

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.

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

A proposal to create Legislation.

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

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

Preamble

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

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

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

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

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

¹ FLS: please see the preamble of the *Green Energy Act, 2009*.

CONTENTS

PART I GENERAL

1. Interpretation
2. Effect of invalidity, etc.
3. Purpose
4. Crown bound
5. Protection and assurances

PART II FAIR ADJUSTMENT OF ELECTRICITY RATES

6. Definitions
- 6.16.01 Specified RPP consumer, first fair adjustment Determination of invoice amount
- 6.26.1 Specified consumers (non-RPP) Regulated rate consumer, first fair adjustment adjustments
- 6.36.2 Determination by Board Other specified consumers, first fair adjustment
- 6.46.3 Implementation of rates Determination by Board
- 6.56.4 Effective date Implementation of rates
- 6.66.5 Transition Effective date
- 7.6.6 Subsequent fair adjustments Transition
- 7.17. Sub-meter customers Subsequent fair adjustments
- 7.1 Sub-metering

PART III CLEAN ENERGY ADJUSTMENT

8. Specified consumers to pay
9. Irrevocability of amount
10. Determination of clean energy adjustment
11. IESO to receive amounts
12. Electricity vendor to invoice specified consumers

PART IV IMPLEMENTATION FINANCIAL SERVICES MANAGER

13. Appointment
14. Duties and powers
15. Financial Services Manager Minister to calculate fair allocation amount
16. Financial Services Manager to prepare Financing Plan
17. Implementation of Financing Plan

PART V THE REGULATORY ASSET

20. IESO funding shortfall deferral
- 20.1 Variance account to be established, maintained
21. Regulatory asset established
22. Transfer of regulatory asset
23. Validity of transfer

PART VI THE INVESTMENT ASSET

24. Effect of transfer
25. Investment asset established
26. Transfer of investment interest
27. Validity of transfer
28. Investment interest owner may grant security interest

PART VII MISCELLANEOUS

29. Appointment of agent, invoicing or collection
30. Not Crown agent
- 31-30.1 Sequestration Board's authority
- 32-31. Choice of law Sequestration
- 33-32. Conflict Choice of law
- 34-33. No further approvals, etc. Conflict
- 35-34. Immunity No further approvals, etc.
- 36-35. References in marketing materials and offering documents Liability

Confidential – Draft for discussion purposes only

37.36. Non-application, Financial Administration Act, s. 28 References in marketing materials and offering documents
38. Regulations

PART VII
AMENDMENTS TO OTHER ACTS
 ELECTRICITY ACT, 1998
 AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

PART VII
COMMENCEMENT AND SHORT TITLE

103. Commencement
104. Short title

PART I
GENERAL

Interpretation

Definitions

1xx. (1) In this Act,

“Board” means the Ontario Energy Board; (“French”)

“clean energy adjustment” means the amount determined under section 10xx and payable by specified consumers; (“French”)

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

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

- (a) the ~~estimated~~ amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts or amounts for,
 - (i) renewable energy generation or capacity,
 - (ii) conservation and demand management,
 - (iii) energy storage,
 - (iv) energy efficiency,
 - (v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy*

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

- (~~v~~b) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and
- (~~b~~c) such other estimated costs as may be prescribed; (“French”)

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

- (a) eliminating coal generation and fostering the growth of and investment in clean, modern and renewable~~reliable~~ 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 and energy efficiency, and
- (d) investing in energy infrastructure to ensure a clean, modern and reliable system;
 (“French”)

“electricity vendor”² means,

- (a) a licensed distributor,
- (b) a licensed retailer,
- (c) the IESO in circumstances where the IESO directly invoices a specified consumer for electricity used in Ontario, or
- (d) such other person as may be prescribed; (“French”)

“fair allocation amount” means the, in respect of a reference period, an amount determined in under section 15xx; (“French”)

“finance amount” means the finance amount determined in accordance with the regulations; (“French”)

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

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

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

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

“funding obligation” means,—— (a) —— a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or —— (b) —— by or on behalf of an investment interest owner to fund its ownership of an investment interest or a payment obligation that meets such other criteria as may be prescribed; (“French”)

“funding rebate” means a payment obligation incurred by IESO as part of the transfer of the regulatory asset; (“French”)

“IESO deferral” means the amount determined under section 20xx; (“French”)

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

“IESO funding shortfall~~deferral~~” means the amount determined under section 20xx; (“French”)

“investment asset” means the rights and interests described in section ~~22~~24xx; (“French”)

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

“investment interest” means,

- (a) an ownership interest in the investment asset, and
- (b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; (“French”)

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

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

Confidential – Draft for discussion purposes only

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

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

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

“monthly global adjustment rate” means the rate determined by the IESO in respect of a month under section 25.33 of the *Electricity Act, 1998* and the regulations made under that section; (“French”)

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

“prescribed” means prescribed by the regulations; (“prescrit”)

“reference period” means,

- (a) the period beginning on ~~May~~July 1, 2017 and ending on October 31, 2017, and
- (b) during the period beginning on November 1, 2017 and ending on April 30, ~~2047, 2047 or ending on such later day as may be prescribed.~~
- (i) every six-month period following the period mentioned in clause (a); or
- (ii) any period shorter than six months, as may be prescribed; (“French”)

“refinancing” means, subject to the regulations, the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation; (“French”)

“regulation” means a regulation made under this Act; (“règlement”)

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

“specified consumer” means,

- (a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or
- (b) such other person as may be prescribed; (“French”)

~~“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~~transfer” includes, when used in relation to an investment interest, the assignment, conveyance, disposition or sale of the investment interest; (“French”)

~~“transfer” means [TBD]~~“true up amount” means a true up amount determined in accordance with the regulations; (“French”)

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

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

“variance account” means the variance account established by the IESO under subsection 20.1xx (1). (“French”)

Specified consumers

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

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.
2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.
3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or ~~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

Transfer of regulatory asset

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts³⁾ In this Act, a reference to the transfer of a specified portion of the regulatory asset is a reference to the following, as provided for in subsection 22xx (3):

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period: Δ reduction in the balance in the variance account.
 - ~~i. The commodity price of the electricity used.~~
 - ~~ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.~~
 - ~~iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.~~
 - ~~iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act (Canada)* in respect of the amounts mentioned in subparagraphs i, ii and iii;~~
 - ~~v. Any other amounts as may be prescribed.~~
- ~~2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. (“French”)~~

Same, exclusions

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

- ~~1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods;~~
- ~~2. Penalties or interest;~~
- ~~3. Charges that do not relate to the use of electricity;~~
- ~~4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:~~
 - ~~i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as “microFIT”;~~
 - ~~ii. A charge labelled as a “specific service charge” or “retail service charge”;~~
 - ~~iii. A rate rider;~~
2. The adjustment of the prescribed type or class regulatory asset.
- ~~5. Any other prescribed amounts~~
3. The acquisition by a financing entity of the investment interest corresponding to the specified portion of the regulatory asset.

Effect of invalidity, etc.³

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

Same, funding obligation

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

³ FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

Purpose

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

- (a) to ensure that clean energy costs and clean energy benefits are fairly allocated among present and future specified consumers ~~and reflect the fair allocation~~; and
- (b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province; and
- (c) to align clean energy costs with clean energy benefits, in order to provide fairness for specified consumers.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

~~5xx. (1) The Crown shall not do anything that would, (a) hinder, delay, impair or prejudice the charging~~
5xx. (1) No action or omission by the Board, the Minister, or the Crown shall be effective to reduce, impair, postpone or terminate the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or to impair or postpone the invoicing, collection or remittance of amounts in respect of the clean energy adjustment; the clean energy adjustment.

- ~~(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or~~
- ~~(c) adversely affect an investment asset or a funding obligation.~~

Clarification with respect to regulations

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

Agreements for compensation

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

⁴ FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Guarantee, indemnification

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

- (a) authorize the Minister and the Minister of Finance, acting together on behalf of the Province,
 - (i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and
 - (ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;
- (b) impose terms and conditions, as it considers advisable, on which the Minister and the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and
- (c) specify a maximum liability for the guarantee or indemnity.

PART II FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

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

“RPP rate” means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan; (“French”) “specified RPP regulated rate consumer” means a fictional specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.
2. The consumer is would, if the consumer were not subject to this Act, be invoiced the RPP rate. (“French”) rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*.
3. Such other criteria as may be prescribed. (“French”)

Determination of invoice amount

Electricity provided by licensed distributor, retailer

6.01xx. (1) For the purposes of this Part, in circumstances where electricity would be provided to a regulated rate consumer by a licensed distributor or a licensed retailer, the invoice amount in respect of that consumer shall be determined as follows:

1. Calculate the sum of the following:
 - i. The commodity price of the electricity.
 - ii. Unless excluded by the regulations and subject to subsection (3), the charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.
 - iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.
 - iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii.
 - v. Any other amounts as may be prescribed.
2. Subtract, from the amount determined under paragraph 1,
 - i. the amount of the financial assistance provided to the consumer under the *Ontario Rebate for Electricity Consumers Act, 2016* in respect of the amounts mentioned in subparagraphs 1 i, ii and iii, and
 - ii. such other amounts as may be prescribed, which may include amounts of the financial assistance referred to in subparagraph i in respect of the amounts mentioned in subparagraphs 1 iv and v.

Same, rate order

(2) For the purposes of subparagraph 1 ii of subsection (2), in respect of charges that relate to any compensation required under subsection 79.2 (10) of the *Ontario Energy Board Act, 1998*, the applicable rate order is the rate order in effect on April 30, 2017.

Invoice amount, exclusions

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

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.
2. Penalties or interest.
3. Charges that do not relate to the use of electricity.
4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:
 - i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as “microFIT”.
 - ii. A charge labelled as a “specific service charge” or “retail service charge”.
 - iii. A rate rider, other than a rate rider that has been prescribed.
5. Any other prescribed amounts.

Specified RPP Regulated rate consumer, first fair adjustment adjustments

6.1xx (1) ~~The rate for electricity payable by a specified RPP consumer~~ Despite any order under subsection 78 (3.1) of the *Ontario Energy Board Act, 1998* and despite section 79.16 of that Act, the electricity rates payable by regulated rate consumers for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly ~~are the rates necessary to achieve the following outcome: the regulated rate consumer would be charged an invoice amount that is 25 per cent lower~~ less than the monthly invoice amount for that would be charged to that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*.

~~Same~~ (3) ~~For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.~~ 1998, without regard to any other provisions of this Act.

Specified Other specified consumers (non-RPP), first fair adjustment

6.2xx ~~The rate for electricity payable by a specified consumer who is not a specified RPP consumer for (1)~~ For the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [2018, the monthly global

Confidential – Draft for discussion purposes only

adjustment rate] in respect of for a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the regulated rate consumer is the rate determined by applying the following steps:

1. Determine the monthly global adjustment rate that would be payable effective May 1, 2017 by the specified consumer, determined without regard to any other provisions of this Act.
2. Subtract the following from the rate determined under paragraph 1:
 - i. The comparison rate referred to in subsection 6.1xx (2) and the
 - ii. The rate determined under subsection 6.1xx (1).

Determination by Board

6.3xx The Board shall determine ~~the rates mentioned in sections~~section 6.1xx and 6.2xx no later than ~~seven~~fifteen business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, ~~[specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer]~~ shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, ~~adapt its billing practices and its~~ invoices to reflect the new rates accordingly.

Effective date

6.5xx ~~The rates determined~~Board's determination under section 6.3xx ~~are~~is effective ~~on the earlier of the following days:~~

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

Transition

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

1. There are fewer than seven business days between the day of the Board's determination ~~of rates under section 6.3xx and the effective date~~July 1, 2017.
2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, ~~specified consumer or unit sub-meter provider shall, (a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and 2017.~~

Same

~~(b) 3) The electricity vendor shall ensure that, if any of its specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board consumers have been invoiced in a manner that does not reflect the rates determined under section 6.3xx as a result of the failure to comply with section 6.4xx, the specified consumer receives the difference between the rate amounts shown on their invoice and the applicable rate amounts payable under the rates.~~

Same

~~(4) Any amount that a specified consumer is eligible to receive under subsection (3) shall be provided as a lump sum credit on the first invoice issued received after the invoices have been electricity vendor has adapted its invoices or by such other means as may be prescribed by the regulations.~~

Subsequent fair adjustments

~~7xx. The (1) Subject to subsection (2), the Lieutenant Governor in Council may make regulations prescribing prescribe the methodology to be applied by the Board to determine rates for electricity rates payable by prescribed classes of specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on after April 30, 2022. 2018.~~

Limitation, fair adjustments after April 30, 2021

~~(2) Any prescribed methodology to be applied in respect of a reference period after April 30, 2021 shall have regard to the following:~~

- ~~1. The fair allocation amount in respect of the reference period.~~
- ~~2. Any clean energy adjustments payable in respect of the reference period.~~
- ~~3. Such other matters as may be prescribed.~~

Sub-meter customers metering

~~7.1xx A(1) This section applies if a specified consumer who provides to another person electricity to a sub-meter customer and any in respect of which a rate is determined under this Part.~~

Same

(2) If an invoice for the electricity is issued to the person by the specified consumer or a unit sub-meter provider who provides providing unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable, the rate for the electricity that is payable by the person who is liable to pay the invoice is the rate that reflects the rate determined under this Part.

PART III CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

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

Same

- (2) For greater certainty, subsection (1) applies regardless of,
- (a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and
 - (b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity inconsistent with the Financing Plan, including any failure to provide for the reasonable alignment of the estimated finance amount with the fair allocation amount.

Indebtedness of specified consumer

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

Same

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

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may recover collect amounts in respect of the clean energy adjustment payable under this

section from each sub-meter customer on a pro rata basis in accordance with the regulations.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment

Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period taking the following steps:

~~Estimated finance amount, true up amount~~

~~(2)-1. Calculate the sum of the following:~~

~~_____ i. The estimated finance amount ~~and~~ in respect of the reference period.~~

~~_____ ii. The true up amount shall be determined in accordance with the regulations in respect of the reference period.~~

~~_____ 2. Divide the sum calculated under paragraph 1 by the number of months in the reference period.~~

Regulations re true up amount

~~(3) The regulations under subsection (2) shall~~ Lieutenant Governor in Council shall, in making regulations with respect to the determination of the true up amount, have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.
2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

- i. differences between the estimated and actual finance amount for the ~~immediately preceding~~applicable reference period,
- ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and
- ii. variations in billings due to variations in electricity consumption

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment in respect of a reference period and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) ~~The~~Without changing the clean energy adjustment, the Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

11xx. (2) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

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

1. Amounts described in subsection 11xx (2).
2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).
3. Proceeds of amounts described in paragraphs 1 and 2.

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust

by the IESO for the investment interest owners ~~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, inclusive of interest earned on the accounts referred to in subsection (2), to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (25) and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same invoice period.

Held in trust

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

Remittance to IESO

(5) Each electricity vendor shall remit amounts ~~described in subsection (5)~~ in respect of the clean energy adjustment to the IESO for the benefit of the investment interest owners in

accordance with the regulations.

PART IV IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

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

Replacement

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

Duties and powers

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

Same

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

- ~~—1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx. 2. Providing providing information to the IESO in respect of obligations under Part III. 3. Such and such other mattersactivities as may be prescribed.~~

Review of costs

Fees, etc.

(3) ~~The Board shall review the administrative~~Subject to any prescribed limitations, the Financial Services Manager may establish and charge fees to recover,

- ~~—(a) the costs of doing anything the Financial Services Manager is required or permitted to do under this or any other Act; and~~
- ~~—(b) any other type of expenditure, the recovery of which is permitted by the regulations.~~

Same, Board approval

~~—(4) Before establishing fees under subsection (3), the Financial Services Manager shall submit them to the Board for approval in accordance with the regulations.~~

Confidential – Draft for discussion purposes only

FAIR ALLOCATION AMOUNT

~~Financial Services Manager~~Minister to calculate fair allocation amount

~~15xx. (1) The Financial Services Manager~~Subject to subsections (2) and (3), before the first funding obligation is incurred, the Minister shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period applying such method as the Minister considers appropriate and in accordance with the following steps:

~~Timing of calculation~~

~~—(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].~~

~~Amount~~

~~—(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts:~~

- ~~1. The amount, if any, by which, if this Act had not been enacted, Determine the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the Electricity Act, 1998 and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.~~
- ~~2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period. Determine the estimated reduction in the amounts payable by specified consumers as a result of rates determined under Part II in respect of all previous reference periods, including the estimated reduction in amounts that would have been payable by specified consumers in respect of clean energy costs under the monthly global adjustment rate in the absence of this Act being enacted.~~
- ~~3. Determine the amount, if any, by which the determination under paragraph 1 exceeds the determination under paragraph 2.~~
- ~~4. Calculate the sum of the amounts determined under paragraphs 3 and 4 and such other amounts as may be prescribed.~~

Confidential – Draft for discussion purposes only

Principles

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

1. ~~Clean~~The purpose of calculating a fair allocation amount is to measure and allocate the estimated clean energy costs and estimated clean energy benefits fairly among the specified consumers in respect of each reference period.
2. Calculations should be made having regard to the need to align each fair allocation amount with the estimated finance amount payable during the reference period.
3. Estimated clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the estimated clean energy benefits attributed to the specified consumers in respect of the reference period.
2. ~~The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.~~4. Such other principles as may be prescribed.

Assumptions

~~3. The~~(3) In calculating each fair allocation calculation should include reasonable amount, the Minister shall make such assumptions as the Minister considers to be reasonable regarding the following:

- i.1. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.
- ii.2. The expected number of specified consumers in respect of each reference period.
- iii.3. The expected electricity consumption rates in respect of each reference period.

Method

(3) ~~The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.~~4. Such other assumptions as may be prescribed.

Minister to provide amount to Financial Services Manager

(4) The Minister shall provide the fair allocation amount in respect of each reference period to the Financial Services Manager.

Notification to Minister

Recalculation

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods. 5) A calculation of fair allocation amounts under this Part may be changed by such person as may be prescribed in accordance such requirements as may be prescribed.

Effective date

Same

(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. No change under subsection (5) shall affect any clean energy adjustment that has already been determined under section xx or any funding obligations that have already been incurred before the change.

Publication Information

(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. The Minister, the IESO, the Financial Services Manager, the Board and electricity vendors shall provide such information as may be prescribed and in accordance with the regulations for the purposes of facilitating a change to a calculation of the fair allocation amount.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

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

Plan to be provided to Minister

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

Principles

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

1. ~~Any incurrence of a funding obligation should reasonably align with~~Funding obligations should be incurred such that, along with any funding obligations already incurred, the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period will reasonable align with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment~~amount to reflect rates determined under Part II in respect of the reference period.~~
2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.
3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, ~~first five year period~~

(4) In respect of each reference period from May 1, 2017 to April 30, ~~2022, 2021,~~ no funding obligation shall be incurred that would ~~become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,~~

- (a) ~~no fair adjustment has been made~~rates determined under Part II have been applied in respect of the reference period; or
- (b) ~~if a fair adjustment rate has been made~~determined under Part II in respect of the reference period, the funding obligations incurred would not be~~result in amounts payable in respect of the clean energy adjustment during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment reduction in the amount payable by specified consumers in respect of the reference period] as a result of the determination under Part II.~~

Other reports

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

Confidential – Draft for discussion purposes only

Confidentiality

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

- ~~——1. The Financing Plan.~~
- ~~——2. Reports referred to in subsection (3.1).~~
- ~~——3. Any other document that would reveal information contained in the Financing Plan or the reports.~~

Amendments to plan

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

Same

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

Implementation of Financing Plan

~~17xx.~~ (1) The Financial Services Manager shall ~~incure~~ensure that funding obligations ~~in material conformity incurred for the purposes of this Act are incurred in a manner that is consistent~~ with the applicable Financing Plan.

Same

(2) For greater certainty, ~~subsection 17xxXX~~ (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

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

Effect of amendment to fair allocation amount

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

PART V THE REGULATORY ASSET

IESO funding shortfall deferral

20xx. (1) The IESO funding shortfall deferral for each month, commencing May 1, 2017, shall be determined by the IESO in accordance with the regulations.

Same, retrospective amounts

(1.1) For greater certainty, the regulations may provide for the IESO deferral to include an amount that was incurred by the IESO on or after May 1, 2017 and before the this Act comes into force.

Electricity vendors to provide information

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

Same

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

Variance account to be established, maintained

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

Recording in variance account

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

1. The amount of the IESO funding shortfall deferral for each month.
2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.
3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

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

Rights of investment interest owner

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

Regulatory asset established

21xx. (1) ~~The~~ Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

~~(2) Subject to subsection (2), the~~ Board shall, from time to time, determine and set rates payable by specified consumers to allow ~~for IESO to recover the balance recorded in the variance account.~~

Limitation

~~(2) Despite subsection (1), the~~ **(3)** The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, ~~2022.~~

~~**Board to set rates** (3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.~~ 2021.

Same, limitations

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

Transfer of regulatory asset

22xx. (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer ~~all or a specified~~ portion of the regulatory asset to ~~any~~ a financing entity in accordance with this section.

Same

Agreement

~~(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion~~ An agreement between the IESO and a financing entity in relation to the transfer of

a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

- (3) Upon receipt by the IESO of the payment by the financing entity,
 - (a) the balance in the variance account shall be reduced by the amount of the payment;
 - (b) the regulatory asset, the transfer shall be valid and enforceable against the IESO and shall be adjusted accordingly;
 - (c) the financing entity shall acquire a corresponding investment interest; and
 - (d) the IESO shall retain no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

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

Validity of transfer

23xx. (1) A transfer of a specified portion of the regulatory asset under this Act ~~is~~section 22xx constitutes a valid and enforceable sale and absolute transfer to ~~the~~assignment, conveyance and sale of the corresponding investment interest owner of to the regulatory asset ~~transferee.~~

Same

(2) Without limiting subsection (1), any transfer ~~that by its terms is intended to constitute a sale or absolute transfer~~agreement that states an intention of the parties for IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute transfer~~assignment, conveyance, disposition and sale of IESO's right to recover the IESO funding shortfall, corresponding amount in the variance account 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~~the regulatory asset is made under section 22xx, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

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

PART VI THE INVESTMENT ASSET

Effect of transfer

24xx. (1) ~~The first transfer of a specified portion of the regulatory asset or a portion of it creates under section 22x creates an investment asset or, if it is not the first transfer, adds to the investment asset.~~

Same

~~(21.1) Upon any transfer of all or a specified portion of the regulatory asset under section 22xx to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest.~~

Investment asset established

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

1. ~~The right and interest to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.~~
2. ~~The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or IESO and other prescribed parties.~~
3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.
4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.
5. The right to enforce the duties and obligations under this Act of each electricity vendor and IESO to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any

enforcement action undertaken by any electricity vendor to recover payment of ~~amounts in respect of~~ the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest, including any rights to receive funding rebates.
7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

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

No set off, etc.

- (2) The investment asset shall not be set off,
 - (a) by a consumer, an electricity vendor, IESO, an agent of the investment interest owner or an owner of a distribution system assets, within the meaning of the *Electricity Act, 1998*, in the Province.
 - (b) in connection with any default of a person mentioned in clause (a); or
 - (c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset interest owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

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

Transfer of investment interest

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

Confidential – Draft for discussion purposes only

Validity of transfer

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

Same

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

Deemed perfection, etc.

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

Priority of transfer, assignment, etc.

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

Investment interest owner may grant security interest

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

Validity

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

Perfection and priority of security interests

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

Proceeds

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

Perfection

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

Same

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

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI MISCELLANEOUS

Appointment of agent, invoicing or collection

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

Not Crown agent

30xx. (1) For greater certainty, ~~no agent~~ a person appointed under this Act ~~section 29xx~~ is not an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Board's authority

30.1xx (1) Each electricity vendor, the IESO and the Financial Services Manager shall maintain such accounts and provide such information to the Board as the Board may require for the purposes of carrying out its responsibilities under this Act, in the form and manner and within the time required by the Board.

No hearing required

(2) Despite anything to the contrary in the *Ontario Energy Board Act, 1998*, the Board may exercise any of its responsibilities under this Act without a hearing.

Sequestration

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

Same

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

Choice of law

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

Conflict

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

No further approvals, etc.

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

Immunity Liability

35xx. (1) No action or other civil proceeding for damages shall be instituted commenced against any employee of the Province, IESO, OPG or OEB or the Ontario Power Generation Inc. for any act done in good faith in the execution or exercise or performance or the intended execution of any duty or authority exercise or performance of a power or duty under this Act, the regulations under this Act or for any alleged neglect or default in the execution exercise or performance in good faith of any such a power or duty or authority under this Act.

Same

(2) Nothing in subsection (1) shall be read as limiting the effect of subsection 19 (1) of the *Electricity Act, 1998* or subsection 11 (1) of the *Ontario Energy Board Act, 1998*.

Same

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

References in marketing materials and offering documents

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

Non-application, Financial Administration Act, s. 28⁵

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. (1) The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. ⁶⁵Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.
2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

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

⁶⁵ FLS - see s. 78 (1) of the *Climate Change Mitigation and Low-carbon Economy Act, 2016* - paras. 1 and 2.

- ~~3.~~ Prescribing types of payment obligations that constitute funding obligations;
- ~~x.~~ governing the calculation [4. Governing the determination of classes of specified consumers, which may include determination based on the manner in which rates are determined for different classes of specified consumers.
5. Governing the determination of the finance amount and the true-up amount} and how the amount is those amounts are to be applied to the clean energy adjustment; ~~x.~~ governing
6. Governing the inclusion of information under this Act on or with invoices, which may include requiring notice to be provided by electricity vendors to specified consumers and other prescribed persons regarding the adjustments; including providing for different requirements in different circumstances and for different classes of specified consumers.
- ~~x.~~ governing 7. Governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on or with invoices issued to specified consumers, including the form that the information must take and the form of the invoices and the form of any notice to be provided to the specified consumer under this Act⁷⁶;
- ~~8.~~ Governing the manner by which invoices or notices provided for under this Act are to be provided to specified consumers and other prescribed persons.
- ~~prescribing~~ 9. Prescribing the time within which any action required by this Act may be required to be done;
- ~~10.~~ Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

Limitation

(2) Despite subsection (1) or any other Act, no regulation under this Act shall have the effect of reducing, impairing, postponing or terminating the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or impairing or postponing the invoicing, collection or remittance of the clean energy adjustment.

⁷⁶ FLS - see OEBA s.79.17 and 88(1)(z.11) and (z.12)

PART VII⁸⁷
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* ~~is~~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;
 - (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,
 - (ivA) incurring liabilities in relation to the regulatory asset,
 - (vB) transferring the regulatory asset under section 22x for consideration; and
 - (viC) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

200.1xx (1) Subsection 25.33 (1) of the Act ~~is~~would be amended by striking out “and” at the end of clause (a), by adding “and” at the end of clause (b) and by adding the following clauses~~clause~~:

- (c) prescribed amounts that are paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] or incurred by the IESO in relation to the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and;

⁸⁷ FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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

(1.1) Subsection 25.33 (2) of the Act is/would be amended by striking out “and” at the end of clause (a), by adding “and” at the end of clause (b) and by adding the following clausesclause:

- (c) prescribed amounts that are paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] or incurred by the IESO in relation to the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and;
- ~~— (d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.~~

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

- 4. A consumer who is, — i. — a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017*, or ii. 2017 or such other consumer as may be prescribed by the regulations [made under the *Ontario Energy Board Act, 1998*].

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

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

201x. Section 53.1 of the Act is/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 the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

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

Deemed assets, entity non-subsidiary

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act, if a financing entity is not a subsidiary of Ontario Power Generation Inc.,

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

Deemed assets, subsidiary

(1.4) Despite any other provision of this Act, the *Business Corporations Act* or any other Act, if a financing entity is a subsidiary of Ontario Power Generation Inc.,

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

Definition, financing entity

~~(1.41.5)~~ For the purposes of this section, “financing entity” has the same meaning as in the *Fair Hydro Plan Act, 2017*.

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

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

~~6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.~~

205x. Subsection 70 (2.1) of the Act is/would be amended by adding the following paragraph:

- 4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

205.1x Section 70 of the Act would be amended by adding the following subsection:

(2.3) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Fair Hydro Plan Act, 2017* and the regulations made under it.

206x. Section 78.1 of the Act is/would be amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.
2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.
3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.
4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

207xx. Subsection 79.16 (3) of the Act would be repealed.

PART VII
COMMENCEMENT AND SHORT TITLE

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.

Confidential – Draft for discussion purposes only

Confidential – Draft for discussion purposes only

~~6714670-v1~~

Document comparison by Workshare Professional on Friday, April 28, 2017
2:29:21 PM

Input:	
Document 1 ID	PowerDocs://SETOR1/6714670/1
Description	SETOR1-#6714670-v1-april_26_fhp_draft
Document 2 ID	PowerDocs://SETOR1/6715790/1
Description	SETOR1-#6715790-v1-April_28/17_FHP_draft
Rendering set	standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	409
Deletions	355
Moved from	26
Moved to	26
Style change	0
Format changed	0
Total changes	816

Confidential – Draft for discussion purposes only

6714670-v1