not paying a GA charge (i.e. non-grid connected customers of IPAs).

While this is a new section, to assist in seeing the changes made relative to the description of RPP consumers in section 6, those changes are highlighted in green.]

1. Low-volume consumers.

2. A consumer who has a demand of 50 kilowatts or less.

3. A consumer who has an account with a licensed distributor, a licensed retailer or the IESO, if the account relates to,

[NTD: The above changes (relative to section 6, and highlighted in green) are needed to properly capture the consumers entitled to the deferral - e.g. we need to say "licensed" distributor to exclude customers of IPAs]

i. a dwelling,

ii. a property as defined in the *Condominium Act, 1998*,

iii. a residential complex as defined in the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

iv. a property that includes one or more dwellings and that is owned or leased by a co-operative as defined in the *Co-operative Corporations Act*.

4. A consumer who annually uses at least 150,000 but not more than 250,000 kilowatt hours of electricity.

5. A consumer who has an account with a licensed distributor, a licensed retailer or the IESO, if the consumer,

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.

Determining rates, ss. ~~79.16~~ 4 (2) consumers

6. (1) ~~For~~ Subject to subsection (4), for the purpose of clause 79.16 (1) (b) of the Act, the Board shall determine rates for the consumers described in subsection 4 (2) in the following manner:

[NTD: The existing section 6 determines the rates for the existing RPP class of consumers (described in the existing ss. 4 (2).

If the RPP class of consumers is 100% a subset of the new ss. 4 (3) class of consumers (the "cross-generational consumers" benefitting from the GA "deferral"), then section 6 will not be used until after the end of the 30-year "cross-generational recovery period" (other than to calculate the "delta" or amount of the deferral under the new sections 6.1 and 6.3).

The new section 6.1 sets out the rate-setting process that the Board would follow for the "cross-generational consumers" if the goal was to ensure that the rates reflected the GA costs over each May 1 – April 30 period.

The new section 6.2 sets out the rate-setting process that the Board will follow for the "cross-generational consumers" where the goal is to reduce the proxy consumer's bill by 25% in the first year, only increase that bill year-over-year for the next 4 years by CPI, and then limit year-over-year increases in subsequent years to 10% (with an overriding requirement that 100% of the GA "deferred" be recovered by April 30, 2047).

The new section 6.3 sets out the calculation of the rate "delta" between having the cross-generational consumers pay the full amount of GA each 12-month period and having them pay something less than the full amount of GA. This rate "delta" (multiplied by the volume of electricity consumed by all of the cross-generational consumers in the 12-month period in question) is the amount of the GA that is being "deferred" for that period, and that must ultimately be recovered from the cross-generational consumers over the 30-year period.]

1. The Board shall determine rates in a manner that is consistent with the Standard Supply Service Code issued by the Board.
2. The first rates determined by the Board shall remain in effect for not less than 12 months. The Board shall determine separate rates after that time for periods of not more than 12 months or for such shorter time periods as the Minister may direct.
3. In determining the rates, the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect those costs.

4. In determining rates commencing May 1, 2011, the Board shall set an off-peak period associated with the regulated price referred to as RPEMOFF in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board,

   i. that begins no later than 7 p.m. on every weekday and ends,

      A. no earlier than 7 a.m. on the next day if the next day is a weekday, or

      B. no earlier than 12 a.m. on the next day if the next day is Saturday, Sunday or a holiday, and

   ii. that begins no later than 12 a.m. on every Saturday, Sunday and holiday and ends no earlier than,

      A. 12 a.m. on the next day, if the next day is Saturday, Sunday or a holiday, or

      B. 7 a.m. on the next day if the next day is a weekday.

(2) The times of day set out in subparagraphs 4 i and ii of subsection (1) are in central standard or daylight saving time or eastern standard or daylight saving time, whichever is then prevailing in the particular location in Ontario.

(3) Despite paragraph 4 of subsection (1), the Board may set different off-peak periods for the purpose of such electricity price pilot projects as it specifies.

(4) The provisions of this section only apply for a period contemplated in paragraph 2 of subsection (1) if there are consumers described in subsection 4 (2) who are not also consumers described in subsection 4 (3).

[NTD: New section 6.1 below sets out the rules the Board is to follow in determining the rates for the "cross-generational consumers" described in ss. 4 (3) based on the assumption that the *full amount* of GA attributable to this class is to be recovered by the end of each 12-month period.]

Determining rates, s. 6.3

6.1 (1) The Board shall determine rates for the consumers described in subsection 4 (3) in the manner set out in subsection 6 (1) solely for the purpose of section 6.3.

[NTD for leg counsel: The "delta" calculation in this reg. will quantify the amount of GA being "deferred" and later recovered under the proposed new EA provisions. To bridge the gap between this reg. (made under the OEBA) and the EA, we will presumably need to provide a cross-reference link in an EA reg. (e.g. 429/04 or a new reg.).]

[NTD: New section 6.2 below sets out the rules the Board is to follow in determining the rates for the "cross-generational consumers" described in ss. 4 (3) who receive the GA reduction]

Determining rates, ss. 4 (3) consumers

6.2 (1) For the purpose of clause 79.16 (1) (b) of the Act, the Board shall determine rates for the consumers described in subsection 4 (3) in the following manner:

1. Subject to paragraphs 2, 3, 4, 5 and 6, the Board shall determine rates in a manner that is consistent with the Standard Supply Service Code issued by the Board.

   [NTD (for Energy Policy): Will the SSSC have any relevance to the determination of rates on a going-forward basis for the cross-generational consumers, based on the approach required under this new s. 6.2? I assume not. If the SSSC will not be relevant, then this paragraph 1 should be removed.]

2. The first rates determined by the Board under this section shall remain in effect for the bill reduction period. The Board shall determine separate rates after that time for periods of 12 months.

   [NTD (for leg counsel): Do we need to specify that the "periods of 12 months" are from May 1 – April 30? I assume that "after that time" refers to immediately after that time. If that is correct, then presumably we don't need to specify May 1 – April 30?]

3. In determining the rates for the bill reduction period, the Board shall:

   a. calculate the average monthly invoice amount for the base period for the proxy consumer (TOU) account and for the proxy consumer (two-tier) account;

   b. determine time-of-use rates that would reduce the average monthly invoice amount for the proxy consumer (TOU) account for the bill reduction period by an amount equal to twenty-five percent of the average monthly invoice amount for the proxy consumer (TOU) account for the base period; and

   c. determine two-tier rates that would reduce the average monthly invoice amount for the proxy consumer (two-tier) account for the bill reduction period by an amount equal to twenty-five percent of the average monthly invoice amount for the proxy consumer (two-tier) account for the base period.

4. In determining the rates for the bill smoothing period, the Board shall:

   a. determine time-of-use rates that would increase the average monthly invoice amount for the proxy consumer (TOU) account for each of the twelve month periods in the bill smoothing period by the rate of inflation relative to the average monthly invoice amount for the proxy

consumer (TOU) account for the immediately preceding twelve month period; and

b. determine two-tier rates that would increase the average monthly invoice amount for the proxy consumer (two-tier) account for each of the twelve month periods in the bill smoothing period by the rate of inflation relative to the average monthly invoice amount for the proxy consumer (two-tier) account for the immediately preceding twelve month period.

5. Subject to paragraph 6, in determining the rates for the cross-generational recovery period, the Board shall:

a. determine time-of-use rates that would increase the average monthly invoice amount for the proxy consumer (TOU) account for each of the twelve month periods in the cross-generational recovery period by no more than ten percent relative to the average monthly invoice amount for the proxy consumer (TOU) account for the immediately preceding twelve month period; and

b. determine two-tier rates that would increase the average monthly invoice amount for the proxy consumer (two-tier) account for each of the twelve month periods in the cross-generational recovery period by no more than ten percent relative to the average monthly invoice amount for the proxy consumer (two-tier) account for the immediately preceding twelve month period.

6. Despite paragraph 5, the Board shall determine time-of-use rates and two-tier rates with a view to ensuring that the rates reflect the **[full amount of GA deferred, plus financing costs (interest, admin and other servicing costs incurred by the IESO or the financing trust)]** by the end of the cross-generational recovery period.

[NTD: We will be able to more fully develop this paragraph as we sort out the proposed legislative amendments related to the GA "deferral" financing.]

Determining differences in rates

6.3 (1) For each 12-month period in the bill smoothing period and the cross-generational recovery period, the Board shall determine the difference between,

(a) the total amount payable by the cross-generational consumers for electricity using the rates determined under section 6.2, and

(b) the total amount that would have been payable by the cross-generational consumers for electricity using the rates determined under section 6.1,

based on the amount of electricity actually consumed by the cross-generational consumers in the 12-month period.

[NTD: Will it be possible for the Board to make the above determinations (e.g. based on information provided by the IESO)?

The difference between (a) and (b), if positive, would represent a principal amount of the cross-generational consumers' electricity costs that would be "deferred". If the difference is negative, this would represent the amount of the "deferral" being repaid in the 12-month period (which payment would cover not just principal but also interest and other financing related costs).

The differences between (a) and (b) will have to link back to the proposed EA amendments related to the "deferral" and repayment of the "deferral".

It appears at first blush to be necessary to take this approach when determining the amounts "deferred". The reason for this is that any "variance" between:

(i) the amounts paid (by LDCs) to the IESO in respect of the cross-generational consumers, and
(ii) the amounts owed by cross-generational consumers,

for the electricity consumed by the cross-generational consumers would be made up of components other than just the amounts being "deferred".]

[NTD (for Energy Policy): Please confirm that no changes are required to sections 7 or 8 of the RPP reg. (reproduced below) in relation to the new GA "deferral" class of consumers, or to s. 79.16 (4) of the OEBA, which relates (in paragraph (b)) to section 8 below (note that we will need to amend 79.16 (3)).]

Exemptions, s. 79.16

7. (1) Clause 79.16 (1) (b) of the Act does not apply to a consumer in respect of electricity retailed to the consumer by Fort Frances Power Corporation pursuant to its obligations under section 29 of the Electricity Act, 1998 for the volume of electricity supplied to Fort Frances Power Corporation by Abitibi-Consolidated Hydro Limited Partnership.

(2) Revoked: O. Reg. 494/10, s. 4 (2).

(3) Subsection 79.16 (1) of the Act does not apply to a consumer with respect to generation station service. O. Reg. 95/05, s. 7 (3).

Criteria for purpose of s. 79.16 (4) (b)

8. (1) For the purposes of clause 79.16 (4) (b) of the Act,

(a) the criterion is that the consumer must file a written statement in accordance with clause 79.16 (4) (a) of the Act, if before November 1, 2009, the consumer is not a low-volume consumer or a consumer otherwise referred to in subsection 4 (2); or

(b) the criteria are, if the consumer is a low-volume consumer or a consumer otherwise referred to in subsection 4 (2),

(i) the consumer must file a written statement in accordance with clause 79.16 (4) (a) of the Act, and

(ii) the statement must relate to a property for which an interval meter, that measures the amount of electricity used, is used for billing purposes. O. Reg. 115/09, s. 2.

(2) A consumer who on or before March 31, 2005 meets the criteria of subsection 79.4 (2) of the Act shall be deemed to meet the criteria set out in subsection (1).

Electricity Announcement
Q&As
March 2, 2017

KEY MESSAGES:

- We are taking decisive action to lower electricity bills for households by 25 per cent on average — the single-largest reduction in Ontario's history.
- People with low incomes and those living in rural communities would benefit from even greater savings.
- The decision to invest in a clean, modern and reliable electricity system was the right one — but the costs of this decision should not be put on today's electricity bills alone.
- We are making fixes to the electricity system to distribute those costs more fairly — and giving people significant savings on their bills that will make a real difference.

FRENCH KEY MESSAGES:

- Nous prenons des mesures énergiques pour réduire d'environ vingt-cinq (25) pour cent les factures d'électricité des ménages. Il s'agit de la plus importante réduction dans l'histoire de l'Ontario.
- Les personnes à faible revenu et celles qui vivent dans les collectivités rurales pourraient faire des économies encore plus élevées.
- La décision d'investir dans un système électrique propre, moderne et fiable était la bonne, mais les coûts de cette décision ne devraient pas figurer uniquement sur les factures actuelles d'électricité.
- Nous sommes en train d'apporter des correctifs au système d'électricité de façon à répartir plus justement les coûts et à permettre aux personnes de faire d'importantes économies sur leurs factures. Voilà qui fera toute une différence.

Top-line QAs

Q. The figure of 25 per cent savings is an average. How much money will a typical household save?

A. When we looked at how to make the system fairer, we wanted to make sure that these measures will benefit everyone.

Some people do need this a lot more, and we have taken that into account.

If you look at the electricity line of the bill, for example, for a typical household connected to Toronto Hydro and consuming 750 kWh per month, the reduction would be 25 per cent in 2017.

The reduction varies depending on a number of factors, including the level of consumption and the local distribution company a consumer is connected to.

Q. Will people's bills look different?

A. Our new plan would increase savings through new initiatives that would cut costs directly on your energy bill.

Most of the components of the plan do not require adjustments to the residential bill. We will work with the Ontario Energy Board (OEB) and Local Distribution Companies (LDCs) to ensure those adjustments that *are* necessary are made to billing systems.

Distribution companies already have experience with the implementation of billing changes.

Q. When will these changes come into effect?

We are looking to implement these changes as soon as possible, so that we can lower rates and take the pressure off people soon. There is a process that we have to follow, which includes introducing legislation.

Pending legislation, changes would enter into effect in summer 2017.

Q. How much will these initiatives cost?

A. We have been making important investments in a cleaner and more reliable energy system. Since 2003, the government invested about $50 billion in electricity generation, transmission and distribution assets, but these investments have led to higher electricity bills.

We have heard from people across the province that the costs of these new investments have increased bills too quickly, which is why we are moving forward with a plan that will ensure costs are shared more evenly and over a longer period of time.

This plan is the biggest rate reduction in Ontario's history. It recognizes that the decision to invest in a clean, modern and reliable system was the right one — but that the costs of this decision should not be put on today's electricity bills alone.

The impact of innovative energy technologies will continue to help us reduce costs in the future. This is allowing us to introduce and expand existing rate relief programs that will reduce bills now.

We estimate the cost of the enhancing the social programs would cost up to $2.5 billion over the next three years.

This spring, we will be releasing the 2017 Long Term Energy Plan (LTEP) which will include a projection of where we think we are headed.

Q. **Where is the money for this rate relief plan coming from? Will you still be able to balance the budget?**

A. We continue to project a balanced budget by 2017–18 and will provide an update on the fiscal plan in the spring Budget.

We continue to invest in the economy, our people and a healthy, clean and prosperous low-carbon future.

These investments will help enhance the public services that people in Ontario rely on, as well as stimulate economic growth.

Q. **You are characterizing these as structural changes. Does this mean the lower rates are permanent, or will rates rise again?**

A. We have a robust energy supply and are in a good position to improve efficiency, increase transparency, enhance opportunities for innovation and enhance competition to reduce system costs.

As part of the initiative we are announcing today, rate increases over the next four years would be held to the rate of inflation.

This spring, we will release the 2017 Long Term Energy Plan (LTEP) which will include a projection of where we think we are headed.

Q. **When you say you are reducing bills by 25 per cent, you are in fact including the 8 per cent rebate already in place. Is 17 per cent enough?**

A. We are introducing the most significant electricity rate relief plan in Ontario's history. We are overhauling the way many families, farms and small businesses are billed for the electricity they use.

And we are doing so by building on measures we have already taken to address electricity costs. This plan would provide substantial rate reductions today and ensure fairness and predictability for tomorrow.

We put in place the 8 per cent and heard clearly that more is needed. That is why we are providing greater relief. We are also making substantive structural changes, through a thoughtful, measured plan that will result in significant savings for people today and a more predictable picture for the future.

Q. What about people who have had their electricity disconnected. What are you doing for them?

A. With unanimous support, we recently passed Bill 95, the Protecting Vulnerable Energy Consumers Act, which empowered the Ontario Energy Board to prohibit winter disconnections. The Board has done this, prohibiting disconnections through April 30th and requiring the reconnection all customers disconnected as a result of payments owed.

Q. There have been calls to get rid of time-of-use rates. Are you considering that?

A. There is a pilot project looking at that, but we do know that time of use provides an overall benefit to the entire province by conserving power during peak demand times.

The plan we are unveiling today provides for substantive structural changes and fairness to the system that will make a different to people's lives right now by significantly lowering electricity bills.

Q. Do these new measures reward the biggest residential consumers?

A. These new measures benefit everyone, regardless of level of consumption.

Through the Fair Hydro Plan, we are providing relief to everyone and also providing additional relief for those who are most in need of support. This support does not increase or decrease based on how much or how little electricity the consumer uses.

Q. Presumably, landlords will benefit from the new rate relief plan. How will you ensure they pass along these savings to their tenants?

A. Tenants who pay their own electricity bills are also able to benefit from the programs. The government is looking at ways to ensure that rate relief can be passed along to tenants that do not receive electricity bills.

Global Adjustment

Q. People have been paying for past investments to make the system cleaner and more reliable. Now, you are spreading these costs over the longer term. Aren't you just offloading costs to future generations?

A. We have been making important investments in a cleaner and more reliable energy system, and we are reaping the benefits of that, but these investments have led to higher electricity bills.

The cost of investments in generation and conservation are funded in part through what is known as the Global Adjustment.

We have heard from people across the province that the costs of these new investments have grown too quickly, which is why we are moving forward with a plan that will ensure costs are distributed more fairly over time. We have a plan that significantly reduces rates today AND ensures fairness and predictability for tomorrow.

Most of Ontario's electricity generators are under 20-year contracts, but many of these facilities will continue to generate power after their contract ends. These are long-term assets for our electricity system. With this plan, we would be bringing forward some of the value of this asset by spreading some of the current costs of these contracts over a longer period.

Q. Won't spreading these costs over more years lead to big rate hikes down the road?

A. Many of the generating facilities that have been developed recently are expected to operate past their contract life. We are recognizing that some generating facilities will continue to provide benefits to future electricity consumers after their contracts end. This would reduce their need for future consumers to finance the development of new generating facilities.

Q. Residential customers just stopped paying the Debt Retirement charge and business and industrial customers are still paying it until 2018. Why are you now adding more debt to ratepayers?

A. We have a plan that significantly reduces rates today AND ensures fairness and predictability for tomorrow.

Most of Ontario's electricity generators are under 20-year contracts, but many of these facilities will continue to generate power after their contract ends. This is a long-term asset for our electricity system. We are bringing forward some of the value of this asset by spreading some of the current costs of these contracts over a longer period. This would reduce the need to finance the development of new

generation assets.

Q. How many years will people be paying back the debt that will result from financing the costs? Can you give any guarantees as to how long and how much people will be paying in the future?

A. Our rate relief plan is a significant restructuring of the electricity sector and the biggest rate reduction in Ontario's history.

It recognizes that the decision to invest in a clean, modern and reliable energy system was the right one — but that the costs of this decision should not be put on today's electricity bills alone.

If passed, the proposed legislation would mean this financing would spread costs over a longer period while providing immediate relief on electricity bills.

This spring, we will release the 2017 Long Term Energy Plan which will include a projection of where we think we are headed.

Q. What measures will be in place to ensure this debt is managed with the proper accountability and transparency?

A. Leveraging the expertise of both companies, the government intends to introduce legislation that enables the IESO and Ontario Power Generation (OPG) to work together to manage this financing. The legislation would also outline the role of the Ontario Energy Board (OEB) as it relates to the financing proposal.

Q. Why was Ontario Power Generation chosen as the entity responsible for this financing?

A. OPG has the necessary expertise to assist with the financing.

OPG currently manages an $18-billion nuclear fund and can use its infrastructure and expertise in this field to help administer the longer-term financing.

As an entity regulated by the Ontario Energy Board, OPG also has extensive experience with regulatory deferral and variance accounts.

Delivery charges

Q. Delivery charges have been a big issue for people. Why aren't you eliminating them or lowering them more than you are?

A. We are seeking to lower delivery charges by changing how support programs are funded.

Ontario provides targeted support programs to help to with electricity costs. Up until now, these programs were paid for by electricity rate payers alone. To ensure fairness and save people money, these programs would now be paid for through government funding.

In addition, pending legislation, Ontario is planning changes to the Rural or Remote Electricity Rate Protection Program to lower delivery charges for about 800,000 rural and remote consumers who currently face some of the highest rates. The government also intends to introduce legislation that, if passed, would eliminate the delivery charge for all on-reserve First Nations residential consumers, resulting in an average savings of $85 per month.

Q. How are you changing the way programs are currently funded?

A. As a government, we have been focused on ensuring that our electricity system has been fairer for families living in rural areas or with low incomes.

Programs designed to support customers that are most vulnerable to increasing electricity costs will shift from the hydro bill to government funding, recognizing they are for the common good. This includes the Ontario Electricity Support Program (OESP) and Rural and Remote Rate Protection (RRRP).

The new Affordability Fund and the on-reserve First Nations delivery rate would also be government-funded. This would ensure that initiatives designed to provide a social good would be better aligned with the government's poverty reduction goals.

Program Enhancements

Q. What are you doing for people in rural areas?

A. We currently provide support to around 350,000 rural residential customers through the Rural or Remote Electricity Rate Protection Program (RRRP). We would expand this support to provide rate relief also to customers of local distribution companies (LDCs) with some of the highest rates.

The enhanced program will benefit about 800,000 customers. As an example, a Hydro One low-density customer on electric heat consuming 2,500 kWh/month will see their distribution charge reduced by about $75. Specific rebate amounts will be dependent on Ontario Energy Board rate-setting processes.

We are moving to have the RRRP funded by the tax base, which would reduce regulatory charges on electricity bills for all Ontario ratepayers. We project this will cost about $500 million in the 2017–18 fiscal year.

Q. What are you doing for low-income Ontarians?

A. Through the Fair Hydro Plan, we are providing relief to everyone and also providing additional relief for those who are most in need of support.

This includes expanding the Ontario Energy Support Program, which lowers electricity costs for the most vulnerable customers by providing a rebate directly on their bills. This program — which is income-tested and application-based — uses two scales: basic credits; and an enhanced credit for Indigenous people and for people who use electric heat or certain electrically intensive medical devices.

Under this plan, the eligibility for OESP would be expanded so that more people would be able to receive the credit. We would also increase OESP credits by 50 per cent. Here is what that would mean for people in common situations:

- Single, low-income consumers who receive the lowest credit amount currently receive $30 per month ($360 per year). They would now receive $45 per month ($540 per year)
- Some customers can't avoid using more power because their home is electrically heated or they rely on an approved medical device that uses a lot of electricity. Their credit, currently $45 per month ($540 per year), would rise to $68 per month ($816 per year)
- Families of four who use electric heat would see their credit climb from $55 per month ($660 per year) to $82.50 per month ($990 per year).

We are moving to have the OESP funded by the tax base, which will reduce regulatory charges on electricity bills for all Ontario ratepayers. We project this would cost about $185 million in the 2017–18 fiscal year.

Q. There hasn't been huge uptake of the Ontario Electricity Support Program. What are you doing to increase participation levels in this program?

A. We want to ensure that people receive the support they need and are eligible for. We are taking a number of steps to ensure that as close as possible to 100 per cent of people eligible participate in this program. We are:

- Streamlining the application process to make it easier and quicker to get approval
- Increasing awareness of the program to eligible recipients
- Exploring automatic qualifications for customers who are enrolled in other low-income support programs
- Expanding eligibility for more low-income people in Ontario.

Q. Why not just remove the need to apply for the Ontario Energy Support Program in the first place? Wouldn't that be the best way to increase participation — by automatically reducing bills for lower-income Ontarians?

A. The OESP is delivered by the Ontario Energy Board (OEB), which works with local utilities to ensure that the credit is applied on customer bills every month.

Local utilities and the OEB do not have information on individual customer incomes and so they do not know which customers may be eligible for the OESP.

That's why the OEB also works with the Canada Revenue Agency and 172 intake agency locations across the province to help get customers the relief they need as quickly as possible.

The government is exploring automatic qualifications for customers who are enrolled in other low-income support programs.

Q. Why are you targeting those who are most vulnerable?

A. We understand rising electricity costs are a concern for all people in Ontario and appreciate that low-income Ontarians feel it even more.

We currently offer both the Ontario Electricity Support Program and the Rural and Remote Rate Protection, which offer significant bill reductions to eligible households. As part of our rate relief plan, these programs are being enhanced to ensure vulnerable consumers receive additional support.

We recognize that these programs have social value and benefit vulnerable people across Ontario. So we are shifting these programs from being paid for through electricity bills to being paid for through government funding.

This would reduce bills for everyone, and ensure these programs continue to serve those in need.

For those most in need, low-income programs like the Home Assistance Program help provide energy efficiency upgrades in homes at no cost to help customers reduce future electricity bills and avoid future disconnections.

We recognize that there are other electricity customers who are in need, but who do not qualify as low income, and are addressing this through the Fair Hydro Plan.

Q. What kinds of support will you provide through the new Affordability Fund, and who will be eligible for it?

A. As well as reducing rates for people across Ontario, we are providing additional support to those in need. This includes creating a Local Distribution Company (LDC) Affordability Fund to help electricity customers who cannot qualify for low-income conservation programs.

Distribution companies have been partners in delivering electricity services and conservation programs to Ontarians for more than 10 years. This fund would give them an additional tool to help customers in need. They would use provincial support through this fund to help customers pay for energy-efficiency improvements to reduce their future electricity bills and avoid future disconnections.

We are moving to have the LDC Affordability Fund funded by the government, which will reduce regulatory charges on electricity bills for all Ontario ratepayers. We project this will cost about $200 million in the 2017–18 fiscal year.

Q. How much of the costs of making energy improvements will people eligible for the Affordability Fund have to cover themselves?

A. The fund would provide support of $3,000 to $5,000 per customer, and they would pay minimal costs towards the energy improvements. We estimate this fund would help from 15,000 to 65,000 households.

Q. What are you doing to reduce electricity bills for First Nations people living on reserves?

A. We are providing additional support for people who live on First Nations reserves. We are taking a number of actions recommended by the Ontario Energy Board, including:

- Eliminating the delivery charge for all on-reserve First Nations residential customers and removing the monthly service charge for customers of licensed distributors that charge a bundled rate. The Ontario Energy Board estimates this will provide residential customers an average monthly benefit of $85 (or $1,020 per year)
- Automatically qualifying on-reserve First Nations residential customers — about 21,500 in total
- Enabling greater information sharing between distributors and band councils to identify all on-reserve First Nations customers.

We are moving to have the First Nations On-Reserve Rate funded through the tax base, which would reduce regulatory charges on electricity bills for all Ontario ratepayers. We project this would cost about $20 million in the 2017–18 fiscal year.

Q. **This announcement is only for residential customers. What are you doing for industrial consumers?**

A. Industrial customers will benefit through two initiatives.

A number of important programs such as the Ontario Electricity Support Program (OESP) and the Rural or Remote Rate Protection (RRRP) program would now be funded from provincial revenues instead of by electricity consumers. This will provide savings to industrial customers, who currently fund a portion of these programs.

We are also proposing to expand the Industrial Conservation Initiative (ICI) to include smaller manufacturers with peak demands between 500 kW and 1 MW. ICI provides a strong incentive for participating consumers to shift their electricity consumption to off-peak hours to reduce their bills by about one-third. By reducing the province's peak demand, ICI has the added benefit of deferring the need to build peaking generation. Participating consumers collectively reduced Ontario's peak demand by an estimated 1,000 MW in 2015.

Advertising/transparency bucket:

Q. Why is the government spending money on advertising for this plan when it could be putting those funds toward lowering electricity prices?

A. We are committed to improving the public's understanding of the energy system.

It is important that the people of Ontario know about the decisions we are making so that they can effectively participate in making decisions on how they use energy.

We have been listening to people in all parts of the province and understand that they need us to do more and that's why we are introducing this plan.

The new Fair Hydro Plan will bring in more savings now through new initiatives that will cut costs directly on your energy bill.

Advertising is crucial for raising awareness about government programs and to ensure that all Ontarians are aware of how these programs will impact them.

For the Affordability Fund, targeted outreach is planned, as opposed to broad marketing, to ensure that support is delivered to customers who need it most.

Another resource available to Ontarians is the Ministry of Energy's emPOWERme website, an online resource dedicated to public education about electricity.

Q. Did the government go through the proper approvals process for this advertising campaign? Was this advertising campaign approved by the Auditor General and the Advertising Review Board?

A. We understand the importance of transparency and accountability.

Our advertising campaign has been reviewed and approved by all the proper agencies/parties, including the Auditor General and the Advertising Review Board.

All the necessary approvals and processes were followed during the selection of the advertising agency.

Ontario

BACKGROUNDER

Ministry of Energy

Refinancing the Global Adjustment

Ontario's Fair Hydro Plan would lower electricity bills ~~is lowering lower electricity bills~~ by 25 per cent on average for all ~~for the average~~ residential consumerss in the province. Many ~~S~~small businesses and ~~,~~farms would ~~will~~ also benefit from the initiative, with additional relief for people with low incomes and those living in eligible rural communities.

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Decades of under-investment in the electricity system by governments of all stripes resulted in the need to make significant investments in generation, transmission and distribution assets. In addition, an important decision was made to eliminate Ontario's use of coal and~~,~~ building clean, renewable supply. Between 2005 and 2015, Ontario invested more than $50 billion in the electricity system, including $35 billion in electricity generation to ensure the system is clean and reliable. The costs of these investments are funded in part through the Global Adjustment (GA).

The majority of the province's electricity generators have 20-year contracts. Many of these generators will be able to operate past their contract term, meaning that generating assets are expected to have ongoing useful life and will benefit future ratepayers by reducing the need to finance the development of new generating assets.

To relieve the current burden on ratepayers and share costs more fairly, a portion of the GA is being refinanced. Refinancing the GA would provide significant and immediate rate relief by spreading the cost of electricity investments over the expected lifecycle of the infrastructure that has been built. In the early years, a portion of the costs covered by the GA would be refinanced to reduce pressure on today's electricity ratepayers. In later years, the cost of refinancing would be recovered from ratepayers. Under current forecasts, the immediate reduction in the GA would be about $2.5 billion per year on average over the first 10 years, with annual interest costs not exceeding $1.4 billion. ~~Total accumulated debt of about $28 billion on a forecast basis with annual interest costs not exceeding $1.4 billion.~~

The government intends to introduce legislation that would, if passed, enable the Independent Electricity System Operator (IESO) and Ontario Power Generation (OPG) to work together to refinance the GA over a longer period of time. The legislation would also outline the role for the Ontario Energy Board (OEB), as it relates to the financing proposal.

For media inquiries only call:

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Ontario

NEWS

Office of the Premier

Ontario Cutting Electricity Bills by 25 Per Cent

System Restructuring Delivers Lasting Relief to Households Across Province

NEWS

March 2, 2017

Ontario is lowering electricity bills by 25 per cent on average for all residential customers as part of a significant system restructuring that will address long-standing policy challenges and ensure greater fairness.

Starting this summer, Ontario's Fair Hydro Plan would provide households with this 25 per cent break. Many small businesses and farms would also benefit from the initiative. People with low incomes and those living in eligible rural communities would receive even greater reductions to their electricity bills. As part of this plan, rate increases over the next four years would be held to the rate of inflation for everyone.

These measures include the eight per cent rebate introduced in January and build on previously announced initiatives to deliver broad-based rate relief on all electricity bills.

Taken together, these changes will deliver the single-largest reduction to electricity rates in Ontario's history.

Recently, electricity rates have risen for two key reasons:

- Decades of under-investment in the electricity system by governments of all stripes resulted in the need to invest more than $50 billion in generation, transmission and distribution assets, to ensure the system is clean and reliable.

- The decision to eliminate Ontario's use of coal and produce clean, renewable power, as well as policies put in place to provide targeted support to rural and low-income customers have created additional costs.

The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's ratepayers. To relieve that burden and share costs more fairly, two system fixes are being undertaken.

Recognizing that the electricity infrastructure that has been built will last for many decades to come, the province would refinance those capital investments to ensure that system costs are more equitably distributed over time. In addition, a number of important programs, such as the Ontario Electricity Support Program (OESP), will now be funded by the government instead of by ratepayers.

.../2

The province will also launch a new Affordability Fund, enhance the existing OESP and Rural or Remote Rate Protection Program (RRRP) programs and provide on-reserve First Nations households with a delivery credit. These new measures will cost the government up to $2.5 billion over the next three years.

Notwithstanding that hydro rate relief costs will add significant pressure on the fiscal framework, the province continues to project a balanced budget for 2017-18, and will provide a full update on its fiscal plan in the spring budget.

Reducing electricity costs is part of Ontario's plan to create jobs, grow our economy and help people in their everyday lives.

QUOTES

"I have heard from people around the province who are worried about the price they are asked to pay for electricity and the impact it has on their household budget. Electricity is a necessity. By fixing problems in the system, we will be able to provide every residential customer in Ontario with an average 25 per cent off their bills now and make rates fairer in the future."
— Kathleen Wynne, Premier of Ontario

"Ratepayers across Ontario have been loud and clear — we need to do more to help reduce costs. The government has listened and Ontario's Fair Hydro Plan would reduce costs now and ensure an affordable and reliable electricity system. These new measures would have a significant impact on your monthly hydro bill and would help the most vulnerable."
— Glenn Thibeault, Minister of Energy

QUICK FACTS

- Ontario's Fair Hydro Plan would improve sector efficiency and modernize the province's electricity market, working in collaboration with the Independent Electricity System Operator (IESO) and the Ontario Energy Board (OEB).

- The Province will expand the RRRP to provide distribution charge relief to additional customers served by LDCs with the highest rates. About 800,000 customers would benefit from the enhanced RRRP program.

- The Affordability Fund would be accessible to Local Distribution Companies (LDCs) for customers who do not qualify for low-income conservation programs and who are unable to undertake energy efficiency improvements without financial assistance.

- On-reserve First Nations customers will receive a 100 per cent credit of the delivery line on their monthly electricity bills.

- The expanded OESP will provide an additional $180 to $276 per year for households of eligible size and combined income.

- Ontario is expanding the Industrial Conservation Initiative (ICI) program by reducing the threshold from 1MW to 500kW and targeting more small manufacturing and industrial consumers.

LEARN MORE

Learn how Ontario is developing the next Long-Term Energy Plan.

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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

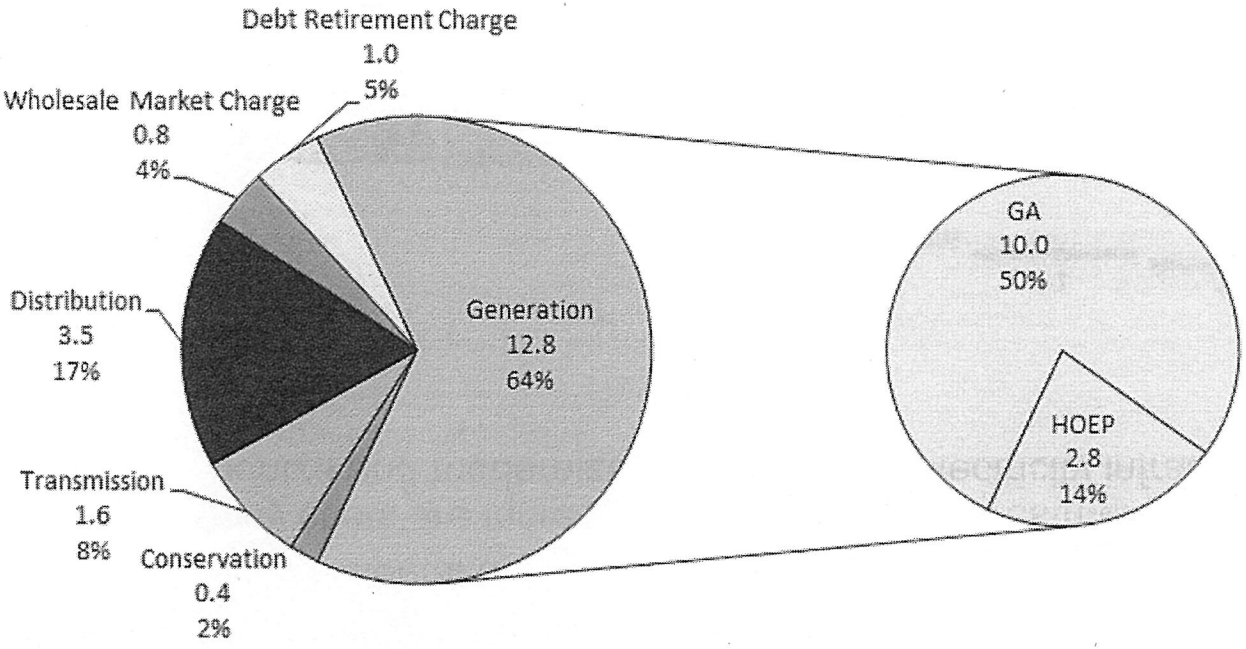
2. Ontario's Fair Hydro Plan – Providing Relief for Consumers

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.

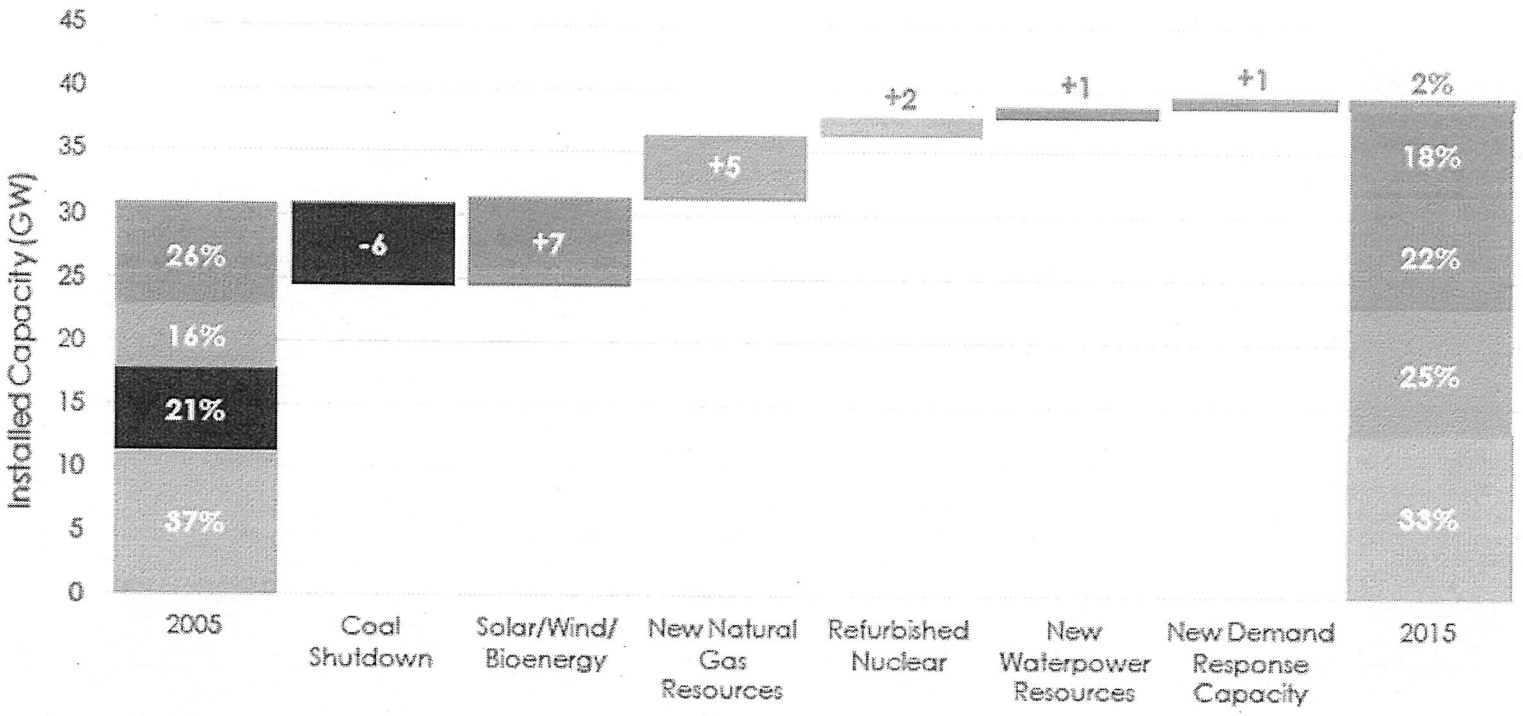
2015 Electricity System Cost
$ billion



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.

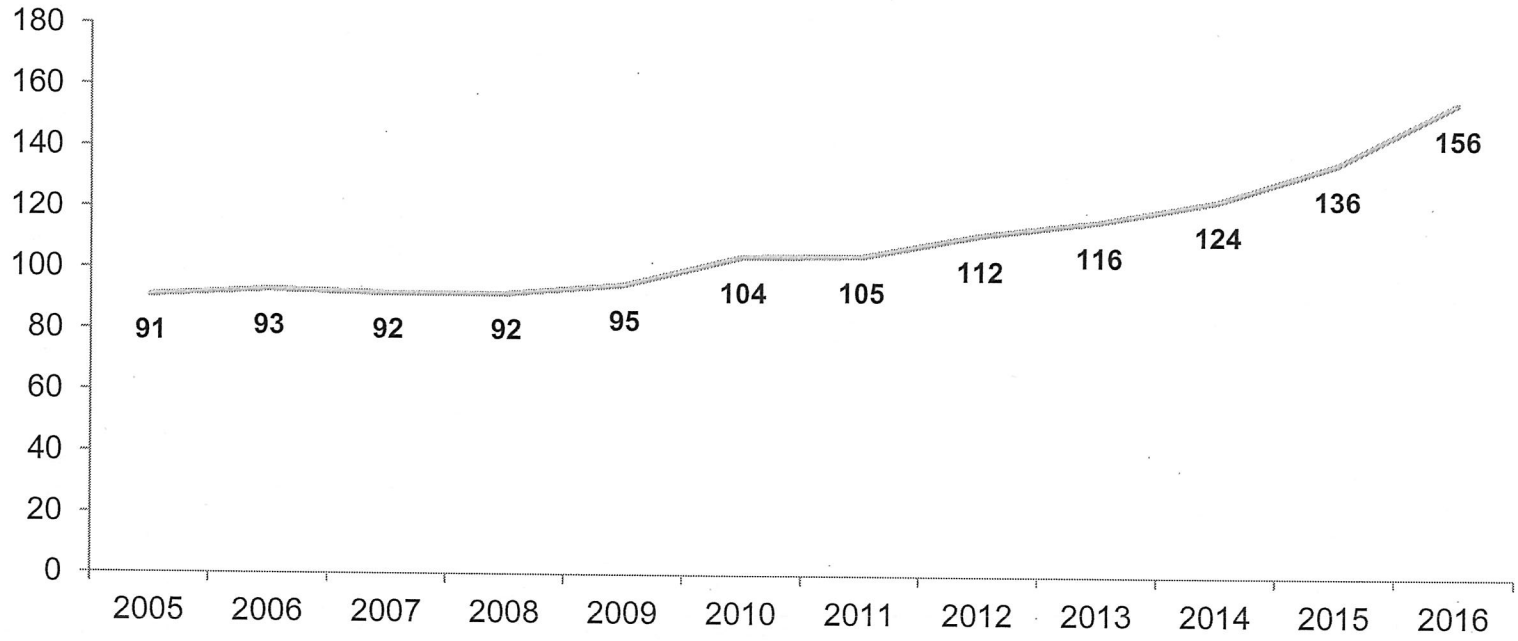


Source: *IESO*

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

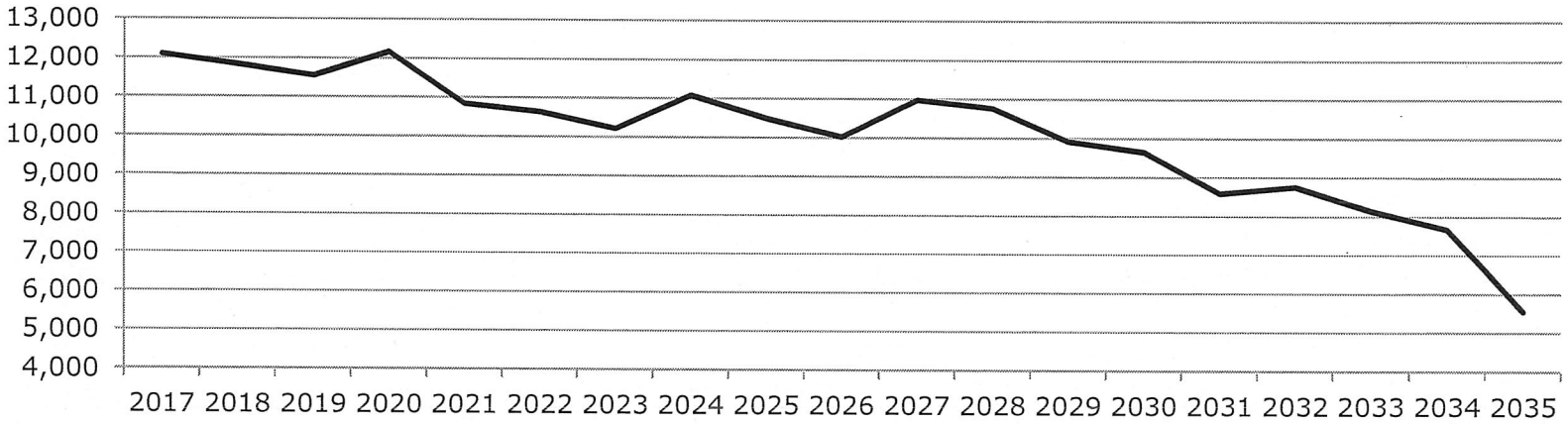
Refinancing the Global Adjustment

- 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.

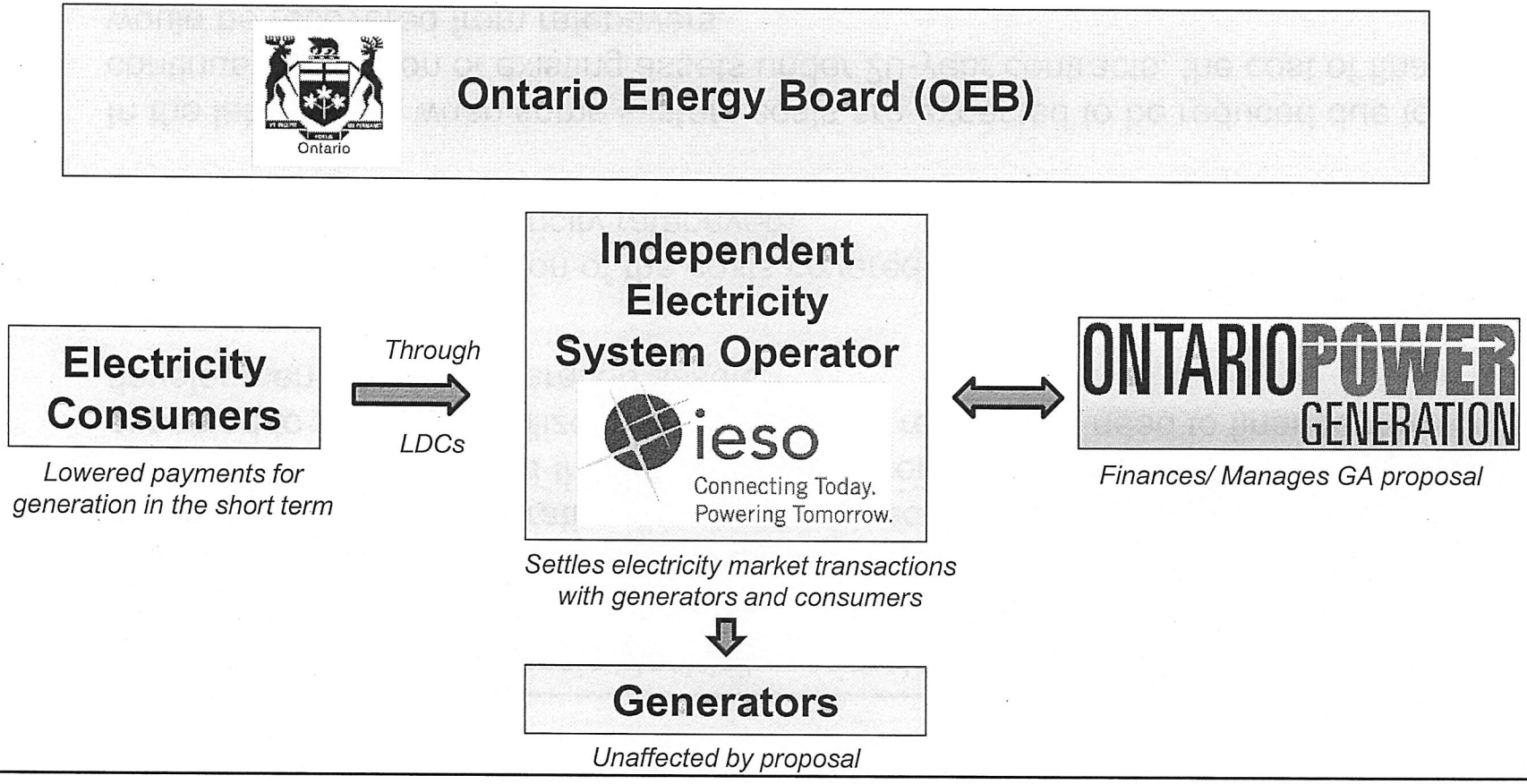
- In the early years, a portion of the costs covered by the GA would be financed to reduce pressure on electricity ratepayers.

- 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.

Ontario

MINISTRY OF ENERGY

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:
  - Eliminating the delivery charge for all on-reserve First Nations households and removing 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.
  - 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.

Establishing a New Affordability Fund

- The Affordability Fund would assist electricity customers who cannot qualify for low-income conservation programs and need financial assistance to undertake energy efficiency improvements.

- 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

Enhancing Competitiveness for Small Manufacturers and Industrials

- The Industrial Conservation Initiative (ICI) provides a strong incentive for participating consumers to reduce their consumption during peak hours to reduce their costs.

- Expanding the eligibility threshold for the ICI would provide small manufacturers and industrials the opportunity to save on their electricity costs, while reducing the province's peak demand. The expanded ICI would include
  - Extending eligibility to small manufacturers and industrials with average monthly peak demand over 500 kilowatts; and
  - Targeting eligibility to energy intensive industries with the North American Industry Classification System (NAICS) codes 31 - 33 (i.e., Manufacturing).

- Under the expanded ICI, small manufacturers and industrials whose electricity demand is currently too low to qualify for ICI, would now be eligible for the expanded ICI if they wish to participate.

- 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.

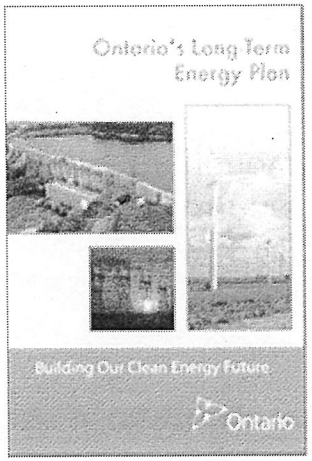
- Changes related to IESO's Market Renewal initiatives are estimated to save at least $200 million per year, starting in 2021.

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

BACKGROUNDER

Ministry of Energy

Enhancing Electricity Support and Conservation Programs

~~Ontario's Fair Hydro Plan wouldill lower electricity bills by 25 per cent on average for all residential consumers in the province. Small businesses and farms wouldill also benefit from the initiative, with additional relief for people with low incomes and those~~Ontario's Fair Hydro Plan would lower electricity bills by 25 per cent on average for all residential consumers~~for the average residential consumer~~ in the province. Many ~~S~~small businesses and farms would also benefit from the initiative, with additional relief for people with low incomes and those living in eligible rural communities.

These new measures will cost the government up to $2.5 billion over the next three years. ~~living in rural communities.served by local distribution companies (LDCs) with the highest distribution rates.~~

~~To help Ontario's most vulnerable electricity consumers, the government intends to introduce legislation that would, if passed, enhance the following:~~

Broadening Rural or Remote ~~Electricity~~ Rate Protection (RRRP)

- The Rural or Remote Rate Protection (RRRP) program provides a rate subsidy to rural and remote residential customers who face higher distribution costs compared to urban areas.
- The RRRP is currently provided to approximately 350,000 rural residential customers in Ontario.
- The Province w~~ouldillill~~ expand the RRRP to provide distribution charge relief to additional customers served by LDCs with the highest rates. About 800,000 customers ~~will~~ would benefit from the enhanced RRRP program. LDCs benefitting from the expanded RRRP include: Hydro One R2 and R1 customers, Northern Ontario Wires, Lakeland Parry Sound, Chapleau, Sioux L~~l~~ookout, InnPower, Atikokan and Algoma. The benefits would differ from LDC to LDC. Credit amounts ~~will~~ would be set using the lowest cost distribution LDC from the group, as set by the Ontario Energy Board (OEB). For example:
  a) A Hydro One R2 customer consuming 2,500kWh a month ~~will~~ would have their distribution cost reduced by about $75.~~,~~
  b) A Hydro One R1 customer consuming 1,000kWh a month ~~will~~ would have their distribution cost reduced by about $18.~~,~~
  c) An InnPower customer consuming 1,000kWh a month ~~will~~ would have their distribution cost reduced by about $12.
- The Province will also move to fund RRRP costs through the tax base, reducing regulatory charges for all Ontario ratepayers. ~~This is projected to cost approximately $500M in the coming fiscal year.~~

Expanding the Ontario Electricity Support Program (OESP)

- The OESP is an income-tested, application based program that lowers electricity costs for the most vulnerable consumers, providing a rebate directly on bills. There are two scales: one with basic credits, and an enhanced credit for Indigenous people or those who use electric heat or certain electrically intensive medical devices.
- Ontario is increasing the ~~-~~OESP by 50 per cent, meaning that single, low-income consumers who

Comment [1]: We must revert to original wording. "Rural communities" is not correct.

Comment [2]: Do we need legislation for all of these items? This phrase implies everything. Don't think we need legislation for the affordability fund?

Comment [3]: Please fact-check. Will this be off the reg or electricity line

Comment [4]: Instead of breaking out costs line by line for each initiative, should we instead be consistent and use the global figure over 3 years that is in the Premier's statement/NR?

receive the lowest credit amount would get an increase from $30 to $45 per month ($540 per year, an increase of $180), and the lowest credit for the enhanced scale would increase from $45 to $68 ($816 per year, an increase of $276).

- Ontario is exploring automatic qualification for customers who are enrolled in other provincial low-income social programs.
- The Province is also moving forward in having the OESP funded by provincial revenues, reducing regulatory charges for all Ontario ratepayers. ~~This is projected to cost approximately $185M in the coming fiscal year.~~

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~~Establishing an Affordability Fund~~

- ~~The Affordability Fund wouldill assist electricity customers who cannot qualify for low-income conservation programs.~~
- ~~The Affordability Fund wouldill provide Local Distribution Companies (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.~~
- ~~The Province wouldill work with Hydro One, in consultation with all other LDCs, to establish a Trust to serve as the administrator of the Affordability Fund.~~
- ~~The Province wouldill pay for the Affordability Fund through provincial revenues. This is projected to cost $200M in the current fiscal year.~~

Providing ~~A~~a First Nations On-Reserve Delivery Credit

- In 2016, the Ontario Energy Board (OEB) engaged with First Nations, including remote communities, the distributors serving them, and consumer groups such as the Low Income Energy Network.
- Following the engagement process the OEB recommended:
  - Eliminating the delivery charge for all on-reserve First Nations residential customers and removing 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.
  - Automatically qualifying on-reserve First Nations residential customers (approximately ~21,500 customers).
  - Enabling greater information sharing between distributors and Band Councils to identify all on-reserve First Nations customers.

- ~~Government intends to introduce legislation to implement these recommendations.~~
- The Province is also moving forward in having the First Nations On-Reserve Delivery Credit funded by provincial revenues. ~~This is projected to cost approximately $20M in the coming fiscal year.~~

~~To help Ontario's most vulnerable electricity consumers, the~~The government intends to introduce legislation that would, if passed, ~~,~~enable the above initiatives. In addition, an Affordability Fund will be established through a transfer payment agreement with Hydro One. No legislative amendments are required for this fund~~, enhance the following:~~

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Comment [5]: Do we need legislation for all of these items? This phrase implies everything. Don't think we need legislation for the affordability fund?

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~~Establishing an Affordability Fund~~

- The Affordability Fund will assist electricity customers who cannot qualify for low-income conservation programs.
- The Affordability Fund will 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.

- The Province will work with Hydro One, in consultation with all other LDCs, to establish a Trust to serve as the administrator of the Affordability Fund.
- The Province will pay for the Affordability Fund through provincial revenues. ~~This is projected to cost $200M in the current fiscal year.~~

~~The fund will be established through a transfer payment agreement with Hydro One. No legislative amendments are required.~~

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BACKGROUNDER

Ministry of Energy

Previous Actions to Reduce Energy Costs

Ontario's Fair Hydro Plan would lower electricity bills by 25 per cent on average for all residential consumers~~for the average residential consumer~~ in the province. Many ~~S~~small businesses and farms would also benefit from the initiative, with additional relief for people with low incomes and those living in eligible rural communities.

~~Ontario's Fair Hydro Plan would lower electricity bills by 25 per cent on average for all residential consumers in the province. Small businesses and farms would also benefit from the initiative, with additional relief for people with low incomes and those living in rural communities served by local distribution companies (LDCs) with the highest distribution rates.~~

Comment [1]: Original wording must stand. "rural communities" not accurate.

Ontario has taken a number of other actions to reduce electricity costs, including:

- A new agreement to trade electricity, energy capacity, and energy storage with Quebec. This is expected to reduce electricity system costs by $70 million.
- Providing eligible rural ratepayers with additional relief via the Rural or Remote Electricity Rate Program (RRRP)~~, decreasing total electricity bills by an average of $540 a year or $45 each month~~.

Comment [2]: This is outdated now as we are further expanding RRRP.

- Removing the Debt Retirement Charge (DRC) early for all residential customers, saving the typical ratepayer $70 per year.
- Renegotiating the Green Energy Investment Agreement (GEIA) with Samsung, reducing contract costs by $3.7 billion.
- 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 Power refurbishments in 2020, instead of 2016, helping to achieve $1.7 billion in savings relative to the 2013 Long-Term Energy Plan (2013 LTEP) forecast and by continuing to operate Pickering until 2024, pending regulatory approvals, which saves ratepayers as much as $600 million.
- Reducing Feed-In Tariff (FIT) prices through annual price reviews, saving ratepayers at least $1.9 billion.
- Introducing a competitive Large Renewable Procurement (LRP I) process to drive costs down by approximately $1.5 billion relative to the 2013 LTEP forecast.
- Expanding eligibility for the Industrial Conservation Initiative (ICI) which could provide up to one-third savings for eligible industrial and manufacturing customers.

Comment [3]: We should clarify the difference. With this announcement – there would be 2 expansions since the throne speech announcement.

- Suspending the second Large Renewable Procurement program (LRP II) and the Energy From Waste Standard Offer Program (EFWSOP), resulting in up to $3.8 billion in savings, relative to the 2013 LTEP forecast.
- Limiting the Feed-In Tariff (FIT) 5 procurement target to 150 MW and suspending future FIT

procurements – resulting in savings of up to $129 M.

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Ontario

Ontario's Fair Hydro Plan:
Providing Relief for Consumers

Technical Briefing
Ontario Ministry of Energy

March 2, 2017

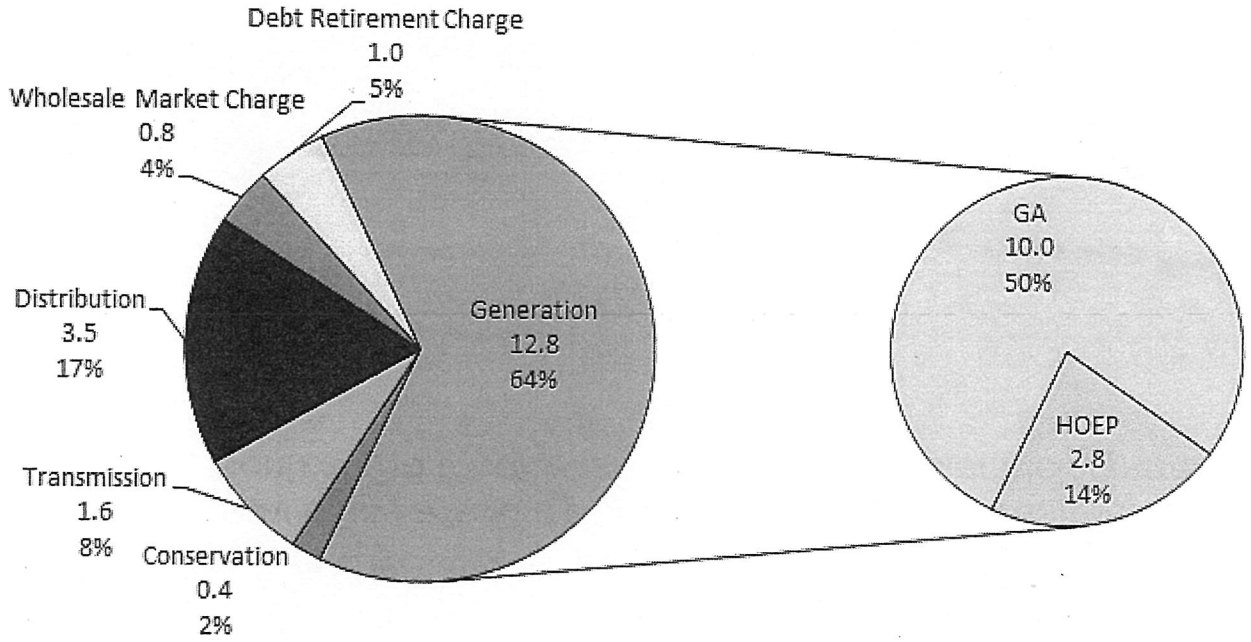
Outline of Technical Briefing

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.

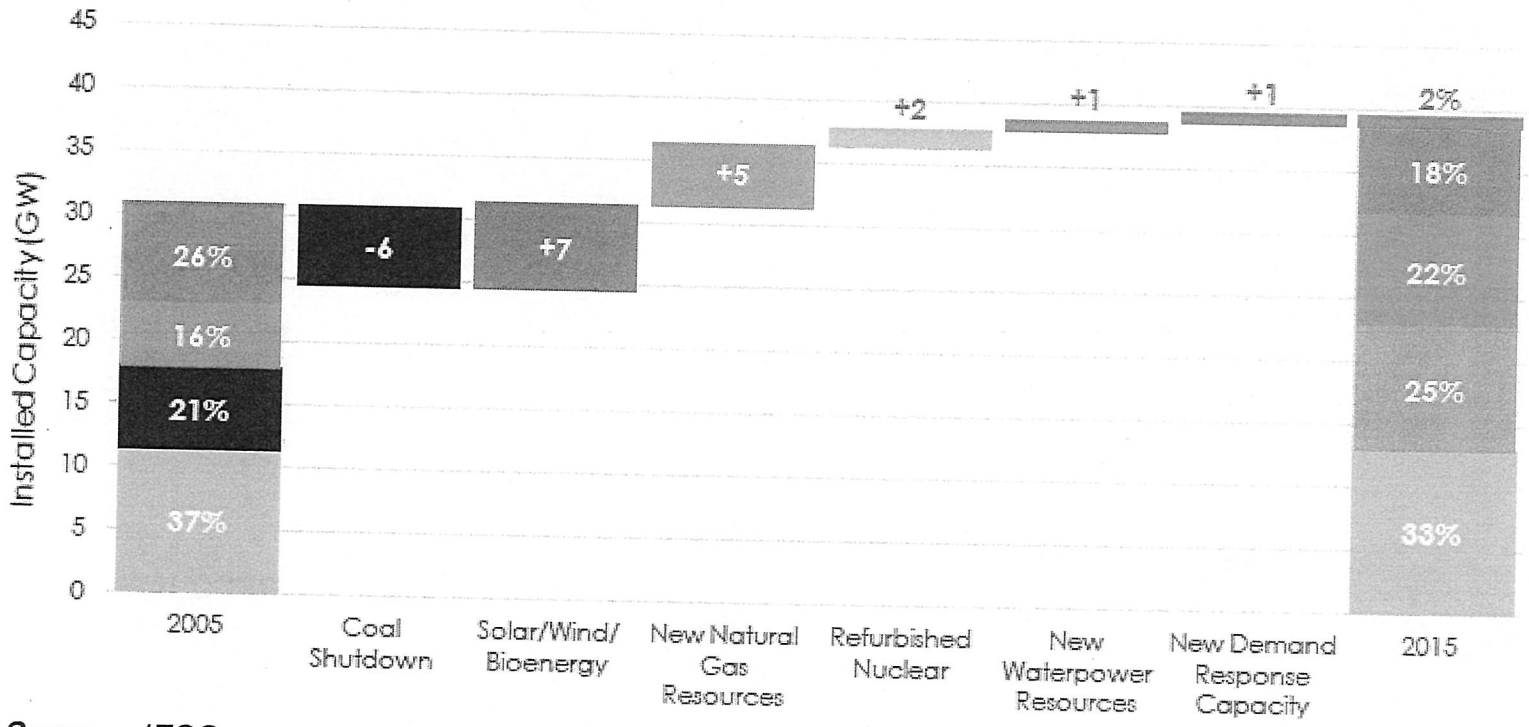
2015 Electricity System Cost
$ billion



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.

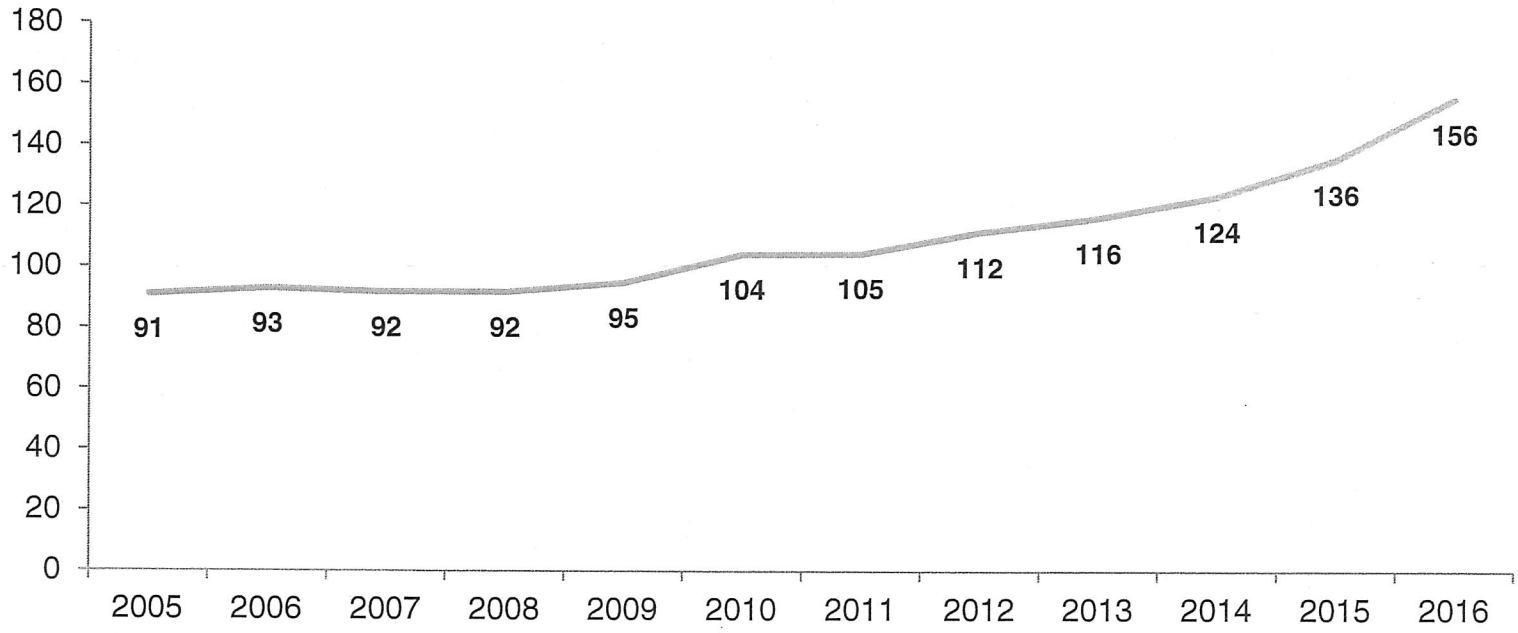


Source: *IESO*

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

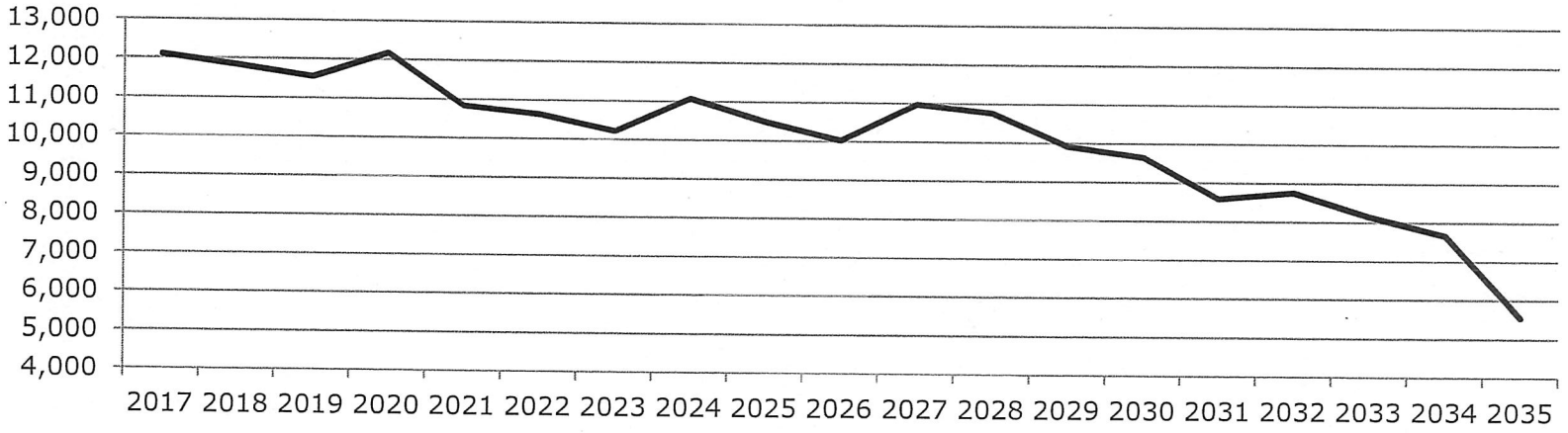
Refinancing the Global Adjustment

- 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.

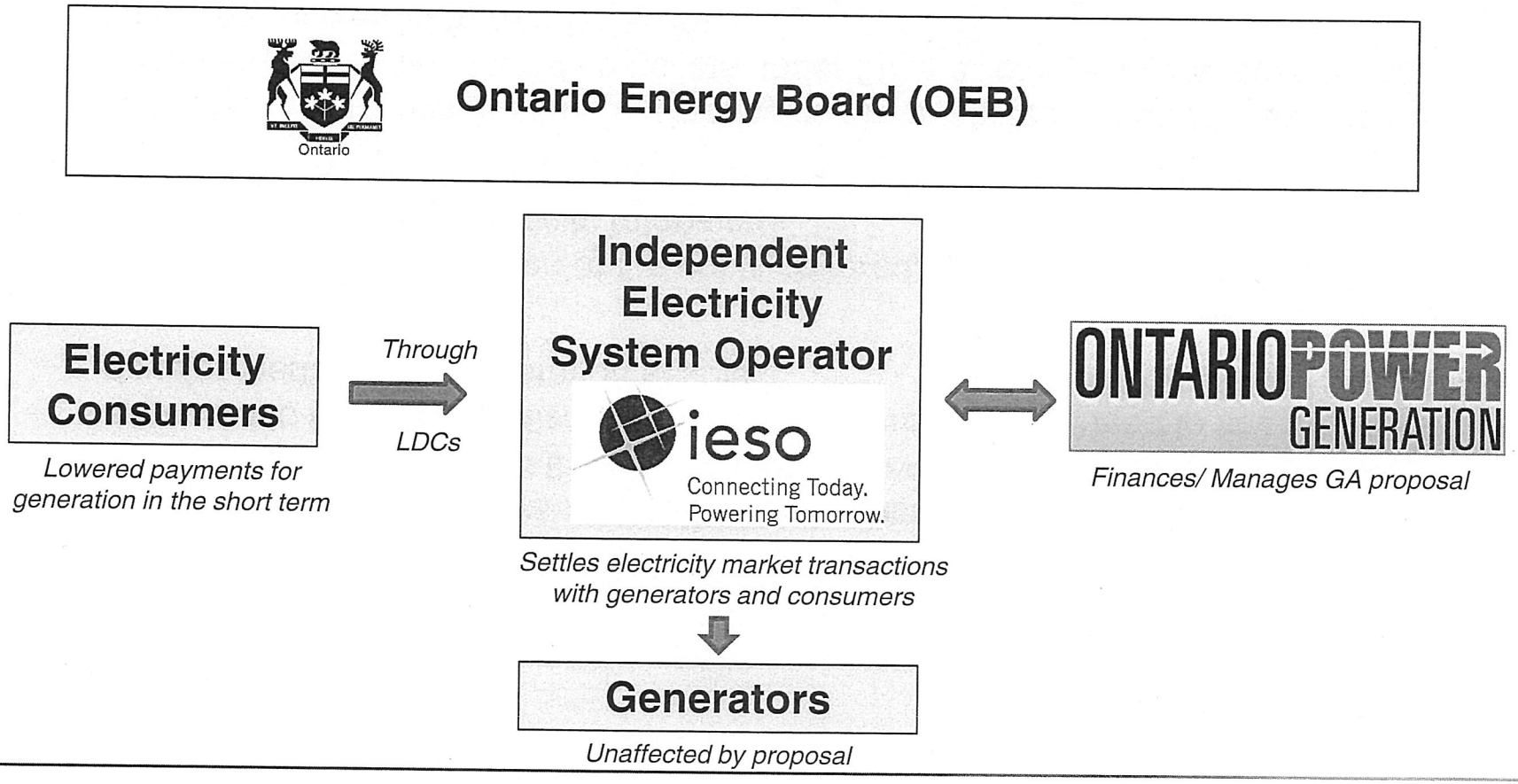
- In the early years, a portion of the costs covered by the GA would be financed to reduce pressure on electricity ratepayers.

- 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:
  - Eliminating the delivery charge for all on-reserve First Nations households and removing 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.
  - 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.

Establishing a New Affordability Fund

- The Affordability Fund would assist electricity customers who cannot qualify for low-income conservation programs and need financial assistance to undertake energy efficiency improvements.

- 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

Enhancing Competitiveness for Small Manufacturers and Industrials

- The Industrial Conservation Initiative (ICI) provides a strong incentive for participating consumers to reduce their consumption during peak hours to reduce their costs.

- Expanding the eligibility threshold for the ICI would provide small manufacturers and industrials the opportunity to save on their electricity costs, while reducing the province's peak demand. The expanded ICI would include
  - Extending eligibility to small manufacturers and industrials with average monthly peak demand over 500 kilowatts; and
  - Targeting eligibility to energy intensive industries with the North American Industry Classification System (NAICS) codes 31 - 33 (i.e., Manufacturing).

- Under the expanded ICI, small manufacturers and industrials whose electricity demand is currently too low to qualify for ICI, would now be eligible for the expanded ICI if they wish to participate.

- 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.

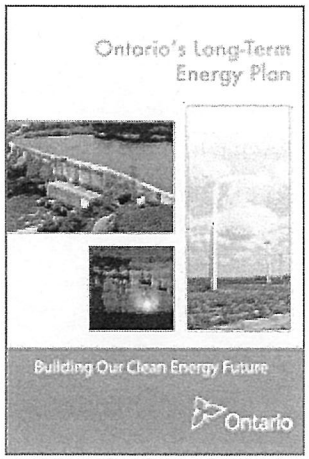
- Changes related to IESO's Market Renewal initiatives are estimated to save at least $200 million per year, starting in 2021.

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.





GLOBAL ADJUSTMENT DEFERRAL

POTENTIAL FRAMEWORK FOR THE "REGULATED ASSETS"

EXECUTIVE SUMMARY

- Each month where the IESO does not collect the full GA amount, the IESO shall establish a deferral account pursuant to the legislation and record in the account the amount that it has deferred and which will be collected in future (each such deferral account would be a "**Regulatory Asset**").
- The IESO would then sell the Regulatory Asset to the Financing Trust (the "**Trust**") in exchange for a payment equal to the GA amount not collected in respect of that month. Note that this right to sell the Regulatory Asset would need to be explicitly permitted by the legislation as this type of sale has not, to our knowledge, been authorized by the OEB previously.
- The Trust would then be required to apply to the OEB for approval to clear and recover amounts from time to time from the Regulatory Asset (i.e., the deferral account).
- A specific regulation would be promulgated setting out the basis upon which OEB would make its decision to approve the clearance and recovery of amounts from the Regulatory Asset (i.e., the deferral account). Specifically, the OEB's discretion would be limited to ensuring the accuracy of amounts recorded in the Regulatory Asset (i.e., the deferral account).
- OEB would be granted broader discretion to consider prudence when approving costs of the Trust arising from OPG's internal costs.

DETAILED ANALYSIS OF REQUIRED CHANGES TO LEGISLATION AND REGULATION

- If necessary, establish authority for the OEB to license the Trust and a requirement for the Trust to obtain such a license from the OEB in order to make the Trust an OEB-regulated entity (s. 57 of the OEB Act)
    - Direct or otherwise require the OEB to issue a license to the Trust on an expedited basis, subject to limited conditions
- Establish authority for the OEB to determine payment amounts for the Trust (strictly in accordance with the following bullet), together with a requirement for the IESO to make payments to the Trust in accordance with the order of the OEB then in effect (similar to the framework that applies in respect of OPG's payment amounts for prescribed generation under s. 78.1 of the OEB Act)
- Require the OEB to make orders determining payment amounts for the Trust in accordance with rules to be prescribed by regulations and create a new regulation that sets out limitations on the OEB's discretion in establishing those payments (similar to O. Reg. 53/05 in respect of OPG's payment amounts). Under the regulation:

- Require the IESO to establish the deferral accounts (i.e., the Regulatory Assets) to record the amount of uncollected GA

- Require the Trust to record in the Regulatory Assets (i.e., the deferral accounts purchased from the IESO): (a) interest costs on amounts borrowed to acquire the Regulatory Assets, and (b) financing and third party transaction costs.

- Require the Trust to establish another deferral account and record therein administrative costs of the Trust payable to OPG

- Require the OEB, in making an order determining payment amounts for the Trust, to ensure that the Trust recovers the balances recorded in each of the deferral accounts as long as the OEB is satisfied that the amounts have been accurately recorded in the accounts (similar to rules under s. 6 of O. Reg. 53/05 in respect of OPG's payment amounts).

    - Consider allowing the OEB to consider prudence only in respect of reviewing internal administrative costs of the Trust payable to OPG.

    - Consider specifying the timing for recovery of the balances in each of the deferral accounts, i.e. once a balance is approved for recovery, over how long a period will the Trust recover that balance?

    - Consider further prescribing the form, methodology, assumptions and/or calculations that the OEB shall be required to use in making orders determining payment amounts for the Trust, such as requiring the OEB to make these determinations by delegated authority and/or without a hearing, specifying the frequency with which such orders must be issued and specifying the information needed from the Trust to enable the OEB to make its determinations from time to time.

- As noted above, the IESO would be required to make payments to the Trust in accordance with the order of the OEB then in effect. To do so, the IESO would need to be authorized to collect, through the Global Adjustment, the amounts it needs to make payments to the Trust in accordance with such orders of the OEB. This would require amendments to s. 25.33 of the Electricity Act and to O. Reg. 429/04 to enable the IESO to collect the relevant amounts from distributors, retailers and directly from market participants that are connected directly to the IESO-controlled grid.

- **[NTD: Need to establish mechanism through which determinations are made (such as Minister directives or otherwise) as to whether and how much smoothing should be obtained by IESO from the Trust and applied to reduce the global adjustment in a particular period, as well as the timing for commencing recovery by the Trust of principal amounts.]**

- **[NTD: Through a separate process associated with the existing Rate Protection Plan, the OEB would be expected to incorporate the impacts of the smoothing mechanism into rates for customers that are subject to RPP rates.]**

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.

CONFIDENTAL Feb 21, 2017

Ontario Power Generation

Terms necessary for OPG to consolidate the Global Adjustment Trust

Issue	No.	Requirements
Directive	1	The Trust must be undertaken by OPG as a business initiative on its merits. A Shareholder Directive is to be limited to direct OPG to investigate the option of establishing a Trust vehicle to administer, finance and operate the Global Adjustment plan and the operation of that Trust and the control, risk and rewards of that Trust will determine its consolidation into OPG as a business enterprise
Trust	2	The Trust should not operate in a predetermined way such that OPG does not have decision-making authority over the Trust's ongoing activities after its formation (i.e. should not operate on 'autopilot').
	3	OPG must have the ability to appoint and remove the Trustee (or Board of Trustees), with no veto right by the Province.
	4	No party shall have the ability to remove OPG from its role and authority in the Trust.
	5	The Province cannot have the right to be able to veto OPG's decisions about the relevant activities of the Trust. OPG must have the power over the relevant activities of the Trust and be compensated. The relevant activities of the Trust include (but are not limited to) the evaluation and decisions on financing alternatives, duration, and the strategy to minimize financing costs.
	6	OPG must have the power to determine or change operating and financing policies of the Trust, which will affect the variability of risks and returns.
	7	OPG must have the power to establish operating and capital budgets of the Trust.
	8	The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following: a. The Trust b. Any of OPG's investments in the Trust c. The most subordinated debt of the Trust
	9	OPG must own greater than 50% of the most subordinated debt and must be no less than 5% of the subordinated debt of the Trust. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources.
	10	OPG must have the ability to earn variable returns by exercising its authority, which shall be accomplished as follows: a. The cash flow from the restructured asset shall include interest determined based on a relevant benchmark that is appropriate relative to the restructured asset, plus an appropriate margin consistent with the relevant market and other risks

		b. OPG shall have the authority to determine the financing strategy, which will vary the financing costs with the objective of enabling the Trust to achieve a more favourable return compared to the benchmark for interest on the restructured asset c. The Trust shall establish classes of liabilities (senior, subordinated and the most subordinated). The classes would allow the Trust to delineate financing of lower risk investment and investment that would bear higher residual risk. The delineation would limit OPG's self-funded investment to a reasonable level in order to allow OPG to remain a self-sustaining entity. d. OPG shall, through its ownership of the most subordinated liability, be able to capture and retain the pricing difference between cost of financing and benchmark for interest on the restructured asset, or any residual risk of restructured asset. The targeted return of the subordinated liability should be reflective of the underlying risks and compensate holders for active management that would be required. e. OPG should participate in the detailed design of the above and the Trust documentation to ensure that it has substantive power and variability, which will allow OPG's Board of Directors to evaluate the opportunity as a business initiative instead of through a shareholder directive]. Defined Forced Majeure for emergency events (e.g. unlikely credit market event or disruption where it is not possible to borrow from the market at a reasonable rate), OEFC may provide bridge financing beyond the designated percentage.
Legislation	11	The Legislation must require interest, carrying and administrative costs to be paid to the Trust on a monthly basis, so that the Trust is able to recognize appropriate revenue to offset any ongoing costs.
	12	The Legislation must dictate the manner in which the restructured asset would be determined, collected, and the period of collection, so that the determination of the restructured asset will not be subject to the Province's decisions on an ongoing basis, but determined based on a formula. Alternatively, the Legislation may allow for an adjustment to the pre-determined deferral formula based on specific parameters that would limit the adjustment to the restructured asset. Adjustments beyond the specific parameters would require approval by the Board of Trustee.
	13	The Legislation must be written to avoid legal or constitutional challenges and be seen as virtually unchangeable to reduce the cost of borrowing and with a specific formula which determines the deferral amount. Should a future government alter or repeal the legislation, the debt held in support of the deferred amounts would become payable by the Province directly, not by OPG or the Trust.
	14	The spirit of the above terms should be reflected in the Trust Indenture Agreement as well as Legislation, wherever possible.

GLOBAL ADJUSTMENT DEFERRAL

POTENTIAL FRAMEWORK FOR THE "REGULATED ASSETS"

EXECUTIVE SUMMARY

- Each month where the IESO does not collect the full GA amount, the IESO shall establish a deferral account pursuant to the legislation and record in the account the amount that it has deferred and which will be collected in future (each such deferral account would be a "**Regulatory Asset**").
- The IESO would then sell the Regulatory Asset to the Financing Trust (the "**Trust**") in exchange for a payment equal to the GA amount not collected in respect of that month. Note that this right to sell the Regulatory Asset would need to be explicitly permitted by the legislation as this type of sale has not, to our knowledge, been authorized by the OEB previously.
- The Trust would then be required to apply to the OEB for approval to clear and recover amounts from time to time from the Regulatory Asset (i.e., the deferral account).
- A specific regulation would be promulgated setting out the basis upon which OEB would make its decision to approve the clearance and recovery of amounts from the Regulatory Asset (i.e., the deferral account). Specifically, the OEB's discretion would be limited to ensuring the accuracy of amounts recorded in the Regulatory Asset (i.e., the deferral account).
- OEB would be granted broader discretion to consider prudence when approving costs of the Trust arising from OPG's internal costs.

DETAILED ANALYSIS OF REQUIRED CHANGES TO LEGISLATION AND REGULATION

- If necessary, establish authority for the OEB to license the Trust and a requirement for the Trust to obtain such a license from the OEB in order to make the Trust an OEB-regulated entity (s. 57 of the OEB Act)
    - Direct or otherwise require the OEB to issue a license to the Trust on an expedited basis, subject to limited conditions
- Establish authority for the OEB to determine payment amounts for the Trust (strictly in accordance with the following bullet), together with a requirement for the IESO to make payments to the Trust in accordance with the order of the OEB then in effect (similar to the framework that applies in respect of OPG's payment amounts for prescribed generation under s. 78.1 of the OEB Act)
- Require the OEB to make orders determining payment amounts for the Trust in accordance with rules to be prescribed by regulations and create a new regulation that sets out limitations on the OEB's discretion in establishing those payments (similar to O. Reg. 53/05 in respect of OPG's payment amounts). Under the regulation:

- Require the IESO to establish the deferral accounts (i.e., the Regulatory Assets) to record the amount of uncollected GA

- Require the Trust to record in the Regulatory Assets (i.e., the deferral accounts purchased from the IESO): (a) interest costs on amounts borrowed to acquire the Regulatory Assets, and (b) financing and third party transaction costs.

- Require the Trust to establish another deferral account and record therein administrative costs of the Trust payable to OPG

- Require the OEB, in making an order determining payment amounts for the Trust, to ensure that the Trust recovers the balances recorded in each of the deferral accounts as long as the OEB is satisfied that the amounts have been accurately recorded in the accounts (similar to rules under s. 6 of O. Reg. 53/05 in respect of OPG's payment amounts).

    - Consider allowing the OEB to consider prudence only in respect of reviewing internal administrative costs of the Trust payable to OPG.

    - Consider specifying the timing for recovery of the balances in each of the deferral accounts, i.e. once a balance is approved for recovery, over how long a period will the Trust recover that balance?

    - Consider further prescribing the form, methodology, assumptions and/or calculations that the OEB shall be required to use in making orders determining payment amounts for the Trust, such as requiring the OEB to make these determinations by delegated authority and/or without a hearing, specifying the frequency with which such orders must be issued and specifying the information needed from the Trust to enable the OEB to make its determinations from time to time.

- As noted above, the IESO would be required to make payments to the Trust in accordance with the order of the OEB then in effect. To do so, the IESO would need to be authorized to collect, through the Global Adjustment, the amounts it needs to make payments to the Trust in accordance with such orders of the OEB. This would require amendments to s. 25.33 of the Electricity Act and to O. Reg. 429/04 to enable the IESO to collect the relevant amounts from distributors, retailers and directly from market participants that are connected directly to the IESO-controlled grid.

- **[NTD: Need to establish mechanism through which determinations are made (such as Minister directives or otherwise) as to whether and how much smoothing should be obtained by IESO from the Trust and applied to reduce the global adjustment in a particular period, as well as the timing for commencing recovery by the Trust of principal amounts.]**

- **[NTD: Through a separate process associated with the existing Rate Protection Plan, the OEB would be expected to incorporate the impacts of the smoothing mechanism into rates for customers that are subject to RPP rates.]**

LEGISLATIVE REQUIREMENTS

TO ALLOW DEFERRAL OF

GLOBAL ADJUSTMENT AMOUNTS TO BE FINANCEABLE

The IESO currently has a right to collect GA monthly from ratepayers through provisions in the *Electricity Act, 1998*. It is proposed that collection of a certain portion of the monthly GA be deferred for collection in the future, and that the right to recover the deferred GA from ratepayers be used as a basis for structured financing/securitization.

The current proposal is for a trust to be created as a financing vehicle (the "**Trust**") in connection the deferred GA. The Trust will finance the deferral of the GA by purchasing the right to recover such deferred GA from the IESO for the principal amount of the GA being deferred. For example, if the amount of GA that is being deferred is $200 million in a given month, the Trust will purchase from the IESO the right to future recovery of the deferred GA and the associated financing costs (including interest and transaction costs) for $200 million in cash.

The Trust is expected to finance these purchases from the IESO through a combination of senior secured financing raised in the capital markets and subordinated financing from OPG (the funding for which will mostly be from equity injections from the OEFC/Province).

For accounting purposes, OPG will need to have the ability to direct the activities of the Trust, through a services agreement and/or through the Trust's constating document.

Based on securitized financing raised by utilities in the US (backed by utility cost recovery orders) and the current regulatory framework in Ontario, the legislation in Ontario would need to be amended to provide the following, at a minimum:

1. The IESO will be empowered to create an asset (the "**Regulatory Asset**") consisting of all right, title and interest in and to:

   (a) right to recover from and bill Ontario electricity ratepayers for:

   (i) the principal amount of GA that is being deferred for collection;
   (ii) all interest and other financing costs incurred in respect of the deferral of the GA (whether through senior debt raised in the public markets or subordinated debt raised from OPG or others); and

(iii) (subject to the comments in paragraph 5 below in respect of OPG's internal administrative costs only) all fees, expenses and other administrative costs associated with such financing, including up-front and ongoing financing costs and any indemnity payments;

all on such repayment/amortization schedule as agreed by the IESO and any purchaser of such right (or pursuant to a pre-defined schedule/formula in the legislation that covers all of the purchaser's principal, interest and ongoing financing costs on a monthly basis); and

(b) all revenues, collections, claims, rights to payments, money or proceeds arising from the rights and interests set out in paragraph (a) above, regardless of whether such revenues, collections, claims, rights to payments, money or proceeds are imposed, billed, received, collected or maintained together with or commingled with other revenues, collections, rights to payments, payments, money or proceeds.

2. The IESO may dispose of the Regulatory Assets created from time to time on such terms as the IESO determines in accordance with the terms of directives to be issued to the IESO from time to time by the Minister **[Torys NTD: While our understanding is that the Minister would direct this, we note from other materials we have seen that OPG may instead be recommending a formula approach. It is not clear what the formula would look like, where it would be set out or how it would be applied and by whom]**, provided that any such disposition shall be a true sale and absolute transfer of the IESO's right, title and interest in and to a Regulatory Asset to the purchaser of the Regulatory Asset. **[Torys NTD: part of being able to convey a property interest in a chose in action (which the regulatory asset would represent since the aspect that makes it a "regulatory asset" is the ability to recover the amount recorded in the account) is the ability to convey all legal and equitable interests – this would include the right to collect. But if the right to record and recover is created by legislation, can the IESO fully assign a legislative right? This issue may be resolved by having the IESO collect the Regulatory Assets on behalf of the purchaser thereof (perhaps as an agent for the purchaser)]**

3. The Regulatory Assets will not be subject to any set-off, counterclaim or other defence by the IESO or any successor or affiliated entity thereof.

4. The legislation will need to recognize the Regulatory Assets as amounts that may be recovered by the IESO (e.g. it could be designated as a "GA Deferral" and would be included in the amounts collectible by the IESO through the GA collection mechanism, and would include interest and financing costs).

5. The purchaser of the Regulatory Asset will have the right to require the IESO (or any successor) to collect the principal amount of GA deferred, together with interest, financing and administration costs, on the agreed repayment/amortization schedule. **[NTD: In the LIPA securitization rate order, if the entity that is authorized to collect rates to service the bonds ends up defaulting, there is the ability to request a court to order "sequestration" and payments of amounts owing to the owner of the Regulatory Asset. Consider whether to include a similar right here. Alternatively, consider whether a security interest over the moneys collected by the IESO could be provided to the purchaser.]**

   OEB would be provided with oversight over the internal administrative costs collected by the Financing Trust. This could be accomplished by (a) providing the purchaser of the Regulatory Asset with the right to require the IESO or a successor to collect only the principal amount of GA together with interest and financing costs and third party fees and expenses, and (b) requiring the IESO to collect amounts through the global adjustment and make payments to the purchaser of the Regulatory Asset with respect to the internal administrative costs incurred by the purchaser in connection with the purchase and management of the Regulatory Asset and the Financing Trust, in accordance with the order of the OEB then in effect. Under this mechanism, the OEB would be required to review the purchaser's internal administrative costs through a streamlined process and issue such orders in accordance with rules to be prescribed under a new regulation under the OEB Act, which would clearly limit the OEB's scope of review and could establish the basis for the purchaser to receive an appropriate fee for its services.

6. In the event that any action is taken or permitted by the Province or any regulatory authority that limits, alters, or impairs **[Torys NTD: the legislation would have to limit the authority of independent quasi-judicial tribunals like the OEB for this to be effective, also deal with any statutory provisions relating to liability against the Crown]** the value of a Regulatory Asset or reduces the ability of the IESO or the purchaser of the Regulatory Asset to collect or recover the costs associated therewith, the owner of the Regulatory Asset and the holders of any bonds or other

securities issued to finance the purchase of the Regulatory Asset, will have a right of action against the Province for any damages suffered as a result of such amendment.

[NTD: Additional details, if necessary, could be built into regulations under the statute.]

[NTD: Any external review, e.g. by the OEB, should be limited to the amount of GA deferred and the time period for recovery. The financing program itself should not be subject to OEB or other regulatory review, as this would add significant risk to bondholders, challenging the financeability of the structure.] [Torys NTD: Our understanding is that these aspects were to be for the Minister to determine, and that OEB review would best be limited to considering the internal administrative costs of the Trust in managing Regulatory Assets]

LEGISLATIVE REQUIREMENTS

TO ALLOW DEFERRAL OF

GLOBAL ADJUSTMENT AMOUNTS TO BE FINANCEABLE

The IESO currently has a right to collect GA monthly from ratepayers through provisions in the *Electricity Act, 1998*. It is proposed that collection of a certain portion of the monthly GA be deferred for collection in the future, and that the right to recover the deferred GA from ratepayers be used as a basis for structured financing/securitization.

The current proposal is for a trust to be created as a financing vehicle (the "**Trust**") in connection the deferred GA. The Trust will finance the deferral of the GA by purchasing the right to recover such deferred GA from the IESO for the principal amount of the GA being deferred. For example, if the amount of GA that is being deferred is $200 million in a given month, the Trust will purchase from the IESO the right to future recovery of the deferred GA and the associated financing costs (including interest and transaction costs) for $200 million in cash.

The Trust is expected to finance these purchases from the IESO through a combination of senior secured financing raised in the capital markets and subordinated financing from OPG (the funding for which will mostly be from equity injections from the OEFC/Province).

For accounting purposes, OPG will need to have the ability to direct the activities of the Trust, through a services agreement and/or through the Trust's constating document.

Based on securitized financing raised by utilities in the US (backed by utility cost recovery orders) and the current regulatory framework in Ontario, the legislation in Ontario would need to be amended to provide the following, at a minimum:

1. The IESO will be empowered to create an asset (the "**Regulatory Asset**") consisting of all right, title and interest in and to:

   (a) right to recover from and bill Ontario electricity ratepayers for:

   (i) the principal amount of GA that is being deferred for collection;
   (ii) all interest and other financing costs incurred in respect of the deferral of the GA (whether through senior debt raised in the public markets or subordinated debt raised from OPG or others); and

(iii) (subject to the comments in paragraph 5 below in respect of OPG's internal administrative costs only) all fees, expenses and other administrative costs associated with such financing, including up-front and ongoing financing costs and any indemnity payments;

all on such repayment/amortization schedule as agreed by the IESO and any purchaser of such right (or pursuant to a pre-defined schedule/formula in the legislation that covers all of the purchaser's principal, interest and ongoing financing costs on a monthly basis); and

(b) all revenues, collections, claims, rights to payments, money or proceeds arising from the rights and interests set out in paragraph (a) above, regardless of whether such revenues, collections, claims, rights to payments, money or proceeds are imposed, billed, received, collected or maintained together with or commingled with other revenues, collections, rights to payments, payments, money or proceeds.

2. The IESO may dispose of the Regulatory Assets created from time to time on such terms as the IESO determines in accordance with the terms of directives to be issued to the IESO from time to time by the Minister **[Torys NTD: While our understanding is that the Minister would direct this, we note from other materials we have seen that OPG may instead be recommending a formula approach. It is not clear what the formula would look like, where it would be set out or how it would be applied and by whom]**, provided that any such disposition shall be a true sale and absolute transfer of the IESO's right, title and interest in and to a Regulatory Asset to the purchaser of the Regulatory Asset. **[Torys NTD: part of being able to convey a property interest in a chose in action (which the regulatory asset would represent since the aspect that makes it a "regulatory asset" is the ability to recover the amount recorded in the account) is the ability to convey all legal and equitable interests – this would include the right to collect. But if the right to record and recover is created by legislation, can the IESO fully assign a legislative right? This issue may be resolved by having the IESO collect the Regulatory Assets on behalf of the purchaser thereof (perhaps as an agent for the purchaser)]**

3. The Regulatory Assets will not be subject to any set-off, counterclaim or other defence by the IESO or any successor or affiliated entity thereof.

4. The legislation will need to recognize the Regulatory Assets as amounts that may be recovered by the IESO (e.g. it could be designated as a "GA Deferral" and would be included in the amounts collectible by the IESO through the GA collection mechanism, and would include interest and financing costs).

5. The purchaser of the Regulatory Asset will have the right to require the IESO (or any successor) to collect the principal amount of GA deferred, together with interest, financing and administration costs, on the agreed repayment/amortization schedule. **[NTD: In the LIPA securitization rate order, if the entity that is authorized to collect rates to service the bonds ends up defaulting, there is the ability to request a court to order "sequestration" and payments of amounts owing to the owner of the Regulatory Asset. Consider whether to include a similar right here. Alternatively, consider whether a security interest over the moneys collected by the IESO could be provided to the purchaser.]**

   OEB would be provided with oversight over the internal administrative costs collected by the Financing Trust. This could be accomplished by (a) providing the purchaser of the Regulatory Asset with the right to require the IESO or a successor to collect only the principal amount of GA together with interest and financing costs and third party fees and expenses, and (b) requiring the IESO to collect amounts through the global adjustment and make payments to the purchaser of the Regulatory Asset with respect to the internal administrative costs incurred by the purchaser in connection with the purchase and management of the Regulatory Asset and the Financing Trust, in accordance with the order of the OEB then in effect. Under this mechanism, the OEB would be required to review the purchaser's internal administrative costs through a streamlined process and issue such orders in accordance with rules to be prescribed under a new regulation under the OEB Act, which would clearly limit the OEB's scope of review and could establish the basis for the purchaser to receive an appropriate fee for its services.

6. In the event that any action is taken or permitted by the Province or any regulatory authority that limits, alters, or impairs **[Torys NTD: the legislation would have to limit the authority of independent quasi-judicial tribunals like the OEB for this to be effective, also deal with any statutory provisions relating to liability against the Crown]** the value of a Regulatory Asset or reduces the ability of the IESO or the purchaser of the Regulatory Asset to collect or recover the costs associated therewith, the owner of the Regulatory Asset and the holders of any bonds or other

securities issued to finance the purchase of the Regulatory Asset, will have a right of action against the Province for any damages suffered as a result of such amendment.

[NTD: Additional details, if necessary, could be built into regulations under the statute.]

[NTD: Any external review, e.g. by the OEB, should be limited to the amount of GA deferred and the time period for recovery. The financing program itself should not be subject to OEB or other regulatory review, as this would add significant risk to bondholders, challenging the financeability of the structure.] [Torys NTD: Our understanding is that these aspects were to be for the Minister to determine, and that OEB review would best be limited to considering the internal administrative costs of the Trust in managing Regulatory Assets]

STATUTORY AMENDMENTS

The following is preliminary and is based on our current understanding of the proposed structure and objectives. For example, we have assumed that the structure will not entail the insertion of a new Holdco between OPG and the Province. As these aspects are refined, some of the suggested amendments described below may not be needed and other aspects that we are not aware of may need to be considered. Accordingly, these suggested amendments are provided for discussion purposes and are subject to change. We would welcome the opportunity to work with OPG and the Ministry on refining the scope and substance of required legislative and regulatory amendments.

A. Amendments to Implement Structure

Certain *Electricity Act, 1998* amendments would be needed to implement the anticipated structure (which we understand, as noted above, would not include a Holdco), as follows:

- **Section 53.1(1):** Amend to permit owning and operating generation facilities through subsidiaries (not only directly through OPG). In addition, amend to permit OPG to administer, manage, loan moneys to and have a beneficial interest in, if applicable, Financing Trust.

- **Section 53.2:** Amend to permit the Minister to acquire, hold, dispose of or otherwise deal with securities or debt obligations of, or any other interest in, OPG or any subsidiaries. This is to accommodate possible variations to the financing structure that may be desirable over time.

- **Section 53.■ (new):** New statutory section to permit the Minister to enter into arrangements relating to an exercise of powers under 53.2.

- **Section 53.■ (new)**: New statutory section providing that creditors of Financing Trust have no recourse to the assets of OPG or any of its subsidiaries (other than Financing Trust, if applicable). In addition, consideration should be given as to whether the Act should be amended so that the Financing Trust cannot be wound up or liquidated.

B. Miscellaneous Corporate Items to Address

- **OPG Articles:** Amend the OPG's articles to remove the private company restrictions.

- **MOA with Province:** Consider whether any amendments to OPG's MOA with the Province are required to contemplate the Financing Trust.

C. Amendments Under Electricity Act to Implement GA Smoothing

Based on our understanding that the global adjustment smoothing mechanism is intended to benefit residential and small business customers only and that the Minister will be responsible for determining how much global adjustment smoothing is to be applied in a given month, if any, amendments to the *Electricity Act, 1998* and Ontario Regulation 429/04 (Adjustments Under Section 25.33 of the Act) would be needed to implement the mechanism, as follows:

(i) Electricity Act:

- **Section ■ (New):** Establish a new power for the Minister to make directives to the IESO in relation to the global adjustment smoothing mechanism and, particularly, for purposes of establishing global adjustment smoothing amounts from time to time (expected to be monthly). To the extent possible, the directive power should be drafted so as to limit the ability for a future Minister to require the IESO to do anything that would materially and adversely affect the Financing Trust or its lenders. **[NTD: While our understanding is that the Minister would direct this, we note from other materials we have seen that OPG may instead be recommending a formula approach. It is not clear what the formula would look like, where it would be set out or how it would be applied and by whom]**

- **Paragraph 25.33(1):** This section says that IESO shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of market participants reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require IESO to ensure that, over time, payments by prescribed classes of market participants also reflect amounts paid to Financing Trust. **[NTD: Not certain this is needed if only to benefit residential and small business consumers, who are not market participants. May be needed in reference to payments from distributors and retailers]**

- **Paragraph 25.33(2):** This section says that distributors and retailers shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of consumers reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require distributors and retailers to ensure that, over time, payments by prescribed classes of consumers also reflect amounts paid to Financing Trust.

- **Note**: As described below, the regulation will need to include new requirements for the IESO to record the global adjustment smoothing amounts in one or more variance accounts and to use those amounts to offset amounts otherwise recorded in the variance accounts under Section 25.33(3) of the Act. For context, we note:

    - 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

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

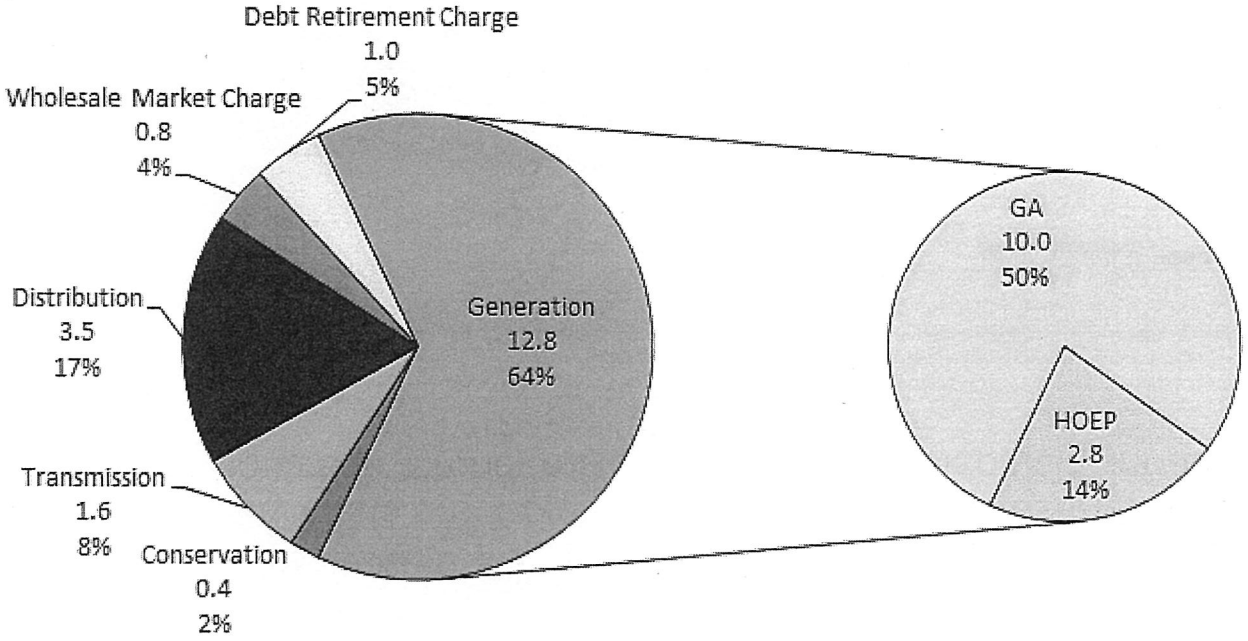
2. Ontario's Fair Hydro Plan – Providing Relief for Consumers

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.

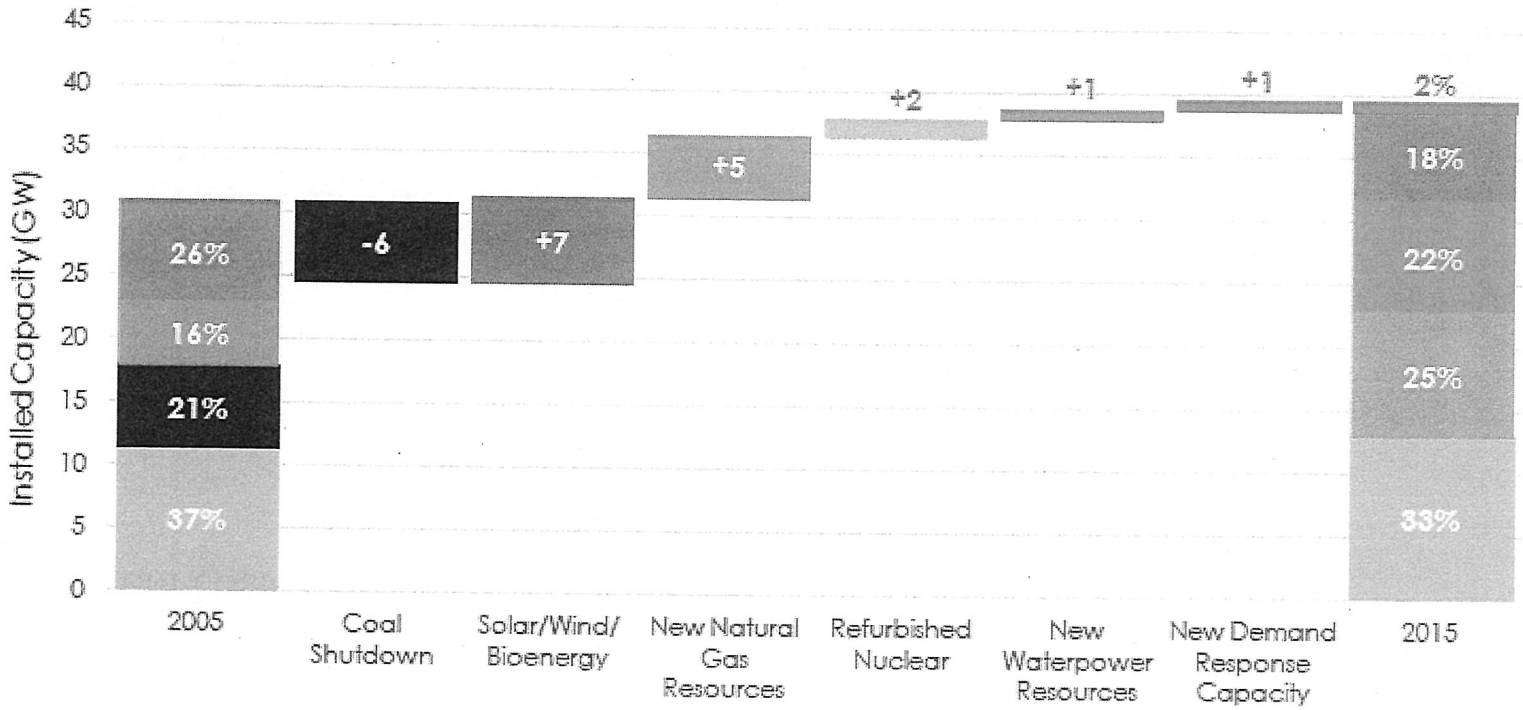
2015 Electricity System Cost
$ billion



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.

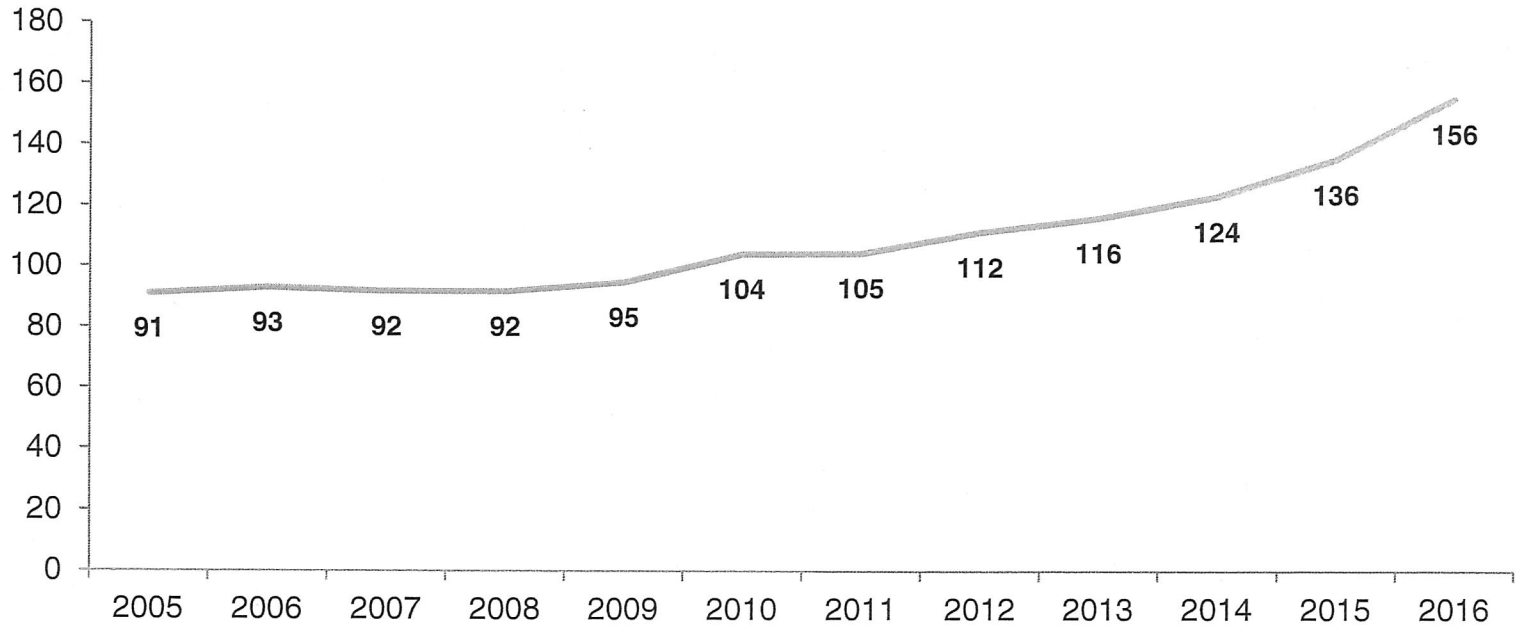


Source: *IESO*

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

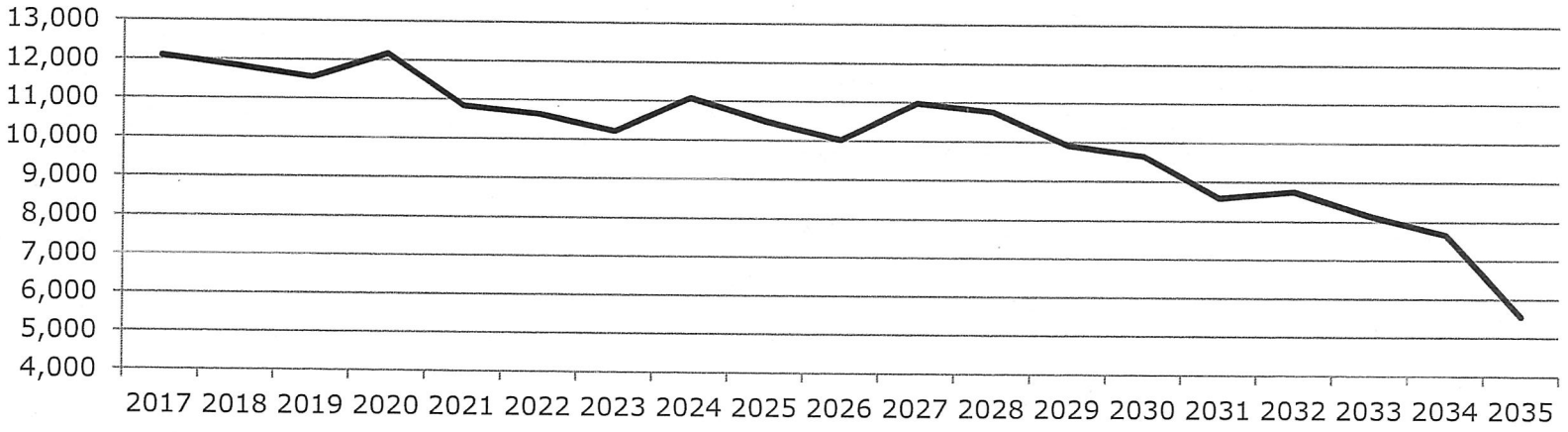
Refinancing the Global Adjustment

- 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.

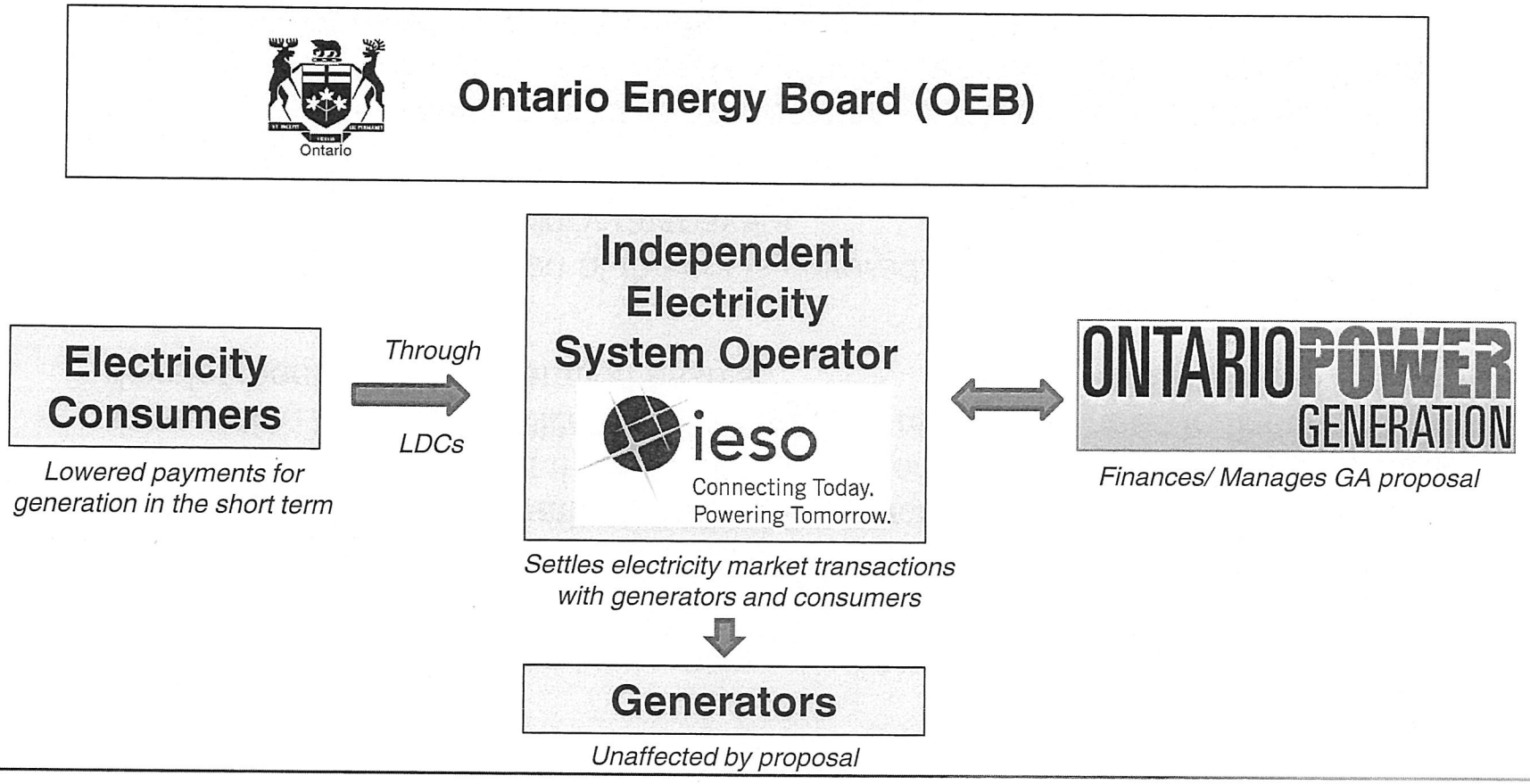
- In the early years, a portion of the costs covered by the GA would be financed to reduce pressure on electricity ratepayers.

- 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:
  - Eliminating the delivery charge for all on-reserve First Nations households and removing 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.
  - 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.

Establishing a New Affordability Fund

- The Affordability Fund would assist electricity customers who cannot qualify for low-income conservation programs and need financial assistance to undertake energy efficiency improvements.

- 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.

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- 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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- The Industrial Conservation Initiative (ICI) provides a strong incentive for participating consumers to reduce their consumption during peak hours to reduce their costs.

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  - Targeting eligibility to energy intensive industries with the North American Industry Classification System (NAICS) codes 31 - 33 (i.e., Manufacturing).

- Under the expanded ICI, small manufacturers and industrials whose electricity demand is currently too low to qualify for ICI, would now be eligible for the expanded ICI if they wish to participate.

- 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.

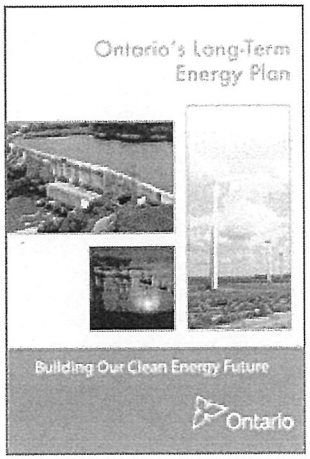
- Changes related to IESO's Market Renewal initiatives are estimated to save at least $200 million per year, starting in 2021.

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

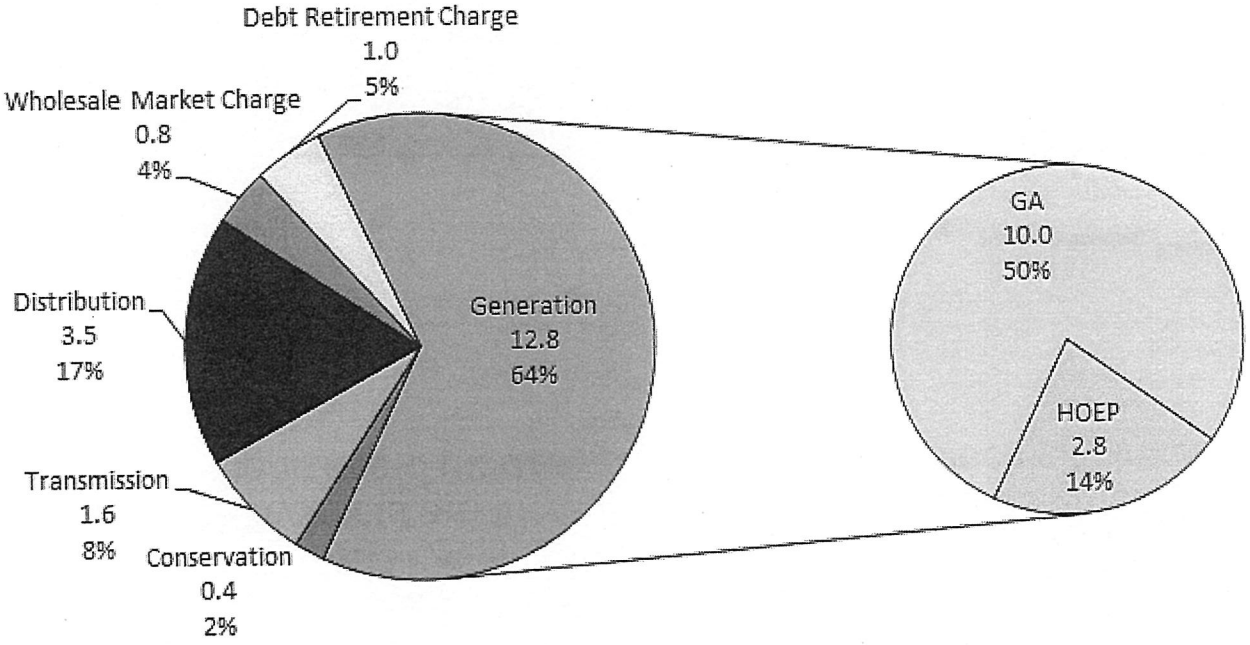
2. Ontario's Fair Hydro Plan – Providing Relief for Consumers

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.

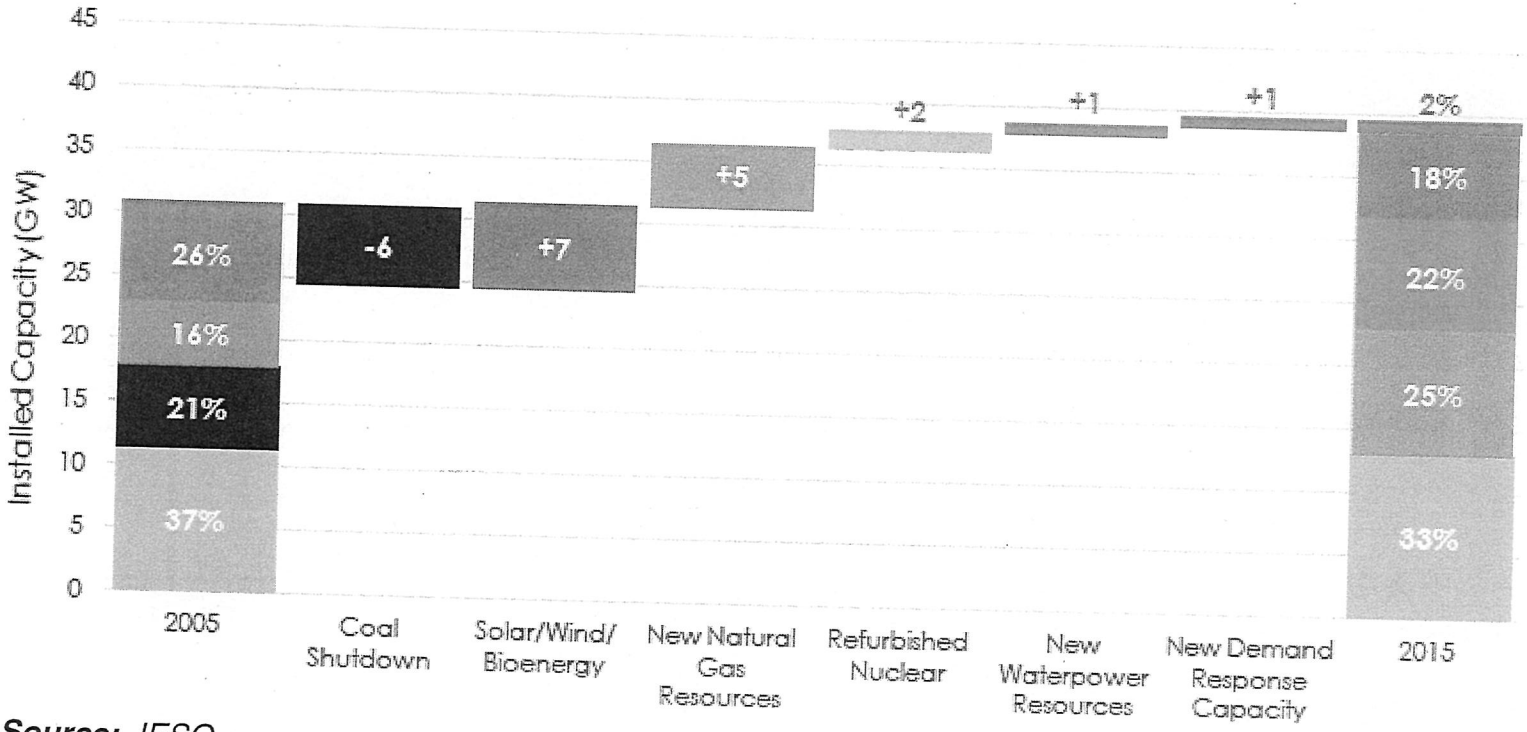
2015 Electricity System Cost
$ billion



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.

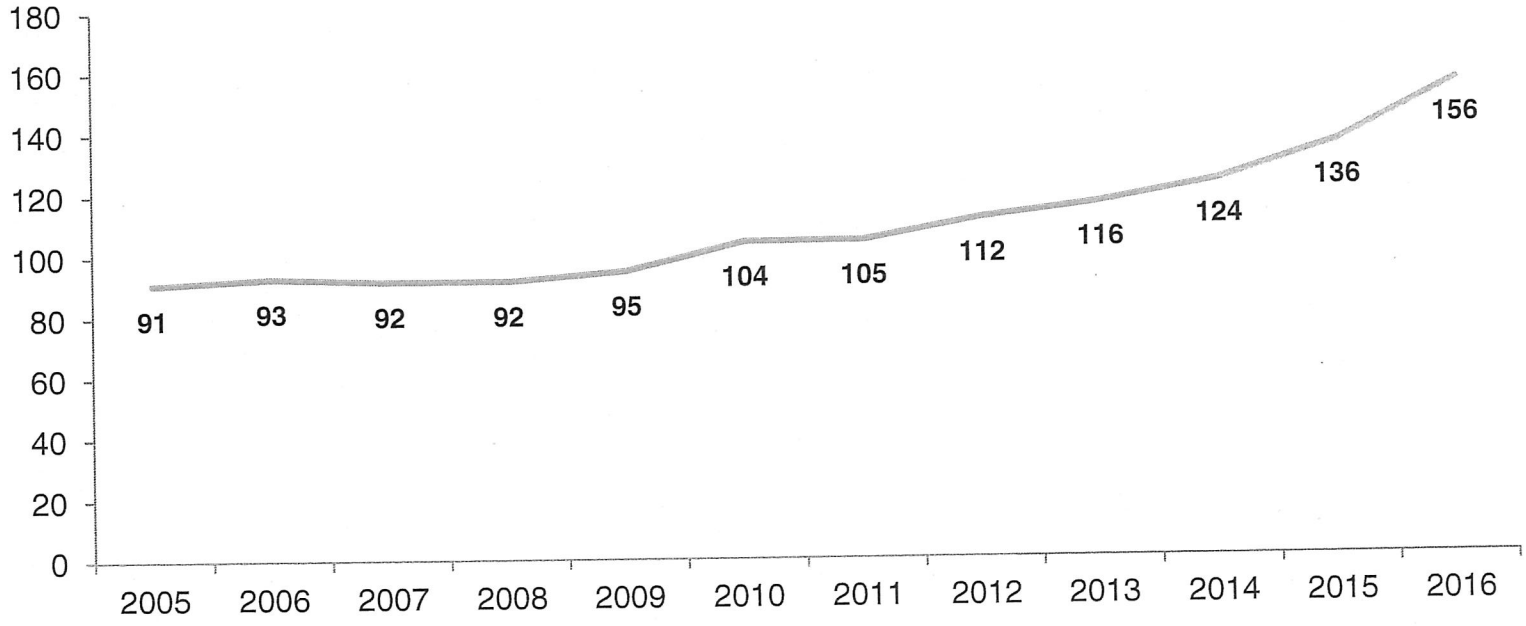


Source: *IESO*

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

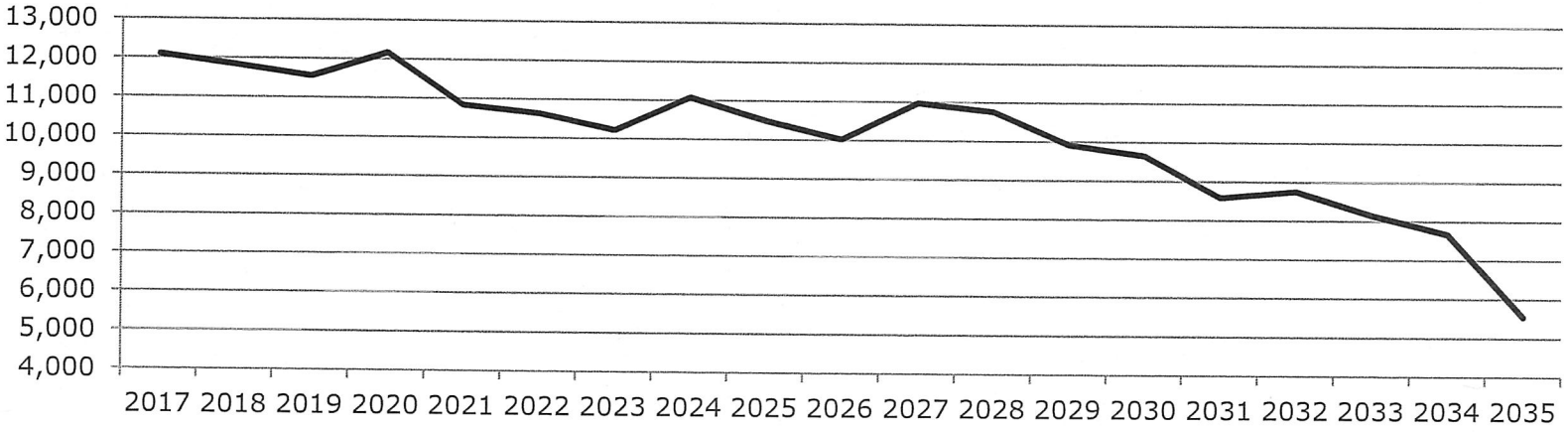
Refinancing the Global Adjustment

- 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.

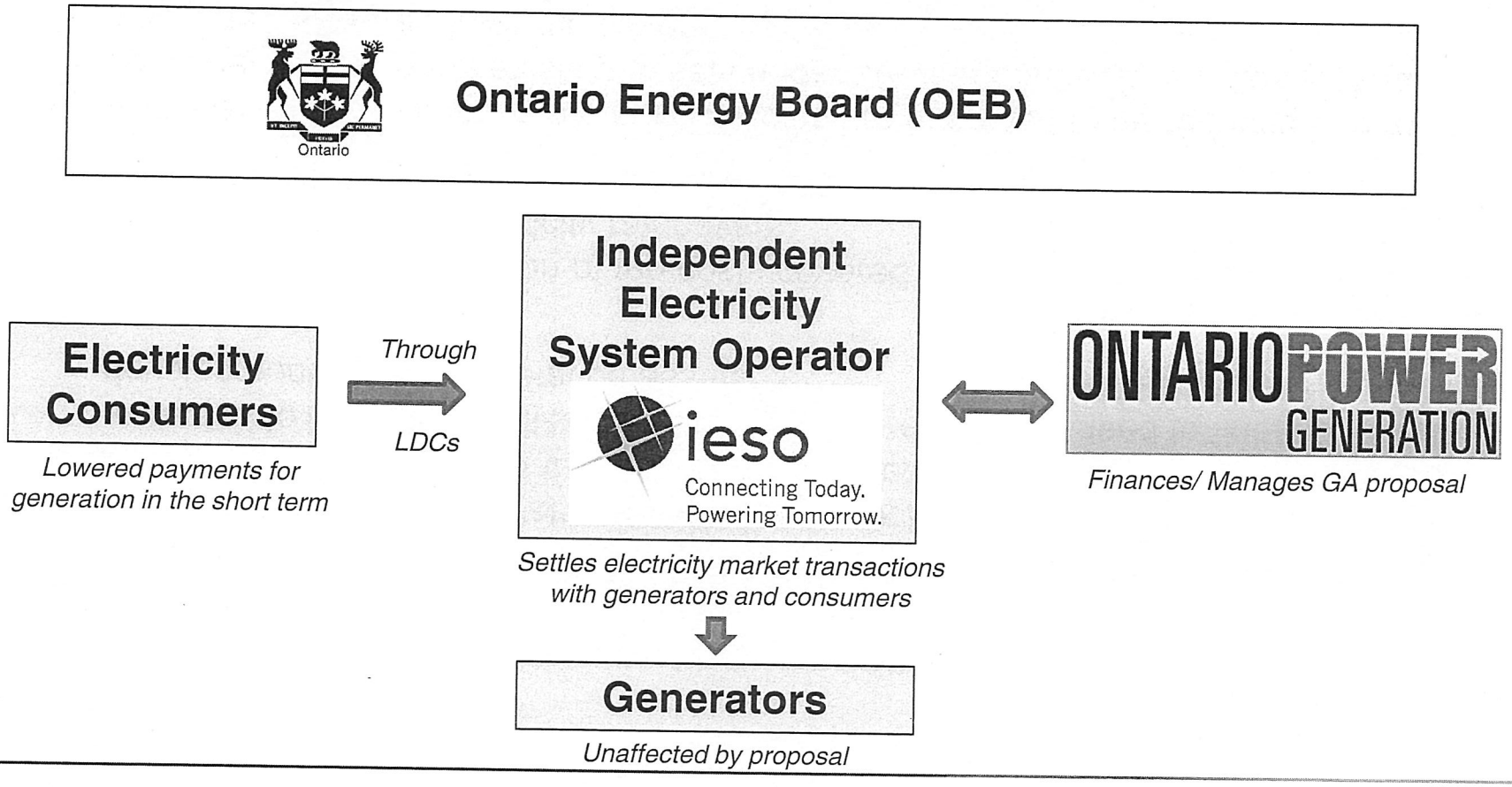
- In the early years, a portion of the costs covered by the GA would be financed to reduce pressure on electricity ratepayers.

- 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						
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

Ontario

***Note:** The proposed higher scale, including the amounts in circles are proposed and will be refined in consultation with the OEB.

MINISTRY OF ENERGY

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:
  - Eliminating the delivery charge for all on-reserve First Nations households and removing 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.
  - 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.

Establishing a New Affordability Fund

- The Affordability Fund would assist electricity customers who cannot qualify for low-income conservation programs and need financial assistance to undertake energy efficiency improvements.

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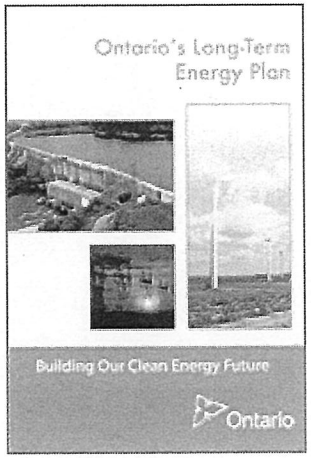



Kacaba, Jennifer (ENERGY)

From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: May 10, 2017 8:16 AM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Huang, Jackson (MEDG/MRIS); Ranalli, David (ENERGY); Landmann, Peter (ENERGY)
Cc: Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: RE: Regulations

Thanks, James. SNAP sent this table in response to mine.

Regulation No.	Action	Description of Change
Ontario Fair Hydro Plan Act, 2017 (OFHPA) (if passed), proposed regulations	**New** regulation; require OFHP bill inserts	• Introduce a regulatory requirement for LDCs to accompany paper invoices with a prescribed OFHP bill insert once every quarter for a period of 12 months, beginning with the first invoice issued on or after July 1, 2017.
OFHPA, 2017 (if passed), proposed regulations	**New** regulation; require OFHP on-bill messaging	• Introduce a regulatory requirement for LDCs to include a prescribed message regarding the OFHP on invoices in a location where conservation or other utility messages to consumers are usually placed.
OFHPA, 2017 (if passed), proposed regulations	**New** regulation; require FNDC line item	• Introduce a regulatory requirement for LDCs who have been identified by the OEB as servicing customers on-reserve (total of 11) to include a "*First Nations Delivery Credit*" line item on the face of invoices and demonstrate the associated savings, where applicable.
O. Reg. 275/04	Amend; remove DRC on-bill messaging Amend; exempt Hydro One	• Remove requirement under s. 8(2) for LDCs into include Minister's informational message concerning the Debt Retirement Charge (DRC), or an exemption thereof, on the invoice. • Include new provision(s) to exempt Hydro One from the application of O. Reg. 275/04.
O. Reg. 442/01	Amend; remove RRRP messaging for Hydro One	• Remove requirement under s. 6(2) for distributors to include the statement "*Your delivery charge is reduced through the Rural or Remote Rate Protection by*" followed by the amount of the monthly rate protection approved by the OEB (mainly applicable to Hydro One).
Minister's O. Reg. 364/16 *(does not need to go to LRC/Cabinet, however we want to post the*	Amend; remove 8% envelope messaging Amend; remove 8% on-bill messaging Amend; exempt Hydro One	• Remove requirements under s. 2(1) paragraph 4 and s. 3(1) paragraph 4 for LDCs to include on-bill informational messaging about the 8% rebate. • The messaging to be removed states: "*The Ontario government is providing a rebate on your electricity*

information so LDCs are made aware)		*costs equal to the provincial portion of HST."* • Remove requirement under s. 2(1) paragraph 5 and s. 3(1) paragraph 5 for LDCs to set out on-envelope messaging related to the 8% rebate. • As of July 1, 2017, the current regulation would require LDCs to include "*8% provincial rebate*" in a prominent location on the face of envelopes, as well as the wording, "*Ontario is helping reduce electricity costs for families, businesses and farms.*" • Include new provision(s) to exempt Hydro One from the application of O. Reg. 364/16.

From: Rehob, James (ENERGY)
Sent: May-09-17 8:04 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Huang, Jackson (MEDG/MRIS); Ranalli, David (ENERGY); Landmann, Peter (ENERGY)
Cc: Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: Re: Regulations

This looks good, although I think we'll also have to add (under invoicing) o. Reg 275/04 amendments RE. The social programs.

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: Tuesday, May 9, 2017 5:49 PM
To: Shear, Dan (ENERGY); Rehob, James (ENERGY); Kacaba, Jennifer (ENERGY); Huang, Jackson (MEDG/MRIS); Ranalli, David (ENERGY); Landmann, Peter (ENERGY)
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Regulation	Lawyer	Timing
Social Programs		
• OESP O. Reg. 314/15 – amendments	David	June 20 (LRC)
• RRRP expansion to R2	David	June 20 (LRC)
• Distribution Rate Protection	Peter	June 20 (LRC)
• First Nation Rate Distribution	Peter	June 20 (LRC)
GA Refinancing		

Kacaba, Jennifer (ENERGY)

Subject:	OFHP Next Steps - Coordinating the Committee Process
Location:	Energy-R-77 Grenville-6A
Start:	Thu 05/11/2017 10:00 AM
End:	Thu 05/11/2017 11:00 AM
Recurrence:	(none)
Meeting Status:	Accepted
Organizer:	Reid, Michael (ENERGY)
Required Attendees:	Hume, Steen (ENERGY); Cox, Hilary (ENERGY); Chander, Sunita (ENERGY); Feather, Adam (ENERGY); Smith, Mike (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); Christie, Tim (ENERGY)
Optional Attendees:	Cayley, Daniel (ENERGY); Kacaba, Jennifer (ENERGY)

1. Committee
   - Clause by Clause
   - Government Motions
   - Opposition Motions

2. Regulations
   - Postings
   - Staging / Timing (i.e., Tranche 1 and 2)
   - Cabinet / LRC dates

3. Agency Relations
   - Agency timelines to enable July 1st effective date, agencies reviewing draft regulations

4. Working Groups
   - Confirm LDC WG needed from now until July, need to meet others

5. Navigant Report / Fair Allocation Amount

6. Weekly Rate Mitigation
   - Agencies
   - TB Reports Backs

7. Miscellaneous items
   - IESO / OPG Summaries of accounting
   - OFA / IESO line of credit
   - s28 indemnities approval
   - Commercial agreements
   - Rating agencies



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GA Refinancing		
• Part II Reg.	Dan	June 14 (Cab)
• General Regulation	James	June 20 (LRC)
• O. Reg. 429/04 – amendments	James	June 20 (LRC)
• O. Reg. 280/14 – amendments	James	June 20 (LRC)
Other		
• O. Reg. 364/16 – repeal in part	David/Peter	TBD (asap?)
• Various - exempt Hydro One from invoicing requirements	David/Peter	TBD (asap?)

Carolyn Calwell
Legal Director
MAG Civil Law Division
Ministries of Energy / Economic Development & Growth /
Research, Innovation & Science / Infrastructure / Accessibility
416-212-8392

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: Tuesday, May 9, 2017 5:49 PM
To: Shear, Dan (ENERGY); Rehob, James (ENERGY); Kacaba, Jennifer (ENERGY); Huang, Jackson (MEDG/MRIS); Ranalli, David (ENERGY); Landmann, Peter (ENERGY)
Cc: Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: FW: Regulations

Hi – based on our discussion this afternoon, this is the list of regulations so far. Is anything missing? Are the right people in the right places? I am also touching base with Steen and Michael to make sure their lists are the same.

Regulation	Lawyer	Timing
Social Programs		
• OESP O. Reg. 314/15 – amendments	David	June 20 (LRC)
• RRRP expansion to R2	David	June 20 (LRC)
• Distribution Rate Protection	Peter	June 20 (LRC)
• First Nation Rate Distribution	Peter	June 20 (LRC)
GA Refinancing		
• Part II Reg.	Dan	June 14 (Cab)
• General Regulation	James	June 20 (LRC)
• O. Reg. 429/04 – amendments	James	June 20 (LRC)
• O. Reg. 280/14 – amendments	James	June 20 (LRC)
Other		
• O. Reg. 364/16 – repeal in part	David/Peter	TBD (asap?)
• Various - exempt Hydro One from invoicing requirements	David/Peter	TBD (asap?)

Carolyn Calwell
Legal Director
MAG Civil Law Division
Ministries of Energy / Economic Development & Growth /
Research, Innovation & Science / Infrastructure / Accessibility
416-212-8392

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Rehob, James (ENERGY)

To:	Partington, Tara (MAG)
Cc:	Calwell, Carolyn (ENERGY/MEDEI/MRI); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Huang, Jackson (MEDG/MRIS)
Subject:	Additional change to EA s.53.1(1.1)

Hi, Tara. This got missed in the EA s.53.1 rider I sent you yesterday. EA s.53.1(1.1) should read as follows:

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.

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.

Let me know if you have any concerns.

Best,
James

James P. H. Rehob
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Legal Services Branch
MAG Civil Law Division
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Notice

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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

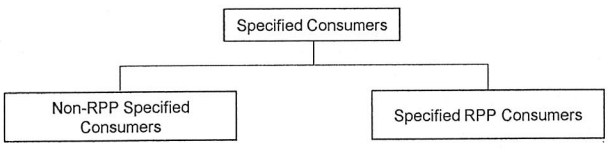
Building Blocks of the Legislation – How are the Costs to be Allocated?

- 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).

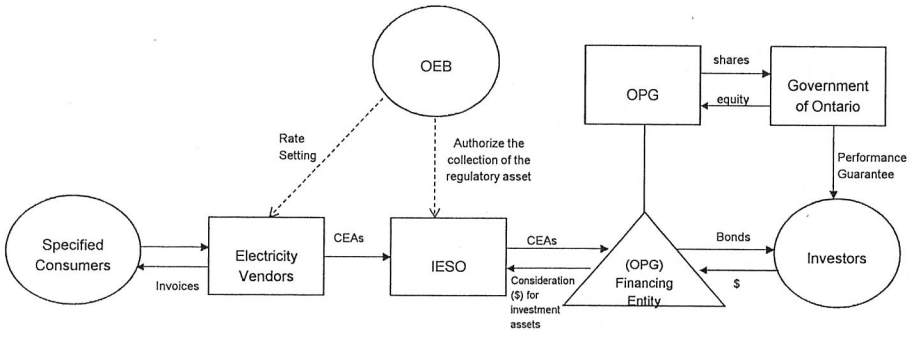
18

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

- don't see why couldn't

- from non-legis
- seems like can prescribe class of consumers
- just broadening class
-

- don't know why couldn't rely on that to prescribe.

- unless → not listing would me
  - bc not specifically listed - intent not to allow presum

KSO still necessary for a reg. to be passed 200.(1.1)
- less fussed about class of consumers.

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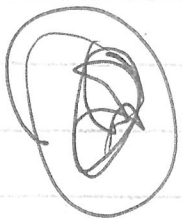
so this is the only software
that we have available.



OGC
S. 10.
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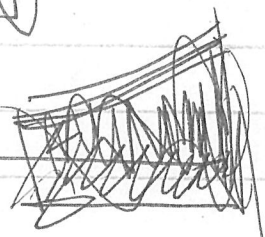
↳ member, office
employee



- of open S. 11 -
takes care of issue
- resolve - we think
our view is
- on another matter
strong consideration
to taking object
out of act

1 IESO funding shortfall

'17 ~~FAS~~ (More +ve)

(IESO variance)

(IESO deferral)

Kacaba, Jennifer (ENERGY)

From: Partington, Tara (MAG)
Sent: May 1, 2017 10:11 AM
To: Rehob, James (ENERGY)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Huang, Jackson (MEDG/MRIS)
Subject: RE: S. 38 Regulation Making authority for Invoices.

Hi again,

I'm wondering if you have a sense of when you'll be sending final instructions on section 38? On Friday I sent you two emails with questions for you to consider in the context of those instructions. You've sent me a few instructions on things to add in section 38 but I'm not sure if you have completed your review of what you need. For ease of reference, one of the emails I sent is set out below and one is in the attached email. If possible, please send me your final instructions on s. 38 this morning.

Thanks,
Tara



Reg-making powers

From: Partington, Tara (MAG)
Sent: April-28-17 1:40 PM
To: Rehob, James (ENERGY)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Huang, Jackson (MEDG/MRIS)
Subject: RE: S. 38 Regulation Making authority for Invoices.

I've addressed these in Draft 16.

I'm also removing the following note but please consider this as well when instructing on re-making powers in s. 38.

[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).]

From: Rehob, James (ENERGY)
Sent: April-28-17 1:14 PM
To: Partington, Tara (MAG)

Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Huang, Jackson (MEDG/MRIS)
Subject: FW: S. 38 Regulation Making authority for Invoices.

Hi, Tara. Recognizing that you may plan on doing a sweep of reg-making authorities at the end, but just in case I would like to amend s. 38 to clarify and broaden the regulation-making authority around invoices and information that can be included "in, on or with" the invoices.

3. Governing the determination of classes of specified consumers for the purposes of this Act, including based on the manner by which [different classes of] specified consumers' rates are determined.

[. . .]

Invoices, information on or with, etc.

x. 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.;

x. 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, [i];

x. governing the manner by which invoices or notices provided for under this Act are to be provided to specified consumers and other prescribed persons.

Thank you!
Best,
James
For LSB Energy

From: Partington, Tara (MAG)
Sent: Friday, April 28, 2017 12:31 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Shear, Dan (ENERGY)
Cc: Rehob, James (ENERGY); Kacaba, Jennifer (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Huang, Jackson (MEDG/MRIS)
Subject: RE: Further drafting instructions - Part II

Carolyn, what about this from your instructions? This is an excerpt from subs. 15xx (1.2)

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts:

<< OLE Object: Picture (Device Independent Bitmap) >>

From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April-28-17 12:27 PM
To: Shear, Dan (ENERGY); Partington, Tara (MAG)
Cc: Rehob, James (ENERGY); Kacaba, Jennifer (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Huang, Jackson (MEDG/MRIS)
Subject: RE: Further drafting instructions - Part II

We're also not having the minister look at previous reference periods – just future ones. We're trying to figure out a curve going forward.

15xx. (1) The Minister shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the estimated finance amount payable during the reference period, for the purpose of measuring and allocating the estimated clean energy costs and estimated clean energy benefits fairly among the specified consumers in respect of each reference period.

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Sent: April-28-17 12:24 PM
To: Partington, Tara (MAG)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); Rehob, James (ENERGY); Kacaba, Jennifer (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Huang, Jackson (MEDG/MRIS)
Subject: RE: Further drafting instructions - Part II

Hi Tara,

What about adding an interpretive provision in section 1 along the following lines:

> In this Act, a reference to a fair adjustment made in respect of a reference period shall include a fair adjustment that is made in respect of a part of a reference period.

Dan

From: Partington, Tara (MAG)
Sent: April-28-17 12:14 PM
To: Shear, Dan (ENERGY)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); Rehob, James (ENERGY); Kacaba, Jennifer (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Huang, Jackson (MEDG/MRIS)
Subject: RE: Further drafting instructions - Part II

Hi Dan,

I agree that in Part II it's ok. But in other provisions of the Act where we want to refer to all fair adjustments made to date, I think it's confusing because this first fair adjustment is not actually being made "in respect of a reference period"

within the defined meaning of that term. So someone might think that the first fair adjustment is not to be included when referring to "fair adjustments made in respect of reference periods".

For example, in the rules in s. 15xx about how the Minister calculates the Fair Allocation Amount, he is required to determine "the estimated fair adjustments in respect of all previous reference periods". If you are all comfortable with this then I'm fine with it but my concern is that someone might argue that the first fair adjustment should not be included because it was not actually in respect of a reference period but in respect of a different period of time.

Tara

From: Shear, Dan (ENERGY)
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To: Partington, Tara (MAG)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); Rehob, James (ENERGY); Kacaba, Jennifer (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Huang, Jackson (MEDG/MRIS)
Subject: RE: Further drafting instructions - Part II

Hi Tara,

I don't think we have to be concerned with that issue for purposes of Part II. If, for purposes of other provisions in the draft Bill, it would make more sense for "reference period" to mean "the period beginning on July 1, 2017", then I think that still works for Part II because Part II does not use "reference period" when talking about the effective date of the new rates in section 6.5xx.

Dan

From: Partington, Tara (MAG)
Sent: April-28-17 11:48 AM
To: Shear, Dan (ENERGY)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); Rehob, James (ENERGY); Kacaba, Jennifer (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Huang, Jackson (MEDG/MRIS)
Subject: RE: Further drafting instructions - Part II

Thanks, Dan.

Just following up on this point:

By the way, is the first "reference period" still meant to begin on July 1, 2017, or is it now beginning on the "effective date" under Part II? For purposes of Part II, it begins on the effective date.

This is problematic because of the definition of "reference period":

"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")

I'm thinking that we need to use a different term in Part II... or at least for the first period? What do you think? The problem is that I think there are a number of places later in the draft where we refer to "fair adjustment in respect of a reference period".

I will try to think of a solution but if you have any ideas, please share.

Tara

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To: Partington, Tara (MAG)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); Rehob, James (ENERGY); Kacaba, Jennifer (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Huang, Jackson (MEDG/MRIS)
Subject: Further drafting instructions - Part II

Hi Tara,

Further drafting instructions on Part II:

- Section 6.01xx: Now that we have moved all of the provisions related to calculating the "invoice amount" from the definitions section to Part II, we need to revise section 6.01xx to incorporate the "proxy consumer" concept. I must have been too tired last night to pick up on this. Section 6.01xx (1) should be revised to read as follows (my edit is in red):

  Determination of invoice amount
  6.01xx. (1) For the purposes of this Part, the invoice amount in respect of a regulated rate consumer who meets the prescribed criteria shall be determined in accordance with this section.

- Because the "invoice amount" now only relates to the representative (TH) consumer, the opening words of subsection 6.01xx(2) should be revised to read, "The invoice amount shall be determined as follows:"

- In a similar vein, please delete subsection 6.01xx(4).

- Since the "regulated rate consumer" will be invoiced at the rates determined under Part II of the OFHPA, and not under s. 79.16(1)(b) of the OEBA, for a period of time, we will have to tweak the definition of "regulated rate consumer" as follows (my edit is in red):

  ""regulated rate consumer" means a specified consumer who would meets the following criteria without regard to any other provisions of this Act:

  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")

Thanks,

Dan

---

[i] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

Kacaba, Jennifer (ENERGY)

From: Partington, Tara (MAG)
Sent: May 2, 2017 10:48 AM
To: Kacaba, Jennifer (ENERGY); Rehob, James (ENERGY)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); Shear, Dan (ENERGY); Huang, Jackson (MEDG/MRIS)
Subject: RE: S. 38 Regulation Making authority for Invoices.
Importance: High

- How structure regs. Law vs. Money.

Jennifer,

A few additional notes about section 38:

- Because we can rely on para. 1 of subs. 38 (1) as described in my email below, I would also recommend that we delete para. 3 and para. 5 from the current draft of subs. 38 (1), because neither seems to be necessary. The only part of para. 5 I'm wondering about is "governing... how the finance amount and true up amount are to be applied to the clean energy adjustment". Do you need this? I don't think we refer to the "application of" these amounts to the CEA, so I'm wondering if this should be removed. I can't recall why this ended up in the draft.

- Also, please confirm that you do want to retain para. 4 of subs. 38 (1) in the current draft – what do you think you'd be using this for? I can't remember why this was included. Please note the following provisions from the Legislation Act, 2006, which may suffice:

Classes

82 (2) The power to make a regulation includes the power to prescribe a class. 2006, c. 21, Sched. F, s. 82 (2).

Same

(3) For the purposes of subsection (2), a class may be defined,

(a) in terms of any attribute or combination of attributes; or

(b) as consisting of, including or excluding a specified member. 2006, c. 21, Sched. F, s. 82 (3).

From: Partington, Tara (MAG)
Sent: May-02-17 10:11 AM
To: Kacaba, Jennifer (ENERGY); Rehob, James (ENERGY)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); Shear, Dan (ENERGY); Huang, Jackson (MEDG/MRIS)
Subject: RE: S. 38 Regulation Making authority for Invoices.
Importance: High

Hi Jennifer,

I have reviewed your document regarding reg-making power and included some notes in the attachment.

In almost every case, I think the following paragraph included in subs. 38 (1), combined with the wording of the substantive provision in question, provides us with sufficient reg-making authority. This paragraph basically allows us to "sign post" regulations throughout the bill and then provide the authority for all sign posted matters by saying "anywhere that we referred to the regulations or used the word *prescribed*, the Legislature is giving reg-making power to the LGIC":

1. [i]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.

<< File: Regulations Rider s_38 ___05_01_2017 v2 TP comments.docx >>
Please let me know as soon as possible if you agree with the above or if I have misunderstood some of your concerns.

In the case of the EA amendments, those regulations would be made under the Electricity Act. I've flagged the reg-making authority that would apply. Please confirm that you agree.

The one question I have (hoping you can respond this morning) is whether we could address regulation-making authority relating to the definition of "refinancing" more directly in the definition as follows:

"refinancing" means~~, subject to the regulations,~~ the incurrence, in accordance with the regulations, of debt in connection with a redemption, repayment or repurchase of a funding obligation; ("French")

Would this work from your perspective? Would the regulations actually set out the manner in which the incurrence would be made? Would you prefer to include the words "if any" in case you decide you don't want to have regulations dealing with refinancing?

Thanks,

Tara

From: Kacaba, Jennifer (ENERGY)
Sent: May-01-17 6:31 PM
To: Partington, Tara (MAG); Rehob, James (ENERGY)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); Shear, Dan (ENERGY); Huang, Jackson (MEDG/MRIS)
Subject: RE: S. 38 Regulation Making authority for Invoices.

Hi Tara,

Attached please find instructions on s. 38 in the form of a rider (instructions are highlighted in green). Please let us know if you have any questions.

Jennifer

<< File: Regulations Rider s_38 ___05_01_2017 v2.docx >>

From: Partington, Tara (MAG)
Sent: May 1, 2017 10:11 AM
To: Rehob, James (ENERGY)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Huang, Jackson (MEDG/MRIS)
Subject: RE: S. 38 Regulation Making authority for Invoices.

Hi again,

I'm wondering if you have a sense of when you'll be sending final instructions on section 38? On Friday I sent you two emails with questions for you to consider in the context of those instructions. You've sent me a few instructions on things to add in section 38 but I'm not sure if you have completed your review of what you need. For ease of reference, one of the emails I sent is set out below and one is in the attached email. If possible, please send me your final instructions on s. 38 this morning.

Thanks,
Tara

<< Message: Reg-making powers >>

From: Partington, Tara (MAG)
Sent: April-28-17 1:40 PM
To: Rehob, James (ENERGY)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Huang, Jackson (MEDG/MRIS)
Subject: RE: S. 38 Regulation Making authority for Invoices.

I've addressed these in Draft 16.

I'm also removing the following note but please consider this as well when instructing on re-making powers in s. 38.

[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;
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To: Partington, Tara (MAG)
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3. Governing the determination of classes of specified consumers for the purposes of this Act, including based on the manner by which [different classes of] specified consumers' rates are determined.

[. . .]

Invoices, information on or with, etc.

x. 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.;

x. 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, [ii];

x. governing the manner by which invoices or notices provided for under this Act are to be provided to specified consumers and other prescribed persons.

Thank you!
Best,
James
For LSB Energy

From: Partington, Tara (MAG)
Sent: Friday, April 28, 2017 12:31 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Shear, Dan (ENERGY)
Cc: Rehob, James (ENERGY); Kacaba, Jennifer (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Huang, Jackson (MEDG/MRIS)
Subject: RE: Further drafting instructions - Part II

Carolyn, what about this from your instructions? This is an excerpt from subs. 15xx (1.2)

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts:

<< OLE Object: Picture (Device Independent Bitmap) >>

From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April-28-17 12:27 PM

To: Shear, Dan (ENERGY); Partington, Tara (MAG)
Cc: Rehob, James (ENERGY); Kacaba, Jennifer (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Huang, Jackson (MEDG/MRIS)
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  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")

Thanks,

Dan

---

[i] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.
[ii] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or the Board, or against a member of the Board, ~~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. ***[OEB Draft Note: Under the OEB Act, Board members are specifically noted as not being employees of the OEB. It is imperative that they also be covered by this provision.]***

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

[5] FLS - see s. 51 of the Electricity Act, 1998

Confidential Draft

Kacaba, Jennifer (ENERGY)

Subject: FW: S. 38 Regulation Making authority for Invoices.

Hi Carolyn,

I have reviewed Tara's email – I take her point that we can rely on subs 38(1) as well as the substantive provision for sufficient reg making authority. I spoke with Dan about this as well and ….. Paul suggested going back to Tara to confirm that there are no adverse consequences with having the 'basket reg-making clause' as well as partial laundry list of reg making powers. And that essentially in the future we would be able to create regs under

We included the EA amendments out of an abundance of caution but if the authority is there in the EA obviously there is no need to revisit.

Regarding her edit to the definition of refinancing, I am not certain whether it is anticipated that we will have regulation related to the definition. Do you have a view on this?

From: Partington, Tara (MAG)
Sent: May 2, 2017 10:11 AM
To: Kacaba, Jennifer (ENERGY); Rehob, James (ENERGY)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); Shear, Dan (ENERGY); Huang, Jackson (MEDG/MRIS)
Subject: RE: S. 38 Regulation Making authority for Invoices.
Importance: High

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1. [i]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.

Regulations Rider s_38 __05_0...

Please let me know as soon as possible if you agree with the above or if I have misunderstood some of your concerns.

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Jennifer

<< File: Regulations Rider s_38 ___05_01_2017 v2.docx >>

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Tara

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(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;

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[. . .]

Invoices, information on or with, etc.

x. 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.;

x. 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, [ii];

x. governing the manner by which invoices or notices provided for under this Act are to be provided to specified consumers and other prescribed persons.

Thank you!
Best,
James
For LSB Energy

From: Partington, Tara (MAG)
Sent: Friday, April 28, 2017 12:31 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Shear, Dan (ENERGY)
Cc: Rehob, James (ENERGY); Kacaba, Jennifer (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Huang, Jackson (MEDG/MRIS)
Subject: RE: Further drafting instructions - Part II

Carolyn, what about this from your instructions? This is an excerpt from subs. 15xx (1.2)

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts:

<< OLE Object: Picture (Device Independent Bitmap) >>

From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April-28-17 12:27 PM
To: Shear, Dan (ENERGY); Partington, Tara (MAG)
Cc: Rehob, James (ENERGY); Kacaba, Jennifer (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Huang, Jackson (MEDG/MRIS)
Subject: RE: Further drafting instructions - Part II

We're also not having the minister look at previous reference periods – just future ones. We're trying to figure out a curve going forward.

15xx. (1) The Minister shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the estimated finance amount payable during the reference period, for the purpose of measuring and allocating the estimated clean energy costs and estimated clean energy benefits fairly among the specified consumers in respect of each reference period.

From: Shear, Dan (ENERGY)
Sent: April-28-17 12:24 PM
To: Partington, Tara (MAG)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); Rehob, James (ENERGY); Kacaba, Jennifer (ENERGY); Johnson, Paul

(ENERGY/MEDEI/MRI); Huang, Jackson (MEDG/MRIS)
Subject: RE: Further drafting instructions - Part II

Hi Tara,

What about adding an interpretive provision in section 1 along the following lines:

> In this Act, a reference to a fair adjustment made in respect of a reference period shall include a fair adjustment that is made in respect of a part of a reference period.

Dan

From: Partington, Tara (MAG)
Sent: April-28-17 12:14 PM
To: Shear, Dan (ENERGY)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); Rehob, James (ENERGY); Kacaba, Jennifer (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Huang, Jackson (MEDG/MRIS)
Subject: RE: Further drafting instructions - Part II

Hi Dan,

I agree that in Part II it's ok. But in other provisions of the Act where we want to refer to all fair adjustments made to date, I think it's confusing because this first fair adjustment is not actually being made "in respect of a reference period" within the defined meaning of that term. So someone might think that the first fair adjustment is not to be included when referring to "fair adjustments made in respect of reference periods".

For example, in the rules in s. 15xx about how the Minister calculates the Fair Allocation Amount, he is required to determine "the estimated fair adjustments in respect of all previous reference periods". If you are all comfortable with this then I'm fine with it but my concern is that someone might argue that the first fair adjustment should not be included because it was not actually in respect of a reference period but in respect of a different period of time.

Tara

From: Shear, Dan (ENERGY)
Sent: April-28-17 12:09 PM
To: Partington, Tara (MAG)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); Rehob, James (ENERGY); Kacaba, Jennifer (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Huang, Jackson (MEDG/MRIS)
Subject: RE: Further drafting instructions - Part II

Hi Tara,

I don't think we have to be concerned with that issue for purposes of Part II. If, for purposes of other provisions in the draft Bill, it would make more sense for "reference period" to mean "the period beginning on July 1, 2017", then I think that still works for Part II because Part II does not use "reference period" when talking about the effective date of the new rates in section 6.5xx.

Dan

From: Partington, Tara (MAG)
Sent: April-28-17 11:48 AM
To: Shear, Dan (ENERGY)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); Rehob, James (ENERGY); Kacaba, Jennifer (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Huang, Jackson (MEDG/MRIS)
Subject: RE: Further drafting instructions - Part II

Thanks, Dan.

Just following up on this point:

By the way, is the first "reference period" still meant to begin on July 1, 2017, or is it now beginning on the "effective date" under Part II? For purposes of Part II, it begins on the effective date.

This is problematic because of the definition of "reference period":

"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")

I'm thinking that we need to use a different term in Part II... or at least for the first period? What do you think? The problem is that I think there are a number of places later in the draft where we refer to "fair adjustment in respect of a reference period".

I will try to think of a solution but if you have any ideas, please share.

Tara

From: Shear, Dan (ENERGY)
Sent: April-28-17 11:36 AM
To: Partington, Tara (MAG)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); Rehob, James (ENERGY); Kacaba, Jennifer (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Huang, Jackson (MEDG/MRIS)
Subject: Further drafting instructions - Part II

Hi Tara,

Further drafting instructions on Part II:

- Section 6.01xx: Now that we have moved all of the provisions related to calculating the "invoice amount" from the definitions section to Part II, we need to revise section 6.01xx to

incorporate the "proxy consumer" concept. I must have been too tired last night to pick up on this. Section 6.01xx (1) should be revised to read as follows (my edit is in red):

> **Determination of invoice amount**
>
> **6.01xx.** (1) For the purposes of this Part, the invoice amount in respect of a regulated rate consumer who meets the prescribed criteria shall be determined in accordance with this section.

- Because the "invoice amount" now only relates to the representative (TH) consumer, the opening words of subsection 6.01xx(2) should be revised to read, "The invoice amount shall be determined as follows:"

- In a similar vein, please delete subsection 6.01xx(4).

- Since the "regulated rate consumer" will be invoiced at the rates determined under Part II of the OFHPA, and not under s. 79.16(1)(b) of the OEBA, for a period of time, we will have to tweak the definition of "regulated rate consumer" as follows (my edit is in red):

  ""regulated rate consumer" means a specified consumer who would meets the following criteria without regard to any other provisions of this Act:

  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")

Thanks,

Dan

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[i] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

[ii] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

Kacaba, Jennifer (ENERGY)

From: Kacaba, Jennifer (ENERGY)
Sent: February 16, 2017 5:11 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Cc: Johnson, Paul (ENERGY/MEDEI/MRI); Rehob, James (ENERGY)
Subject: FW: Rate mitigation options

Hi Carolyn,

Further to our conversation this morning, James and I engaged MIT legal with respect to the options set out in the rate mitigation deck. We spoke with Michael for a little bit this morning and his colleague Aida this afternoon.

- With respect to the first two options (GA smoothing for ALL and Lower the Cost of GA by Funding a portion of Conservation through GGRA), MIT legal isn't clear whether or not these would **even** be considered subsidies. Aida feels MIT would need to do an analysis of whether this constitutes a financial contribution. They think that likely the second part of the test (conferring a benefit) would be met.

- With respect to options 3, 4 & 5 (Remove Debt Retirement Chart Early for Non-RPP Class B Consumers, Extend 8% rebate to include Class B Consumers and Provide Tax Based Assistance package for class B consumers), MIT is of the view that these options are a clearer subsidy. As I eluded to in my email below there are two main types of subsidies – prohibited and actionable.

    - Prohibited Subsidy: It is unlikely that these would be prohibited subsidies as they don't appear to meet the definition (they are not contingent on export performance; there is no clear link or tie between program and measure and wanting to increase exports; not contingent on use of domestic goods)

    - Actionable Subsidy: It is possible they could be considered actionable subsidies. In order to complete an assessment as to whether or not these are in fact actionable subsidies MIT legal would need to look at effects on market (ie whether or not there are displaced goods). The subsidy would have to be specific to an industry or inadvertently benefit a specific industry. However, as an example, both Michael and Aida noted that if there are seen to be benefits to the softwood lumber industry we have to be very careful as it is likely that the US would try to raise trade challenges with respect to a subsidy that benefits the softwood lumber industry even if the legally they have a weak case.

- We told MIT legal we would get back to them once the options were more crystallized and/or if a formal legal opinion was required.

Let us know if you have questions.

Jenn and James

From: Kacaba, Jennifer (ENERGY)
Sent: February 13, 2017 2:55 PM

To: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Cc: Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: FW: Rate mitigation options

Hi Carolyn,

I don't have anything to add to the specific contents of the email however, I have started to think through the trade law risk and or analysis we would be asking trade lawyers for below. Paul and I also discussed briefly. Hope this is helpful.

Under trade law, a subsidy is "a financial contribution which confers a benefit upon a recipient."

1st Element: Financial Contribution

- The WTO agreements have a definition of what would be a financial contribution and there is WTO caselaw outlining how to measure benefit
- Each of the following is a financial contribution for the purposes of determining whether a subsidy exists:
    - a direct transfer of funds such as a grants, loans, or equity infusion;
    - potential direct transfers of funds or liabilities, such as loan guarantees;
    - government revenue otherwise due that is foregone or not collected
    - the provision by a government of go or services other than general infrastructure;
    - the purchase by a government of goods;
    - any of the above if it involves government payment to a funding mechanism or entrustment or direction of a private body;
    - income or price supports.

2ND element: Benefit that is conferred to the recipient of the financial contribution

- there is WTO case law about this but it stresses that the beneficiary of the financial contribution, not the government, is the focus of the inquiry
- a benefit is measure by asking whether "the recipient of the financial contribution has received it on more favourable terms than those avialbale in the commercial marketplace (e.g. comparable to a commercial loan).

There are different types of subsidies under the WTO Agreement. But I don't think we need to get into that for this analysis.

Materials prepared by trade policy suggest that government subsidies granted to attract or retain investment are not subject to international disciplines unless they create a trade distortion in the global market place. Trade policy states: " the only way for such a trade disortion to occur would be if a direct link could be established between on the one hand, the subsidy received by an investment and on the other hand, subsquenetly exported goods which injure sales of that same good in an export market."

So to think this through, I think in order for there to be a trade law risk, it would have to be argued that by lowering GA a firm that produces X widgets has an advantage over a firm producing the same X widgets in another jurisdiction. Or to say it another way, by lowering GA, we are allowing the firm that produces X widgets in Ontario to stay open and therefore artificially distorting the global market for widgets?

I think to assess the trade law risk trade lawyers will ask for info on the market and impacts that the 'subsidies' would have on the market.

Let me know if you want to discuss? Hope this is what you were looking for. It is very rough will let you know if anything else comes to me.

Jennifer

From: Kacaba, Jennifer (ENERGY)
Sent: Monday, February 13, 2017 1:30 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: Re: Rate mitigation options

I am reviewing now (sorry was at allergy doc just got back)

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: Monday, February 13, 2017 1:17 PM
To: Johnson, Paul (ENERGY/MEDEI/MRI); Kacaba, Jennifer (ENERGY)
Subject: RE: Rate mitigation options

Jane has asked for more on the trade question. Here is a draft response. Anything to add?

Jane, here are some thoughts based on the nature of the initiatives currently contemplated:

1. Helping the most vulnerable by enhancing electricity support programs and shifting cost onto the tax-base:

- Rural or Remote Electricity Rate Protection (RRRP) Enhancement (Delivery Charge Relief);
- Ontario Electricity Support Program (OESP) Expansion;
- LDC Affordability Fund; and
- First Nations Rate.

These initiatives target residential consumers. They help businesses by moving costs from the rate base to the tax base, but they are not targeted to help business. The policy rationale for the move to the tax base is that these are social programs, not electricity sector costs.

2. Ongoing activities to bend the future cost curve of electricity:

- Ontario Energy Board (OEB) – Identify opportunities for OEB red-tape reduction and future LDC efficiencies and rates.
- Independent Electricity System Operator (IESO) – Modernize Ontario's electricity market through electricity Market Renewal initiatives.

These initiatives are targeted at energy sector participants (the OEB as an independent, quasi-judicial regulator, the IESO as a statutory non-share capital corporation whose directors are appointed by the government, but which is not a Crown agent). As with the initiatives above, business would benefit from costs savings found through efficiencies in these organizations, but these are not measures targeted at business.

3. Smoothing the global adjustment (GA) to provide significant and immediate rate relief through cost deferral of the GA:

- Implementation Model.
- Smoothing Mechanism; and

The GA model currently under consideration targets RPP customers, typically residential customers and small businesses, like convenience stores, and won't have an impact on larger businesses (Class A or B).

As of this morning, I heard that Energy will also look at options aimed at reducing costs for Class B electricity consumers, who tend to be the medium sized businesses and small manufacturers. We will likely need a proper trade analysis of these initiatives, which could be seen as subsidies.

From: Mallen, Jane (MAG)
Sent: February-13-17 12:58 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Subject: RE: Rate mitigation options

Do you mind sending me, at your earliest convenience, a better explanation to Irwin's question about trade risks? Thanks

From: Mallen, Jane (MAG)
Sent: February-13-17 8:35 AM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Subject: Fw: Rate mitigation options

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>
Sent: Sunday, February 12, 2017 1:33 PM
To: Mallen, Jane (MAG); Perun, Halyna N. (MOECC)
Cc: Helie, Michel (MAG)
Subject: Re: Rate mitigation options

I can't see how the ideas being proposed would raise trade risks. The lawyers in our office who have worked on the trade files are on the rate mitigation file as well, and they haven't flagged anything so far.

From: Mallen, Jane (MAG)
Sent: Sunday, February 12, 2017 12:13 PM
To: Johnson, Paul (ENERGY/MEDEI/MRI); Perun, Halyna N. (MOECC)
Cc: Helie, Michel (MAG)
Subject: Re: Rate mitigation options

Thanks, Irwin has asked whether there are any trade risks with the proposal. If I recall correctly, the rate mitigation options are focused on residential rate payers such that the trade agreements wouldn't be engaged but can you please confirm?

Also, Irwin has asked that the MAG note address the necessary steps for the Province to introduce a tax. Michel, I believe Ashley will be following up with you directly on that issue but wanted to give you a heads-up.

Jane

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Johnson, Paul (ENERGY/MEDEI/MRI)
Sent: Sunday, February 12, 2017 10:56 AM
To: Mallen, Jane (MAG); Perun, Halyna N. (MOECC)
Cc: Helie, Michel (MAG)
Subject: Re: Rate mitigation options

I've seen no traffic this weekend.

From: Mallen, Jane (MAG)
Sent: Sunday, February 12, 2017 10:04 AM
To: Perun, Halyna N. (MOECC); Johnson, Paul (ENERGY/MEDEI/MRI)
Cc: Helie, Michel (MAG)
Subject: Re: Rate mitigation options

Hi Paul, do you have updates?

Thanks,
Jane

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Perun, Halyna N. (MOECC)
Sent: Friday, February 10, 2017 7:30 PM
To: Johnson, Paul (ENERGY/MEDEI/MRI); Mallen, Jane (MAG)
Cc: Helie, Michel (MAG)
Subject: Re: Rate mitigation options

Ok thanks Paul

Halyna Perun
Office: 416-327-2125
BlackBerry: 416-671-2607
May contain confidential and privileged information .

From: Johnson, Paul (ENERGY/MEDEI/MRI)
Sent: Friday, February 10, 2017 7:19 PM
To: Mallen, Jane (MAG); Perun, Halyna N. (MOECC)
Cc: Helie, Michel (MAG)
Subject: Re: Rate mitigation options

Another turn of the deck is supposed to come tomorrow. I'll have a clearer picture then.

From: Mallen, Jane (MAG)
Sent: Friday, February 10, 2017 7:03 PM
To: Perun, Halyna N. (MOECC); Johnson, Paul (ENERGY/MEDEI/MRI)
Cc: Helie, Michel (MAG)
Subject: Re: Rate mitigation options

Paul, please let us know what the proposal is re: the GGRA proceeds.

Also, do you have any information re: timelines for the cab sub? Do you still need some bullets on the legals?

Halyna, pls hold off re: bringing in your DM. We will flag this for the DMO once we have a better sense of what the proposal is.

Thanks,
Jane

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Perun, Halyna N. (MOECC)
Sent: Friday, February 10, 2017 6:50 PM
To: Johnson, Paul (ENERGY/MEDEI/MRI); Mallen, Jane (MAG)
Subject: Re: Rate mitigation options

Does the rate mitigation item include GGRA proceeds? Shall I be flagging this for my DM?

Halyna Perun
Office: 416-327-2125
BlackBerry: 416-671-2607
May contain confidential and privileged information .

From: Johnson, Paul (ENERGY/MEDEI/MRI)
Sent: Friday, February 10, 2017 6:24 PM
To: Mallen, Jane (MAG); Perun, Halyna N. (MOECC)
Subject: RE: Rate mitigation options

Hi – our meeting just finished. I understand ENERGY has not reached out to MOECC. We were also told that although the rate mitigation item is going to Cabinet on Wednesday, it will be as an information item, not to seek decisions.

Paul

From: Mallen, Jane (MAG)
Sent: Friday, February 10, 2017 5:56 PM
To: Perun, Halyna N. (MOECC); Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: Rate mitigation options

Hi Halyna,

We found out from Energy this aft that a proposal to use GGRA proceeds to fund (partially fund?) conservation initiatives appears to be back on the table.

Paul was hoping to get more clarity in a meeting he was attending at 5:00. He doesn't know if MOECC has been engaged (my guess is not).

The larger rate mitigation proposal is going to Cabinet on Wednesday and CLB is providing advice on some aspects of the proposal.

We'll keep you posted. If there's an issue re: bringing in MOECC, our DMO will assist.

Jane

P.s. I haven't copied Carolyn as she is off today and I am trying not to bug her!

Sent from my BlackBerry 10 smartphone on the Rogers network.

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.

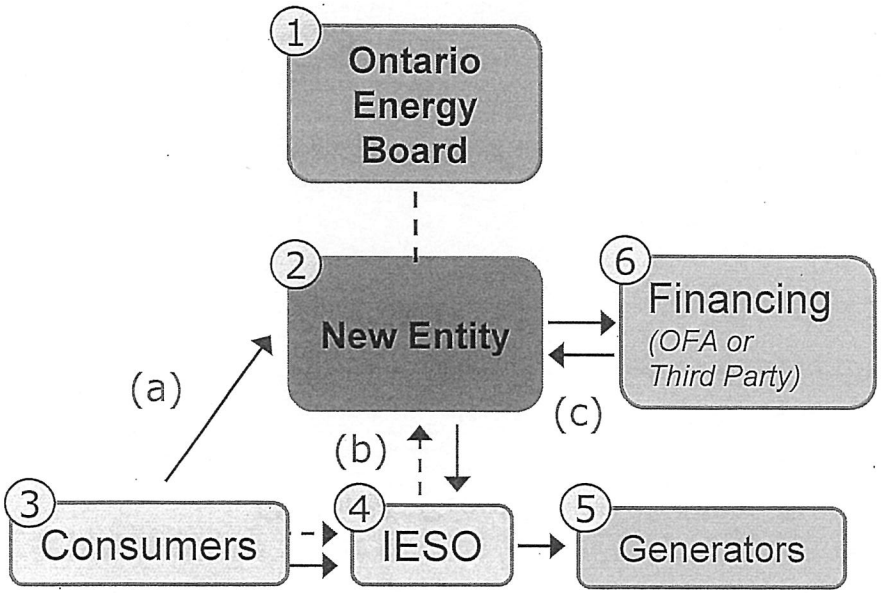
- Two leading options are under consideration:

  - 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 2/3rds of Hydro One R1 and R2 customers would experience cost increases if this was implemented:
  - R1: ~146k customers would see cost decreases, and ~298k customers would see cost increases.
  - R2: ~117k customers would see cost decreases, and ~217k customers would see cost increases.
- However, support from the fiscal plan can be used to accelerate the move to fixed rates for those high volume consumers who benefit – leaving low volume consumers to experience no change.
  - Hydro One estimates this would cost $64 million. If the move was expanded to include Hydro One Urban (UR rate class) and Seasonal customers, the cost would be ~$90 million.
  - When layering on the current RRRP support of $242 million, program costs are between $306-$332 million.
  - As the move to fixed rates was completed, fiscal plan support for these customers could be withdrawn.

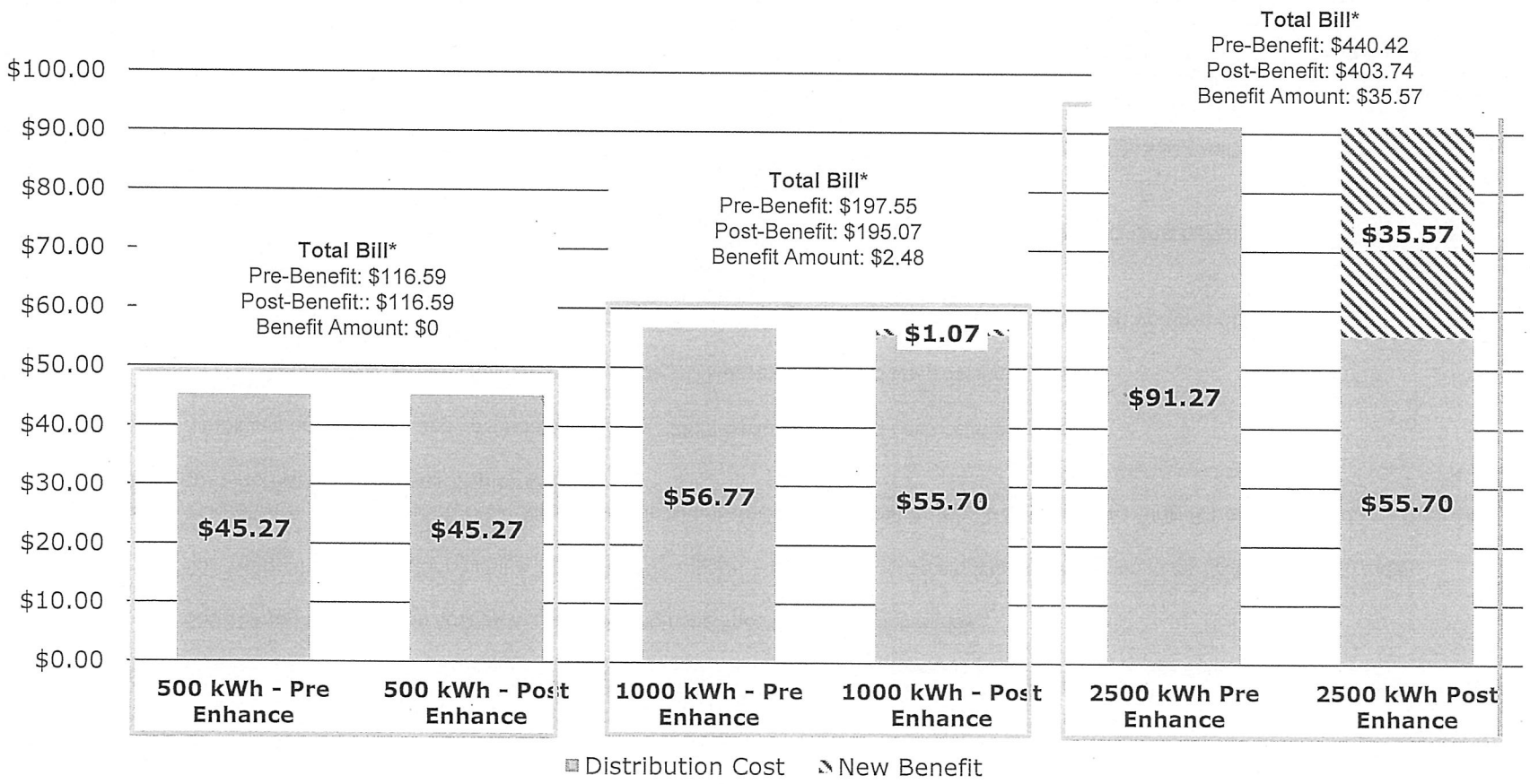
Accelerated Fixed Rate Benefit Fiscal Impact						
	2018	**2019**	**2020**	**2021**	**2022**	**2023**
Fixed Rate Enhancement*	$64M-$90M	$52-$72M	$38M-$54M	$26M-$36M	$13M-$18M	$0
Total RRRP** (inclusive fixed rate enhancement, excluding Algoma Power & Hydro One Remotes)	$306-$332M	$300-$320M	$293-$309M	$287-$297M	$281M-$286M	$275M

*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

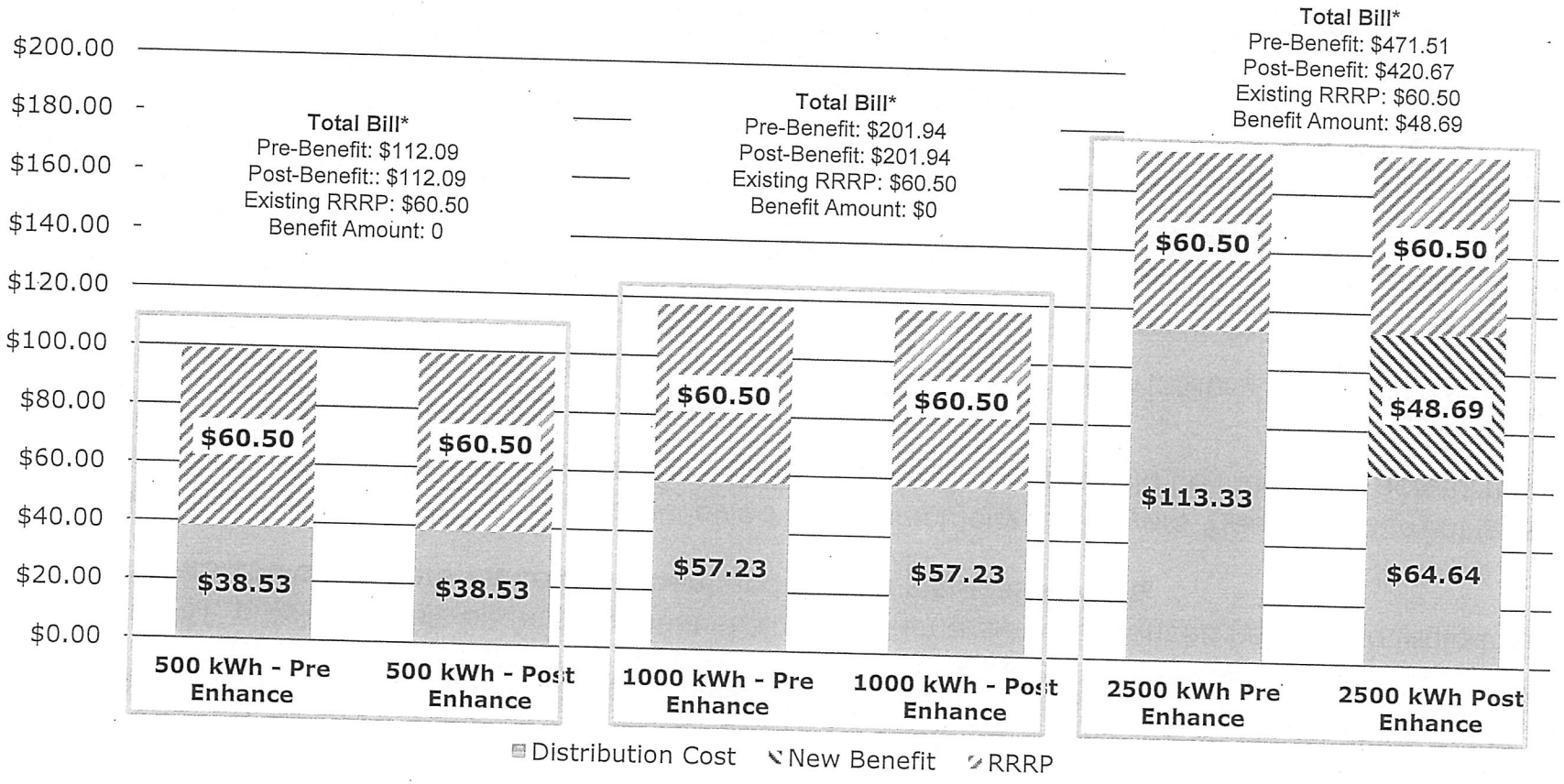
2a. RRRP Enhancement – Hydro One Mid-Density (R1) Ratepayer Impacts

- 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

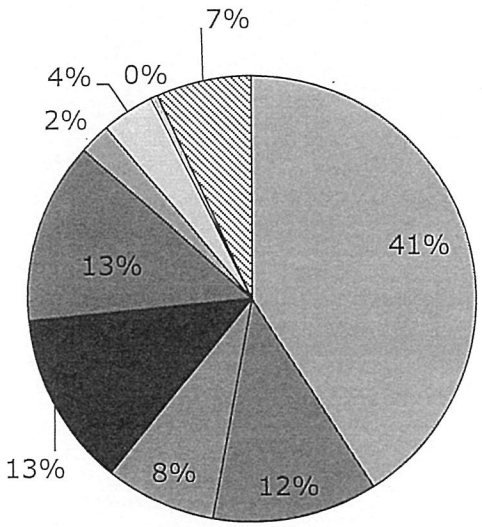
- Changes related to IESO's Market Renewal initiatives, reflected in HOEP and uplifts, are estimated to save up to $300 million per year, starting in 2021, leading to a reduction of:
  - About $1/month or less than 1% at current retail prices for a typical residential bill; and
  - About $1.30/MWh at 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

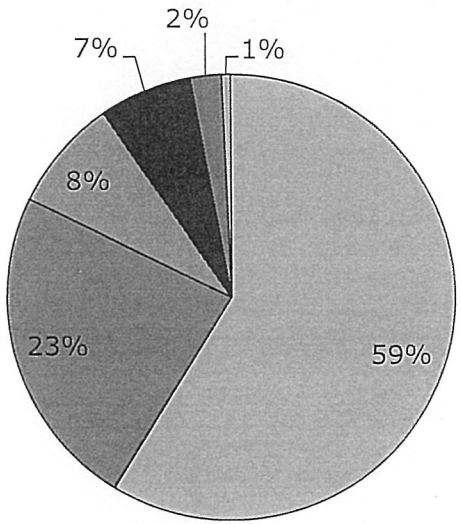
GA Smoothing – Cost Breakout

- 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.

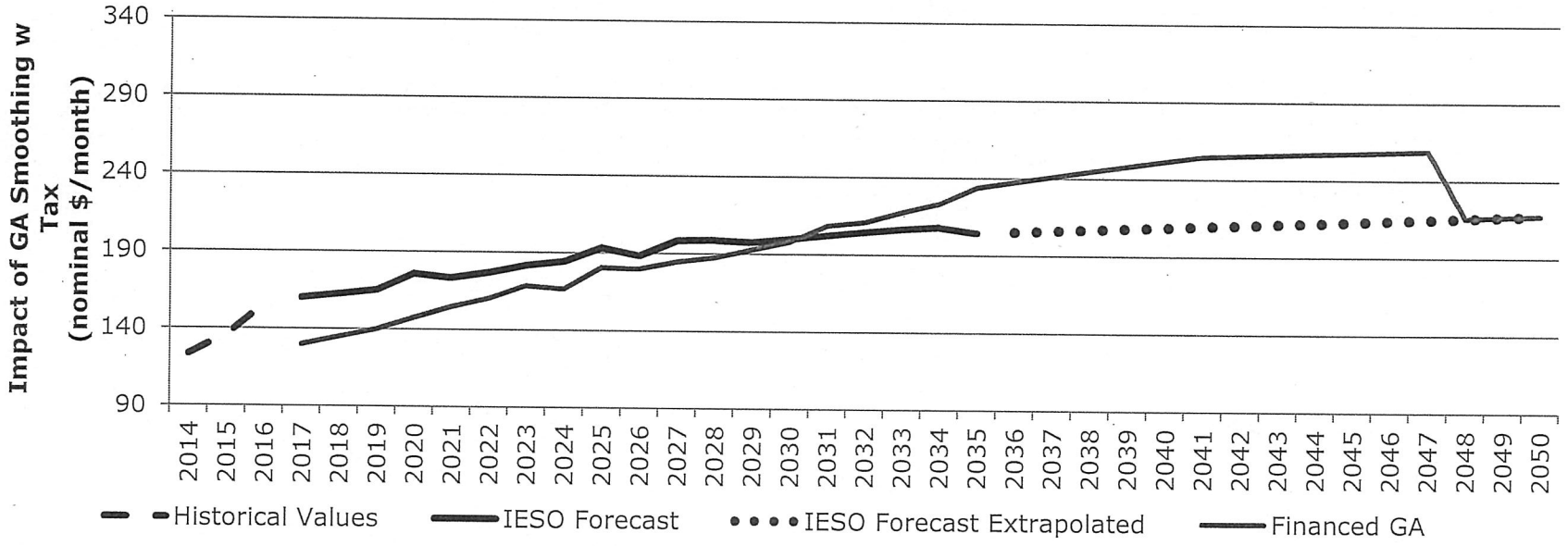
Residential (750 kWh/month)	Actual 2016	2017	2018	2019	2020	2021
Total Bill (includes HST)	**163**	**172**	**175**	**178**	**189**	**187**
Total Bill (excludes HST)	145	153	155	158	168	165
Impact of GA Financing		-27	-25	-22	-25	-17
Impact of Tax-Basing Social Programs		-2	-2	-2	-3	-3
Subtotal		123	128	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.

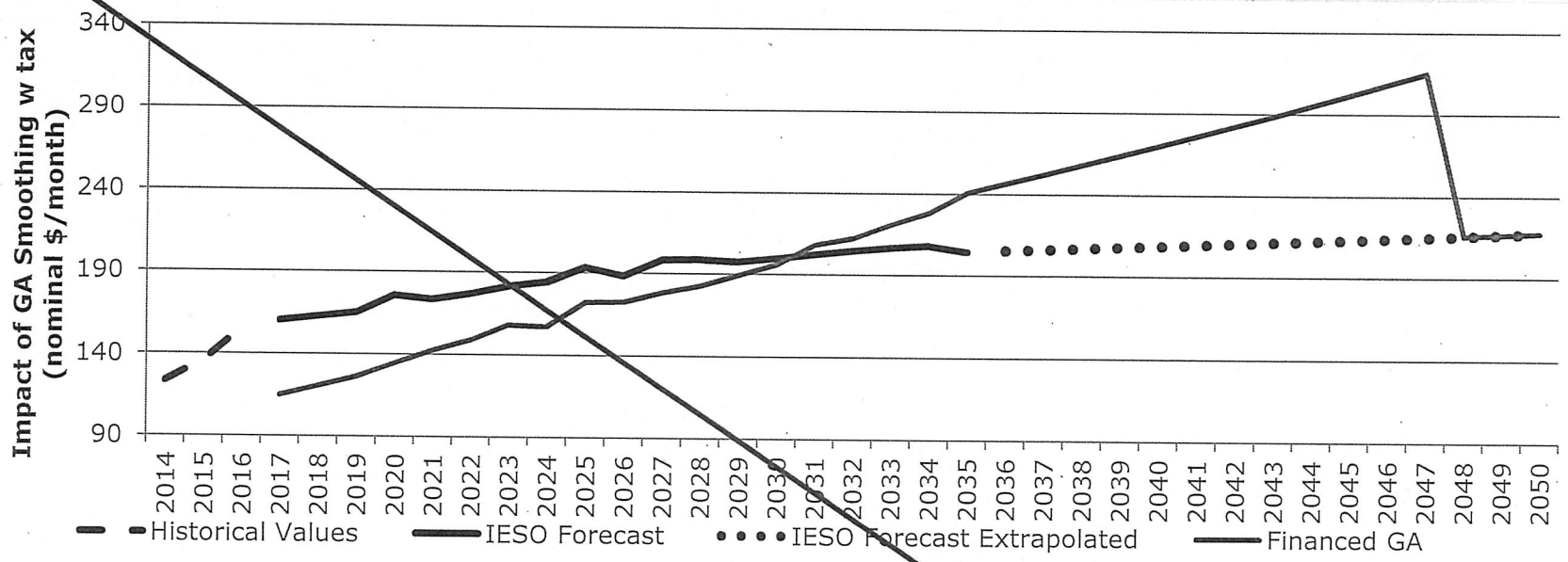
Residential (750 kWh/month)	Actual 2016	2017	2018	2019	2020	2021
Total Bill (includes HST)	**163**	**172**	**175**	**178**	**189**	**187**
Total Bill (excludes HST)	145	153	155	158	168	165
Impact of GA Financing		-40	-37	-35	-37	-28
Impact of Tax-Basing Social Programs		-2	-2	-2	-3	-3
Subtotal		110	115	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.

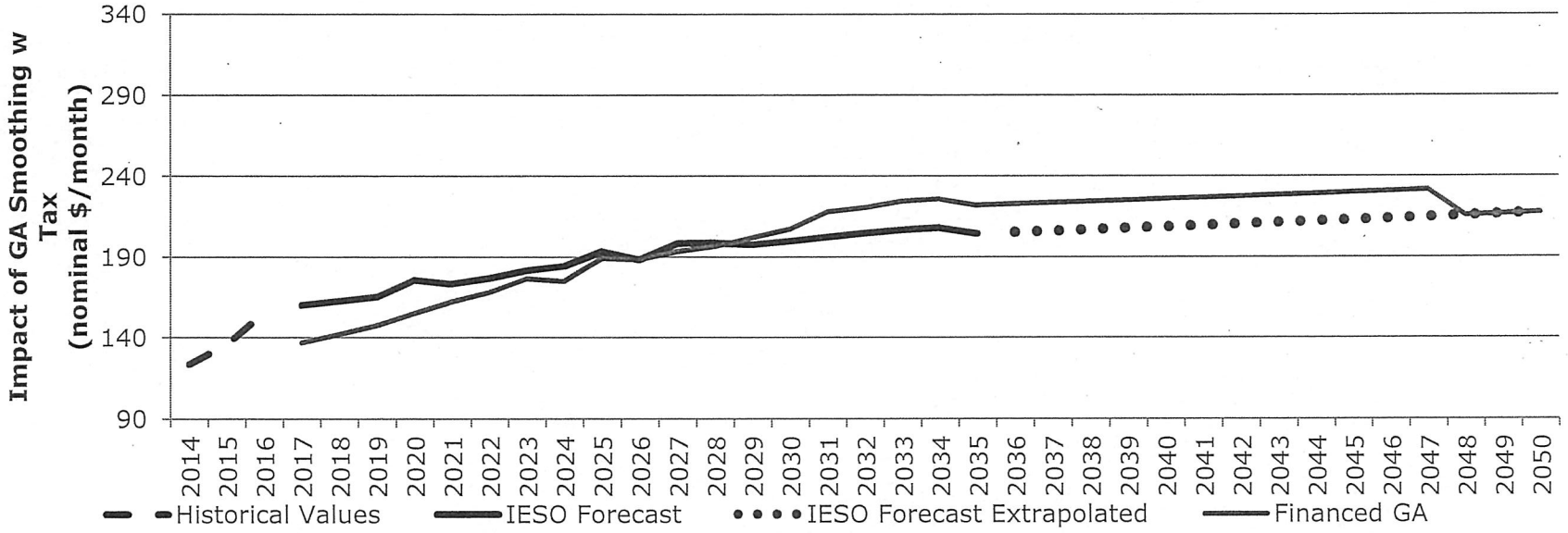
Residential (750 kWh/month)	Actual 2016	2017	2018	2019	2020	2021
Social Programs Expansion		0.5	0.7	0.9	1.1	1.2
Total Bill (includes HST)	**163**	**173**	**176**	**179**	**191**	**188**
Total Bill (excludes HST)	145	153	156	158	169	167
Impact of GA Financing		-21	-18	-16	-18	-10
Subtotal		132	137	143	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.

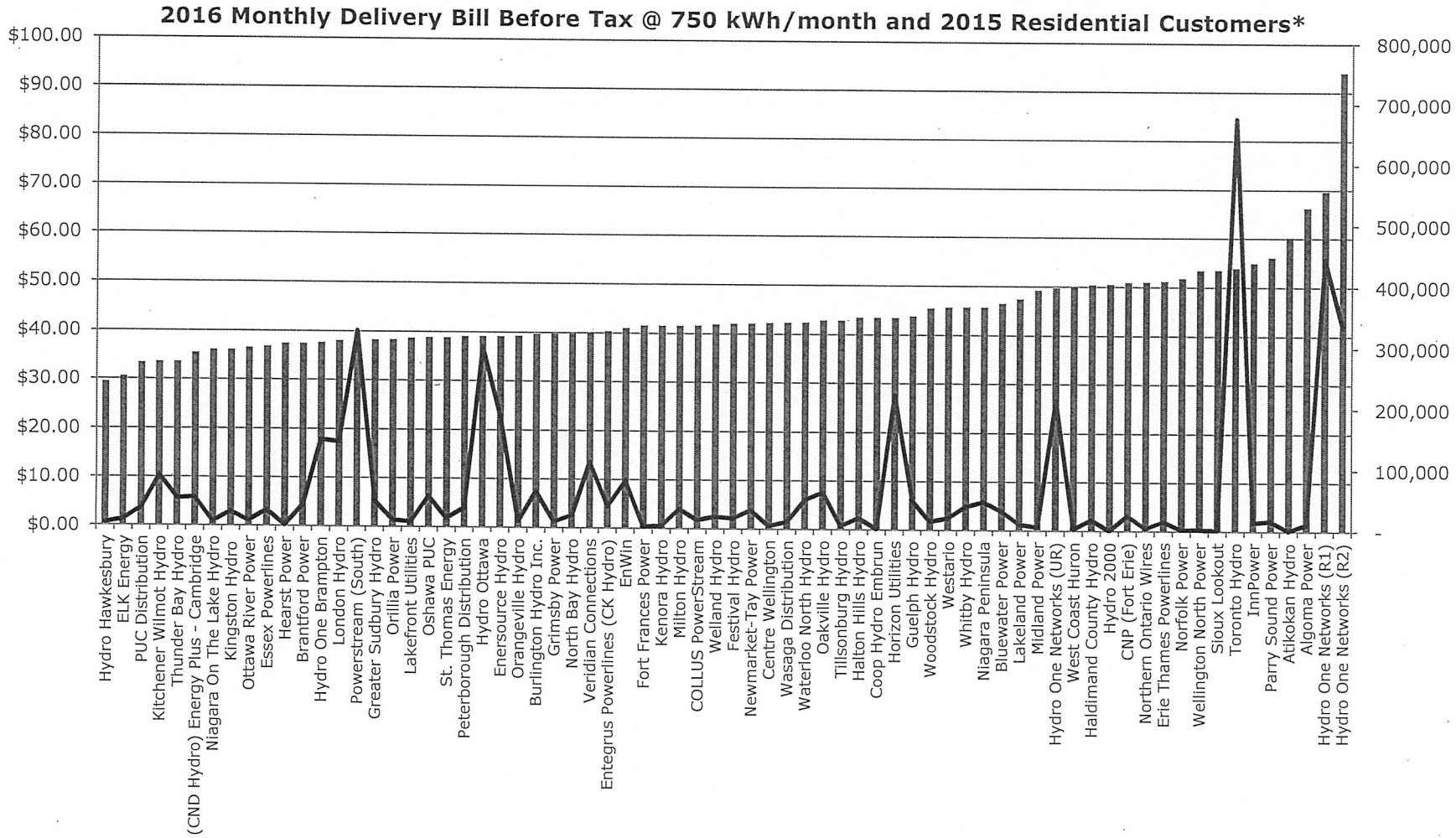
- Other indicators that may provide evidence of control exist when the government has the power to:
  - Provide significant input into the appointment of members of the governing body of the organization;
  - Appoint or remove the CEO or other key personnel;
  - Establish or amend the mission or mandate 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.

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JPR Instructs – GAM (Feb 10-17) based on GOV2016.146.e
2-TK

Electricity Amendment Act, 2016 (Proceeds Recycling)

EXPLANATORY NOTE

[Insert explanatory note.]

This draft has not been edited.

ENE to confirm consultation plans with MOECC and MOF (and CLB?)

ELECTRICITY ACT, 1998

1. Section 1 of the *Electricity Act, 1998* is amended by adding the following clauses:

(d.1) to continue, create or facilitate the continuance or creation of initiatives that are reasonably likely to reduce or to support the reduction of greenhouse gas,[1] including initiatives relating to electricity conservation and efficiency or to the use of cleaner energy sources and technologies, and to provide mechanisms for mitigating related costs to consumers;

(d.2) to establish one or more mechanisms to facilitate the Government of Ontario's policy to smooth electricity prices and to recover from consumers the costs associated with such activities, including policies designed to ensure that those consumers who benefit from investments made in generation, conservation, demand-management and energy efficiency bear an appropriate share of those costs; ***[ntd-jpr: This new object is designed to provide further authority context for Government to be able to establish rate-(GA) smoothing mechanisms, including mechanisms which [re]-allocate the value future benefits to today's consumers ("intergenerational fairness" is the organizing principle), and costs associated with future benefits to future consumers. This is consistent with our CLB advice on the GAM proposals.]***

Ntd-jpr: Hi, OLC Counsel:. These amendments are focussed on two key changes to the existing global adjustment mechanism (GAM) provisions (including related regulation-making authority) associated with ENERGY's rate smoothing strategy.

[1] FLS: See s. 71 (2) para. 2 of the Climate Change... Act.

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Comment [JPR1]: This portion of the drafting relates to the legacy GGRA work that we had done over the summer. It is a bit of a template for the work we're doing now with GAM refinancing.

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1) **IESO Makes payments to and from a newly-established entity** (e.g. corporation or trust) designed to borrow large sums of money on behalf of consumers and to pay amounts to the IESO to allow the IESO to pay those amounts into GAM as an offset to the amounts that consumers would otherwise have to pay (similar to the GGRA idea but instead of receiving money from Government's GGRA (an account within the crf) this would be money from an entity which deals at arms length from both Government and the IESO. Dan Shear is to instruct on the entity. The real difference between the payment flows between the IESO under the GGRA scenario versus "the entity" scenario is that for the latter, the IESO would also be collecting amounts to **repay the entity** (including capital and interest charges) for the amount the entity borrows. Those amounts are collected from consumers. Significant amounts would need to be borrowed in order to lower consumers GAM-related costs up-front to give them an appreciable (25 or 30 percent) total bill reduction. The repayment schedule would increase over time and add to both the cost at the later end (see deck (Feb 6/17 version) at slides 5 – 9 for an indication of how the bill impact would look for average consumers over the next 15 to 20 years.).

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[NTD-JPR: We need to amend the IESO Fees-making provision at s.25.1 to ensure

x. (2) Section 25.1 of the Act is amended by adding the following subsection:

(2) the IESO shall establish a fee to recover from consumers ***[all or a portion of? the]*** administrative, operational and management costs of the Financing Subsidiary to the financing or refinancing of all or a portion of the amounts otherwise payable by consumers pursuant to section 25.33 and the regulations, including but not limited to all or a portion of the administration and operating expenses of the entity *[corporation]* referred to in x.

(2.1) The IESO shall establish and maintain separate accounts reflecting the amounts collected from consumers and paid to the entity referred to s.53.x of the Act, from any other books or accounts related to its operations or the fees that it collects for those purposes.

Comment [JPR2]: I'm still considering whether we need to address the IESO's "Fees" provisions which could be designed to recover any amounts related to the costs associated with GAM refinancing: it may be redundant to the IESO's GAM cost-recovery authority specified below. However, it may be an important "back-stop" to the GAM-related authorities to ensure that stray amounts not easily relatable to the borrowed funds (such as a share of the new entity's administrative operating expenses) can be recovered.

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x. (1) Clause 25.33 (1)(a) of the Act is amended by adding "the entity *[corporation]* referred to in section x", after "Financial Corporation" and replace "under section 78.1, 78.2 or 78.5" with "under 78.1, 78.2, 78.5 or 78.6".

Comment [JPR3]: See in OEBA-related amendments: new s.78.6 to deal with IESO payments to new entity and OEB oversight.

x. (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a), by adding "and" to the end of clause (b) and by adding the following clause:

(c) amounts received by the IESO, directly or indirectly, from the Greenhouse Gas Reduction Account established under section 71 of the *Climate Change ~~Mitigation~~ Smoothingand Low-Carbon Economy Act, 2016* for the funding of greenhouse gas reduction initiatives under this Act or the *Ontario Energy Board Act, 1998* for which the costs are, or would otherwise be, borne in whole or in part by consumers.

(d) amounts received by the IESO, directly or indirectly, from **[the entity referred to in Part x]**, for which the costs are, or would otherwise be, borne in whole or in part by consumers. ***[ntd-jpr: part of the rate-smoothingplan relating to GAM is to create a separate entity (either a trust or other not-for profit entity which is capable of either borrowing or receiving borrowed funds and ensuring that the borrowed funds themselves and the costs of the borrowed funds, (e.g. the interest/financing costs which are expected to be quite significant), are recovered from consumers. The current plan is to have the IESO continue to act as the settlement agent for consumers – it would receive amounts from the entity to flow into and through GAM using those amounts to reduce GAM liability, and recover and much much later down the road, the costs of borrowing (capital plus interest) from consumers. The GAM-related amendments are designed to ensure that there is an appropriate "line in" and "line out" of GAM in respect of amounts the IESO is supposed to receive from the entity and, over time, pay out to the entity relating to the borrowed funds and interest costs.***

(e) amounts payable by the IESO, on behalf of consumers, to **[the entity referred to in Part x]**.

(2) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a), by adding "and" to the end of clause (b) and by adding the following clause:

(c) amounts received by the IESO, directly or indirectly, from the Greenhouse Gas Reduction Account established under section 71 of the *Climate Change ~~Mitigation~~ Smoothingand Low-Carbon Economy Act, 2016* for the funding of greenhouse gas reduction initiatives under this Act or the *Ontario Energy Board Act, 1998* for which the costs are, or would otherwise be, borne in whole or in part by consumers.

OLC Counsel:, next we need to require that distributors make adjustments in their account which recognize the funds (amounts) received from the IESO that are

Comment [JPR4]: This relates to potential GGRA funding via GAM.

Comment [JPR5]: These are the costs related to GAM which consumers are otherwise responsible for, but for which the amounts paid out by the new entity are being used, in part, to address (lower).

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paid by the entity (the borrowed funds) in order to combine those amounts with the amounts that consumers will pay under clause 25.33(2)(a):

(d) amounts received by the IESO, directly or indirectly, from Financing Subsidiary for which the costs are, or would otherwise be, borne in whole or in part by the following classes of consumers;

(i) Consumers who participate in the Board's Regulated Price Plan established under section 79.16 of the *Ontario Energy Board Act, 1998*; ***[ntd-jpr: to which subsection 79.16 and regulations made thereunder apply.] Note: s.79.16(1) authorizes the OEB to create its Regulated Price Plan (RPP) and O. Reg. 95/05 (Classes of Consumers and Determination of Rates) fixes the classes of consumers who are eligible to participate in the RPP. Some "opt out" (per s.79.16(4) for retail contracts – I assume that they, too, would be entitled ot receive the benefits of and costs of "rate smoothing"]***. and,

(ii) Consumers who are eligible to participate in the Board's Regulated Price Plan established under section 79.16 of the *Ontario Energy Board Act, 1998* and who have entered into a contract with a retailer;

(iii) Consumers who are served by a sub-metering entity; ***[ntd-jpr: this provision may require further discussion/building out.]***

(e) amounts payable by the IESO, on behalf of consumers, to the Financing Subsidiary.

[ntd-jpr: one of the purposes of our GA-related work is to reflect the "intergenerational" nature of the benefits (and costs) that we're attempting to reallocate. I've tried to tailer an object (mocked-up above as an amendment to s.2)

x. Section 25.33 is amended by adding the following subsection after subsection (5):

[OLC Counsel:, below I'm trying to clarify that for the GGRA funds received by the IESO, that the IESO may be required (via regulation – amendments to O. Reg. 429/04) to settle certain contracts and classes of contracts with certain generators and classes of generators using GGRA amounts. This is to ensure that Government can always track the GGRA funds as specifically and separately as required in order to match those amounts paid out of the GGRA with the GHG-lowering initiatives which the contracts and classes of contracts represent].

GGRA funding, separate payments and tracking,

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Comment [JPR6]: These are the costs related to GAM which consumers are otherwise responsible for, but for which the amounts paid out by the new entity are being used, in part, to address (lower).

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Comment [JPR7]: Here we're ensuring that distributors must recognize amounts that consumers have to *pay back* to the entity (and its financiers) including borrowed funds, interest and carrying charges. Probably has to include admin and operational-related costs of running the entity.

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(5.1) If required by the regulations, the IESO shall separately track and account for the amounts it receives pursuant to clause 25.33(1)(c) and to direct such amounts to the contracts and generators or classes of contracts and generators as may be prescribed.

Financing Subsidiary funding, separate payments and tracking.

(5.2) For the purposes of ensuring that amounts received from the Financing Subsidiary are paid toward the costs consumers are otherwise required to bear pursuant to section 25.33, the IESO shall, on behalf of consumers or the Financing Subsidiary,

(a) allocate amounts received from the Financing Subsidiary toward the amounts otherwise payable by consumers under section 25.33(1) in accordance with ***[ntd for clients; need instructions here: the schedule approved by the Board? Alternativley, do we plan to place instructions right in the legislation? Consider.]***

(b) recover the amounts ***[ntd:; these are the amounts borrowed by the financing sub including interest costs]*** to be paid by the IESO to the Financing Subsidiary pursuant to subsection 25.33(2) from consumers in accordance with ***[ntd for clients: need instructions here: the schedule approved by the Board? Alternativley, do we plan to place instructions right in the legislation? Consider.]***

(c) recover the amounts, on behalf of the Financing Subsidiary, of administrative, operating ***[ntd-jpr: operational?]*** and management costs and fees associated with the Financing Subsidiary's ***[ntd: rate smoothing?]*** activities conducted on behalf of consumers from consumers.

(d) separately track and account for,

(i) the amounts received from the Financing Subsidiary *[ntd: and allocated toward the amounts/costs provided for under section 25.33 (1) that consumers would otherwise bear;*

(ii) the amounts paid to the Financing Subsidiary *[ntd: related to the amounts referred to in sub-clause (i));*

(iii) the amounts that that the IESO pays to the Financing Subsidiary related to the Subsidiary's administrative, operational and management costs;

(iv) the amounts related to (iii) that are recovered from consumers; and,

Comment [JPR8]: This is just preserving the GGRA-traacking/tracing to specific FIT and GEIA contracts amounts. The IESO must separately track for future audit.

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(v) any variances between the amounts reflected in subclauses (i) and (ii), or the amounts reflected in subclauses (iii) and (iv) or such variances which relate to any of the amounts reflected in subclauses (i) through (iv) that the IESO deems appropriate;

True up,

(5.3) The IESO shall annually, or more frequently as is practicable, recover from consumers and pay to the Financing Subsidiary, any amounts determined under this section ***[ntd: could isolate to subsection (5.2)]*** which are due and payable to the Financing Subsidiary.

Entity funding, distributors, separate payments and tracking,

(5.3) If required by the regulations, distributors and retailers shall separately track and account for the amounts received from the IESO, and payments it makes to the IESO, the entity ***[corporation]*** referred to under Part X of the Act, pursuant to ***clause 25.33(1)(d) or (e)***, and to direct such amounts to the entity *[corporation]* in such manner as may be prescribed.

Instructions (for ensuring reg-making authority can capture what it needs to) how O. Reg. 429/04 would need to reflect (track separately) both the amounts related to GGRA funding and / or funded via refinancing (settlements with the new "Entity")

O. Reg. 429/04, s.1.1 - New "J" for Master Formula -- Reflecting the Re-Financing of GAM at the Regulation Level

-Define new element of master formula, "J", to track amounts funded through the new entity (e.g. the amount to be financed). Then ensure that the Master formula reflects either the "inclusion" of this amount

J is the net amount received or owed to *the entity under Part X of the Act* and which relates to the amounts:

1. Received by the IESO *[each month]* from the entity in accordance with *[the schedule approved by the Board]* under s.x; plus,
2. Payable to the Entity each month by the IESO in accordance with the schedule approved by the Board under s. x.

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[next, back up at the legislative level, could we next track this through to the reg. making authority in s.114(1.3)(f)]

Regarding whether we need to specify that adjustments under (c) may be made only with respect to certain classes of consumers, my current take is that I don't think so, and this is why:

- Both s. 25.33 (1) and (2) make clear in their opening flushes that the adjustments may be with respect to certain, but not all, market participants/consumers.
- S. 114 (1.3) (f) (i) provides authority to prescribe classes of market participants and consumers to whom adjustments will apply.
- S. 114 (1.3) (f) (ii) is a bit different, but still refers to classes of consumers/distributors/retailers in respect of which prescribed adjustments would be made.
- S. 114 (2) confirms that a regulation made under s. 114 (1) or (1.3) may be general or particular in its application.

Of course, we could be more express, but that would inevitably draw attention to the fact that the consumers who may receive the benefit of the adjustment and the consumers paying for the initiatives don't exactly line up. Just to keep it in mind, there are two sets of consumers we're talking about here…the ones who are funding the initiatives (ie, the "consumers" referred to in clause (c)), and the ones who would be within a class that would get the benefit of the adjustment that all consumers pay (the consumers who would be within the prescribed class). I think you're only prescribing the latter. Happy to discuss.

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Comment [JPR9]: Relates to the legacy GGRA funding of GAM work.

(3) Section 25.33 of the Regulation is amended by adding the following subsection:

Additional requirements

(9) The Lieutenant Governor in Council may, by regulation, require the IESO, a distributor, retailer, generator or any other licence holder to take the steps prescribed by the regulations in the manner and time prescribed by the regulations, in order to implement or facilitate the implementation of the adjustments for the amounts referred to in clauses (1) (c), (1)(d) and (1)(e), ~~and~~ (2) (c), (2)(d) and (2)(e).

1. Given the potential breadth of application of this provision, I thought it better to "surface" it into the provision itself, and not just deal with it in the reg-making provision. Again, my earlier caveats apply…it's hard to know in the abstract what this would and wouldn't authorize. Obviously not something that would conflict with the Act. Long story short, without specifics there's no guarantee that this'll let you do what you need it to do, at the end of the day.

2. The fact that this is specific to clauses (c) may attract comment, e.g., why would you need this for clauses (c) and not for clauses (a) or (b)?

Comment [JPR10]: Relates to the legacy GGRA funding of GAM work.

x. (1) Subclause 114 (1.3) (f) (ii) of the Regulation is amended by adding "under subsection 25.33 (2)" after "that must or may be made".

TBD whether s. 114 (1.3) (f) (i) and (ii) need further amendment, given the inclusion of the new clause (c) in s. 25.33 (1) and (2). I don't see anything at this point that would need changes. *[ntd-jpr: Thanks, OLC Counsel: – could we also consider s.114(1.3)(f) from the perspective of s.25.33(1)(d), (e) and (2)(d), (e).]*

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(2) Subsection 114 (1.3) of the Regulation is amended by adding the following clause:

(g.0.1) requiring the IESO, a distributor, retailer or generator or any other licence holder to take specified steps, including [...], in order to implement or facilitate the implementation of the adjustment of the amounts referred to in clauses 25.33 (1) (c) and (2) (c), and prescribing the manner in which and the timing by which the steps must be taken,

Please provide examples, if possible, so that we can consider, (a) whether this 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.

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~~ smoothingand greenhouse gas reduction.

7. To facilitate the implementation of the policies of the Government of Ontario respecting the smoothingof electricity prices.

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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~~ smoothingand greenhouse gas reduction.

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x. Section 27.1 of the Act is amended by adding the following paragraph:

Hearings

(1.1) A directive may specify whether the Board is to hold a hearing, the circumstances under which a hearing may or may not be held and, if a hearing is to be held, the type of hearing to be held and the time within which it must be held.

The underlined is what makes this different from the other provisions in the Act that basically have the same wording. There are already a number of places in the Act where you have this type of hearings provision re directives (e.g., s. 27.2 (7)). If you basically want the same authority in each instance, then the wording should be consistent in each case. There are already some discrepancies between the current provisions (e.g., s. 27.2 (7) talks about types of hearings, whereas s. 28 (2) doesn't). Differences in wording will typically be presumed to be differences in meaning. So, the question is what you're intending to authorize in each case, and whether differences are intended. If you want the same thing everywhere, it should all be worded the same. Let me know.

x. The Act is amended by adding the following section:

Payments to the Entity, etc.

78.6 (1) The IESO shall make payments to the entity referred to in Part X of the *Electricity Act, 1998* with respect to amounts borrowed by that entity for the purposes of mitigating their electricity prices;

Interest, etc.

(2) The IESO shall make payments to the entity referred to in Part X of the *Electricity Act, 1998* with respect to any interest paid or payable by the entity in respect of the

Comment [JPR11]: This next section combines the IESO's authority (requirement) to make payments to the entity and to recover amounts from consumers in accordance with the OEB-supervised (approved) payments and cost recovery schedule. It's a light-handed way of putting the OEB in a supervisory role without licensing. The IESO has to annually report on the payments to / from the entity and amounts collected from consumers, including any month-to-month/year-to-year variances.

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amounts borrowed by that entity on behalf of consumers for the purposes of mitigating their electricity prices;

Amount and timing of payments,

(3) The amount and timing of the payments referred to in subsection (1) shall be

Clients: option 1: approved by the Board?

: option 2: prescribed by the Regulations?

: option 3: a function of the financial contracts and other arrangements referred to in s. 25.32.2(1) of the *Electricity Act, 1998 [A new provision we've just designed?]*

Debts of entity,

(3) The payments referred to in subsections (1) and (2) are deemed to be debts payable to or accounts receivable of the entity and not those of the IESO;

IESO to collect

(4) The IESO shall collect from consumers the amounts referred to in subsection (1) and (2) on behalf of the entity, and recover those amounts from consumers, on behalf of the entity, over time, in accordance with the regulations or any order of the Board ***[ntd-jpr: this allows the OEB to establish a repayment schedule and collection (cost-recovery) schedule.]*;**

Variance accounts, etc.,

(5) For the purposes of this section, the IESO shall establish one or more variance or deferral accounts to separately track, administer and pay the amounts referred to in this section.

Board oversight

(6) At least once during each fiscal year and as often as the Board may require, the IESO shall submit to the Board and the Board shall review, a report detailing the payments and amounts that the IESO has paid or collected under this section:

(a) Payments made during the fiscal year to the entity;

(b) The amounts collected on behalf of the entity from consumers;

(c) The amounts which are reflected in any deferral or variance accounts *[ntd-jpr: which track or reflect the differences]*;

(d) Such other information as the regulations or the Board may from time to time require.

Commencement

xx. This Act comes into force on [insert commencement rule].

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What are the commencement instructions?

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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 conclus re basket + 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:

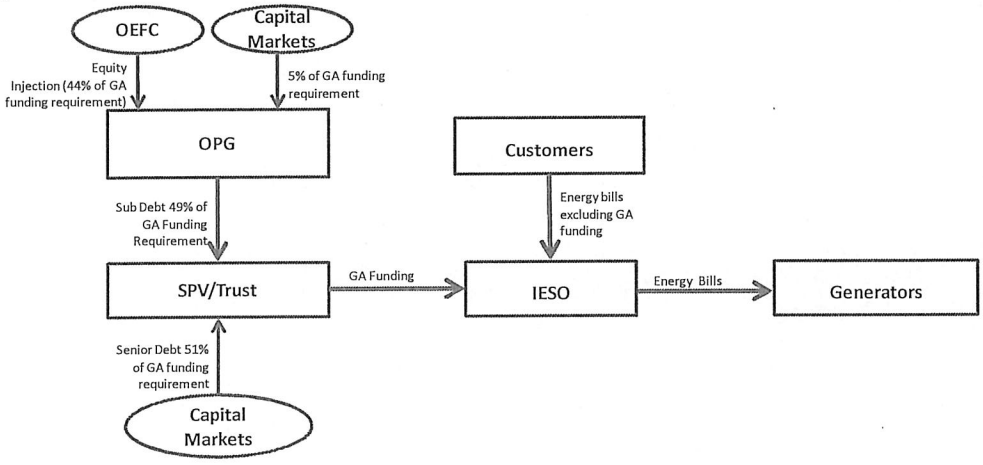
- restrict the risk to OPG;

- 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.