CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will continue to benefit present and future electricity consumers in the Province.

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

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative. These amounts paid by the IESO arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with revenue certainty, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. **[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 developed under the Green Generation Initiative will be in excess of the respective terms of their respective procurement contracts.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective terms of the applicable procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to Regulated Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Regulated Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on general principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future Regulated Consumers (the "Fair Allocation Plan"). **[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 Regulated Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such Regulated Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in respect of such period. In this case, IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred to cover such a shortfall during any period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on Regulated Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf of such financing entities by a financial services manager under the Financing Plan contemplated in this Act.

[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 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.]**

> "Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition other than as security.
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> "Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services Manager whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.
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> "Additional Funding Charges" means, for a Reference Period, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of 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 limitation such amounts as may be prescribed.
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> **[NTD: See section 5(11). Remove this concept globally.]**

"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.]**

"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"[1] means the methodology specified in the Fair Allocation Plan for allocating the Period Finance Charges for a Reference Period to 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 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.[2]

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

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

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

“Disposition Document” means the agreement, deed, conveyance, instrument or other document under which IESO or an Absolute Assignee effects a Disposition to an Absolute Assignee.

“Electricity Distributor” means a rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, 1998*, together with and its successors.

“Electricity Distributor Remittances” means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received **[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 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 an Electricity Distributor (or in its stead, by an Alternative Collection Agent), by the Servicer or by a Retailer, in each case to a Regulated Consumer that is served by the Electricity Distributor’s distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to such Electricity Distributor’s distribution system and in respect of applicable Transition Charges to be charged to the Regulated Consumer under this Act. **[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 Manager; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to Regulated Consumers, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

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

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

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

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

"Financial Services Manager" means OPG or, following any Replacement Event involving OPG, such other person who may be appointed as the financial services manager of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[3]

"Financing Entity" means any entity established at the initiative of and managed by the Financial Services Manager to support the Financing Plan.[4]

"Financing Plan" means the written plan prepared by the Financial Services Manager in accordance with Article 9, as the same may be amended, amended and restated or terminated by the Financial Services Manager in accordance with Article 9 from time to time.

"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 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

[3] There must only be one Financial Services Manager.

[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.

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

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

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

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

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

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

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO , during the month pursuant to section • of the *Electricity Act* in respect of Regulated Consumers. **[NTD: IESO indicates that it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDCs entails payments by LDCs to the IESO and then credits/debits by the IESO to LDCs to reflect RPP shortfalls/overages.]**

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[5].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 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

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

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition.

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

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"Net Funding Costs" means, for a Reference Period 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 (b) the True-Up Amount in respect of the applicable True-Up Period and (c) an adjustment amount as may be prescribed to account for estimated collection shortfalls and collection delays in respect of amounts under (a) and (b).

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

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

"Program End Date" means •, [2047].

“Province” means the Province of Ontario.

“Redemption Amount” means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

“Reference Period” means (a) the period from (and including) the Measurement Date to (and including) October 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

“Refinancing” means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

“Regulated Consumer” means consumers of electricity in the Province as prescribed.

[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.]

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

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

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

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

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to Servicer or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the Business Day **[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 or to provide for the repayment (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

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

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

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

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

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

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

"Transition Charge" means, the amount recoverable from a Regulated Consumer in respect of a Reference Period, 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.]**

"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 Regulated Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

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

"True-Up Period" means, in relation to a Reference Period, the immediately preceding Reference Period.

"Undertaking of Her Majesty in right of Ontario" means the undertaking of Her Majesty in right of Ontario given under Section 11(2).

Article 3 – Transition Charges

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

(2) **Indebtedness of Regulated Consumers** – Until paid, a Transition Charge charged to a Regulated Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the

Regulated Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[6] debt obligation owing by the Regulated Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Regulated Consumer under the Electricity Invoice or otherwise.[7]

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

(4) **Allocation of Regulated Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a Regulated Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be 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 (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period regardless of whether the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, and regardless of whether the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(6) **True-Up of Transition Charges?** – **[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.]**

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

[7] 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.

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 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 Regulated Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable Regulated Consumer. **[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 Finance Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Manager on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. Not later than one month prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Manager on its behalf) shall calculate the Period Finance Charge applicable to the Reference Period having regard to such amounts specified by the Servicer, which calculations, information and amounts shall be 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 of the Transition Charge for each Regulated Consumer. **[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 Regulated Consumer who is served by the Electricity Distributor.

(5) **Adjustments** – The amount of any Transition Charge charged to a Regulated Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

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

(7) **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 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).]**

(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 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.]

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Servicer, collect amounts owing by Regulated Consumers in respect of Transition Charges charged to such Regulated Consumers in

Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent all in accordance with the Regulations. **[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).]**

(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 Regulated Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[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.

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all amounts invoiced by the IESO on account of the Transition Charge in respect of the related Reference Period to or to the account of 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.]**

(4) **Duty to Collect Electricity Distributor Remittances** – Servicer or if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from Regulated Consumers that pay their Electricity Invoices directly to IESO on the same basis as it accepts and collects other charges from such Regulated Consumers.[9]

(5) **Segregation of Electricity Distributor Remittances** – Servicer and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, Servicer or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners or Pledgee.

(6) **Servicer Remittances** – On each Settlement Date[10], Servicer shall remit all amounts on deposit in its Regulatory Asset Account to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month.

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

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

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

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

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

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[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 Regulated Consumers connected to such person's distribution system assets; (b) allocate partial payments by Regulated Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest. **[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, Servicer, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from Regulated Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5, or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

(11) **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 Regulated Consumer, any Electricity Distributor, Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, Servicer,

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

Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[12]

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

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

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

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

a. the right of a Regulatory Asset Owner to record its portion of the Regulatory Asset in its accounts;

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

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

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 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 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.

(2) **Validity of Dispositions** – A Disposition by IESO of all or any part of the IESO Funding Shortfall to an Absolute Assignee, or a Disposition of all or any part of an Investment Interest by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the 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 IESO Funding Shortfall or an Absolute Assignee's right, title and interest in, to and under an Investment Interest, as applicable (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in 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.]**

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the IESO or transferring Regulatory Asset Owner, as applicable, and all other persons who have claims of any kind (whether in tort, contract or otherwise) against IESO or the transferring Regulatory Asset Owner, as the case may be, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – A Pledge by an Absolute Assignee may be made to secure any Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the

Pledge. No consent of, or notice to, any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation shall, subject to the terms thereof, give rise to a security interest 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.[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. 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 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.]**

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[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.

Article 7 – Establishment of the Fair Allocation Plan[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 **[the Regulations]**

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Regulated Consumers on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

[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]

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.
2. The share of Future Fair Share of Green Transition Benefits allocable to a particular Regulated Consumer in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to such Regulated Consumer over such Reference Period, other than in exceptional circumstances.
3. 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.

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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).

(3) Attribution Methodology – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Finance Charges across the Regulated Consumers. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation; provided that the Attribution Methodology shall not be used to limit the recovery of Transition Charges. **[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, (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.]**

Article 8 – The IESO Funding Shortfall

(1) Recording of IESO Funding Shortfall -- IESO will record any IESO Funding Shortfall in its books.

(2) Dispositions – IESO may effect a Disposition of all or any part of the IESO Funding Shortfall to an Absolute Assignee if (a) the Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; and (b) the Financial Services Manager confirms in writing that the Disposition complies with any restrictions or limitations specified with respect thereto in any documents evidencing the Funding Obligations and is permitted under the Financing Plan.

(3) No Continuing Interest in any Investment Interest – IESO shall have no continuing right or interest in any IESO Funding Shortfall subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party.

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 Manager shall be authorized to prepare, implement and amend a financing plan for the Financing Entities and propose the adoption of such financing plan as the Financing Plan for the purposes of this Act. The Financial Services Manager shall have the right to withdraw its financing plan as the Financing Plan at any time if it determines that implementing the Financing Plan in such manner would not be in the best interests of a Financing Entity.

(2) **Principles and Parameters of the Financing Plan** – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions having regard to the principles and parameters set forth in Schedule 3.

(3) **OEB Approval** – Any Additional Funding Charge payable to the Financial Services Manager in respect of services provided by the Financial Services Manager (other than third party costs) shall be subject to review and approval by the OEB.

(4) **Review of Financing Plan** – The [OEB] shall undertake an annual review of the records maintained by the Financial Services Manager for the purpose of confirming that the Funding 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 Financial Services Manager** – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Financial Services Manager shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services Manager under the Financing Plan. If the Financial Services Manager is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services Manager. Any replacement must comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations.

(6) **Obligation to Apply IESO Remittances** – The Financial Services Manager shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Absolute Assignees, or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose. **[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 Manager, the OEB or Her Majesty in right of Ontario, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount.

(8) **Incurrences are Binding** – Each Disposition made to or by an Absolute Assignee, all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation and each Pledge entered into by an Absolute Assignee, shall be valid and binding, including in determining the amount of related Transition Charges, notwithstanding any defect in the manner in incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan.

[Article 10 – Compliance Matters[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 Manager [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Manager; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][17]

Article 11 – Undertaking of the Her Majesty in right of Ontario[18]

(1) **No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections** – Her Majesty in right of Ontario shall not in any way take or permit (including by any agency or administrative body) any action to reduce, impair, postpone or terminate the obligation of Regulated Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by Her Majesty in right of Ontario (including by any agency or administrative body), including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) **Undertaking and Agreement** – Her Majesty in right of Ontario shall not:

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[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.

[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 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.

[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.

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.

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

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

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment, amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder, or would not otherwise comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations,

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

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, an IESO Successor shall immediately be established by Her Majesty in right of Ontario to perform such obligations.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated by Her Majesty in right of Ontario for any losses suffered by them as a result of any failure by Her Majesty in right of Ontario to comply with its undertakings and agreements in this Article 11.[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 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

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[19] Requested by Dealers. For discussion.

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[20]

(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.

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

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3

Principles and Parameters for Establishing the Financing Plan

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

(1) 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) if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Regulated Consumers under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(3) reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical Regulated Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation **[having regard to the application of the 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) require that the Financial Services Manager report annually to the Ministry of Energy on the operation of the Financing Plan including, in particular, with respect to the amount and terms of the Funding Obligations incurred and the sufficiency of such Funding Obligations for the purpose of funding the estimated Funding Shortfalls in accordance with the Fair Allocation Plan.