CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act" ~~– Part V.2~~

Article 1 – Purpose[1]

~~IESO has entered into Power Contracts with Generators. The agreed-upon reference prices and quantities set out therein were determined based on commitments made by IESO to provide Generators with long-term price certainty, so as~~The Province has and continues to encourage the construction and development of facilities for the ~~purpose of~~ long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer ~~and~~, feed in tariff and other similar programs (the "Green Generation Initiative"). ~~[The terms of the Power Contracts were intended to approximate the anticipated useful life of the related generation assets]; however, it has been determined that the useful life of many of these assets will be well in excess of the actual term of the related Power Contracts and will extend over more than one generation of ratepayers.~~ The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will benefit present and future ~~ratepayers of the Province. Currently, market prices for electricity are less than the reference prices set out in the Power Contracts, leaving a gap in funding which is funded by charging consumers a "Global Adjustment" (part of which is available to IESO to pay this shortfall).~~electricity consumers in the Province.

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

~~Each month, the IESO determines the Global Adjustment payable by consumers for the consumption~~The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province~~. A component of the Global Adjustment is the amount by which the reference prices in the Power Contracts~~ under the Green Generation Initiative, which may be higher than prevailing market price for electricity. These differences arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with long-term price certainty for electricity, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. In general, whenever amounts payable under these procurement contracts exceed the market price for electricity ~~for the quantities of electricity specified under the Power Contracts for the relevant period[2]. The relationship between the past, present and future benefits to Ratepayers from~~, the Green Costs Adjustment passes through the amount of such differences as part of the monthly charge to electricity consumers. Such amount then becomes available to IESO to meet its obligations under the procurement contracts. It has been determined that the useful lives of many of the assets encouraged by the Green Generation Initiative~~, on the one hand, and the costs of~~ will be well in

~~[1] Consider the scope and breadth of the Purpose section. This text is considered to be useful to establish the legislative basis for the statute, which text will be useful in the event of a challenge.~~

~~[2] Consider modifying this to also refer to gas contracts and hydroelectric contracts, which provide for mechanics that are not based on contracts for differences.~~

excess of the respective terms of the related procurement contracts, and in many cases may extend over more than one generation of electricity consumers.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative ~~borne by past, present and future Ratepayers through their respective allocations of the Global Adjustment, on the other hand, do not necessarily reflect an equitable allocation of such benefits and costs over time, with the result that an adjustment may be appropriate to address inter-generational fairness considerations. Such an adjustment should reflect~~will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective durations of the procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to Retail Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Retail Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on principles and parameters that ~~can be applied from time to time in order to~~ establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative ~~across present and future Ratepayers. A plan to allocate such costs and benefits~~ equitably across present and future ~~Ratepayers may be developed based on those principles and parameters (a~~Retail Consumers (the "Fair Allocation Plan").

If ~~a~~the Fair Allocation Plan determines that the equitable allocation of the ~~Global Adjustment to the Ratepayers~~costs associated with the Green Generation Initiative to the Retail Consumers of a particular time period ~~in respect of the Power Contracts~~ should be reduced below the amount ~~otherwise determined,~~that currently would be charged based on the Green Costs Adjustment, then the amount payable by such ~~Ratepayers to Electricity Distributors in respect of such period,~~Retail Consumers and in turn ~~by the Electricity Distributors to the~~available to IESO~~,~~ ~~would~~ will, in the aggregate, be less than the amount payable by the IESO to the ~~Generators under the Power Contracts~~generators in respect of such period. ~~If the difference is greater than any net Power Contract surpluses available to IESO from earlier periods, IESO will have a funding shortfall.[3] In order for IESO to cover such a funding shortfall for a period,~~In this case IESO will need to obtain funding from another source~~, which could include funding from third party sources operating in public and private capital markets~~ to cover such a shortfall. If a funding obligation is incurred ~~in order to enable the~~by IESO to cover such ~~a funding~~ shortfall during one period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs ~~will be~~ incurred ~~and may~~will become payable in one or more ~~other~~future periods. ~~It will be necessary to provide~~In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding ~~obligations and to pay related funding costs with certainty when the funding obligations~~amounts when they become due and payable~~. This Part~~, this Act imposes irrevocable and non-bypassable financial obligations ~~of Ratepayers~~on Retail Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts . The right and interest in and to collect such financial obligations~~, which~~ will take the form of the Regulatory Asset contemplated in this ~~Part and~~Act, which will constitute property rights and interests. ~~The~~Interests in the Regulatory Asset ~~will~~may be sold and absolutely assigned ~~and will belong~~by IESO to one or more ~~newly created~~ financing entities, which in turn will finance their ~~purchase of such Regulatory Asset~~acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf ~~the~~such financing entities by ~~an administrative~~a financial services agent ~~(initially OPG),~~ under the Financing Plan

~~[3] Confirm whether any RPP forecasting variance is to be included in (i) a funding shortfall; and (ii) related IESO financing costs to be included in Transition Charges.]~~

contemplated in this ~~Part~~Act. The Financing Plan will seek to reasonably match the payment obligations arising under such funding obligations ~~and~~, to be borne by the future ~~Ratepayers~~Retail Consumers of the period in which such payment obligations become due, with the ~~costs and~~ benefits of the Green Generation Initiative ~~charged~~allocated to such future ~~Ratepayers~~Retail Consumers under the Fair Allocation Plan.

The purpose of this ~~Part~~Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future ~~Ratepayers~~Retail Consumers on an equitable and cost effective basis.

Article 2 - Definitions

In this ~~Part~~Act:

"Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition.

"Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the ~~Administrative~~Financial Services Agent whose records shall be determinative for the purposes of this ~~Part in~~Act except to the ~~absence~~extent of a manifest calculation error.

"Additional Funding Charges" means, for a Reference Period in respect of an Absolute Assignee, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by ~~the Regulatory Asset Owners~~or on behalf of the Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including (without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the ~~Administrative~~Financial Services Agent on behalf of, ~~a Regulatory Asset Owner~~the Absolute Assignee under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on ~~a Regulatory Asset Owner~~the Absolute Assignee or incurred by on behalf of ~~a Regulatory Asset Owner~~the Absolute Assignee under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the ~~Administrative~~Financial Services Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of ~~a Regulatory Asset Owner~~the Absolute Assignee; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager ~~of~~or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith by the Financial Services Agent for recovery and payment under the Financing Plan.

~~"Administrative Agent" means [OPG] or, following any Replacement Event, such other person or persons who may be appointed as the administrative agent of the Regulatory Asset Owner under the Financing Plan in compliance with the requirements set out in Schedule 2.~~

"Allocation Factor" means, in respect of a ~~Ratepayer~~Retail Consumer for a Reference Period, the number (expressed as a percentage) determined in respect of the ~~Ratepayer~~Retail Consumer by ~~[IESO]~~the OEB based on the application of the Attribution Methodology in respect of the Reference Period.[4][1]

"Alternative Collection Agent" means a person appointed under Section 5(11) and in compliance with the requirements set out in Schedule 2 to assume the collection activities and activities of any Electricity Distributor or IESO under Article 5, as agent for and on behalf of the Regulatory Asset Owners.

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners.

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[5][2] means the methodology specified in the Fair Allocation Plan for allocating the Period Transition Charges for a Reference Period to ~~the~~ individual ~~Ratepayers~~Retail Consumers of the applicable ~~Ratepayer~~Retail Consumer Group based on its Allocation Factor.

~~"Bypass Charge" means [To be developed].~~[6]

"Collected Amount Adjustment" means, in respect of a ~~Reference~~True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the ~~Administrative~~Financial Services Agent, as applicable, equal to (a) the Estimate of the

[4] ~~Consider basing~~[1] Confirm that this will be based on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those ~~would~~may be identified and ~~rolled into~~caught by the True-Up.

[5] ~~A key question will be how the overall costs will be spread across the rate base. For example, the~~[2] This allocation may be volumetric ~~or not,~~ or some combination of a flat amount and a volumetric charge. ~~This will also impact any discussion regarding any bypass (e.g., grid exit) charge in connection with the bypass discussion~~Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

[6] ~~Consideration needs to be given to any amount that will be charged to a ratepayer who successfully bypasses (e.g., leaves the grid). In allocating Transition Charges, considerations would include whether to reserve Bypass Charges and spread them over the life of the program, and correspondingly how to factor those into the calculation of Transition Charges.~~

Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[~~7~~3]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) and each Pledgee that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.[4]

"Delegate" means the person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act.

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of ~~all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of a Regulatory Asset Owner's right, title and interest in, to and under the Regulatory Asset~~an Investment Interest to an Absolute Assignee pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which a Regulatory Asset Owner effects a Disposition to an Absolute Assignee.

"Electricity Distributor" means, in respect of a Service Area, the rate regulated distributor licensed ~~by the OEB~~under Part V of the *Ontario Energy Board Act, 1998* in respect of such Service Area, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to IESO or if applicable the Alternative Collection Agent in accordance with Section 5(3) , including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by ~~an~~any of a Electricity Distributor (or in its stead, by an Alternative Servicer) ~~or~~, by the Servicer or by a Retailer, in each case to a Retail Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to a distribution network in the Electricity Distributor's designated Service Area and in respect of applicable Transition Charges to be charged to the Retail Consumer under this Act.

"Estimate" means~~,~~ (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the ~~Administrative Agent~~Financial Services Agent; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to any Retail Consumer Group, the estimated value (in current

[~~7~~3] This would pick up adjustments based on actual collection experience, changes in the ~~Consumer Base~~retail consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

[4] Consider adding the Financial Services Agent and the Servicer as parties.

dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this ~~Part in~~Act except to the ~~absence~~extent of a manifest calculation error.

"~~Fair Allocation Plan" [has the meaning given in Article 1].~~Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Retail Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

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

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

"Finance Amount" means, ~~in respect of~~for a Reference Period in respect of an Absolute Assignee, the sum (without duplication) of the following amounts ~~for~~that are or become payable during the Reference Period in respect of the Absolute Assignee: (a) Repayments; (b) Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.~~"Finance Receipts" means, for a Reference Period, all amounts received by or on behalf of the Regulatory Asset Owners during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Regulatory Asset Owners under derivatives and any withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a Funding Obligation.~~

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals.

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan.

"Financial Services Agent" means OPG or, following any Replacement Event, such other person or persons who may be appointed as the Financial Services Agent of the

Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]

"Financing Entity" means an entity established in accordance with the Financing Plan to acquire all or an interest in the Regulatory Asset as an Absolute Assignee and to enter into Funding Obligations to finance such acquisition~~.[8]~~ under the Financing Plan.[6]

"Financing Plan" means the written plan ~~[~~prepared by the ~~Administrative Agent]~~Financial Services Agent on behalf of each Absolute Assignee in compliance with Article ~~8~~9 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred ~~in order to fund a Funding Shortfall~~by an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (~~i~~j) the cash flows arising from time to time or otherwise derived from ~~the Regulatory Asset~~an Investment Interest may otherwise be applied, as the same may be amended, amended and restated or terminated by the Financial Services Agent in compliance with Article 9 from time to time.

"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the ~~Regulatory Asset Owner~~Absolute Assignee during the Reference Period in respect of ~~all~~its Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to ~~a~~its Funding ~~Obligation~~Obligations, exceeds (b) the aggregate of all ~~Finance Receipts~~amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Absolute Assignee under derivatives and any Finance Reserve Withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the payment of the Funding Costs payable in respect of a Funding Obligation for the Reference Period.

[5] Discuss whether to accommodate multiple Financial Services Agents. MOE to consider.

~~[8] OPG has suggested~~[6] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act. ~~These raise issues for consideration by the stakeholders.~~

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including each obligation to pay: principal, interest, premiums and other financing ~~charges, indebtedness,~~charge payments; pass-through payments; payment obligations arising under or in respect of derivatives~~,~~; payment obligations owing to service providers, ~~administrative agents~~Financial Services Agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all ~~taxes payable in connection with the foregoing)~~Additional Funding Charges incurred by or on behalf of ~~a Regulatory Asset Owner~~the Absolute Assignee under the Financing Plan ~~in order to fund a Funding Shortfall for a Reference Period~~, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.[9]

"~~Funding Shortfall" means, for a Reference Period, (a) the amount, if any, by which (i) the IESO Power Contract Net Payment for the Reference Periods, exceeds (ii) the GA Power Contract Contribution for Reference Period, minus (b) the IESO Applied Surplus for the Reference Period.~~[10]Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

~~"GA Power Contract Contribution" means, for a Reference Period, the aggregate of the payments to be made by the applicable Ratepayer Group in respect of the portion of the Global Adjustment [attributable to the Power Contracts] in accordance with the Fair Allocation Plan.~~[11]

"Generator" means a generator of electricity that is subject to ~~[this~~the *Electricity Act*~~]~~[12]~~.~~, *1998*.

"Global Adjustment" ~~means the amount calculated from time to time under [Section • of the *Electricity Act*], which includes among other things an amount determined in respect of the costs associated with the Green Generation Initiative, including amounts attributable to the Power Contracts.~~[13]has the meaning given in Article 1.

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

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

[9] ~~OPG has asked whether this should include IESO finance arrangements.~~

[10] ~~Consider whether to simplify by referring to the calculations of GA, with vs. without Fair. The issue would be that Fair is then linked into the GA calculation specifically, rather than to the specific assets that are subject to revised amortization under Fair. The constitutional position requires a clear nexus to the assets. Also, confirm whether RPP forecasting variances are to be included.~~

[11] ~~IESO to confirm its ability to allocate a shortfall in a given month between what it receives and what it owes under the GA, in order to calculate (a) existing volume-based variances which are rolled into subsequent month GA and trued-up every 6 months under RPP, (b) existing variances attributable to OREC which are funded by the Province, and (c) new variances attributable to Fair Hydro program.]~~

[12] ~~Revise once determine whether this will be a standalone Act or remain part of the *Electricity Act*. "Generator is a defined term in other legislation (OEB Act, Electricity Act) so this should ultimately be a distinct term such as "FH Generator" to avoid confusion.~~

[13] ~~Note that if adjustments for Fair Hydro program are to be applied after existing GA adjustments, then this may need a new name (such as "FH Adjustment").~~

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

"IESO ~~Applied Surplus~~Available Amount" means, for a Reference Period, the lesser of (a) the amount~~,~~ (if any~~,~~) by which (i) the ~~IESO Power Contract Net Payment~~Maximum Transition Charge Amount for the Reference Period, exceeds (ii) ~~the GA Power Contract Contribution~~Period Finance Amount for the Reference Period, and (b) the IESO ~~Unapplied Surplus on the last day of the immediately preceding Reference Period.~~ Retained Interest Amount as of the [35th] day prior to the first day of a Reference Period plus any IESO Financing Costs that are due and payable and remain unpaid as of the [35th] day prior to the first day of a Reference Period.

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO during the month pursuant to section • of the *Electricity Act*.

"IESO Financing Costs" means, for a Reference Period, the financing costs (if any) incurred by IESO pursuant to Section 8(4) in order to finance its ownership of the IESO Retained Interest during the Reference Period.

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[7]; provided that if the amount of any such shortfall is determined to have been based on incomplete information, variances or estimates that were inaccurate, an adjustment shall be made in determining the amount of any subsequent shortfall for the month in which the inaccuracy is identified.

"IESO ~~Power Contract Net Payment" means, for a Reference Period, the amount by which (a) the sum of amounts payable by IESO to the Generators under all Power Contracts for the Reference Period, exceeds (b) the sum of amounts payable by the Generators to IESO under all Power Contracts for the Reference Period.~~Recovery" means each amount remitted to IESO (including by IESO retaining such amount) in respect of the IESO Retained Interest pursuant to Section 5(6)(b), and "IESO Recoveries" means, collectively, all such amounts received by IESO.

~~"IESO Power Contract Net Receipt" means, for a Reference Period, the amount by which (a) the sum of amounts payable by the Generators to IESO under all Power Contracts for the Reference Period, exceeds (b) the sum of amounts payable by IESO to the Generators under all Power Contracts for the Reference Period.~~

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative

[7] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO ~~Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for [managing the Province's power system].~~ Retained Interest" means IESO's right, title and ownership interest (if any) in, to and under the Regulatory Asset, which shall exclude each Investment Interest.

"IESO Retained Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, plus (b) the sum of all IESO Funding Costs incurred prior to the day in accordance with Section 8(4), minus (c) the net proceeds received by IESO from or on behalf of each Absolute Assignee as consideration for the Disposition of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee prior to the day, and minus (d) the IESO Recoveries received by IESO prior to the day.

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

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition, which ownership interest may include (without limitation) ownership of a specified portion on a divided basis of the assets comprising the Regulatory Asset and ownership of an undivided ownership interest in the Regulatory Asset, in each case as may be described in the applicable Disposition Document.

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

"Maximum IESO Recovery" means, for a month, the amount (if any) by which (a) the IESO Remittances for the month, exceed (b) the sum of all Finance Amounts that are due and payable by Absolute Assignees in respect of the month.

"Maximum Transition Charge Amount" means, for a Reference Period, (a) the aggregate amount of Future Fair Share of Green Transition Benefits that are allocable to the applicable Retail Consumer Group in accordance with the Fair Allocation Plan, divided by (b) the applicable Reference Period Length.

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

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

~~"IESO Unapplied Surplus" means, at a particular time, the amount, if any, by which (a) the sum of (i) all IESO Power Contract Net Receipts for Reference Periods occurring prior to the time, and (ii) all GA Power Contract Contributions for Reference Periods occurring prior to the time, exceeds (b) the sum of (i) all IESO Power Contract Net~~

~~Payments for Reference Periods occurring prior to the time, and (ii) all IESO Applied Surpluses for Reference Periods occurring prior to the time.~~ Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period ~~Transition Charge~~Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount and (b) the True-Up Amount in respect of the immediately preceding Reference Period.

"Period Transition Charges" means, for a Reference Period, the sum of (a) the Period Finance Charges for the Reference Period and (b) the IESO Available Amount for the Reference Period.

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

"Pledgee" means a person to whom ~~a Regulatory Asset Owner~~an Absolute Assignee grants a Pledge.

~~"Power Contracts" means long-term power contracts entered into by IESO with certain Generators, under which IESO has agreed to pay such Generators amounts, determined in respect of quantities of electricity over specified periods, to the extent that applicable market prices for such quantities of electricity during a specified period are less than specified reference prices for such quantities of electricity, and, correspondingly, Generators have agreed to pay IESO amounts if the market prices for such quantities exceed the applicable reference prices for such quantities.~~[14]Program End Date" means •, [2047].

"Province" means the Province of Ontario.

~~"Ratepayer" means present and future [retail] consumers of electricity [in the Province] who are [RPP][or OREC-eligible] consumers, which shall include all such retail consumers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO.~~[15]

[14] ~~Consider expanding to include PPAs that are not contracts for differences. Should this contemplate the possibility of additional or amended power contracts?~~

[15] ~~Need to describe consumers in a fashion that is broad and not weakened by a bypass risk. Consider terminology to align with the description of the eligible customer class provided by the Ministry, e.g., same as OREC-eligible consumers except for consumers served by Independent Power Authorities (who do not pay GA). Also, consider use of the word "retail", to avoid limiting to customers of retailers and confirm removal of reference to transmission-connected customers.~~

~~"Ratepayer Group" means, in relation to a Reference Period, the Ratepayers who receive Electricity Invoices[16] during the Reference Period.~~

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

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

"Reference Period Length" means, for a Reference Period, the number of months in the Reference Period.

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

"Regulatory Asset" means the property ~~right~~rights and ~~interest~~interests described in Section 6(1), ~~or if the context requires, a specified portion or undivided interest in such property right and interest that is described in the applicable Disposition Document~~which collectively is comprised of the IESO Retained Interest and each Investment Interest.

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

"Regulatory Asset Owner" means each of (a) IESO, as owner of (and to the extent ~~that it has retained any ownership interest in, to or under the Regulatory Asset~~of) the IESO Retained Interest and (b) each Absolute Assignee, ~~to the extent that it has acquired and owns any ownership interest (including a specified portion on a divided basis or by way of an undivided interest) in, to or under the Regulatory Asset~~as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively ~~all of the Regulatory Asset Owners~~IESO and each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7). ~~For greater certainty, where one Regulatory Asset Owner owns the entirety of the Regulatory Asset, "Regulatory Asset Owners" refers to this Regulatory Asset Owner.~~

[16] ~~Expand to include eligible consumers who are not customers of Electricity Distributors (e.g., suite-metered customers).~~

~~"Related Generation Assets" means the [facilities, plants and equipment] constructed, acquired or developed in connection with the Green Generation Initiative.~~

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

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in ~~relation to~~accordance with any Funding Obligation, then the Business Day preceding each Settlement Date.

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the ~~Regulatory Asset Owner~~Absolute Assignee under a Funding Obligation.

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

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

"Retail Consumer" means:

(a) present and future consumers of electricity in the Province who are (i) consumers designated under section 79.16 of[, and O.Reg 95/05 under,] the *Ontario Energy Board Act, 1998*, or (ii) hold or are deemed to hold an "eligible account" under the *Ontario Rebate for Electricity Consumers Act, 2016*, other than any such consumer who has a contract with a Retailer who uses Retailer Consolidated Billing; and

(b) present and future Retailers who use Retailer Consolidated Billing,

and each case includes all such consumers and Retailers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO.

"Retail Consumer Group" means, in relation to a Reference Period, the Retail Consumers who receive Electricity Invoices during the Reference Period.

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

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

"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is licensed to distribute electricity in accordance with ~~[this~~the *Electricity Act*[17]~~]~~, *1998*.

"Servicer" means ~~[To be determined]~~IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset ~~Owner [To be determined – collective invoicing agent, and consider expanding]~~ Owners, for the purposes set forth in Article 4.

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

"Transition Charge" means, for a ~~Ratepayer~~Retail Consumer in respect of a Reference Period, ~~the sum of~~ (a) ~~[one-sixth] of~~ the Period Transition Charge, (b) multiplied by its Allocation Factor ~~and (b) any Bypass Charge charged to the Ratepayer~~ in respect of the Reference Period, divided by (c) the applicable Reference Period Length.

"Transition Charge Collection" means any amount received or deemed by this ~~Part~~Act to have been received upon the collection of a Transition Charge paid by or on behalf of a ~~Ratepayer~~Retail Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

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

"True-Up Period" means, in relation to a Reference Period, the period from and including the [30th] day immediately preceding the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the Reference Period.

"Undertaking of the Lieutenant Governor in Council" means the undertaking of the Lieutenant Governor in Council given under Section ~~10~~11(2).

~~"Unrecovered Transition Costs" means the [unrecovered][unamortized] costs incurred in connection with the creation, adoption and implementation of the Green Generation Initiative, including any negative value of the Power Contracts and [other].~~[18]

Article 3 – Transition Charges

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

[17] ~~Revise once determine whether this will be a standalone Act or remain part of the *Electricity Act*.~~
[18] ~~Note that this is the term that describes the "asset" that we are amortizing over a longer period of time.~~

~~23107566.8~~23107566.9

(2) **Indebtedness of ~~Ratepayers~~Retail Consumers** – Until paid, a Transition Charge charged to a ~~Ratepayer~~Retail Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the ~~Ratepayer~~Retail Consumer to the Regulatory Asset Owners, ~~(~~each with respect to its respective interest in the Regulatory Asset~~)~~. Such indebtedness shall constitute a single and separate[8] debt obligation owing by the ~~Ratepayer~~Retail Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the ~~Ratepayer~~Retail Consumer under the Electricity Invoice or otherwise.[~~19~~9]

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

(4) **Allocation of ~~Ratepayer~~Retail Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a ~~Ratepayer~~Retail Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collection.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred under the Financing Plan (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section ~~8~~9(3)) are deemed to be irrevocable, final and effective without any further action, ~~in~~except to the ~~absence~~extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period whether or not the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, whether or not the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

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

[~~19~~] ~~Torys suggests that we not create a debtor/creditor relationship between ratepayers and regulatory asset owners. Instead, ratepayers would only have relationships with electricity distributors and the Fair program would rely on consumers paying distributors and distributors to collecting those amounts and remitting them to IESO. The current draft goes further to bridge the investors more directly with ratepayers. There are differences in the approaches, including reliance from a credit perspective on the LDCs (rather than an ability to replace the individual LDCs with the investors choice). This depends on the credit analysis, and comfort that a later requirement will not be accommodated without a change in the legislation.~~[9] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. ~~Consideration should be given to whether that achieves the same direct relationship and whether the effectiveness of the current regulatory licensing regime should be suggested as the basis~~Consider if it is helpful to integrate the existing regulatory scheme for ~~a market-based credit decision.~~invoicing and collections (regarding RPP) in the legislation.

~~(6) [Anti-avoidance; No-by-pass – Transition Charges charged to a Ratepayer in respect of any Finance Amount incurred under with the Financing Plan applicable at the time the related Funding Obligation was incurred may not be avoided and shall be [non-by-passable].]~~

Article 4 – Invoicing of Transition Charges[20]

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a ~~Ratepayer~~Retail Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued by the Electricity Distributor or if applicable by the Alternative Servicer to the ~~Ratepayer~~Retail Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable ~~Ratepayer~~Retail Consumer.

(2) **Calculation of the Period Transition Charge** – Not later than [35] days prior to the first day of a Reference Period, each ~~Regulatory Asset Owner~~Absolute Assignee (or the ~~Administrative~~Financial Services Agent on its behalf) shall provide the ~~Servicer~~OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. [35] days prior to the first day of a Reference Period, IESO or Successor IESO if applicable shall specify the IESO Retained Interest Amount and any IESO Financing Costs that are due and payable and remain unpaid on such day. Not later than one month prior to the first day of a Reference Period, the ~~Servicer or if applicable the Alternative Servicer[21]~~OEB shall calculate the Period Transition Charge applicable to the Reference Period based on the calculations and information set forth in such written notices received from the ~~Regulatory Asset Owners, which~~Absolute Assignees and based on such amounts specified by IESO or Successor IESO, which calculations, information and amounts shall be determinative ~~in~~, except to the ~~absence~~extent of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the ~~Servicer or if applicable the Alternative Servicer~~OEB shall apply the Attribution Methodology to determine the Allocation Factor for each ~~Ratepayer~~Retail Consumer of the applicable ~~Ratepayer~~Retail Consumer Group.

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the ~~Servicer or if applicable the Alternative Servicer~~OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each ~~Ratepayer~~Retail Consumer of the applicable ~~Ratepayer~~Retail Consumer Group who has a billing address in the Electricity Distributor's Service Area.

(5) **Adjustments** – The amount of any Transition Charge charged to a ~~Ratepayer by the Servicer~~Retail Consumer and specified as such in an Electricity Invoice shall be

[20] ~~Details concerning Invoicing of Transition Charges (Article 4) and Collections and Remittances (Article 5) are complex. Consider how much of this can be addressed through regulations, or if acceptable based on existing OEB license conditions/codes, IESO market rules/manuals, etc.~~

[21] ~~Should this be a designated government official, rather than an agent appointed by investors?~~

determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, ~~in~~except to the ~~absence~~extent of any manifest calculation error.

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

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the ~~Regulatory Asset Owners~~Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners.

(9) **~~Regulatory Asset Owners~~Absolute Assignees have Standing** – The ~~Regulatory Asset Owners~~Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to ~~Ratepayers~~Retail Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges. Any court of the Province ~~[and the OEB]~~ shall have jurisdiction over any actions brought before it by the ~~Regulatory Asset Owners~~Absolute Assignees in relation to any such failure.[22]

(10) **No Set-Off or Reduction –** No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(11) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor~~,~~ or any Alternative Servicer ~~or any [Alternative Collection Agent]~~ to ensure that Transition Charges are properly charged to ~~Ratepayers~~Retail Consumers and specified as such in Electricity Invoices.

[22] ~~Consider having such matters first go through the OEB, particularly if the obligation to bill, collect or remit is deemed to be a condition of license for distributors, IESO, retailers and unit sub-metering providers, which would be enforceable provisions under the OEB Act and within OEB jurisdiction to enforce.~~

Article 5 – Collections and Remittances

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable][10] efforts] to collect amounts owing by ~~Ratepayers~~Retail Consumers in respect of Transition Charges charged to such ~~Ratepayers~~Retail Consumers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent.

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from ~~Ratepayers~~Retail Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[11] Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for ~~each~~the Regulatory Asset ~~Owner~~Owners.

(3) **Electricity Distributor Remittances** – On each [applicable Remittance Date], an Electricity Distributor shall remit all Transition Charge Collections received by it from ~~Ratepayers~~Retail Consumers in respect of the related Reference Period to or to the account of IESO or if applicable the Alternative Collection Agent.

(4) **Duty to Collect Electricity Distributor Remittances** – IESO or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable] efforts to accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from ~~Ratepayers~~Retail Consumers that pay their Electricity Invoices directly to ~~the Servicer.[23]~~IESO.[12]

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

(6) **IESO Remittances** – On each [Settlement Date]~~[24]~~[13], IESO and if applicable the Alternative Collection Agent shall remit all amounts on deposit in its Regulatory Asset Account (a) first, to or to the account of the ~~Regulatory Asset Owner~~Absolute Assignees an amount equal to the Investment Remittance for the related month and (b) second, to IESO (including by IESO retaining such amount) an amount equal to the lesser of (i) the Maximum IESO Recovery for the related month and (ii) the IESO Retained Interest Amount as of the Settlement Date.

[10] Mirror collection "standard of care" under applicable legislation.

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

~~[23]~~[12] Consider building this obligation into a deemed condition of licence for the IESO.

~~[24]~~[13] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

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

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

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[25][14], then such person shall, if requested by the ~~Regulatory Asset Owners~~Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to ~~Ratepayers~~Retail Consumers in its applicable service area, including all consumers connected to the electricity distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by ~~Ratepayers~~Retail Consumers as provided in this ~~Part; (c) terminate service to non-paying Ratepayers on the same basis as termination of service is permitted for non-payment of electricity transmission and distribution rates; (d~~Act; (c) exercise all enforcement rights of the ~~Regulatory Asset Owners or Pledgee~~Absolute Assignees for the benefit of ~~a Regulatory Asset Owner or Pledgee~~an Absolute Assignee; and (~~e~~d) remit any Transition Charge Collections to the ~~Regulatory Asset Owner or Pledgee~~Absolute Assignees or Pledgees, as applicable, each in accordance with its ~~Regulatory Asset~~Investment Interest.

(10) **~~Regulatory Asset Owners~~Absolute Assignees have Standing** – The ~~Regulatory Asset Owners and any Pledgee~~Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Alternative ~~Servicer~~Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from ~~Ratepayers~~Retail Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5. Any court of the Province ~~[and the OEB]~~ shall have jurisdiction over any actions brought before it by the ~~Regulatory Asset Owners~~Absolute Assignees in relation to any such failure. [26]

(11) **Appointment of an Alternative Collection Agent** – If a Replacement Event occurs in respect of any Electricity Distributor or IESO, the ~~Regulatory Asset Owners~~Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations otherwise required to be undertaken by such Electricity Distributor or IESO, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the

[25][14] This is in anticipation of a possible future restructuring of the distribution system. ~~Also, this would cover any OREC-eligible customer (market participant) of IESO.~~

[26] ~~Consider having such matters first go through the OEB, particularly if the obligation to bill, collect or remit is deemed to be a condition of license for distributors, IESO, retailers and unit sub-metering providers, which would be enforceable provisions under the OEB Act and within OEB jurisdiction to enforce.~~

Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor or IESO, as applicable. Any Electricity Distributor or IESO, as applicable, that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the ~~Regulatory Asset Owners~~Absolute Assignees.

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any ~~Ratepayer~~Retail Consumer, any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[~~27~~15]

(13) **Sequestration** – If any Electricity Distributor, IESO, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by ~~the Regulatory Asset Owners or Pledgee~~and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the ~~applying party~~Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the ~~Regulatory Asset Owners or Pledgee~~Absolute Assignees, each with respect to its ~~Regulatory Asset.~~ Investment Interest, and the Pledgees as applicable.[16]

(14) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by ~~the Regulatory Asset Owner~~some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

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

[~~27~~15] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a ~~Ratepayer~~Retail Consumer reduces its payment of Transition Charges, despite this language~~, and same~~. Same for Electricity Distributor Remittances and IESO Remittances.

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

a. the right of ~~a Regulatory Asset Owner to record its portion of the Regulatory Asset in its accounts~~IESO (i) to record its IESO Retained Interest in its accounts in accordance with Section 8(1), having a stated amount from time to time equal to the IESO Retained Interest Amount; and (ii) to receive IESO Recoveries from time to time in accordance with Section 5(6)(b);

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

c. the right to enforce the obligations and indebtedness of each ~~Ratepayer~~Retail Consumer to pay the Transition Charges charged to the ~~Ratepayer~~Retail Consumer from time to time in accordance with Article ~~2,~~3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices;

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of IESO or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article ~~4~~5;

f. the right to enforce the duties and obligations of IESO and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article ~~4~~5;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred.

(2) **Validity of Dispositions** – Despite any limitations or restrictions on a Disposition that may arise by contract or by operation of any applicable law of the Province [or any consent requirement applicable to a Disposition that may arise by ~~contract or by~~ operation of any applicable law of the Province], a Disposition by ~~a Regulatory Asset Owner~~IESO to an Absolute Assignee made under the Financing Plan ~~pursuant to a Disposition Document~~, or by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with ~~its~~the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the ~~Regulatory Asset~~applicable Investment Interest (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the Regulatory Asset Owner's applicable right, title, and interest in, to and under the Regulatory Asset (or relevant portion thereof), and not merely as a Pledge thereof~~. [A Disposition shall not be subject to recharacterization or challenge on any other basis and the validity of a Disposition shall not be affected or impaired by: (a) the commingling of Transition Charge Collections or other proceeds from Transition Charges with other amounts; (b) the retention of any interest (including any partial, residual or subordinated interest, whether direct or indirect) in the Regulatory Asset by the transferring Regulatory Asset Owner; (c) any right to repurchase the Regulatory Asset in favour of the transferring Regulatory Asset Owner; (d) any recourse that an Absolute Assignee may have against the transferring Regulatory Asset Owner; (e) any indemnification rights or obligations provided by the transferring Regulatory Asset Owner; (f) any obligation of the transferring Regulatory Asset Owner to collect and remit Transition Charge Collections on behalf of an Absolute Assignee, including but not limited to, any retention by the transferring Regulatory Asset Owner to bare legal title for the purpose of collecting Transition Charges; or (g) the ascribed or intended treatment of the Disposition by the transferring Regulatory Asset Owner or the Absolute Assignee on any different basis including for tax, financial reporting or other purposes.]~~[28], and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the Investment Interest subject to the Disposition, including all rights under the Investment Interest arising after such Disposition.

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

[28] ~~Consider if helpful to investors, or delete.~~

(4) **Validity of Pledges** – Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province [or any consent requirement applicable to a Pledge that may arise by ~~contract or by~~ operation of any applicable law of the Province], a Pledge by ~~a Regulatory Asset Owner~~an Absolute Assignee may be made to secure any related Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the ~~Regulatory Asset~~related Investment Interest in accordance with the terms of the Pledge. Other than as required by the Financing Plan, no consent of any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - ~~Any Pledge made by a~~For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset ~~Owner~~shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation ~~incurred under the Financing Plan shall be perfected, valid and binding from the time when the Pledge is made and shall be valid and binding as against the Regulatory Asset, the Regulatory Asset Owner making the Pledge and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the Regulatory Asset or the pledging Regulatory Asset Owner, irrespective of whether such persons have notice of the Pledge and the security interests of the Pledgee under such Pledge shall have priority over any liens in favour of such other persons. All proceeds of the Regulatory Asset~~may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the ~~Regulatory Asset Owner~~Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected~~, without any physical delivery thereof, registration of any financing statement with respect thereto~~ pursuant to the [PPSA] ~~or any other further act.~~[29][17] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may ~~subsequently~~ attach to the property rights and interests in the ~~Regulatory Asset~~Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. ~~Any~~Subject to the terms of the Collective Action Agreement, a Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. ~~[A Pledgee~~All provisions of the PPSA shall ~~cause a financing statement to be filed in respect of a Pledge on the basis that~~apply to the Regulatory Asset on the basis that it is "intangible" personal property, ~~for informational purposes only under the [PPSA].~~except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and

~~29~~17 Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document, in each case under the Financing Plan. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's ~~right~~rights and ~~interest~~interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective [and ~~joint~~]coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement.[30]

Article 7 – Establishment of the Fair Allocation Plan[~~31~~18]

(1) **Adoption of the Fair Allocation Plan** – The ~~[Minister of Energy]~~[32]Delegate may , [by written ~~order~~declaration,] designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this ~~Part~~Act, [except if amended, amended and restated or terminated by a further written ~~order issued~~declaration made by the ~~Minister of Energy~~Delegate in compliance with Section ~~•~~]7(4).

(2) **Principles and Parameters**[33] – A Fair Allocation Plan shall seek to allocate ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits across present and future ~~Ratepayer~~Retail Consumer Groups on a basis that the ~~Minister of Energy~~Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters[34]:

1. ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits should be allocated over ~~a period not to exceed the later of (a) the estimated remaining useful life of the Related Generating Assets and (b) the remaining term of IESO's commitments under the Power Contracts~~the period ending on the Program End Date.

2. The Fair Allocation Plan should specify the Reference Periods ~~(e.g., 6 month periods),~~ for the purpose of identifying applicable ~~Ratepayer~~Retail Consumer Groups and allocating ~~among them responsibility to bear the Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits among them on a relative basis over time.

[30] ~~This is necessary to ensure that if there are multiple regulatory asset owners and pledgees, they will be coordinated in the application of their rights of enforcement, etc.~~

[~~31~~18] The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current ~~Power Contracts~~procurement contracts and not invest in extending service lives to secure further ~~power~~procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

[32] ~~Input required. If the MOE is given this power, conform to applicable authorities (e.g., plans and directives).~~

[33] ~~Consideration will be given as to whether these details should be included in the Regulation.~~

[34] ~~We have provided a few examples of what could be the basic principles. These will depend on market considerations, the Province's decision on the required amount of detail and the ability to sustain the legal basis for the program. These examples are not meant to suggest the appropriate balance – just illustrative to advance a discussion among the stakeholders.~~

3. The share of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits allocable to a particular ~~Ratepayer~~Retail Consumer Group in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to the ~~Ratepayer~~Retail Consumer Group over such Reference Period.

4. The ~~estimated Unrecovered~~share of Future Fair Share of Green Transition ~~Costs~~Benefits to be allocated to a ~~Ratepayer~~Retail Consumer Group and any future ~~Ratepayer~~Retail Consumer Group at a particular time should not exceed the ~~estimated value of the Related Generating Assets based on their remaining useful lives or terms~~Estimated Future Green Transition Benefits, measured in respect of the ~~period~~Reference Periods following such particular time and to the Program End Date.

5. No future ~~Ratepayer~~Retail Consumer Group should ~~bear~~be allocated an unreasonably disproportionate share of ~~the Unrecovered~~Estimated Future Green Transition ~~Costs~~Benefits. Except in exceptional circumstances or in the case of any ~~backward-looking adjustment made~~reallocation of an Over-Assessed Amount as contemplated in 7, below, the ~~share of the Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits to be allocated under a Fair Allocation Plan to any future ~~Ratepayer~~Retail Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate]*[35].

6. ~~A reasonable estimate of the rate of inflation~~The time value of money should be ~~applied~~reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal ~~amount of Unrecovered Transition Costs to be allocable to Ratepayer~~allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Retail Consumer Groups over time.

7. ~~Backward-looking adjustments to a~~To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may ~~be made to achieve a fair distribution among Ratepayers of the benefits of the Green Generation Initiative.~~determine that an adjustment should fairly be made to rebate Retail Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such Retail Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more Retail Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) Attribution Methodology – The Fair Allocation Plan [shall] specify ~~an objective methodology (~~the ~~"~~Attribution Methodology~~")~~ for the purposes of allocating the Period

[35] ~~Consider if a quantitative limit needs to be included in the legislation.~~

Transition Charges across ~~all of~~ the ~~Ratepayers~~Retail Consumers of a particular ~~Ratepayer~~Retail Consumer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that ~~are~~is considered by the ~~Minister of Energy~~Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation.

(4) **~~[Confirmation][Review] of the Fair Allocation Plan – [OEB?]~~[36]Amendments of the Fair Allocation Plan** – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation and (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation.

Article 8 – The ~~Financing Plan~~[37]IESO Retained Interest

(1) **Maintain Books of Account** – IESO may maintain books of account to record the IESO Retained Interest Amount and all adjustments thereto from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset.

(2) **Limitation on Additions** – IESO shall not record additions to the IESO Retained Interest Amount in respect of IESO Funding Shortfalls (a) if such additions are restricted by the terms of any Disposition Document or the Collective Action Agreement, or (b) on or after •, 2017.

(3) **Dispositions** – IESO may effect a Disposition to an Absolute Assignee if (a) the Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; (c) the Financial Services Agent confirms in writing that the Disposition is permitted under the Financing Plan; and (d) the net proceeds payable to IESO from the sale of the related Investment Interest would not exceed the IESO Retained Interest Amount immediately before the time of such Disposition.

(4) **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any Investment Interest subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party and IESO shall not assert any such right or interest or take or omit to take any action to exercise or enforce its rights or interests under the IESO Retained Interest if such action or omission would impede or obstruct the rights of any Absolute Assignee or a Pledgee to enforce its rights and interests in any Investment Interest, except if IESO is expressly permitted to take or omit to take such action, respectively, under the related Disposition Document or the Collective Rights Agreement.

(5) **IESO Financing Costs** – IESO shall be entitled in good faith to incur reasonable financing costs (including interest and other reasonable financing charges) reflecting

[36] ~~Any approvals or consents by the OEB will be obtained before any Funding Obligation that is dependent on such approval or consent is incurred. Any such approval or consent will be irrevocable and non-appealable. Any regulatory action occurring after any incurrence will not affect the related Funding Obligation or underlying rights in the Regulatory Asset.~~

[37] ~~Consideration will be given as to whether these details should be included in the Regulation.~~

market terms and conditions and which are payable in arrears, in order to finance its ownership of the IESO Retained Interest from time to time.

(6) **IESO Recoveries** – IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) available to IESO under Section 5(6)(b).

Article 9 – The Financing Plan

(1) **Power to Prepare ~~and~~, Implement and Amend the Financing Plan** – ~~In compliance with a [written order][*MOE to confirm process.*] of the Minister of Energy, the Administrative Agent shall~~The Financial Services Agent shall be authorized to prepare, implement and ~~propose~~amend the ~~adoption of a~~ Financing Plan. If the ~~Administrative~~Financial Services Agent is unwilling or unable to prepare and propose the adoption of ~~a~~the Financing Plan, the ~~Minister of Energy~~Delegate may by written ~~order~~declaration designate one or more other persons who shall be authorized to prepare ~~and~~, implement ~~such a~~and amend the Financing Plan.

(2) **~~Required~~ Terms and Conditions of the Financing Plan** – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions ~~that have the effect of allocating the Unrecovered Transition Costs across present and future Ratepayer Groups on a basis that is consistent with the Fair Allocation Plan~~. The Financing Plan shall ~~be consistent with~~have regard to the principles~~,~~ and parameters~~, requirements and conditions~~ set forth in Schedule 3 and such other conditions and requirements as may be specified in a written ~~order~~declaration of the ~~Minister of Energy [~~Delegate or in accordance with the Regulation~~]~~.

(3) ~~**Power to Review and Approve the Financing Plan** – The Minister of Energy may, by written order, designate one or more persons to review the Financing Plan and to review and assess the consistency of the Funding Obligations incurred with such Financing Plan, and the Minister of Energy may specify requirements in respect of such review in such written order. The Administrative Agent, or such other person(s) as may be designated by written order of the Minister of Energy made pursuant to Section 8(1), shall make any such amendments to the Financing Plan, and submit a revised Financing Plan to the designated reviewer for approval within [the time period specified in such written order]/[[•] days of such written order].[**_Consider periodic amendments to the Financing Plan following an annual review; provided that amendments cannot affect the existing Funding Obligations. Consider the level of oversight the MoE/OEB will have over this process?_**]~~**OEB Approval** – Any Additional Funding Charge payable to or for the benefit of the Financial Services Agent shall be subject to review and approval by the OEB.

(4) ~~**Approval of Financing Plan** – The **[OEB]** shall have the power to and shall approve or disapprove of the Financing Plan based solely on whether the Financing Plan is consistent with (i) the principles, parameters, requirements and conditions set forth in Schedule 3, (ii) such other conditions and requirements as may be specified in a written order of the Minister of Energy [or in accordance with the Regulation] [and (iii) the Fair Allocation Plan]. If the **[OEB]** approves the Financing Plan, then such Financing Plan shall be implemented by the Administrative Agent. If the OEB disapproves of the Financing Plan or otherwise fails to approve the Financing Plan, then the Administrative Agent shall re-submit the Financing Plan with such amendments as the Administrative~~

~~Agent shall consider necessary for the Financing Plan to be approved by the OEB.[38]~~
OEB Review – The OEB [shall] undertake an annual review of the records maintained by the Financial Services Agent for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan.

~~(5)~~ ~~**Consistency with the Fair Allocation Plan** - Funding Obligations should only be incurred if Repayments and Funding Costs would be borne by present and future Designated Ratepayers on a basis that is [generally] consistent with their respective allocations of the costs and benefits of the Green Generation Initiative contemplated in the Fair Allocation Plan. In that regard, at the time of setting the Fair Allocation Plan for any particular period, the aggregate amount payable during future Reference Periods on account of Funding Obligations incurred on or before the date on which a new Funding Obligation is incurred should not exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Ratepayer Group contemplated in the Fair Allocation Plan. If, despite the foregoing, the Administrative Agent determines that the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Ratepayer Group under the then current Fair Allocation Plan, the Financing Plan shall require the Administrative Agent to make diligent efforts to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances, if such a Refinancing or deferral is determined to be available the Financing Plan shall require the Administrative Agent to make diligent efforts to implement such Refinancing or deferral on a basis that is consistent with the Fair Allocation Plan.~~

(5) ~~**(6) Establishment of Special Purpose Entities** – If the implementation of the Financing Plan contemplates the establishment of one or more special purpose finance entities to incur Funding Obligations as a Financing Entity under the Financing Plan, as an Absolute Assignee and on a basis that limits the recourse for the payment of such Funding Obligations to such Absolute Assignee's interest in, to and under the Regulatory Asset, the Administrative Agent shall have regard to the characteristics specified in Schedule 4 in establishing such special purpose entity.]~~**Replacement of** ~~the Administrative Agent~~ – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Administrative Agent shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services Agent under the Financing Plan. If the Financial Services Agent is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services.

(6) ~~(7)~~ **Obligation to Apply IESO Remittances** – The ~~Administrative~~Financial Services Agent shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the ~~Regulatory Asset Owners~~Absolute Assignees, or otherwise in respect of or

[38] ~~Once the Financing Plan is reviewed and approved there would be no further OEB review. If there is opportunity for further review, such review will have no impact on prior issued debt. Any further financings would be put on hold until such review is completed (during which time the IESO would again need to fund the shortfall on an interim basis and obtain necessary funding).~~

as proceeds from ~~the Regulatory Asset~~an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose.[39]

(7) ~~(8)~~ **Non-Recourse** – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, ~~and~~any Alternative Collection Agent, the ~~Administrative~~Financial Services Agent, the OEB, the Province or the Lieutenant Governor in Council, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this ~~Part~~Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount. [All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]

(8) ~~(9)~~ **Incurrences are Binding** – ~~Despite any failure to adhere to the Financing Plan or to comply with any requirement of this Part,~~Notwithstanding anything to the contrary in this Act, each Disposition made to or by an Absolute Assignee and all amounts payable or becoming due and payable by or on behalf of ~~a Regulatory Asset Owner~~an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation, shall be binding for the purposes of this ~~Part~~Act, including in determining the amount of related Transition Charges, despite any impairment or defect resulting from such failure.

[Article ~~9~~10 – Compliance Matters[~~40~~19]

(1) **Right of the [OEB] to Inspect Books and Records** - For the purpose of investigating compliance with the provisions of this ~~Part~~Act, the [OEB] shall have the right, jurisdiction, power and authority to examine the books and records of ~~any person who is or may become obligated or have duties that arise under this Part or any Funding Obligation~~*[Insert names if any]*.

~~(2)~~ ~~**Power to Investigate Compliance and Impose Regulatory Sanctions** - Subject to the limitations set forth regarding the irrevocability of Transition Charges and the Undertaking of the Lieutenant Governor in Council, nothing in this Part shall (a) prevent or preclude the [OEB] from investigating the compliance of any person who is or may become obligated or have duties that arise under this Part [or any Funding Obligation] with the terms and conditions of this Part and requiring compliance by such person therewith; or (b) prevent or preclude the [OEB] or any successor regulator from imposing regulatory sanctions against any person who is or may become obligated or have duties that arise under this Part for its failure to comply with the terms and conditions of this Part~~[41]~~.~~

(2) ~~(3)~~ **[~~Other Rating~~OPG's Rate Settings** – When setting other rates for or in respect of ~~any person who is or may become obligated or have duties that arise under this Part,~~

[39] ~~We need to work in the idea that there may be Finance Reserve Deposits or other amounts that remain after paying Finance Amounts. Those surplus amounts should be credited back to Ratepayers.~~

[~~40~~19] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article ~~is~~and any potential role for the Auditor General is still under consideration.

[41] ~~Consider scope of OEB regulation and whether a Financing Entity should be subject to this sort of provision in any event.~~

~~including any Electricity Distributor, IESO, Generator or the Administrative Agent, nothing in this Part shall prevent the [OEB] or any successor regulator from taking~~OPG, the OEB shall not take into account (a) the ~~collection by or attribution to such person of~~ administrative or servicing fees charged by OPG as Financial Services Agent [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services~~.]~~[42]]; (b) the cost consequences to OPG of being the Financial Services Agent; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][20]

Article ~~10~~11 – Undertaking of the Lieutenant Governor in Council[43][21]

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

(2) Undertaking and Agreement – The [Lieutenant Governor in Council] shall not:

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

(b) ~~**(2)** Undertaking and Agreement – The Lieutenant Governor in Council shall not in any way take or permit any action that limits, alters or impairs the value of the Regulatory Asset or,~~ except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the ~~Regulatory Asset Owners, including any~~ Absolute ~~Assignee from time to time, and~~Assignees or any Pledgee from time to time~~[, including through the introduction of any bill or the passing of any legislation or regulation]~~.;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination

[42] ~~OPG has indicated that the risks and cost consequences to OPG of being an~~[20] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Administrative Agent ~~or of consolidating a Financing Entity for accounting purposes should not be considered by the OEB in setting the regulated payment amounts for~~of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role. ~~To be discussed.]~~

[43] ~~Under consideration~~[21] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes.

would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder,

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

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, Successor IESO shall be established to perform such obligations.

(4) ~~[If IESO becomes insolvent or otherwise incapable of performing its obligations under this Part, an IESO Successor will be established that is capable of performing such obligations in order that the Regulatory Asset Owners may appoint the IESO Successor as an Alternative Servicer or Alternative Collection Agent. Regulatory Asset Owners shall be fully~~**Compensation for Failure** – Absolute Assignees shall be compensated for any losses suffered by them as a result of any failure by the Lieutenant Governor in Council to comply with its undertakings and agreements in this Article ~~10(2) for any loss suffered by the Regulatory Asset Owner as a result of such failure.~~[44]11.[22]]

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid.

(6) ~~(3)~~ **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Lieutenant Governor in Council, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article ~~11~~12 – Regulations

Regulations may be made under this ~~Part~~Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

- **(a)** to set standards and measures regarding the commercially reasonable requirements of the Province associated with ~~a Regulatory Asset Owner~~an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding ~~Costs~~Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;
- **(b)** to establish and empower one or more regulated entities to undertake decision-making activities with respect to this ~~Part~~Act;
- **(c)** to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

[44][22] Requested by Torys. For discussion.

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this ~~Part~~Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by ~~a Regulatory Asset Owner~~an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article ~~12~~13- Miscellaneous[~~45~~23]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this ~~Part~~Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this ~~Part~~Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this ~~Part~~Act shall be required with respect to the actions to be taken in compliance with this ~~Part~~Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this ~~Part~~Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

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

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

[~~45~~23] OPG would like the specific amendments related to OPG to be included in the Bill.]

severable and that the Legislature would have enacted this ~~Part~~Act even if any Article, Section, paragraph or subparagraph of this ~~Part~~Act held to be unconstitutional or invalid had not been included in this ~~Part~~Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3[24]

Principles~~,~~ and Parameters~~, Requirements and Conditions~~ for Establishing the Financing Plan

The ~~Financing Plan shall have regard to the~~ following principles~~,~~ and parameters~~, requirements and conditions:[*Consider others.*]~~ provide a guideline as to what a Financing Plan should address:

(1) ~~the Financing Plan shall,~~ in respect of each Reference Period, ~~describe~~make reference to the allocations of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits to each Reference Group ~~as~~ contemplated by the Fair Allocation Plan;

(2) ~~the Administrative Agent shall make a good faith~~ estimate ~~of the~~IESO Funding Shortfalls for each Reference Period~~, based on the terms of the Power Contracts and assumptions considered to be reasonable respecting forward market prices for electricity~~;

(3) ~~the Administrative Agent shall describe~~consider alternative funding arrangements ~~considered to be~~ suitable ~~for the purpose of funding~~to fund the estimated IESO Funding Shortfalls, including ~~by reference to~~ short term and/or long term Funding Obligations ~~that could reasonably be incurred by the Regulatory Asset Owners for such purpose~~;

(9) ~~(4) such Funding Obligations shall reflect~~consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that ~~the effect of incurring such Funding Obligations would be that the~~ payments made ~~thereunder in respect of each~~for a Reference Period ~~(including the anticipated Finance Amounts becoming payable in relation to such Funding Obligations) would~~ reasonably correspond to the allocations of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits to the applicable Reference Group under the Fair Allocation Plan;

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

(5) ~~the Financing Plan shall reflect the outcome of a financial model that incorporates~~reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical ~~Ratepayer~~Retail Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation having regard to the application of the Allocation Methodology); ~~[*Consider what outputs from OPG will be tested by the OEB and when. The modelling in the Financing Plan may permit the OEB to check progress against the model from*~~

[24] Awaiting input from Torys based on OPG mark-up of Financing Plan sections.

~~*time to time, which may provide a basis for the MoE/OEB to require a review/amendment to the Financing Plan if the ongoing operation of the program results in significant deviation from the model. Consider whether this flexibility is desirable.*~~]

(6) ~~the Administrative Agent, for and on behalf of each Regulatory Asset Owner, shall seek to~~ incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:

a. whether the ~~Regulatory Asset Owners~~Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not obligate ~~a Regulatory Asset Owner~~an Absolute Assignee 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 such Reference Period that would exceed the allocations of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the ~~Administrative~~Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations ~~shall~~should not obligate ~~a Regulatory Asset Owner~~an Absolute Assignee 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 such Reference Period that would exceed the allocations of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits to the applicable Reference Group under the Fair Allocation Plan;

c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the ~~Administrative~~Financial Services Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the ~~Administrative~~Financial Services Agent shall cause the applicable ~~Regulatory Asset Owner~~Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the ~~Administrative~~Financial Services Agent will select counterparties under any transaction to be entered into by ~~a Regulatory Asset Owner~~an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the ~~Administrative~~Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the ~~Administrative~~Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(7) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding ~~Shortfall~~Shortfalls from time to time on a basis that is consistent with the allocations of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits to applicable Reference Groups under the Fair Allocation Plan;

(8) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(9) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the ~~Administrative~~Financial Services Agent and other agents and service providers to the ~~Regulatory Asset Owners~~Absolute Assignees may be determined, allocated and paid;

(10) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(11) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(12) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(13) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(14) the basis upon which any Disposition may be made or effected by ~~a Regulatory Asset Owner~~an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(15) ~~a description of each~~describe the requirements applicable to any special purchase entity that will purchase ~~the Regulatory Asset from the IESO~~an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities ~~having regard to the parameters in Schedule 4~~; and

(16) the basis on which any Pledge may be given or effected.

~~Schedule 4~~

~~Creation of any Special Purpose Entity to become a Regulatory Asset Owner]~~

~~(1)~~ **~~Powers and Abilities~~**~~:~~

~~a.~~ ~~No part of the revenue or assets of a Regulatory Asset Owner shall enure to the benefit or be distributable to its trustees, officers or directors, as the case may be, or any other private persons, except as may be provided for actual services rendered;~~

~~b.~~ ~~Each Regulatory Asset Owner shall be authorized to:~~

~~i.~~ ~~incur the Funding Obligations contemplated by a Financing Plan and use the proceeds thereof to purchase or acquire, and to own, hold and use the Regulatory Asset;~~

~~ii.~~ ~~contract for servicing of the Restructuring Asset and any bonds contemplated by a Financing Plan and for administrative services; and~~

~~iii.~~ ~~pledge the Regulatory Asset to secure the Funding Obligations incurred by the Regulatory Asset Owner;~~

~~c.~~ ~~So long as any Funding Obligations contemplated under a Financing Plan are outstanding, a Regulatory Asset Owner shall not be authorized to merge or consolidate, directly or indirectly, with any person or entity;~~

~~d.~~ ~~a Regulatory Asset Owner shall not have the power or authority to incur or guarantee or otherwise become obligated to pay any debt or obligations other than what is contemplated under a Financing Plan;~~

~~e.~~ ~~a Regulatory Asset Owner shall cause the proceeds obtained by incurring any Funding Obligation to be placed in one or more separate accounts and used only to purchase the Regulatory Asset and pay any costs as provided for in a Financing Plan; and~~

~~f.~~ ~~so long as the Regulatory Asset is pledged to secure Funding Obligations, the Regulatory Asset Owner must apply revenues from the collection of Transition Charges only to repay such Funding Obligations and other costs as provided for in a Financing Plan.~~

~~(2)~~ **~~Governance of Regulatory Asset Owner~~** ~~– A Regulatory Asset Owner shall be created having regard to the following principles:[~~***~~OPG to confirm if SPE will be a trust or another type of entity.~~***]

~~a. [Number of trustees]~~

~~b. [Replacement of trustees; vacancies; appointment of successors]~~

~~c. [Removal of trustees for neglect of duty or misconduct]~~

~~d. [Quorum and meetings]~~

~~e. [Fiduciary duty]~~

~~f. [Isolation, separateness and other "non-consolidation" and "bankruptcy remoteness" criteria]~~

~~g. [Delegation of powers and duties to administrative agents]~~

~~h. [Delegation of powers and duties to administrative agents]~~

(17)

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Moved cell	
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