5 (MARCH 24-17) BASED ON CONFIDENTIAL

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Fair Hydro Plan Act, 2017 (Generational Redistribution -- GAM)

EXPLANATORY NOTE

[Insert explanatory note.]

NEW PURPOSE CLAUSE(s):

There has been strong interest in adding Purpose" clauses that highlight the following:

- The importance of achieving intergenerational fairness in the prices that electricity consumers have to pay and the recovery of electricity costs (spreading the cost of the generation of electricity captured by the Global Adjustment across generations of rate-payers;
- The policy of the Government of Ontario to undertake activities designed to defer some of the costs related to the costs of generation *[aka the Global Adjustment]* to achieve that goal over an extended time-period. ***[ntd: Considering attempting to define a term below – "Fair Hydro Financing Initiative" similar to the Smart Metering Initiative provided for elsewhere in the Act.]***

x. Subsection 2(1) of the Act is amended by adding the following definition:

"Fair Hydro Financing Initiative" means those policies of the Government of Ontario related to its decision to ensure Ontario electricity consumers pay their fair share of the costs of electricity infrastructure, having regard to the benefits derived by different generations of consumers.

"Fair Hydro Financing Entity" means the trust or other entity established by Ontario Power Generation Inc. under Part V.2

ELECTRICITY ACT, 1998

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

(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;

[NTD: Instead of the various references to "mitigation", we need to build in the concept that this regime is intended, for the eligible class of customers, to achieve a fair and equitable allocation of the costs associated with replacing coal fired generation with cleaner power sources having regard to, among other things, the useful life of such assets. In other words, the fair and equitable allocation of the cost of new generation assets which takes into account the useful life of such assets. This characterization is important from a Constitutional Law perspective.]

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

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

(i) the adequacy, reliability and quality of electricity service, and

(ii) prices that consumers pay for electricity, which include the establishment of one or more mechanisms to defer certain costs to achieve greater fairness amongst classes of consumers who consume electricity across different time periods, as part of [*the Government of Ontario's initiative to defer the costs of global adjustment]*;

[OLC No te: I have a few concerns about the proposed amendments to clause (f) (and some of these same concerns come up in a few other places throughout the draft where similar wording is used):

1. Because the substantive provisions we are creating will be very express about what is being established, I don't understand why the above amendment to the purpose provision is necessary. The existing clause (f) already notes that a purpose of the Act is to protect the interest of consumers with respect to "price". Why is this considered to be insufficient?

[NTD: Linked to price is the inter-generational sharing of costs for the specified rate class, having regard to the useful life of the assets.]

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

2. I see that there is precedent within this Act to refer to government policies in broad terms, but this raises some concerns. A reference to a government "policy" or "initiative" is really vague (which initiative/ policies? At which point in time?) and I think this could cause lots of confusion, particularly if the policies evolve over time. It could also have unintended consequences.

3. If it's necessary to mention the initiative/policies in the purpose provision, consider whether or not you want to create a legislated link between these policies and "protecting the interests of consumers". Questions may be raised about *which consumers' interests* are meant to be protected (e.g. all consumers? a subset of consumers? Current consumers vs. future consumers?). Would it be better to refer to the implementation of the initiative without specifying that it must be done in the interests of consumer protection?

4. I have proposed some tentative wording to describe the initiative/policies. Once the language is settled, we may want to do something like what has been done with the definition of "smart metering initiative" to simplify repeated references throughout the draft.]

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

(q.1) to enter into agreements or arrangements with the Fair Hydro Financing Trust or any prescribed entity or entities under Part V.2;

[NTD: The references to the Trust should be replaced with a defined term such as "authorized entity", "financing entity", or "fair hydro financing entity" – the term could be defined as: the Fair Hydro Financing Trust or such other trust, corporation, partnership, joint venture or other entity as may be prescribed under regulation, which shall include the successors and permitted assigns of any such entity]

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

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

[ntd-We need to expand the objects of the IESO to match up (in a bit more detailed of a manner) with the new activities the IESO would be expected to undertake with the OPG Financing Trust or (a new concept) new financing

entities that OPG either creates or transacts with in order to facilitate the deferral activities – ALL still being developed.

[NTD: The IESO and the LDCs will also be collection agents on behalf of the holders of the "regulatory asset".]

(q.3) to engage in activities related to the sale or disposition of the regulatory asset referred to in section 25.35 and in accordance with the Regulations including:

i. the incurring of liabilities in relation to the asset; ***[IESO to incur debt which in the short-term it manages but has to be a"added" to the regulatory asset thereby increasing its value but also increasing IESO's liability, eventually to be recovered through LDC's from consumers.]***

ii. the disposition of the asset to the Financing Trust or other prescribed entities;

iii. the assignment of rights to the asset to third parties

iv acting as a recovery agent for the Financing Entity or prescribed entities in relation to amounts to be deferred and forming part of the regulatory asset created under s.25.36;

(q.4) to engage in any activities related the making of payments to and receiving payments from the Financing Entity or any prescribed entities under Part V.2,

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

Electricity pricing adjustments
Adjustments by IESO

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

[OLC Note: As per our discussion on March 16th, there is some concern about whether the above underlined wording (which is the current wording of subs. (1)) is sufficiently clear. The IESO is required to make adjustments to ensure that the payments "reflect" the various amounts listed below. Now that the list below is being expanded and will include a more diverse range of categories of amounts, we should consider whether revising the opening flush would be helpful to explain how, in a general way, the amounts are to be "reflected".]

(a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the *Ontario Energy Board Act, 1998*;

(b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract;

(c) amounts received by the IESO, directly or indirectly, from the Greenhouse Gas Reduction Account established under section 71 of the *Climate Change Mitigation and Low-Carbon Economy Act, 2016* for the funding of greenhouse gas reduction initiatives under this Act or the *Ontario Energy Board Act, 1998* for which the costs would otherwise be borne in whole or in part by consumers;

(d) amounts received by the IESO from the Financing Entity under Part V.2; and

(e) amounts paid to the Financing Entity under section [repayment of principal/interest and operating cost],

[NTD: We should also contemplate the payments received by LDCs (as collection agent for the holder of the "regulatory asset").]

Adjustments by distributors and retailers

(2) Subject to subsection (2.1), distributors and retailers shall, through their billing systems, make adjustments in accordance with the regulations that ensure that, over time, payments by such classes of consumers in Ontario as are prescribed by regulation reflect, [OLC Note: Same concerns as flagged under subs. (1).]

(a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the *Ontario Energy Board Act, 1998*;

(b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract;

(c) amounts received by the IESO, directly or indirectly, from the Greenhouse Gas Reduction Account established under section 71 of the *Climate Change Mitigation and Low-Carbon Economy Act, 2016* for the funding of greenhouse gas reduction initiatives under this Act or the *Ontario Energy Board Act, 1998* for which the costs would otherwise be borne in whole or in part by consumers;

(d) amounts received by the IESO, <u>directly or indirectly</u>, from the Financing Entity under Part V.2; and

(e) amounts paid to the Financing Entity under [repayment of principal/interest and operating cost].

[OLC Note: Your instructions were slightly different for clauses (1) (d) & (e) and (2) (d) & (e) - for example see the underlined phrase in (d) above. Please review carefully to ensure that the differences are intentional. I don't understand the discrepancies so if they are intended, please explain.]

[NTD: In the short run (probably the first few months of this proposed new mechanism), the IESO may cover the shortfall (caused by the deferral) by borrowing itself from lenders (and not by getting funds from the Financing Trust). As such, the GA settlement amount will be reduced by the amount deferred, not necessarily the amount received from the Financing Trust.

For (e) above, the LDCs need to be expressly obligated to collect, as collection agent of the holder of the regulatory asset, amounts due and payable pursuant to the terms of that regulatory asset. The amount will include all financing and servicing costs, not just those currently listed.

See also the NTD below re: whether (d) and (e) should be moved out of the GAM altogether.]

Application to certain market participants, consumers

(2.1) In making adjustments under subsection (1) or (2), the IESO shall, in accordance with the regulations, ensure that the amounts mentioned in clauses (1) (d) and (e) and (2) (d) and (e) are reflected only in payments by classes of market participants with respect to electricity consumed by a consumer who,

[OLC Note: This is an attempt to address the other issue we discussed on the phone, but I'm not sure it is quite right. The idea would be for the regulations to specify how the IESO would ensure that the short-term rate reductions that flow from the Trust borrowing are only received by the targeted class of consumers and that this same class of consumers is the only class responsible for the repayment of borrowed funds in the long-term.

An alternative to consider -- Perhaps this part of the calculations should not even be part of the GAM… it really depends on how this is supposed to work. I am wondering if perhaps this is a subsequent step that is entirely separate from the GAM. Tamara's previous draft had anticipated that the IESO would "apportion" amounts received from the Trust/entity for the purposes of covering the GAM to consumers. If that is the case, then perhaps subs. (2.1) doesn't need to be included in the GAM section at all. Instead, we would deal with "apportionment" by the IESO as a separate matter. I have included a proposed apportionment provision below in Part V.2.]

[NTD: It has not yet been conclusively settled that the amounts "deferred" will only be global adjustment costs.

As the wholesale market price increases, the amount of the global adjustment correspondingly decreases.

So for e.g., it is theoretically possible that HOEP could rise to a point where, on occasion, some of the amount "deferred" would relate to the wholesale market price (HOEP).

As such, it might be better to move the "deferral" and "recovery" provisions out of the GAM section altogether, since the relevant amounts might not be 100% global adjustment costs.]

(a) is a member of a class of consumers prescribed for the purposes of subsection 79.16 (1) of the *Ontario Energy Board Act, 1998* who is required to pay the [global adjustment], regardless of whether or not the Board determines the rates for electricity payable by the consumer under that subsection;

(b) is [served by a sub-metering entity]; or

(c) is a member of a class of consumers prescribed by the regulations.

[NTD: See the description of "cross-generational consumer" in ss. 4 (3) of the proposed amendments to O. Reg. 95/05. That is the class of consumers who will be the subject of the "deferral" and recovery.

For now, there will still be a second (the original) prescribed class of consumers (the RPP consumers – ss. 4 (2) of the RPP reg.), although the ss. creating that class might be revoked if it is no longer needed. I assume we can clearly identify which "class" we mean in the regulation by saying something like "for the purposes of section (X)"?]

x. Clause 25.33 (4) (a) of the Act is amended by striking out "(2) and (3)" and substituting "(2), (2.1) and (3)".

x. Section 25.33 of the Act is amended by adding the following subsections:

Separate accounting by IESO

(4.1) If required by the regulations, the IESO shall separately track and account for any amounts referred to in clauses (1) (c) for which it makes adjustments under this section.

[OLC Note: Please confirm the underlined. Or is this requirement intended to be broader?]
[OLC Note: Instructions included "and to direct such amounts to the contracts and generators or classes of contracts and generators as may be prescribed". You noted that for constitutional reasons, you may want to direct GGRA money only to renewables-related contracts so that you could show that the money was used for GHG reduction activities. Please advise.]

Same

(4.2) The IESO shall separately track and account for each of the following amounts:

1. Amounts referred to in clause (1) (d) for which it makes adjustments under that subsection.

2. Amounts referred to in clause (1) (e) [principal/interest and other financing cost related amounts] for which it makes adjustments under that subsection.

3. Amounts referred to in clause (1) (e) [management and operating costs] for which it makes adjustments under that subsection.

4. Amounts paid to the Fair Hydro Financing Trust or designated entity under [authority requiring payment back to TBD of operating costs].

5. The following variances, if any:

   i. Variances between the amounts set out in paragraphs 1 and 2.

   ii. Variances between the amounts set out in paragraphs 3 and 4.

   iii. Any other variances related to the amounts set out in paragraphs 1 to 4 that the IESO considers appropriate.

Separate accounting by distributors and retailers

(4.3) If required by the regulations, distributors and retailers shall separately track and account for any amounts referred to in clauses (2) (d) and (e) for which they make adjustments under this section.

x. Subsection 25.33 (5) of the Act is repealed and the following substituted:

Variance, deferral accounts[2]

(5) The IESO shall establish and maintain such variance or deferral accounts as may be required,

[2] FLS: see the current s. 25.33 (5), as well as s. 88 (1) (i.7) of the Ontario Energy Board Act.

(a) for the purposes of subsections (3) and (4.2); and

(b) to otherwise record all amounts payable or receivable by it under this section.

[OLC Note: Subs. 25.33 (7) refers to adjustments made under subs. (1) or (2) -- this should perhaps also refer to subs. (2.1)?]

[NTD: Why are we referring in (5) (a) above to ss. (3), when ss. (3) already requires the IESO to establish variance accounts for the purposes of ss. (3)?

We need to be careful about broadly scoped deferral account provisions like the one in (5) (b) above, especially if we keep the proposed "deferral" and recovery in ss. 25.33. We may only have one deferral account for all the proposed "deferral" and recovery related in-flows and out-flows.]

(3) Section 25.33 of the Act is amended by adding the following subsection:

Additional requirements

(9) The Lieutenant Governor in Council may, by regulation, require the IESO, a distributor, retailer, generator or any other licence holder to take the steps prescribed by the regulations in the manner and time prescribed by the regulations, in order to implement or facilitate the implementation of the adjustments for the amounts referred to in clauses (1) (c), (d) and (e) and (2) (c), (d) and (e) [and subsection (2.1)?].

[OLC Notes:
1. Can you give me any examples of how ENE might use this reg making authority?
2. Please confirm the citations to the borrowing piece against those provisions in this draft and let me know if you need to narrow them at all.]

Note: Regulation-making authority drafting to be done later, once the actual substantive elements of the scheme have been landed (or at least more landed). For now, I've left it exactly as it was in draft 2, when only GGRA was in play.

x. (1) Subclause 114 (1.3) (f) (ii) of the Act is amended by adding "under subsection 25.33 (2)" after "that must or may be made".

TBD whether s. 114 (1.3) (f) (i) and (ii) need further amendment, given the inclusion of the new clause (c) in s. 25.33 (1) and (2). I don't see anything at this point that would need changes.
[The expectation is that the IESO will have to receive amounts from the Financing Trust or prescribed entities in the normal course, or from the OEFC/OFA to cover short-term

financing gaps/shortfalls. This provision is designed to ensure IESO is required (and therefore authorized) to undertake these activities.

IESO Fair Hydro Financing Initiative activities,
25.34.1(1) The IESO shall, as often as is required to ensure that it meets its obligations under section 25.33, enter into transactions with the Financing Entity or any other entity ***[ntd: Trying to signal that it can negotiate new Lines of credit with Ontario Financing Authority or OEFC to conduct "warehousing" short-term financing activities]*** for such amounts as are necessary to support the government's Fair Hydro Financing Initiative.

Prescribed limits, etc.
(2) Notwithstanding subsection (1), the IESO shall conduct its activities in accordance with any maximum amounts and timing provided for in the regulations.

Deemed additions, regulatory asset,
(3) When the IESO incurs any liability as a result of its activities in support of the Government's Fair Hydro Financing Initiative, such amounts shall be added to the value of ***[ntd: amounts tracked in the accounts related to]*** the regulatory asset established under section 25.34. *[ntd-jpr: may need to break out the capital, interest (plus transaction)/financing costs but likely not the operating costs.]*

Deemed regulatory asset,
25.35 (1) There shall be established in the books and accounts of the IESO a regulatory asset to be comprised of the following,

1. all amounts referred to in clause 25.33(1.1) (a) which are paid to the IESO by the Financing Entity or other prescribed entities during the deferral period and payable for the month or such other periods as are prescribed;

2. all amounts referred to in clause 25.33(1.1) (b) related to interest costs or charges, including transaction costs, incurred by the Financing Entity or prescribed entity during the deferral period;

3. all amounts of any costs or charges referred to in clause (1.1) (c) relating to the operation or management of the Financing Entity or other prescribed entities, as approved by the Board.

4. The full amount of any true-up amount which may be prescribed by the regulations.

Sale or assignment of regulatory assets

25.35.1 (1) The IESO shall, in accordance with the regulations, sell and convey to the Financing Entity or other prescribed entities all title and right to the regulatory asset established under section 25.34 on such terms and conditions as are provided for by the Financing Entity or prescribed entities

Assignment, etc.

(1.1) For the purposes of this section and sections 25.34 and 25.35.1, the IESO may assign its rights to the regulatory asset established under this section to the Financing Entity or entity prescribed under section 53.6.1 in accordance with any criteria as may be prescribed the regulations, ***[ntd-LSB: The "sale" could be characterized instead as an assignment to the Financing Entity or other presctibed entities. However, we may also need to provide the IESO with an authority to assign other rights during the times its doing its own financing and/or during a time before it actually transfers (assigns) the regulatory asset to the Financing entity. We're still working this out.]***

Sale deemed final

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

Debts

(3) For greater certainty, the amounts mentioned in subsection (1) are debts owing to the Financial Entity or other entities as may be prescribed by the IESO, distributors and prescribed consumers until such amounts have been fully paid and fully discharged.

Distributors liable,

(4) The IESO and distributors are entitled to compensation for any shortfall in relation to the amounts the IESO must pay to generators, the financial corporation or other persons including prescribed persons, under section 25.33 resulting from the IESO's activities under the Government's Fair Hydro Financing Initiative.

Consumers liable,

(5) Consumers are required to contribute towards the amount of any compensation referred to in subsection (4) in accordance with the amounts and methods prescribed by the regulations and such amounts shall not be by-passed. ***[ntd-we may add a timing element here as well.]***

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

Recovery by IESO

(6). The IESO shall recover the amounts set out in subsection (5) from consumers referred to in subsection 25.33 (2.1), in accordance with the regulations. ***[NTD-JPR: This may change to refer to regulations, such as O. Reg. 95/05, made under the Ontario Energy Board Act, 1998.] [ntd-we may add a timing element here as well.]***

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

Payments to Financing Entity ***[ntd-This is meant to signal the ultimate fundamental obligation of the IESO to pay the full amounts that the Financing entity borrows .]***

25.35.2. (1) On or before January 1, 2047 or the later time prescribed in the regulations, the IESO shall, through its billing and settlement systems, make full payment to the Financing Entity of the following:

1. The amounts received by the IESO under subsection 25.3.

2. The amounts of any interest costs or charges, including transaction costs, incurred by the Financing Entity in relation the amounts mentioned in paragraph 1.

3. The amounts of costs relating to the operation or management of the Financing Entity, <u>as are approved by the Board.</u>

[OLC Note: How will the Board be approving these costs? Is this related to the expenditure report submitted to the Board? That provision (below) doesn't refer to any approval taking place.]

4. Other amounts as may be prescribed <u>or as may be approved by the Board</u>.

(2) Subsection 114 (1.3) of the Act is amended by adding the following clause:

(g.0.1) requiring the IESO, a distributor, retailer or generator or any other licence holder to take specified steps, including […], in order to implement or facilitate the implementation of the adjustment of the amounts referred to in clauses 25.33 (1) (c) and (2) (c), and prescribing the manner in which and the timing by which the steps must be taken,

Please provide examples, if possible, so that we can consider, (a) whether this reg authority is sufficient, and (b) whether to refer to the examples expressly.

TBD whether s. 114 (1.3) (f) (xii) – (xv) are to be amended in any way. They provide authority to require that various actors provide information to various other actors "for the purposes of section 25.33 or a regulation made under this clause". If your clients are interested in a reporting requirement relating to the actual GHG reduction initiatives, then I think that if that authority doesn't already exist elsewhere, it could be added, but not here. As I read it, this is really reporting in respect of the adjustments, set-offs, credits, payments, etc.

- Just a flag, in case it matters, that a couple of these information-sharing subclauses are subject to s. 114 (6) of the Act, which deals with agreements to the contrary.

x. Subsection 53.1 (1) of the Act is repealed and the following substituted: : Objects of Ontario Power Generation Inc.

s.53.1 (1) The objects of Ontario Power Generation Inc. include, in addition to any other objects: ***[ntd-: Some elements of the "object" may be moved to a more substantive provision to ensure that the obligation to support the fair hydro financing initiative is properly supported.]***

(i) owning and operating generation facilities;

(ii) establishing, operating and supervising the activities of the Fair Hydro Financing Entity;

(iii) establishing, operating and supervising the activities of financing entities for the purposes of supporting and promoting the government's Fair Hydro Financing Initiative ***[ntd-jpr: like the smart metering initiative, it may be that we define the Government's Fair Hydro Financing strategy,]***

(iv) providing financial and other support to the IESO in its activities in relation to the government's Fair Hydro Financing Initiative, including through the Fair Hydro Financing Entity or other prescribed entities,

(v) engaging in such financing, borrowing, lending and related activities and transactions as are or may be required to provide the IESO with short-term or long-term financing ***[ntd: consider adding "and financial support?"]*** in relation to the IESO's activities referred to under (iv), and in accordance with the Regulations made pursuant to this Part or sections 25.33 through 25.35.1;

(vi) provide such equity and at such times ***[and in such amounts or proportions?]*** as required in order to support the financing capability ***[ntd-: alternative: capacity?]*** of the Fair Hydro Financing Entity or other prescribed entities, not to exceed the maximum prescribed by the regulations ***[ntd: this is required to ensure that the financing entity has the correct financial risk-profile. There will be prescribed limits to support the deferral.]***

Subsidiaries

(1.1) Ontario Power Generation may create one or more subsidiaries in order to more efficiently conduct its activities or its objects. ***[ntd: There does not appear to be a direct comparator to Hydro One: Hydro One has the authority to conduct its transmission and distribution business through one or more subsidiaries, as well as to undertake required generation activities through one or more subsidiaries. OPG's objects subtly acknowledge the existence of subsidiaries. This would clarify OPG's authority to create subsidiaries in order to carry out its objects.] [Note: This object is broad – it is not tied specifically to the Fair Hydro Financing Initiative, but it could be if desired.]***

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

Rights of the Minister[3]

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

Agreements

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

x. The Act is amended by adding the following Part:

[3] FLS - this provision is based on s. 49 of the Act

PART V.2
[FAIR HYDRO FINANCING INITIATIVE/COST DEFERRAL INITIATIVE]

Definition

53.6.0.1 In this Part,

"Financing Entity" means,

(a) the Fair Hydro Financing Entity mentioned in clause 53.6.1 (1) (a), or

(b) an entity prescribed by regulation as mentioned in clause 53.6.1 (1) (b).

[NTD - could move this definition to the beginning of the Act since we use this term in 25.33 but let's wait for the drafting to settle first. The idea is to have a single term that captures the Trust/designated entity.]

[OLC Note: As discussed on the phone, you are still working on identifying the "spark plug" that would set the financing activities in motion and establish limits on borrowing, etc. The possibility of a Minister/LGIC "financing directive" is not preferred because of the level of control this would give the government. You mentioned that you are considering whether LGIC regulations might be more appropriate or else whether a non-legislative process (e.g. SH declaration) might work best. Please advise.]

[NTD: OPG will likely be required by leg/reg to use some amount of effort to obtain financing. There will also likely be rules related to how OPG determines the financing to get (e.g. short term vs. long term), etc. This will all be set out in a regulation, but we will need legislative authority to make a regulation dealing with this.

COST DEFERRAL INITIATIVE

[NTD-Counter-part to the IESO trigger mechanism – this is intended to authorizes and requires OPG to assist IESO in the related Fair Hydro Financing Initiative activities.]

OPG Financial activities to reduce electricity prices

x. (1) Ontario Power Generation shall, at the times that the IESOspecifies, cause the Financing Entity or a prescribed entity established by the Corporation ***[ntd: Corporation refers to OPG here]*** to undertake any of the following activities for the purpose of accomplishing the [*the Government Fair Hydro Financing Initiative]*:

(i) engaging in such financing, borrowing, lending and related transactions as required to provide the IESO with short-term or long-term financing ***[ntd: consider adding "and financial support?"]*** in relation to the IESO's activities referred to under this section.

(ii) purchase the regulated asset established under section 25.35 in accordance with s.25.35.1 and this section, at the times specified by the IESO or as may be prescribed, and to make any payments to the IESO that relate to the IESO's activities in support of the Government's Fair Hydro Financing Initiave.

(iii) To collect, from the IESO, all amounts that the IESO is required to pay in relation to its activities in support of the government's Fair Hydro Financing Initiative pursuant to section 25.36 and the regulations,

(iv) Make an assignment of all or any of its rights to all or part of the regulatory asset referred to in this section.

(v) Engage in such other activities ***[ntd: assignment?]*** as may be prescribed to support the Government's Fair Hydro Financing Initiative.

(vi) provide such equity as is required in order to support the financing capacity of the Fair Hydro Financing Entity or other entity up to the maximum prescribed by the regulations;

[ntd: this is required to ensure that the financing entity has the correct financial risk-profile. The provision places the authority to "trigger" the OPG's financing entity's borrowing/lending activities is triggered by the IESO. The approach may change depending upon certain decisions.]

[NTD: This will not be a borrowing transaction with the Financing Entity. The IESO will assign its statutory recovery rights (the "regulatory asset") to the Financing Entity in return for an amount that equals the principal amount deferred plus interest and other financing-related costs of the Financing Entity.

We will also have to contemplate that if the IESO borrows money (from someone other than the Financing Entity) to cover any of the "deferral" amounts (e.g. before the Financing Entity has gotten the necessary financing in place), it will have the right to recover the principal amount borrowed together with interest and financing-related costs.]

Apportionment

(2) The IESO shall apportion amounts received under subsection (1) to consumers referred to in subsection 25.33 (2.1), in accordance with […].
[OLC Note: How are the requirements that would determine apportionment for this subsection meant to interact with the GAM reg? I know this is under active consideration.]

Consumer liable for apportioned amounts

x. Consumers referred to in [above] are liable to the IESO and their distributor for their proportionate share, to be determined by the regulations, of the [amounts listed in paras. 1-4 below?].

[OLC Note: The above is essentially a placeholder for the moment. You noted that *the provision is going to have to evolve to deal with consumers who exit the grid (disconnect) completely either because they leave the province or they decide to generate their own electricity and completely disconnect. You also want to be able to prescribe* methods of ensuring that the amounts required cannot be "by-passed". I'll need to understand what is meant by "by-passed".]

[NTD: Consumers must be liable to the holder of the Regulatory Asset. IESO and LDCs must have an obligation to collect as collection agents. We will consider further the "proportionate share, to be determined by the regulations". The amount payable by each consumer must determinable.]

Right of recovery, Financing Entity

x. (1) The Financing Entity and any prescribed entities shall have the right to recover the following amounts in full from the IESO, distributors and prescribed consumers:

1. The amounts provided to the IESO by the Financing Entity or other prescribed entities under subsection (1).

2. The amounts of any interest costs or charges and transaction costs *[ntd: meant to* incurred by the Financing Entity in relation the amounts mentioned in paragraph 1.

3. The amounts of costs relating to the operation or management of the Financing Entity, <u>as are approved by the Board.</u>

[OLC Note: How will the Board be approving these costs? Is this related to the expenditure report submitted to the Board? That provision (below) doesn't refer to any approval taking place.]
[OLC Note: Need to mention expenditures?]

4. Other amounts as may be prescribed <u>or as may be approved by the Board</u>.

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

[OLC Note:
I don't understand how the following provisions dealing with "regulatory assets" fit with the "right of recovery" provision above.
1. Are the "regulatory assets" something different from the amounts listed in paras. 1 to 4 above? Or are these meant to be the same amounts?

2. Are the rules relating to the "sale of regulatory assets" essentially rules about how the FE will actualize its right of recovery? I don't understand how the IESO would "sell"

these things… don't they just make a payment, and haven't we already stated this below in the section that requires the IESO to make payments to the FE?

I've set out the substance of your instructions on the regulatory assets here for reference:

[OLC Note: How would the IESO know if other costs have been approved by the Board?]

FINANCING ENTITY

Direction of Minister, Financing Entity

53.6.1 (1) For the purpose of accomplishing [*the Government of Ontario's initiative to defer the costs of global adjustment*], the Minister may,

(a) direct Ontario Power Generation Inc. to establish and operate the Fair Hydro Financing Trust; or

(b) direct Ontario Power Generation Inc. to [oversee? Administer?] an entity designated by regulation.

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

Duty of Ontario Power Generation Inc.

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

Object of Financing Entity

53.6.2 (1) The object of the Financing Entity is to finance the amounts required to accomplish [*the Government of Ontario's initiative to defer the costs of global adjustment*].

[OLC Note: We are imposing several obligations on the Financing Entity (FE). As a practical matter, how will these obligations be enforced? Who will be responsible for meeting these obligations? (e.g. is there an automatic hierarchy of individuals that are appointed and who take responsibility when a Trust is established?). Or will the OPG be responsible for meeting these obligations as the body that establishes/manages the trust or oversees the designated entity?]

Activities

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

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

1. Borrowing funds from the Financial Corporation or from such other persons or entities [as may be prescribed?].

2. Investing funds.

3. Making payments and loans to the IESO or such other entity as may be prescribed in accordance with the regulations [or an order of the Board].

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

4. Receiving payments from the IESO or such other person or entity as may be prescribed in accordance with the regulations.

[OLC Note: Is it necessary to state that the payments are received to recover the amounts borrowed? We have already made it clear in the opening of this subsection that this is all being done to achieve the object of the Trust.]

5. Issuing securities or debt ***[in the manner prescribed?].***

6. Engaging in any activities, including entering into such transactions or agreements or arrangements as may be prescribed and in accordance with the regulations.

Board approval of expenditures, etc.

53.6.4 (1) The Financing Entity shall, at least 60 days after the end of each fiscal year, submit its expenditures relating to its operations for the fiscal year including the expenses it has charged to Ontario Power Generation Inc. or the IESO, or that it has been charged by the Financial Corporation, in relation to those operations, to the Board for review.

[OLC Note: As mentioned above, who will actually be responsible for carrying out this duty? OPG? IESO? Should we be more clear about who is submitting the expenditures?]

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

Board recommendations, etc.

(2) The Board may review the expenditures and charges referred to in subsection (1) and make recommendations to the Financing Entity as are appropriate in order to ensure the most efficient operation and management of the Financing Entity in order to protect consumers.

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

Deemed assets, trust or entity,

53.6.5 Despite any other provision of this Act or the *Business Corporations Act,* the assets and liabilities which are resident in and form part of the property of the Financing Entity or any prescribed entity referred to in section 53.6.1 shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries for any purpose. ***[ntd-Do we need a carve-out to exclude any subsidiary OPG establishes to borrow for its 5% (approximate) share from the market? Eg.***

(2) Subsection (1) does not apply to a subsidiary established by Ontario Power Generation Inc. for the purposes of providing amounts in the form of equity to the Fair Hydro Financing Entity or other prescribed entities in order to support the Government's Fair Hydro Financing Initiative.]

ONTARIO ENERGY BOARD ACT, 1998

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

6. To facilitate the implementation of the policies of the Government of Ontario respecting climate change mitigation and greenhouse gas reduction.

7. To facilitate the implementation of the [the Government of Ontario's Fair Hydro Financing Initiative as defined in the Electricity Act, 1998].

[OLC Note: As noted above in the EA purpose provision, need to consider this further.]

x. Section 2 of the Act is amended by adding the following paragraph:

7. To facilitate the implementation of the policies of the Government of Ontario respecting climate change mitigation and greenhouse gas reduction.

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

Hearings

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

The underlined is what makes this different from the other provisions in the Act that basically have the same wording. There are already a number of places in the Act where you have this type of hearings provision re directives (e.g., s. 27.2 (7)). If you basically want the same authority in each instance, then the wording should be consistent in each case. There are already some discrepancies between the current provisions (e.g., s. 27.2 (7) talks about types of hearings, whereas s. 28 (2) doesn't). Differences in wording will typically be presumed to be differences in meaning. So, the question is what you're intending to authorize in each case, and whether differences are intended. If you want the same thing everywhere, it should all be worded the same. Let me know.

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

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

Adjustment to eliminate variances

(3) In determining rates under clause (1) (b), the Board shall take into account balances in variance accounts established under section 25.33 of the *Electricity Act, 1998* and, subject to section X of that Act, make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct. [OLC Note: I didn't spend any time on the above amendment -- will revisit it in the next draft. This is a placeholder.]

Commencement

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

[NTD: The proposed "deferral" will become effective as of May 1, 2017. We will probably need to have retroactive reg-making authority to make the necessary regulations that support the proposal.]