Version 34

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A PROPOSAL TO CREATE REGULATION

made under the

ONTARIO FAIR HYDRO PLAN ACT, 2017

GENERAL

CONTENTS

DEFINITIONS

~~*[General NTD: Please note that in certain cases, the drafting has not captured (caught up to) the most recent comments received. We hope to get closer on the next draft but please do not hesitate to insert your previous comments where the draft does not contemplate the important points you have raised.*~~

~~*"Track-changed" drafting language right in the draft (rather than or together with explanatory text) is most useful at this stage. Finally, any responses you have to "OLC" (Leg. Counsel) notes and questions would be most appreciated]*~~

~~*Due date/Timing: First thing Tuesday, June 20th (please). This is due to stark drafting deadlines and the need to get one more draft out to all involved parties prior to finalizing the proposal.*~~

~~*[Please note – We have appreciated all of your excellent comments. However, this version does not fully capture all comments. We hope to have a further updated draft for you soon but will need further comments from you within the above timelines in order to facilitate this. Thank you.]*~~

Definitions

~~0.1xx~~1. (1) In this Regulation,

[OLC Note~~: Please advise if these definitions work as defined for the entire regulation. Your instructions were for these terms to be defined solely for the purposes of calculating the finance amount but I believe the terms get used elsewhere in the regulation and probably are meant to have the same meaning throughout.]~~ re definitions: You'll see that I've removed some of the definitions because I determined they were creating some confusion. Feel free to ask me to explain any of the changes if you have questions but my intention was to communicate concepts in a way that is more direct about the relationship between various types of amounts and the period of time in which they are paid/received etc. So for example in the section dealing with finance amounts, I refer specifically to deposits/withdrawals to the specific accounts and can do so with reference to *when* those deposits/withdrawals are made, right within the section dealing with the determination of the finance amount in respect of a period of time.]

"capital account" means an account established by or on behalf of a financing entity ~~pursuant to~~under the governing documents of a funding obligation for the purpose of accumulating funds to be used to make repayments ~~[~~in respect of the funding obligation~~?]~~~~*on expected payment dates, due dates or maturity dates*~~;

[OLC Note: Just want to confirm that the use of the word "repayment" here is consistent with the defined term "repayment".]

"derivative agreements" means interest rate swaps, cross-currency swaps or other derivative agreements, and including any associated collateral, entered into in connection with, or to hedge the exposure of a financing entity under, a funding obligation.

"derivative payments" means any payments required to be made in connection with a derivative agreement, including ordinary course payments, payments on termination and payments made in connection with margining or collateral arrangements.

"derivative receipts" means any payments received in connection with a derivative agreement, including ordinary course receipts, payments received on termination and payments received in connection with margining or collateral arrangements.

"financing entity expenses" include fees, charges, costs, taxes, indemnities, reimbursements and other amounts incurred or committed to by or on behalf of a financing entity as a result of an activity authorized or permitted under the Act and includes fees charged by the Financial Services Manager;

[OLC Note: Is ~~the portion in italics necessary? If so, is it sufficiently clear what the different dates mean~~it necessary to include taxes in this definition, given how the term "expenses" is used in this reg?]

[OLC Note: ~~I'm not sure if the "repayment" referred to here is always in respect of the same funding obligation under which the capital account was established. I'm not sure if there may be multiple capital accounts (and multiple funding obligations) for each financing entity. I'm also not sure if any of this matters, but I thought I should ask.]~~The examples for the proposed definition of "expenses" to be drafted and would just note that the proposed examples include a reference to a $100 threshold for a reference period which won't work because amounts will have to be determined relative to portions of reference periods as well.]

~~"capital reserve deposit" means the amount [required or permitted?] under a funding obligation to be deposited into a capital account;~~

~~"capital reserve withdrawal" means the amount [required or permitted?] under a funding obligation to be withdrawn from a capital account;~~

"finance reserve account" means an account established by or on behalf of a financing entity ~~pursuant to~~under the governing documents of a funding obligation for the purposes of pre-funding, collateralizing, over-collateralizing or establishing reserves for the payment of the funding obligation or for related contingencies;

~~"finance reserve deposit" means the amount [required or permitted?] under a funding obligation to be deposited into a finance reserve account;~~

~~"finance reserve withdrawal" means the amount [required or permitted?] under a funding obligation to be withdrawn from a finance reserve account;~~

"funding cost" means ~~any required payment of~~ interest, commitment fees or other ~~finance~~financing charge payable by or on behalf of a financing entity ~~in respect of its funding obligations, including any up-front or periodic amount payable pursuant to a derivative entered into by or on behalf of the financing entity to hedge its related interest rate or currency exposures;~~[as required under the governing documents of?] funding obligations.

[OLC Note: I have highlighted in blue several references to derivatives/interest rates/currency agreements/hedging - Please check throughout the reg to ensure that we are intentionally using different language in various provisions. If we mean the same thing in each place, then let's be consistent. Unfortunately I don't know enough about any of these terms to know what would be ideal -- for example I don't know if you are intending something different when you say "derivatives" vs. "derivative agreements".]

[OLC Note: What does "~~finance charge" mean? This can easily be confused, I think, with "finance amount". We don't use the term "finance charge" anywhere else~~financing charge" mean? This is the only place it is used. Note we also have the term "financing cost". I think we need to be clear about what we are talking about here… Especially given that "funding cost" is used to determine the "financing cost".]

[IESO Note: Our suggested language attempts to standardize language around derivatives by using the term "derivative agreement" to describe the agreement and the related obligations and "derivative payment" and "derivative receipts" to capture actual amounts paid and received. We think that payments and receipts should not be addressed directly and transparently not as part of funding costs in the case of payments and recovery amounts in the case of receipts.]

"governing documents" means, in respect of a funding obligation, the documents evidencing the funding obligations, and the related credit, security and ancillary documents;

[OLC Note: Does this work?]

"~~recovery amount" means the aggregate of all amounts received by or on behalf of financing entities in respect of funding obligations, other than the proceeds of the issuance of funding obligations, [including any amounts received by or on behalf of the financing entity pursuant to any related interest rate, currency or other form of derivative agreement];~~

~~[OLC Note: I can't tell if the portion in square brackets is meant to be an example of "the proceeds of the issuance of funding obligations" or if it is meant to be an example of the amounts that are included in "recovery amount".]~~maturity date" means, in respect of a funding obligation, the date occurring after all scheduled payment dates in respect of the funding obligation, on which all outstanding principal, interest and other amounts payable under the governing documents of the funding obligation are payable;

~~"redemption amount" means the amount payable~~ "net repayment amount" means in relation to any period and any financing entity the amount, which may be positive or negative, equal to (i) the amounts paid by or on behalf of a financing entity to repay, prepay, redeem~~, prepay~~ or ~~repurchase~~purchase a funding obligation ~~incurred by or on behalf~~ of the financing entity, including any premium, make-whole or other ~~additional~~ amount ~~becoming~~ payable ~~under the funding obligation~~ to give effect to the redemption, prepayment or repurchase~~;~~, less (ii) the proceeds to such financing entity of all debt incurred to refinance in whole or in part any funding obligations of such financing entity.

[IESO Note: Consider whether a more detailed definition of refinancing is required. All debt incurred by a financing entity should be incurred either to finance the acquisition of an Investment Asset or to refinance existing debt. Therefore, (ii) above could be expressed as the amount by which the amount of all debt incurred in a period exceeds the purchase prices paid in that period.]

~~"refinancing amount" means the principal amount of a funding obligation incurred by or on behalf of a financing entity where the proceeds of the funding obligation are not paid to the IESO in respect of all or any portion of the purchase price of an investment interest;~~

[OLC Note: Is the word "prepay" correct or should it say "repay"? I note that this seems to overlap with the definition of refinancing. [Further consideration is required]. What is different between a redemption and a refinancing?]

"repayment" means the payment ~~[~~by or on behalf of a financing entity~~?]~~ or the provision by or on behalf of a financing entity for the payment of all or a portion of the principal amount ~~advanced to the financing entity under~~of a funding obligation~~, which may include payment of an amount payable on the termination, unwind[??] or amendment of any related interest rate, currency or other form of derivative agreement;~~

[OLC Note: What does the underlined phrase mean? An agreement to repay? Just want to confirm that this ~~is~~"agreement to do something ~~that~~" is included for "repayment" but not for other amounts. It also raises some confusion where the term is used in subs. 5 (1) below - would *the provision for the payment* need to specify that the payment would be payable during the specific period of time in order for it to be included in the finance amount in respect of that period of time?]

"scheduled payment date" means, in respect of a funding obligation, a regular date, set out in the governing documents of the funding obligation, on which a payment [repayment?] is scheduled;

~~"tax" means any tax, duty, fee, premium, assessment, impost, levy or other charge imposed by any governmental authority, including,~~"tax" means [to be completed];

~~(a) an amount levied on [...];~~

~~(b) an amount measured by [...];~~

~~(c) an amount referred to as [...];~~
~~[OLC note: Please instruct on what belongs in each of the above clauses - the following list was provided but doesn't make sense when all terms are lumped together...~~
~~*income, gross receipts, profits, capital, minimum tax, sales, goods and services, harmonized sales, value-added, excise, use, withholding, property, surtaxes, payroll, employer health, employment insurance and government pension plan premiums or contributions*]~~

~~(d) any amount or charges under Part VI of the *Electricity Act, 1998*;~~

~~(e) any instalment in respect of an amount mentioned in clause (a), (b), (c) or (d); and~~

~~(f) any interest, penalty, fine, addition to tax or other amount imposed in respect of an amount mentioned in clause (a), (b), (c) or (d);~~
~~[OLC Note: Does "addition to tax" need some elaboration in order to convey the intended meaning?]~~

"tax liability" means all tax payable~~ or paid~~ by or on behalf of a financing entity, incurred directly or indirectly by the financing entity or for which the financing entity is otherwise liable ~~for~~ as a result of ~~its engagement in~~ any activity authorized or permitted ~~by~~under the Act, including,

(a) activities related to a financing entity, including ~~the~~its creation, maintenance or reorganization~~ of a financing entity~~,

(b) activities related to an investment interest and related assets and liabilities, including the acquisition, holding, enforcement or disposition of an investment interest and activities relating to bank accounts to hold reserves and payments received,

(c) activities related to a funding obligation, including ~~the~~its incurrence, performance, redemption, repayment or disposition~~ of a funding obligation~~, and

(d) activities related to an agreement, including the entering into, performance, enforcement, termination or disposition~~ of an agreement in respect of interest rates or currency or any other form~~ of derivative ~~agreement~~agreements;

"tax refund" means all amounts received by or on behalf of a financing entity as a refund of tax and to which the financing entity is entitled as a result of its engagement in any activity authorized or permitted ~~by~~under the Act, including activities described in clauses (a) to (d) of the definition of "tax liability"~~;~~.

(2) For the purposes of subsection 21 (8) of the Act and this Regulation,

"readjustment amount" means, in respect of a reference period, the amount determined by applying the following steps:

1. Determine the amount, if any, by which the total amount payable by specified consumers for electricity in respect of the reference period is forecasted to be reduced as a result of a determination of the Board under Part II of the Act.

2. Determine the amount, if any, by which the determination under paragraph 1 exceeds the fair allocation amount determined by the Minister under subsection 20 (1) of the Act in respect of the reference period.

Funding obligation

~~1xx.~~2. (1) For the purposes of the definition of "funding obligation" in subsection 1 (1) of the Act, a payment obligation in respect of any of the following types of amounts is also a funding obligation if it is incurred by or on behalf of a financing entity:

[~~*ENE LSB note to OPG/Tory and IESO: Does this definition, together with the definition of "funding obligation" in subs. 1 (1) of the Act, adequately address the "principal" amounts of funding obligations along with the other elements set out below?*~~]OLC Note:[Please explain] why the "without duplication" concept would be necessary here… this is just a list of types of amounts and we aren't adding them up.]

1. ~~Any present and future interest, fees and other amounts owing in relation to a funding obligation.~~

2. ~~Any amount, including an amount mentioned in paragraph 1, in relation to a refinancing.~~

[OLC Note~~: I have re-worded para. 2 so that it is about a "type of amount" as per the opening flush of this section. I believe the meaning conveyed is consistent with the instructions.]~~ - see below in subs. 3 (2) where it is suggested that a refinancing is a funding obligation… and I think that perhaps "amounts in respect of a refinancing" are covered under subs. 2 (2)? Does this work as intended?]

3. ~~Any amount payable under interest rate swaps or cross-currency swaps or other derivative agreements, including any bonds or loans to finance collateral obligations under the swaps or derivative agreements.~~1. Any debt incurred by a financing entity for the purpose of acquiring an investment interest.

2. Any other debt incurred by a financing entity in connection with the acquisition and holding of investment assets, the incurrence of funding obligations and the activities of the financing entity under the Act.

~~4.~~

2. Any amount raised ~~in a manner consistent with the Financing Plan for the purposes of a financing entity acquiring and financing an investment interest, including any amounts raised that also constitute, and are recoverable as, a finance amount~~by a financing entity for the purpose of refinancing a funding obligation.

(2) ~~The~~Funding obligations, including the types of amounts set out in paragraphs 1 to ~~4~~2 of subsection (1), include ~~both~~ principal ~~and~~, interest, fees and other amounts owing in respect of the amounts.

~~[OLC Note: subs. (2) doesn't really make sense for para. 1 of subs. (1), which refers expressly to "interest". Could we remove the reference to "interest" in para. 1 if we need to retain subs. (2)?]~~

Refinancing

~~**1.1xx**~~**3.** (1) For the purposes of the definition of "refinancing" in subsection 1 (1) of the Act, a refinancing includes the incurrence of a debt if the following criteria are met:

1. The debt is incurred no earlier than six months before the maturity date of a funding obligation.

2. ~~If the~~The proceeds of the debt are designated by the Financial Services Manager to repay the funding obligation mentioned in paragraph ~~1, the~~1.

3. The proceeds are applied as designated.

(2) For greater certainty, if the proceeds mentioned in paragraph 2 of subsection (1) ~~cease to be~~are not applied as designated, the debt ceases to be a refinancing but remains a funding obligation.

[~~OLC Notes:~~NTD to OPG - OPG to consider necessity for this provision]
~~- I used the term "debt" instead of "funding obligation" when referring to the incurrence that constitutes the "refinancing" because this tracks the language of the definition of "refinancing".~~
~~- Perhaps the following scenario is not likely to occur as a practical matter, but what if the FSM changed the designation of the proceeds? Does that need to be addressed?~~
~~- Is the designation by the FSM something that would be set out expressly in the Financing Plan? I'm just wondering how anyone would know whether or not the debt continued to meet the criterion set out in para. 2 above.]~~

Specified consumers, unit sub-meter providers, s. 13 (6) of the Act

~~2xx.~~4. For the purposes of subsection 13 (6) of the Act, amounts in respect of the clean energy adjustment may be collected by the specified consumer as follows:

1. If an invoice for electricity is issued to a person by the specified consumer, ~~i.~~ the specified consumer may collect from the person the person's proportionate share of the amount of the clean energy adjustment shown on the invoice~~, and ii.~~ for electricity payable by the specified consumer ~~may, immediately upon receiving the amount from the person, provide the amount to the electricity vendor on behalf of the person~~.

2. If an invoice for electricity is issued to a person by a unit sub-meter provider providing unit sub-metering for a specified consumer~~, i.~~ the unit sub-meter provider may collect from the person the person's proportionate share of the amount of the clean energy adjustment shown on the invoice ~~and provide the amount collected to~~for electricity payable by the specified consumer~~, and~~.

~~ii. the specified consumer may, immediately upon receiving the amount from the unit sub-meter provider, provide the amount to the electricity vendor on behalf of the person.~~

Finance amount

~~3xx.~~5. (1) Subject to subsection (2), the finance amount in respect of a ~~reference~~financing entity and a period of time shall be determined as follows:

[IESO Note: If there is more than one financing entity, there will need to be a separate calculation for each financing entity].

[OLC Note: Because it appears that "finance amounts" and "true-up amounts" may need to be determined in respect of portions of reference periods and not just reference periods, I decided to just make the general rule very general about determinations "in respect of a period of time". This could mean an entire reference period or one small portion of a reference period.]

1. After eliminating any duplication in the following amounts, calculate the sum of the following amounts ~~in respect of the reference period~~:

~~[OLC Note: Consider whether the above "in respect of the reference period" is sufficiently clear to establish parameters on each of the amounts set out below.]~~

    i. ~~Amounts payable in respect of~~net principal repayments during the period.

~~[OLC note: above was only place where we used the term 'repayment amount' so not necessary to define.]~~

[OLC Note: Consider subpara. i along with the definition of "repayment" above… ~~I'm not sure this works… do the "amounts payable" include payments that are made? Or only those that are outstanding?~~ See my question under that definition about "the provision for the payment of…"]

ii. Funding costs paid during the period.

iii. ~~Redemption amounts.~~Amounts required, under the governing documents of funding obligations, to be deposited into capital accounts or finance reserve accounts during the period.

iv. ~~Finance reserve deposits.~~Derivative payments during the period.

v. ~~Capital reserve deposits.~~Financing entity expenses paid during the period.

vi. ~~Expenses.~~Taxes paid during the period.

~~vii. Tax liabilities.~~

2. After eliminating any duplication in the following amounts, calculate the sum of the following amounts ~~in respect of the reference period~~:

~~[OLC Note: Consider whether the above "in respect of the reference period" is sufficiently clear to establish parameters on each of the amounts set out below.]~~

i. ~~Capital reserve withdrawals.~~Amounts withdrawn from capital accounts or finance reserve accounts during the period.

~~ii. Finance reserve withdrawals.~~

~~iii. The amount paid to or for the benefit of financing entities [as a result of?] funding rebates.~~ii. Funding rebates received during the period.

iii. Derivative receipts during the period.

[~~OLC Note: There is no need for the defined term 'funding rebate receipt' because this is the only place where that concept matters. I'm proposing the words 'as a result of' based on my understanding of the definition of "funding rebate" in subs. 1 (1) of the Act.~~IESO Note: Consider creating parallel definitions of "Actual Finance Amount, for use in relation to past periods, and "Estimated Finance Amount", for use in relation to future periods. The "Actual Finance Amount" would be strictly a cash definition. The "Estimated Finance Amount would require an estimate of cash receipts and cash expenditures, including projections around refinancing. Using the same base definition for both concepts has resulted in some obscuring of the cash nature of the Actual Finance Amount calculation.]

~~Here we have used the phrase "the amount paid" and not "the amount payable". We should be consistent if we mean the same thing.]~~

~~iii. Recovery amounts.~~

~~iv. Refinancing amounts.~~

[OLC Note: This is now the only place where we were using the term "refinancing amount". I'm having trouble with the proposed defined term for "refinancing amount" when read in conjunction with the definition of "refinancing" in the Act - which already says that it is "the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation". Could the "refinancing amount" simply be "amounts in respect of a refinancing"?

Here is the proposed definition - what are we trying to convey here that isn't conveyed in the definition in the Act?

"refinancing amount" means the principal amount of a funding obligation incurred by or on behalf of a financing entity where the proceeds of the funding obligation are not paid to the IESO but instead are used to repay an existing funding obligation in respect of all or any portion of the purchase price of an investment interest;]

v. Tax refunds received during the period.

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

(2) ~~The~~Subject to subsection (3), the following rules apply with respect to the determination of the finance amount~~ in respect of a reference period~~:

1. The determination shall be made by applying a cash basis accounting method.

[OLC Note: ~~I understand that there is a desire to create more certainty around what is meant by "cash basis accounting method". [Leg. Counsel notes that Ontario drafting practices include minimizing redundancies]. [I]f the descriptions set out in paras. 2, 3 and 4 are in fact redundant of what is meant by "cash basis accounting method", can we delete para. 1 and rely on paras. 2, 3 and 4? Are those rules [sic] sufficient to convey the intended policy? If not, please explain what other aspects of "cash basis accounting method" need to be articulated.]~~As per my previous notes, please advise regarding the meaning of "cash basis accounting method" and whether there is redundancy between the first four paragraphs here. Now that additional rules have been added and their relationship to para. 1 noted (see subs. (3)'s "despite paragraph 1") it is important that the relationship between paras. 2, 3 and 4 and para. 1 be clarified.

- Also, now that the itemized list in subs. (1) above is specific about what is paid/received/incurred etc. during the specific period of time in question, consider whether some or all of the rules in this subsection are consistent and/or necessary.]

2. If the determination is in respect of a past ~~reference~~ period of time, the determination shall reflect cash amounts actually paid, deposited, received or made available ~~in~~during that ~~reference~~ period of time. ~~[OLC Note: Isn't this just a re-statement of what is described in para. 1 - e.g. isn't this just "cash basis accounting"?]~~

3. If the determination is in respect of a future ~~reference~~ period of time, the determination shall reflect the estimated cash amounts that will be paid, deposited, received or made available ~~in~~during that ~~reference~~ period of time.

4. If the determination is in respect of a ~~partially completed reference~~ period of time that includes both past and future dates, the determination may reflect a combination of actual and expected cash finance amounts.

~~[OLC Note: I'm not sure if paras. 3 and 4 also fall under the general description of "cash basis accounting method" and are also redundant of para. 1?]~~

~~5. Taxes payable to a governmental authority may be estimated~~(3) Despite subsection (2), for purposes of estimating taxes to be paid in respect ~~of the relevant~~ a future tax reporting period of ~~the governmental authority and allocated in respect of reference~~a financing entity, such taxes may be allocated to various periods of time that occur within the tax reporting period, in such manner as ~~[~~the ~~FSM~~Financial Services Manager considers to be reasonable~~?]~~, subject to the following rules:

1. The estimated taxes, less any taxes paid by way of instalment or otherwise by or on behalf of the financing entity during the period of time in respect of which the finance amount is determined, shall be deemed to be a tax liability of the financing entity during that period of time.

[IESO Note: Even in respect of a future period, we are trying to capture taxes when paid, including taxes paid by way of instalment, and not tax liabilities when they accrue].

~~6. Taxes estimated and allocated as described in paragraph 5 shall be deemed to have been paid by a~~2. The amount, if any, by which the estimated taxes exceeds the tax liability of the financing entity in respect of the particular tax reporting period shall be deemed to be a tax refund of the financing entity ~~if the following conditions are met:~~in the first reference period commencing after the particular tax reporting period.

~~[OLC Note: What happens if the following conditions are not met….]~~

~~i.~~3. The ~~following amount, if any, is recognized as a tax refund in the reference period immediately following the reference period in which the actual amount of taxes was calculated in the tax return filed with a governmental authority: the amount by which the estimated taxes payable to the governmental authority~~amount, if any, by which the tax liability of the financing entity in respect of the ~~relevant~~particular tax reporting period exceeds the ~~actual amount of taxes paid to the governmental authority in respect of the~~estimated taxes shall be deemed to be a tax liability of the financing entity in the first reference period commencing after the particular tax reporting period.

~~ii. The following amount, if any, is recognized as a tax liability in respect of the reference period immediately following the reference period in which the actual amount of taxes was calculated in the tax return filed with the governmental authority: the amount by which the actual amount of taxes paid to the governmental authority in respect of the relevant tax reporting period exceeds the estimated taxes payable to the governmental authority in respect of the tax reporting period.~~4. If a financing entity receives an assessment or reassessment of taxes for a particular tax reporting period that differs from the amount shown on a tax return filed with the applicable governmental authority, the following rules apply once there has been a final determination with respect to the tax liability of the finance entity in respect of the particular tax reporting period:

i. The amount, if any, by which the tax liability of the financing entity for the tax reporting period is decreased shall be deemed to be a tax refund of the financing entity for the first reference period commencing after the final determination.

ii. The amount, if any, by which the tax liability of the financing entity for the tax reporting period is increased shall be deemed to be a tax liability of the financing entity for the first reference period commencing after the final determination.

(4) For the purposes of paragraph 4 of subsection (3),

"final determination" means a determination made by the applicable governmental authority or court of competent jurisdiction and in respect of which all rights to object to or appeal have been exhausted or have expired.

[IESO Note: This deeming language is not appropriate in the context of the actual Finance Amount calculation, which should be strictly an historical cash calculation].

Determining true-up amount

~~[OLC Note to draft: need to check these provisions carefully against the language of subs. 15 (2) of the Act to ensure consistency.]~~NTD to OPG: Ministry concerned about volatility of pricing for rate payers. Ministry to consider further.]

~~4xx.~~6. (1) Unless all ~~funding obligations and any additional~~ finance amounts are paid in full, the Financial Services Manager shall ~~comply with the following rules:~~

~~[OLC Note: Consider whether we need the underlined phrase above and throughout… are the "finance amounts" separate from the "funding obligations"? (If so, why are we saying "any additional"… shouldn't we just say "any"?)~~

~~I'm actually not clear on exactly how the concept of "funding obligation" and "finance amount" are meant to relate to one another. The "finance amount" consists of many amounts that relate to the funding obligation.]~~

~~1. The Financial Services Manager shall~~ calculate the true-up amount in respect of ~~a~~each reference period ~~and notify the Board of its determination for each reference period in accordance with subsection 5xx (1)~~.

[OLC Note to draft: need to check these provisions carefully against the language of subs. 15 (2) of the Act to ensure consistency.]

~~2. If~~ (2) The Financial Services Manager may, at any time during a reference period, determine the true-up amount in respect of the remaining portion of the reference period if,

(a) the Financial Services Manager reasonably forecasts that there will be a material shortfall in the collection of the clean energy adjustment ~~will be insufficient to pay~~relative to the estimated finance amount ~~for~~payable in respect of a reference period ~~in respect of which~~ ; and

(b) the Board has ~~made a determination~~determined rates under subsection 15 (4) of the Act~~, the Financial Services Manager may at any time during the reference period re-determine the true-up amount~~ in respect of the ~~remaining portion of the~~ reference period.

(~~2~~3) The true-up amount in respect of a reference period ~~may be determined, either before~~or a portion of the reference period ~~or at any point in time during the reference period~~may be determined, as follows:

~~*[ENE LSB note to ENE and IESO: Please determine how the "funding rebate" works in relation to all of the "finance amount", "true-up amount" and the composition of the "regulatory asset".]*~~

$$T = (A - B) + C$$

Where,

T = the true-up amount in respect of the ~~reference~~ period of time,
~~[OLC Note: I'm not sure I have understood the policy correctly… I think that regardless of whether the determination is being made before or during the reference period, the determination is always a determination of the *true-up amount in respect of the full reference period*. Is that correct? In other words, if the reference period begins on July 1st, I may determine the true-up amount on June 15th (before)… but then on July 15th I may decide that I want to determine it again, taking into account whatever information I have about the first 15 days of the reference period. But in both cases, I am always determining the amount for the full reference period.]~~

A = the aggregate of the finance amounts in respect of all reference periods preceding the current reference period and, if the determination is being made at a point in time during the current reference period, **in respect of the portion of the current reference period that precedes the point in time**,

B = the aggregate of all amounts of the clean energy adjustment remitted by the IESO to or for the benefit of the investment interest owners during all reference periods preceding the current reference period and, if the determination is being made at a point in time during the current reference period, **in respect of the portion of the current reference period that precedes the point in time**,

C = ~~any amounts to adjust for~~the amount representing reasonably foreseeable differences between amounts to be invoiced in respect of the clean energy adjustment and the amounts to be remitted by the IESO to the investment interest owners in respect of the invoices due to various factors, including those mentioned in subparagraphs 2 ii and iii of subsection 15 (2) of the Act.

[IESO Note: We continue to be concerned about both the feasibility of a mid- Reference Period recalculation of the relevant amounts and a mid-period rate reset by the Board. In particular: (1) will information be available for irregular periods to allow for a part period calculation of the Clean Energy Adjustment (2) will LDCs be able to apply part period adjustments to customer invoices, given the differences in billing periods and billing dates (3) will not short adjustments in material amounts applied to shorter periods lead to rate volatility and (4) is not some intra-period variation to be expected in any event, given that consumption and the finance entities' cash requirements will not be constant through the period. Even if all forecasts are accurate, liquidity will still be required within a Reference Period since cash inflows and outflows (even if they match over the Reference Period) are unlikely to match for each month within a reference period. If it is decided that partial Reference Period calculations are feasible, the calculation should in any event be done as at the end of the most recent usable accounting period. If a mid- Reference Period rate reset is possible, consider limiting the number in any one Reference Period. We think that adequate liquidity arrangements are a better alternative to a rate reset.]

(~~3~~4) The Financial Services Manager shall, when determining the amounts described in "C" in the formula set out in subsection (~~1~~3), have regard to amounts ~~due and~~ payable that were not collected and any amounts in respect of which an overpayment was made, which may include amounts resulting from a default of specified consumers, an electricity vendor or the IESO, whether in its capacity as an electricity vendor or its activities as agent or otherwise under section 16 or 17 of the Act.

(~~4~~5) If the Financial Services Manager determines that an error in the determination of the clean energy adjustment ~~in respect of a month~~ or any other error relating to the clean energy adjustment requires correction, the Financial Services Manager may reflect the correction in a ~~redetermination of the true-up amount under paragraph 2 of subsection (1) or may do so in the~~subsequent determination of the true-up amount ~~in respect of the following reference period~~. ~~[OLC Note - just want to clarify re the underlined phrase -- do you want to prohibit this kind of correction as being a rationale for an "emergency" redetermination? In other words, is this correction only permitted as part of a redetermination in a case where *the Financial Services Manager reasonably forecasts that the collection of the clean energy adjustment will be insufficient to pay the estimated finance amount for a reference period*?]~~

Notification to Board

~~5xx.~~7. (1) The Financial Services Manager shall notify the Board of the clean energy adjustment in respect of a reference period or a portion of a reference period in accordance with ~~the following rules:~~this section.

~~0.1 The notice shall be in respect of each month in the reference period or, in the case where a redetermination of the true-up amount has been made under paragraph 2 of subsection 3xx (1), the remaining portion of the reference period.~~
~~[OLC Note: In your instructions on s. 6xx (1), you mentioned notice regarding a 3-month period… I'm not sure how that is supposed to fit with the above requirement.] 1.~~
~~Until~~(2) Subject to subsection (6), until such time as all ~~funding obligations and any additional~~ finance amounts have been paid in full, the notification in respect of each reference period shall be provided,
~~[OLC Note: Same question as above re "any additional" finance amounts.]~~

~~i. on or before April 1,~~ (a) in the case of a reference period that begins on May 1, on or before April 1 in the same year; and

~~ii. on or before October 1,~~ (b) in the case of a reference period that begins on November ~~1.~~1, on or before October 1 in the same year.

~~2.~~ (3) In addition to complying with ~~paragraph 1, after the scheduled final payment date in respect of the latest/last/final maturing funding obligation passes~~subsection (2), the Financial Services Manager shall, starting on the day after the final scheduled payment date of the funding obligation described in subsection (4) and until such time as all finance amounts have been paid in full, comply with subsection (5).

(4) For the purposes of subsection (3), the relevant funding obligation is the outstanding funding obligation that has the latest maturity date of all outstanding funding obligations.

(5) During the period of time mentioned in subsection (2), the Financial Services Manager shall update its most recent determination of the clean energy adjustment and notify the Board of the updated determination ~~on or before January 1 and July 1 in each calendar year, until such time as all funding obligations and any additional finance amounts have been paid in full.~~ ~~[OLC Note: Same question as above re "any additional" finance amounts.]~~

~~[OLC Note: I'm wondering whether the underlined phrase is sufficiently clear without further explanation. As I understand it, each funding obligation will have a "scheduled final payment date" set out in an agreement, and that is the date by which the principal for that funding obligation is supposed to be paid in full... And what we are talking about here is the specific funding obligation that has the latest scheduled final payment date. Is that correct?~~

~~If the funding obligations are being incurred on a rolling basis, how do we know which one is the last one?] (2) For the purposes of paragraph 2 of subsection (1)~~,

(a) ~~the notice provided~~ on or before January 1 ~~shall be~~in each year, in respect of the months of February, March and April in the same ~~calendar~~ year; and

(b) ~~the notice provided~~ on or before July 1 ~~shall be~~in each year, in respect of the months of August, September and October in the same ~~calendar~~ year.

~~(3) For the purposes of this section, the scheduled final payment date in respect of a funding obligation is the date specified in the agreement relating to the funding obligation. (4~~6) If the Financial Services Manager ~~re-~~determines the true-up amount in respect of the remaining portion of a reference period ~~under paragraph 2 of subsection 4xx (1)~~, the Financial Services Manager shall ~~recalculate~~redetermine the clean energy adjustment in respect of each of the months remaining in the reference period for which the Board has made a determination under subsection 15 (4) of the Act and notify the Board of the ~~recalculated amount~~redetermination [as soon as possible?].

Board to determine rates, subs. 15 (4) of Act

~~6xx.~~**8.** (1) The Board shall, upon receiving a notice of the clean energy adjustment under section ~~5xx,~~7, determine the rates at which specified consumers are to be invoiced in respect of ~~each month during~~ the ~~reference~~ period~~, or~~ of time in ~~the case~~respect of ~~a notice in respect of a redetermination of~~which the notice was given.

[OLC Note: Legislative Counsel has determined that it would not be appropriate to repeat the wording of subs. 15 (4) of the Act - "Without changing the clean energy adjustment~~, in respect of each remaining month in the reference period.~~" due to drafting principles. ….]

(1.1) The rates shall be expressed as a cent per kWh amount and determined by dividing the clean energy adjustment in respect of ~~a month~~the relevant period of time by the forecasted electricity ~~demand~~consumption of specified consumers in respect of the ~~month~~period.

(2) For the purposes of subsection (1.1), the forecasted electricity ~~demand~~consumption of specified consumers ~~in respect of a month~~ shall be determined by the Board, by reference to the forecasted ~~demand~~electricity consumption for the Province as provided to the Board by the IESO.~~[OLC note: What is the reg authority for the provision that would provide for "no liability" for the IESO: *The IESO is not liable to any person for any reason for any errors or omissions which arise out of any forecasts or any other information that the IESO provides to the OEB in good faith.*]~~ **[NTD: without our proposed changes this is incorrect as drafted. The IESO does not forecast electricity consumption for classes of consumers. IESO only forecasts for consumption on province wide basis. Also, why is this necessary for the regulation since the authority for the Board to require this information is already prescribed by s. 25.5 of the Electricity Act?]**

(3) If notice of a determination is provided under subsection 7 (2), the rate shall be determined by the Board so that the rate takes effect on the first day of the month following the month in which the notice was required to be provided.

(4) If notice of a redetermination is provided under subsection 7 (5), the rate shall be determined by the Board so that the rate takes effect,

(a) if the notice was provided before the fifteenth day in a month, on the first day of the month following the month in which the notice was provided; or

(b) if the notice was provided on or after the fifteenth day in a month, on the first day of the second month following the month in which the notice was provided.

~~[OLC Notes:~~
~~Does the Board need to do anything else after it determines the rates (either under subs. (3) or (4)?~~

~~What if it receives notice of a re-determination but there has been no change in the CEA? Does the Board need to do anything?~~

~~What if the FSM does a redetermination during the last month of the reference period and provides notice before the 15th day of that month? What does the Board do with that information?]~~

IESO to receive, remit amounts, s. 16 of the Act

~~7xx.~~**9.** (1) The IESO shall ensure that amounts actually received in respect of the clean energy adjustment under subsection 16 (1) of the Act are identifiable as such.

(2) For the purposes of subsection 16 (4) of the Act, the IESO shall remit the amounts in accordance with the requirements of the agreements relating to the ~~sale~~transfer of the ~~investment interests~~regulatory asset to the financing entities and agreements relating to the funding obligations.
[OLC note: Subs. (2) raises subdelegation issues. Subs. 16 (4) of the Act contemplates that the LGIC will set out in the regulation how the amounts shall be remitted… if it's really just going to be left to contract, perhaps the contract itself could handle this issue, in which case the regulation would be silent on the matter.] For this type of provision to be authorized, I think the regulation would at least have to impose some constraints on the contents of the agreements. Otherwise the determination is being subdelegated entirely to unknown entities.]

Electricity vendors to invoice, collect, s. 17 of the Act

~~8xx.~~**10.** (1) Each electricity vendor shall ensure that invoices issued to specified consumers include a separate line item for the amount in respect of the clean energy adjustment.

(2) Each electricity vendor shall ensure that amounts collected from specified consumers in respect of the clean energy adjustment are ~~identified as such and~~ deposited into ~~an~~a segregated account established for the ~~purposes~~exclusive purpose of receiving those amounts.
[OLC Note: Previously the language in subs. (2) was drafted for consistency with subs. 16 (2) of the Bill ("an account established for the purposes of receiving those amounts"). You've suggested changes here through the addition of the words "segregated" and "exclusive". Just want to be sure you are aware of the different language which may be interpreted to have been included to achieve a different outcome.]

[NTD to OPG: This obligation poses practical problems for small LDCs. OPG to propose threshold for this obligation. It is not viable to apply universally.]

(3) Each electricity vendor shall maintain separate records with respect to amounts invoiced to specified consumers in respect of clean energy adjustments~~ and shall, *subject*~~.

(4) Subject to [any ~~*requirements*~~requirement to the contrary ~~*related to confidentiality,*~~under any Act or regulation?], each electricity vendor shall make the records available, upon request, to the IESO, the Financial Services Manager, financing entities and investment interest owners.

~~[OLC Note: This may create another subdelegation issue… what "requirements related to confidentiality" are you referring to? Is it in legislation? Is it in contract? Need clarification in order to assess the authority for this kind of rule.]~~NTD to OPG re: Appointment, s. 18 of the Act – Ministry does not intend to address replacement of FSM at this time and absent specific circumstances where replacement is required.]

FAIR ALLOCATION AMOUNT

~~**Determination of clean energy benefits**~~

Prescribed period, amount

~~8.1xx~~ **11.** (1) The prescribed period for the purposes of sub-subparagraph 1 ii B of subsection 20 (1) of the Act shall be the period beginning on ~~[when] and ending on [when].~~ ~~[NTD- considering restating as~~ January 1, 2005 ~~through~~ and ~~including June 30th,~~ ending on April 30, 2017.~~]~~

~~**Headnote TBD**~~

~~**8.1.1xx** (1) If the determination under paragraph 4 of subsection 20 (1) is a positive number, [*the amount determined under paragraph 5 is to be the fair allocation amount for the reference period*].~~

(2) If the sum of the amounts determined under paragraphs 1 and 2 of subsection 20 (1) ~~is zero or less, [*the amount determined by subtracting*~~ of the Act are less than or equal to the amounts determined under paragraph 3 of subsection 20 (1) of the Act, the amount determined by applying the following formula is prescribed for the purposes of paragraph 5 of subsection 20 (1) of the Act:

$$A = B - C$$

Where,

A = the amount prescribed for the purposes of paragraph 5 of subsection 20 (1) of the Act,

B = the sum of the amounts determined under paragraphs 1 and 2 of subsection 20 (1) of the Act, and

C = the amount determined under paragraph 3 ~~*from the amounts determined under paragraphs 1 and 2 would be included in the determination under paragraph 5]*~~ of subsection 20 (1) of the Act.

Determination of estimated financing costs

~~8.2xx~~**12.** (1) For the purposes of paragraph 2 of subsection 20 (1) of the Act, the estimated financing costs in respect of a reference period shall consist of the sum of the following ~~types of costs~~amounts that would become payable during the reference period:

1. ~~[estimated?]~~Estimated funding costs~~?~~.

2. ~~[estimated?] Expenses?~~Estimated financing entity expenses.

~~[OLC Note: "funding costs" is a defined term but what is meant by "expenses"?]~~

3. ~~Estimated IESO deferrals? 4.~~ Estimated funding rebates~~?~~.

[IESO Note: Is this right? This is a receipt to a financing entity and an offset against funding costs]

(2) ~~Subject to~~In estimating amounts for the purposes of subsection (~~4), the estimated financing costs in respect of a reference period shall be determined by calculating the sum of the costs set out in paragraphs 1 to 4 of subsection (1) that would become payable during the reference period, based on~~1), the Minister shall make the following assumptions:

~~[OLC Note: from the instructions, it wasn't clear to me whether you wanted the calculation to be a sum of the following amounts… please clarify.]~~

1. The entire amount of the regulatory asset is transferred over time in accordance with section 26 of the Act.

2. The principal owing by a financing entity during a reference period is repaid [paid?] by applying funds expected to be available to it under the Financing Plan after all other ~~expected~~forecasted finance amounts for the reference period have been paid or provided for.

[OLC Note: ~~need~~Elsewhere we refer to ~~check if the concept of "expected" is used relative to~~the finance amounts ~~elsewhere.~~being "paid in full", not "paid or provided for". Why the difference?]

(3) For the purposes of subsection 20 (2) of the Act, the prescribed circumstances are that ~~[~~the determination under section 9 or 11 of the Act in respect of a reference period resulted in a readjustment amount~~]~~.

(4) If the circumstances mentioned in subsection (3) apply, the Minister shall, in addition to calculating the sum of the costs set out in paragraphs 1 to ~~4~~3 of subsection (1), calculate the following amounts and include them in the determination of the estimated financing costs in respect of the reference period:

1. A portion of ~~past deferred clean energy costs~~the readjustment amount that should be attributed to the reference period.

2. ~~A portion of~~The financing costs that should be attributed to the ~~reference period~~adjustment amount.

~~[OLC Note: Not sure what is meant by para. 2 – we are trying to determine estimated financing costs through these adjustments/steps under 20 (2) of the Act so this doesn't seem to work.]~~

(5) For the purposes of paragraph 1 of subsection (4), the Minister shall determine the portion ~~that should~~to be attributed to the reference period in such a manner as to ensure that ~~past deferred clean energy costs~~readjustment amounts are recovered proportionally over the remaining reference periods.

~~[OLC Note: You asked for the following language to also be included in the draft as an alternative approach but I have not drafted the following because it didn't seem to be your instruction to me… I guess the following is an alternative to subs (3), (4) and (5) that I have drafted above. If you want the following instead, please instruct and I will re-visit:~~
~~*xx. (1) For the purposes of subsection 20 (2) of the Act:*~~

1. ~~*The prescribed circumstances are that the determination under section 9 or 11 of the Act in respect of a reference period resulted in a readjustment amount.*~~
2. ~~*The Minister shall recalculate the estimated financing costs under paragraph 2 of subsection 20(1) of the Act by adding the readjustment amount to the amount determined under paragraph 1 of Section 9.2xx and reflect such recalculated estimated financing costs in determining the sum calculated under paragraph 4 of subsection 20 (1).]*~~

~~**Calculation of fair allocation amount**~~
Minister's considerations
~~9xx.~~ **13.** For the purposes of subsection 20 (3) of the Act, the Minister shall have regard to the following matters:

~~1.~~ 1. Electricity prices.

2. Interest rates.

3. Inflation.

4. ~~Population. [the population of Ontario? Do you mean anticipated population growth trends for reference periods?]~~Electricity consumption.

5. ~~Consumption. [consumption of what? By whom? When? Do you mean the estimated/anticipated consumption during reference periods?]~~ 5. The useful life of the assets that are subject to contracts referred to in clause (a) of the definition of "clean energy costs" in subsection 1 (1) of the Act.

6. ~~The useful life of assets. [any assets? specific assets?]~~

~~FINANCIAL SERVICES MANAGER~~

~~Fees, subs. 19 (3) of the Act~~

~~**10xx.** (1) For the purposes of subsection 19 (3) of the Act, fees may be established and charged to financing entities in relation to the recovery of amounts in respect of the following matters:~~

1. ~~The costs of services provided by the Financial Services Manager, which may include services related to planning, financing, negotiation and execution of agreements, front office services and administrative services.~~

2. ~~The costs of doing anything that the Financial Services Manager is required or permitted to do under the Act.~~

~~(2) The fees mentioned in subsection (1) may provide for a fixed rate of return and a variable rate of return based on performance, both expressed as basis points of Ontario Power Generation Inc.'s investment in [which financing entity?].~~

~~(3) The variable rate of return shall be capped at plus or minus one per cent of the amount of Ontario Power Generation Inc.'s investment in [which financing entity?].~~

~~(4) In reviewing a fee proposed by the Financial Services Manager, the Board shall consider the following:~~

1. ~~The methodology applied for determining the fee.~~

2. ~~The methodology for benchmarking the variable rate of return provided by the fee.~~

3. ~~The validity of all fixed components of the fee, including the remuneration and benefits of the staff of the Financial Services Manager.~~

4. ~~The period of time during which the fee would be charged.~~

5. ~~Such other matters as the Board may determine.~~

~~**Board approval of fees, subs. 19 (4) of the Act**~~
~~**11xx.** (1) The Financial Services Manager shall submit its methodology for determining proposed fees to the Board no later than August 31, 2017.~~

~~(2) The Financial Services Manager may at any time submit proposed amendments to its fees to the Board.~~

~~(3) If the Financial Services Manager submits proposed amendments, the proposed amendments shall be submitted no later than 90 days before the Financial Services Manager intends for the fees to be charged.~~

~~(4) The Board may approve the proposed fees or proposed amendments by order or may refer the proposal back to the Financial Services Manager for further consideration with the Board's recommendations.~~

FINANCING PLAN

~~**Readjustment amount**~~
~~**11.1xx** (1) For the purposes of section 21 of the Act and section 9.4xx of this Regulation,~~

~~"readjustment amount" means, in respect of a reference period, the amount determined by applying the following steps:~~

1. ~~Determine the fair allocation amount, if any, determined by the Minister under subsection 20 (1) of the Act in respect of the reference period.~~

2. ~~Determine the amount, if any, by which the estimated clean energy costs in respect of the reference period are [or are expected to be?] reduced as a result of a determination of the Board under Part II of the Act.~~

3. ~~Determine the amount, if any, by which the determination under paragraph 2 exceeds the determination under paragraph 1.~~

~~(2) For greater certainty, if an amount determined under paragraph 1, 2 or 3 of the definition of "readjustment amount" in subsection (1) is zero or less, the readjustment amount is zero.~~

Financing plan, principles and assumptions prescribed under subs. 21 (3) of the Act

~~**12xx.**~~**14.** (1) The Financial Services Manager shall make reasonable assumptions regarding the following matters in preparing the Financing Plan:

1. The determination of the IESO deferral for future months ~~and the purchase price of investment interests~~.

2. Future transfers of specified portions of the regulatory asset.

3. The maturities~~, both short term and long term,~~ of funding obligations.

4. Cash flow requirements to meet contractual obligations associated with funding obligations.

5. The future availability of refinancings and redemption opportunities.

6. Liquidity terms and conditions.

7. The future availability of currency and interest rate hedging facilities for the purposes of ~~mitigating any differences between the estimated finance amount becoming due and payable during any reference period and the fair allocation amount determined in respect of the reference period~~managing currency and interest rate risks that may be associated with funding obligations.

8. Interest rates and financing ~~costs related to interest rates~~entity expenses.

9. Future availability of capital markets, including markets outside of Canada, in which funding obligations may be incurred.

10. Fees charged by the Financial Services Manager.

11. ~~The credit ratings that are likely to be ascribed by rating agencies in respect of a funding obligation. 12.~~ The need for and implementation of financing reserve accounts and ~~sinking funds. 13. The basis on which any security in an investment interest may be given~~capital accounts.

(2) In addition to the principles set out in subsection 21 (3) of the Act, the Financial Services Manager shall have regard to the following principles in preparing the Financing Plan:

[OLC Note:…[T]he language below [must be further considered/reviewed] to see how it links up with the new content […] added to the reg in Draft 3 and to generally assess consistency.]

[NTD to OPG: Financing plan principles are a governance issue for the Ministry. Ministry to consider further to clarify language and expectations.]

1. Funding obligations shall be incurred on the best terms available at the time of incurrence for a financing transaction of the size and type contemplated by the Financing Plan.

2. The Financing Plan shall seek to create a stable platform to acquire and finance investment interests.

3. The Financing Plan shall specify the reference capital or finance markets in which the funding obligations are to be incurred, including markets outside Canada if considered by the Financial Services Manger to be appropriate in the circumstances.

4. The Financing Plan shall specify the basis upon which the Financial Services Manager is to select the currency of payments under the funding obligations and shall address measures to be taken to mitigate currency risk, including hedging transactions and adoption of minimum and maximum coverage levels, having regard to the availability of related derivatives with notional amounts corresponding to the repayment and maturity profile of the funding obligations.

5. The Financing Plan shall describe the basis upon which recovery amounts are to be applied.

6. Principal proceeds of a funding obligation must only be applied for the purposes of repaying or redeeming debt or for the purposes of paying the purchase price for investment interests.

7. The Financing Plan shall set out the basis upon which the Financial Services Manager is to select the interest rates for the incurrence of funding obligations.

8. Subject to subsection (2.1), the Financing Plan shall set out the basis upon which the Financial Services Manager is to select the term to maturity of funding obligations.

9. The Financing Plan shall address the need for refinancing.

10. The Financing Plan shall restrict the Financial Services Manager from making any election or decision, including election or decision to redeem any funding obligations, if the consequence would be that the clean energy adjustment would exceed the sum of the fair allocation amount ~~MINUS the~~and any readjustment amount~~, if any, for~~ in respect of a reference period.

11. The Financing Plan shall address the incurrence of funding obligations for the provision of ~~any funds required for finance reserve deposits and capital reserve deposits~~deposits required as described in subparagraph 1 iv of subsection 5 (1).

~~[OLC Note: Isn't para. 11 circular when you look at the definitions of finance reserve deposit and capital reserve deposit?]~~

12. Any funding obligation that by its terms may require a payment to ~~become payable~~be made by the financing entity during a reference period shall limit the amount of the payment to a fixed or determinable amount, which amount shall be deemed to be a finance amount for the purposes of paragraph 1 of subsection 21 (3) of the Act.

[OLC Note: If the highlighted segment in para. 12 is supposed to add something to what constitutes the "finance amount", then this rule should be included above where we explain how the finance amount is calculated. I don't know if that's what this is about.]

13. The Financing Plan shall set out measures to realign costs and finance amounts as a result of any change in the calculation of fair allocation amounts.

14. The Financial Services Manager shall act as any reasonably prudent financial services manager would act in similar circumstances.

15. The Financing Plan shall describe the basis upon which the Financial Services Manager or its agent is to negotiate [in respect of?] and settle [in respect of?] finance amounts.

[OLC Note: "finance amount" is defined as an amount determined in accordance with the regulations -- assuming that the negotiation and settling that you're referring to above is not about actually determining the finance amount so we should clarify what is meant… negotiating payment of?]

16. The Financing Plan shall describe the timing and basis upon which ~~finance reserve deposits, capital reserve deposits, finance reserve withdrawals and capital reserve~~deposits described in subparagraph 1 iv of subsection 5 (1) and withdrawals described in subparagraph 2 i of subsection 5 (1) may be made and shall balance the need to maintain reserves in order to provide for marketable securities with the costs of holding such reserves, including on account of any potential income tax liabilities of the investment interest owners.

17. The Financing Plan shall describe the requirements applicable to any financing entity that is to purchase an investment interest, including proposed capitalization, governance and restrictions on their powers and activities, as well as structural considerations in order to minimize risk and costs, including any tax liabilities that may be recovered as finance amounts.

[OLC Note: I'm not sure about the concept of "tax liabilities being recovered as finance amounts"… as drafted now, tax liabilities are taken into consideration as part of the determination of what is the finance amount. Perhaps this should just say "including any tax liabilities"?]

18. The Financing Plan shall describe the basis upon which fees, charges, financing entity expenses, costs, indemnities, reimbursements and other amounts payable to or for the

benefit of the Financial Services Manager or agents and other service providers to the financing entities may be determined, allocated and paid.

19. Any contract to be entered into by the Financial Services Manager on behalf of a financing entity that provides for a payment to be made to or for the benefit of the Financial Services Manager or any person with whom the Financial Services Manager does not deal at arms' length shall demonstrably reflect on arms' length terms and conditions.

[OLC Note: Please clarify what is meant by the underlined phrase -- the contract has to include terms and conditions that create an arms' length relationship? Is there some precedent language in Ontario legislation that captures this kind of requirement?]

Rule, para. 8 of ~~sub~~subs. (2),

(2.1) For the purposes of paragraph 8 of subsection (2), any repayments required to be made under the terms of a funding obligation, other than an obligation incurred for the purposes of refinancing to prudently and cost-effectively manage debt, shall not obligate any financing entity to repay an amount in relation to a reference period that would have the effect of the Financing Plan permitting incurrences of funding obligations payable in the reference period that would ~~cause the clean energy adjustments for the reference period to~~ exceed the fair allocation amount attributable to the reference period.

(3) The Financial Services Manager shall, no later than 90 days following the end of each fiscal year, submit to the Minister a report with respect to its affairs during the fiscal year, signed by the [xx] of the Financial Services Manager.

(4) Despite subsection (3), for the fiscal year commencing in 2017, the Financial Services Manager shall submit the report by such time as may be specified by the Minister, which time shall be on or after the 30th day following the end of the fiscal year.

THE REGULATORY ASSET

~~[OLC Note: Your instruction related to the regulatory asset (emailed on Saturday, June 17th) seems to be about the IESO deferral under 23 (1) and also the variance account in 24 (1)… see below for my proposed structure for dealing with topics relating to these …..]]~~

Determination of IESO deferral

~~12.1xx~~**15.** The IESO may include the following amounts in the IESO deferral for each month ~~shall be determined as follows~~:

1. The difference between the following amounts:

i. The sum of all amounts payable to the IESO in a month by electricity vendors and specified customers pursuant to ~~the *Electricity Act, 1998*~~ and the market rules made under section 32 of the *Electricity Act, 1998*, which amounts are not inclusive of any monthly variances reported to and recorded monthly by the IESO in a variance account pursuant to section 5 of Ontario Regulation 430/04 and are without regard to the rates determined by the Board pursuant to Part II of the Act.

ii. The sum of all amounts payable in the same month by electricity vendors and specified consumers to the IESO with rates determined under Part II of the Act. **[NTD: [NTD: we have further considered this provision and believe it is necessary to revise it in this manner to ensure the IESO deferral includes the total difference between what is payable by LDCs and the lesser amount LDCs are able to pay as a result of the Fair Hydro reduced rates. The previous manner in which we had proposed drafting this provision and in which it has been redrafted would result in the RPP variance under O Reg 430/04 not being included in the IESO deferral. We will consider this further and may have additional edits.]]**

2. The costs incurred by the IESO in relation to the financing of the difference between the amounts referred to in subparagraphs 1 i and ii.

3. Amounts incurred by the IESO on or after May 1, 2017 and before section 23 of the Act came into force relating to [early implementation of the government's fair hydro plan] **[NTD: May want to reword language in brackets. However, it is the IESO's view that it is necessary to make provision for this amount pursuant to section 23 of the Act (and not as an adjustment pursuant to section 24) because section 23 (2) expressly provides for enacting regulations that provide for the recovery of these amounts. Section 24 does not provide for these amounts to be recovered as an adjustment under that section]**

[~~**Please note: further detail to provided for next draft.**~~]OLC Note: No need to repeat 23 (2) of the Act.]

Adjustments that may be recorded by IESO

~~12.2xx~~

16. For the purposes of paragraph 3 of subsection 24 (1) of the Act, the IESO shall record monthly the following adjustments in the variance account:

~~[OLC Note: …. All of the items in this list need to be characterized as "adjustments" as per the reg authority.]~~

1. All funding rebates and all other amounts paid by the IESO to a financing entity in a month.

2. Any variance account balances in variance accounts established and maintained under subsection 25.33 (5) of the *Electricity Act, 1998*. **[NTD: wording in brackets is not necessary. If balances remain in variance accounts pursuant to section 25.33 (5), then by definition such variances have not been "cleared" (i.e. ordered recovered) by the Board]**

[OLC Note: what does "that remain to be cleared" mean?]

FEES

[NTD to OPG: Ministry to consider further to find balance between OEB oversight and OPG requirements re Financial Services Manager fees]

~~Fees, subs. 19 (3) of the Act~~

17. (1) For the purposes of this section,

"incremental annual funding obligation" means the aggregate of all funding obligations incurred by [or on behalf of?] all financing entities in a calendar year.

(2) For the purposes of subsection 19 (3) of the Act, the Financial Services Manager may establish fees and charge the fees to financing entities in relation to the following matters:

1. The services provided by the Financial Services Manager to financing entities~~, which may include services related to planning, financing, negotiation and execution of agreements, front office services and administrative services.~~

2. ~~The costs of doing anything that the Financial Services Manager is required or permitted to do under the Act.~~

[OLC Note: here we refer to "required or permitted" but in most places throughout the reg we refer to "authorized or permitted". Please check and confirm intention throughout the reg.]

(3) The fees mentioned in subsection (1) may include both a fixed fee and a variable fee based on performance [of what?].

(4) The fixed fee shall be equal to the cost of services provided to a financing entity plus a reasonable rate of return.

(5) Subject to subsection (6), the variable fee to be charged in respect of a calendar year shall be calculated in accordance with the following formula:

[OLC Note: Check year vs. calendar year throughout reg.]

$$A \times (B - C) \times D$$

Where,

A = the principal amount of the aggregate of all funding obligations incurred by [or on behalf of?] all financing entities in the year,

B = the forecasted interest rate for "A", as determined by the Financial Services Manager on or before the end of the calendar year prior to the calendar year in respect of which the fee is being determined and based on the term of the aggregate,

C = the weighted average interest rate for "A",

D = 5 per cent or such other per cent that is approved by the Board.
[OLC Note: What is the authority for the Board to determine a different percentage for the purposes of "D"? Shouldn't this be the FSM who does this based on subs. 19 (3) of the Act? The Board is just playing an "approval" role.]

(6) The variable fee payable in respect of a calendar year shall not be,
[OLC Note: subject to change based on what D is going to look like.]

(a) more than 1 per cent of the [value of D] multiplied by A; or

(b) less than -1 per cent of the [value of D] multiplied by A.

(7) If the variable fee is a negative amount, the amount shall be deducted from the fixed fee payable in the following calendar year in twelve equal monthly instalments.

(8) When submitting proposed fees to the Board, the Financial Services Manager shall provide the following:

1. The methodology that the Financial Services Manager has used to calculate the proposed fixed and variable fees.

2. The methodology that the Financial Services Manager has used to benchmark the proposed variable fee.

3. The period of time during which the Financial Services Manager proposes to charge the proposed fees.

4. The identity of the financing entities that would be liable to pay the proposed fees.

5. Such other information as the Board may require.

(9) This section applies with necessary modifications in respect of a proposal by the Financial Services Manager to amend fees.

[OLC Note: The instructions included the a statement that the Board is not "bound" by a methodology proposed by the Financial Services Manager, but since the Board's function is to "approve", I'm not sure what this is intended to achieve. I'm wondering if this should be included in the subsection below 11xx (4) regarding the Board's recommendations… perhaps "the Board recommend a different methodology" when it refuses to approve?]

Board approval of fees, subs. 19 (4) of the Act

18. (1) The Financial Services Manager shall submit its methodology for determining proposed fees to the Board no later than August 31, 2017.

[ENE NTD: Need to determine how to deal with the 1st fee. Understand that OPG is proposing a fixed fee for this year.]

(2) The Financial Services Manager may, from time to time but not more than once in any twelve month period, submit proposed amendments to its fees to the Board.

(3) If the Financial Services Manager submits proposed amendments, the proposed amendments shall be submitted no later than 120 days before the Financial Services Manager intends for the fees to be charged.

(4) The Board may approve the proposed fees or proposed amendments or may refer the proposal back to the Financial Services Manager for further consideration with the Board's recommendations [which may include recommendations regarding the methodology used to calculate the fees?].

MISCELLANEOUS

Investment asset, s. 29

~~13xx.~~**19.** The prescribed accounts referred to in paragraph 3 of subsection 29 (1) of the Act are as follows:

1. Any specifically identified segregated account, regardless of the name in which the account is opened, if it is opened by the IESO or an electricity vendor and if amounts in respect of the clean energy adjustments are deposited into it.

2. Any accounts opened in the name of a financing entity by the Financial Services Manager.

Appointment of agent, invoicing or collection

~~14xx.~~**20.** For the purposes of subsection 33 (1) of the Act, the appointment may occur if the electricity vendor is unable or unwilling to perform its obligations under the Act, including if the electricity vendor becomes insolvent, bankrupt or enters into receivership.

Disclosure in marketing materials, offering documents, etc.

~~15xx.~~**21.** For the purposes of section 40 of the Act, a person may include the references in marketing materials or offering documents if,

(a) the inclusion is required by applicable law or is necessary for the purposes of any financing of funding obligations, including any requests for disclosure by rating agencies; or

(b) the Minister has been given written notice of the proposed inclusion of the references and has been given a reasonable opportunity to comment.

Commencement

~~x.~~**22. This Regulation comes into force on the day it is filed.**

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