Version 3 OEB COMMENTS

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

A proposal to create Legislation.

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

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

[Insert explanatory note.]

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

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

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

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

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

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

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Schedule 1 Estimated finance amount

PART I
GENERAL

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

Interpretation
Definitions

1xx. (1) In this Act,

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

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

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

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

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

(i) renewable energy generation or capacity,

(ii) conservation and demand management, including storage,

(iii) energy efficiency,

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

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

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

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

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

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

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

(c) promoting conservation and demand management; (“French”)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"reference period" means,

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

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

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

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

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

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

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

"specified consumer" means,

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

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

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

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

Specified consumers

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

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

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

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

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

   i. a dwelling,

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

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

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

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

Invoice amount

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

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

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

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

iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada); *[OEB Note to Draft: We do not understand why it would be necessary to include "by the consumer" here. Please advise.]*

v. Any other amounts as may be prescribed.

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

Same, exclusions

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

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

2. Penalties or interest.

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

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

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

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

iii. A rate rider. *[OEB Note to Draft: To expand on a comment made on an earlier draft, rate riders are generally of two types: those which dispose of variances or deferred amounts related to distribution service, and those which relate to variances arising from retail settlement (which arise largely due to temporary differences between revenues from customers and payments to the IESO). Toronto Hydro has riders of both types for its residential service class; some are credits (reduce current costs for customers) and some are debits (increase costs to customers). All riders related to distribution service recover in some manner a distributor's cost of providing service to customers, and some eventually become part of the distribution revenue requirement when base rates are adjusted. For example, Toronto Hydro's current rates* *include 2 rate riders that recover foregone distribution revenue related to 2015 and 2016 until December 2019. These riders should not be excluded from the definition of "invoice amount" because of their relationship to a distributor's cost of service. We agree, however, that retail settlement variances, which can be volatile year to year and do not relate to underlying costs of service provision, may more appropriately be excluded from the definition of "invoice amount", as there is less of a policy rationale for recovering them on an inter-generational basis.]*

5. Any other prescribed amounts.

Representative consumer

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

(a) purchases electricity directly from Toronto Hydro;

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

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan, ~~or~~ an equal billing plan or a net metered basis; and

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

Transfer

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

Effect of invalidity, etc.[5]

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

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

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

Same, funding obligation

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

Purpose

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

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

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

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

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

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

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

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

Clarification with respect to regulations

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

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

Agreements for compensation

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

PART II
FAIR ADJUSTMENT

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

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

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

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

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

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

~~Rate determination~~

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

Sub-meter customers

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

Determining rate

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

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

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

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

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

Transition

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

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

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

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

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

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

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

Same

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

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

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

Indebtedness of specified consumer

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

Same

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

Irrevocability of clean energy adjustment

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

Exception

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

Determination of clean energy adjustment

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

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

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

True up amount

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

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

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

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

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

IESO to issue remittance notice to electricity vendors

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

IESO to collect

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

Collection account

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

1. Amounts described in subsection 12 (4).

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

Same, held in trust

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

IESO to remit

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

Collection of outstanding amounts, regulatory asset

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

Electricity vendor to invoice specified consumers

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

Electricity vendor to collect

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

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

Pro rating of payments

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

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

Held in trust

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

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

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

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

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

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (~~3~~4) to the IESO for the benefit of the investment asset owners or secured parties in accordance with the regulations.

Regulations

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

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

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

Termination

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

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

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

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

Replacement

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

Duties and powers

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

Same

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

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

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

3. Such other matters as may be prescribed.

Review of costs

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

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

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

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

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

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

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

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

Amount

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

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

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

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

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

   ii. The expected number of specified consumers for each reference period.

   iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period.

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.

Effective date

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

Publication

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

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred or potential transfers should be made for the purposes of this Act.

Principles

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

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

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

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

[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.

Limitation, first five year period

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

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

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

Confidentiality of plan

(4) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

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

Same

(2) For greater certainty, section [paramountcy of funding obligations] applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and make transfers.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Effect of amendment to Fair Allocation Plan

(4) No funding obligation incurred and no transfer made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.
[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order to authorize the IESO to do the following:

1. Create a variance account for the purposes of this Act.
2. Record the IESO funding shortfall in the variance account from time to time.
3. Recover the IESO funding shortfall in accordance with section X and the regulations.

No hearing

(2) The order of the Board shall be made ~~in writing and~~ without holding a hearing.

No appeals, etc.

(3) No appeal lies from the order of the Board.

IESO funding shortfall

20xx. (1) The IESO shall determine the IESO funding shortfall for each month in the following manner: *[OEB Note to Draft: See the Note to Draft accompanying the definition of the term "invoice amount"]*

1. Calculate the sum of all invoice amounts issued to specified consumers for the month if Part II of this Act did not apply.
2. Calculate the sum of all invoice amounts issued to specified consumers for the month.
3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity used by specified consumers, the IESO shall record an

adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers.

Recording of IESO funding shortfall

(3) IESO shall record the IESO funding shortfall from time to time, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall in the variance account is determinative of the amount of IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect the IESO funding shortfall from specified consumers before May 1, 2022.

2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation]. *[OEB Note to Draft:*

   1. We understand that this recovery mechanism applies when there is a "funding shortfall" remaining with the IESO as a result of the inability to transfer amounts to OPG, but please confirm.

   ~~1.~~*2. We have not been involved in any discussions relating to the OEB's role in this regard, and as such we don't know what is intended. This section needs to be less vague, and should contemplate the process that the OEB is expected to use. In that regard, we propose that the OEB should be able to do this with or without a hearing given that the magnitude of any such funding shortfall is not known at this time*.

   ~~2.~~*3. Other questions include: (a) is item (2) intended to allow the recovery of the funding shortfall from consumers other than specified consumers before May 1, 2022? (b) what "process" is contemplated to be used for recovery of the funding shortfall from specified consumers after May 1, 2022? (c) How does this relate to the recovery referred to in item 3 of section 19xx(1), and how does this "process" relate to the accounting* *order referred to in that section? (d) Is the OEB intended to have a role in figuring out or allowing the IESO to recover carrying costs related to holding the shortfall until after May 1, 2022?]*

3. Such other restrictions as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan, which transfer creates the investment asset.

Same

(2) Upon receipt of any payment in consideration for the transfer,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) unless otherwise provided for in this Act, the IESO shall have no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

Same

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

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment asset owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

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

Deemed perfection, etc.

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

Priority of transfer

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

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

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

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

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

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

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

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

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

No set off, etc.

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

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

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

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

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act.*

Collective action required

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

Transfer of investment interest

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

Validity of transfer

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

Same

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

Deemed perfection, etc.

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

Priority of transfer, assignment, etc.

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

Investment asset owner may grant security interest

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

Validity

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

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

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

Perfection

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

Same

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

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

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

Same

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

Same

(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order.

Choice of law

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

Conflict

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

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan. *[OEB Note to Draft: This is very broad, and for that reason could have unintended consequences, particularly in relation to as-yet unknown obligations under the Financing Plan.]*

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or the Board ~~OEB~~ for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

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

References in marketing materials and offering documents

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

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

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

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

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

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

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

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

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

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

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

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

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

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

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

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

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017.*

Subsidiaries, etc.

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

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

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

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

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]*** *[OEB Note to Draft: See the Note to Draft accompanying section 14xx(3)]*

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

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

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.] *[OEB Note to Draft: We reiterate that this is not necessary and could have unintended consequences for the OEB's work. Among other things, this could affect the setting of payment amounts for OPG by requiring us to include the effect, if any, of the Fair Hydro Plan on OPG's financing costs in determining a reasonable cost of capital, which represents a major cost component of the price setting and could adversely affect all ratepayers.]*

205x. Section 70 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1)] [OEB Note to Draft: We reiterate our request for information as to what new licence conditions are intended here so that we can have as meaningful an opportunity as possible to consider the proposal. Anything included in a licence becomes an "enforceable provision" for the OEB. The OEB has a regulatory regime in place and processes to address LDC and other regulated entity non-compliance. However, enforcement action is a matter of discretion for the OEB, and we reiterate that third parties (like creditors) do not have a right to cause the OEB to take enforcement action. Our approach to commenting on this draft of the legislation reflects our assumption that we will not be responsible for enforcing compliance with much of what is in this Act.]

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

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

SCHEDULE 1
ESTIMATED FINANCE AMOUNT

[OEB Note to Draft: On the assumption that the OEB has no role in the calculation of the CEA, we offer no comments on this schedule. We would ask whether the "administrative costs" referred to in section 14xx(3) and/or the "fees" referred to in the note under section 203x are intended to be recovered through the CEA].

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by estimating, prior to the start of a reference period, the sum of the following:

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

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

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

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

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

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

Funding costs

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

Finance reserve balance

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

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

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