WORKING DRAFT #1
Assessment of control of the OPG Trust under PSAS

Issue:

Is the trust to be established by Ontario Power Generation ("OPG") (the "OPG Trust") controlled by the IESO according to guidance issued by the Public Sector Accounting Board?

Background:

The IESO currently has the right to collect the global adjustment ("GA") monthly from ratepayers through provisions in the *Electricity Act, 1998*. It is proposed that collection of a certain portion of the monthly GA be deferred in a regulatory asset for collection in the future, and that the right to recover the deferred GA from ratepayers be used as a basis for structured financing/securitization.

In connection with the draft Ontario Fair Hydro Plan, 2017 ("the proposed Act"), the proposal is for a trust to be created as a financial vehicle by OPG in connection with the deferred GA. The OPG Trust will finance the deferral of the GA by purchasing the regulatory asset from the IESO for the principal amount of the GA being deferred. For example, if the amount of GA that is being deferred is $300 million in a given month, the OPG Trust will purchase from the IESO the regulatory asset for $300 million in cash. The OPG Trust will have a right to recover the regulatory asset and the related financing and administrative costs.

The OPG Trust is expected to finance these purchases from the IESO through a combination of senior secured financing raised in the capital markets and subordinated financing from OPG (the funding for which will mostly be from equity injections from the OEFC/Province of Ontario).

OPG will be appointed as the Financial Services Manager and will be given the responsibility to direct the activities of the OPG Trust, through a services agreement and/or through the Trust's constating document.

Guidance under Public Sector Accounting Standards ("PSAS"): Section PS 1300 *Government Reporting Entity*:

PSAS refer to government or government organizations. For the purpose of this analysis, the PSAS guidance below relating to government or government organizations should be read and understood as being the IESO.

The government reporting entity should comprise government components and those organizations that are controlled by the government. [PS 1300.07]

Control is the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organization's activities. [PS 1300.08]

A government may choose not to exercise its power; nevertheless, control exists by virtue of the government's ability to do so. Control must exist at the financial statement date, without the need to amend legislation or agreements. [PS 1300.09]

Whether a government controls an organization is a question of fact that must be determined by reference to the definition of control established in paragraph PS 1300.08 and the particular circumstances of each case. The determination of the fact that control exists will require the application of professional judgment. Government achieves its objectives through a wide range of organizations which individually will fall somewhere along a continuum. At one end of the continuum, it will be clear that an organization does not have the power to act independently and is controlled by the government. At the other end, the organization will have the power to act independently and, while government will have a level of influence on the organization, it will be clear that it does not have control. Along the continuum, consideration needs to be given to the nature of the relationship between the government and the organization in order to determine whether control exists. This Section provides guidance intended to assist in this assessment. [PS 1300.10]

In applying this guidance, it is necessary to determine the substance of the relationship between the government and the organization. The true nature of certain relationships may not be completely reflected by their legal form. All relevant aspects and implications of the relationship would be considered in determining whether or not the government controls the organization. Where various aspects of the relationship are designed, in effect, to achieve an overall objective, they would be viewed as a whole. [PS 1300.11]

Control does not stem simply from the government having constitutional responsibility, but rather from the nature of the relationship between the government and the organization. For example, where a government has constitutional responsibility for health care, the government may choose to deliver those services through a controlled organization, such as a government department, or through an independent contractor. Constitutional responsibility does not mean that the government controls the entities that are used in delivering the services. [PS 1300.12]

Financial and operating policies are principles and practices that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control because it establishes the fundamental basis for the conduct of the organization's operations and the achievement of its mission and mandate. [PS 1300.13]

There are a variety of ways to govern the financial and operating policies of an organization. For example:

(a) a government may establish an organization's fundamental purpose and eliminate or significantly limit the ability of the organization to make future decisions by predetermining the financial and operating policies of the organization;
(b) a government may direct the financial and operating policies of an organization on an ongoing basis; or
(c) a government may veto, overrule or modify the financial and operating policies established by an organization. [PS 1300.14]

A government does not need to manage an organization's activities on a day-to-day basis to control the organization. It is the government's existing authority to determine the policies governing those activities that is important. [PS 1300.15]

For the purposes of this Section, it is assumed that where the government has the power to govern the financial and operating policies of an organization, it expects to derive a financial or non-financial benefit. The government may also be exposed to the risk of loss. [PS 1300.16]

Indicators of Control:

In determining whether or not the OPG Trust should be consolidated by IESO, it must first be determined if the IESO exercises control over their financial and operating policies resulting in expected benefits to the IESO of the risk of loss from its activities.

Under PSAS, IESO is required to consolidate all entities that are considered to be part of its reporting entity, applying the guidance provided in *Section PS 1300 Government Reporting Entity.* Under PS 1300, IESO must consolidate all entities it "controls".

PS 1300.17 indicates that "whether a government controls an organization is a question of fact that requires the application of professional judgment based on the definition of control in this Section and the substance of the relationship in each case." Under PS 1300.08 control is defined as "the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organization's activities". Therefore, the determination of whether IESO will consolidate the OPG Trust will be based on an assessment of whether IESO is considered to control the OPG Trust based on the indicia of control set out in PS 1300. The assessment of the IESO's control of the OPG Trust is made based on the proposed Act, facts and nature of the relationship between the IESO and the OPG Trust and based on facts and assumptions provided by IESO. PS 1300.18 and .19 set out potential indicia of control. Several of these indicia have been categorized as more persuasive of a finding of control (see Indicators 1 to 4 in the table below). For each indicator that applies, the degree of government influence would determine its importance as evidence of control. Finally, the indicia are considered both collectively and individually.

The following table summarizes the indicia of control set out in PS 1300.

Persuasive Indicators	Other Indicators
1. Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization **2. Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses** **3. Government holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the organization** **4. Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations**	5. Provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members 6. Appoint or remove the CEO or other key personnel 7. Establish or amend the mission or mandate of the organization 8. Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis 9. Establish borrowing or investment limits or restrict the organization's investments 10. Restrict the revenue-generating capacity of the organization, notably the sources of revenue 11. Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources

Detailed Analysis of the 11 Indicators of Control:

PERSUASIVE INDICATORS OF CONTROL		
INDICATOR OF CONTROLS	**CONDITIONS IDENTIFIED IN ORGANIZATION**	**CONTROL (Yes/No)**
Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization	- The proposed Act states: - OPG is appointed as the Financial Services Manager for the purposes of this Act. (Section 13xx) - The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners. (Section 14xx (1)) - Subject to any prescribed limitations, the Financial Services Manager may establish and charge fees to recover, the costs of doing anything the Financial Services Manager is required or permitted to do under this or any other Act; and any other type of expenditure, the recovery of which is permitted by the regulations. (Section 14xx (3)) - The Electricity Act, 1998 (EA) will be amended as follows: - "In addition to the objects mentioned in subsection (1), the objects of OPG include exercising the powers and rights and performing the duties and obligations assigned to it under the Ontario Fair Hydro Plan Act, 2017 and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services on behalf of financing entities, subject to the right to be paid by the financing entities for those services." (Section 53.1 (1.1)) - "OPG may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects." (Section 53.1 (1.2)) - OPG will establish a trust to manage the collection of the regulatory asset and related financing and administrative expenses. The Board of Trustees will be the governing body of the Trust and will be appointed by OPG. OPG will have the power to unilaterally appoint or remove all members of the Board of Trustees. - The IESO will not control the appointment or replacement of the Board of Trustees.	No
Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses	- Section 23 of the proposed Act states: - "A transfer of a specified portion of the regulatory asset under section 22xx constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee." - "Without limiting subsection (1), any transfer agreement that states an intention of the parties for IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of IESO's right to recover the corresponding amount in the variance account and not merely as a security interest." - "At the time a transfer of the regulatory asset is made under section	No

	22xx, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor." - Based on the proposed Act, upon transfer by IESO of a portion of the regulatory asset to the OPG Trust, the investment asset resulting from the transfer is immediately vested in the OPG Trust, free and clear of any adverse claim. (Section 24xx (1.1)) - Therefore, upon transfer of the regulatory asset to the OPG Trust, IESO will no longer have access/ability to direct the regulatory asset nor have the ongoing responsibility for losses.	
Government holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the organization	- IESO will not have any ownership in the OPG Trust and will not have the power to govern the financial and operating policies of the OPG Trust.	No
Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations	- IESO will not have the power to dissolve the organization.	No

OTHER INDICATORS		
INDICATOR OF CONTROLS	**CONDITIONS IDENTIFIED IN ORGANIZATION**	**CONTROL (Yes/No)**
Provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members	- OPG will have the power to unilaterally appoint or remove all members of the Board of Trustees.	No
Appoint or remove the CEO or other key personnel	- OPG will have the power to unilaterally appoint or remove all members of the Board of Trustees.	No
Establish or amend the mission or mandate of the organization	- The Trust will be established by OPG and the mandate of the Trust will be set based on the proposed Act.	No
Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis	- The proposed Act states: - "OPG is appointed as the Financial Services Manager for the purposes of this Act." (Section 13xx) - "The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring and financing an investment asset in accordance with this Act or for the purposes of refinancing a funding obligation." (Section 16 (1)) - OPG is the Financial Services Manager, not IESO.	No
Establish borrowing or investment limits or restrict the organization's investments	- Section 17 of the proposed Act states: - "The Financial Services Manager shall ensure that funding obligations incurred for the purposes of this Act are incurred in a manner that is consistent with the applicable Financing Plan." - OPG is responsible for the borrowing, not IESO.	No
Restrict the revenue-generating capacity of the organization, notably the sources of revenue	- N/A	No
Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources	- As mentioned above, OPG will be granted by legislation the power to establish or amend the policies of the OPG Trust and the ability to appoint and remove all members of the Board of Trustees.	No

Conclusion:

Based on the Proposed Act, none of the persuasive indicators of control are considered to be met, and none of the 7 non-persuasive indicators are met. Based on a collective assessment of these indicators, the IESO does not appears to control the OPG Trust under the proposed Act.

Although the above analysis discusses in detail IESO's assessment of each of the indicators of control it is important to note that, under PS 1300.20 -.21, these are indicators of control and the degree of importance of the indicators depends on the particular circumstances in each case. Accordingly, the degree of government influence in respect of that would determine the importance of that particular indicator as evidence of control.

The adoption of the proposed Act, the amendments of the Electricity Act, 1998 and the Ontario Energy Board Act, 1998 and the finalization of the financing structure and other agreements (including the bylaws and regulations of the OPG Trust) will take several weeks. Accordingly, the conclusion on control may change subject to further analysis of any changes to the terms of the proposed Act or review of the final regulations, financing structure and other agreements.