High Level Summary of Global Adjustment Deferral Mechanism

1. IESO shall, for each month between ■ and ■, determine an amount that is equal to 17%[1] of the portion of the global adjustment for that month which is to be included in rates established under the Rate Protection Plan pursuant to s. 79.16 of the Ontario Energy Board Act (the "Monthly GA Deferral"). **[Note: Will GA deferrals be applied for 4 years or 10 years or other period? Technical Briefing slide #11 indicates "rates will follow inflation for 4 years before increasing to repay financed GA costs", but also that "the immediate reduction (i.e. the financed portion) in the GA would be about $2.5B per year on average over the first ten years, for a total accumulated debt of about $28B on a forecast basis".]**

2. The IESO shall establish, and the OEB shall accept the establishment of, "GA Mitigation Deferral Accounts" and each such account shall be identifiable by the period to which it relates. **[Note: From a legal perspective it is better to have IESO assign 100% of several accounts instead of assigning sub-accounts that comprise less than 100% of a single main account.]**

3. The IESO shall record, for each month between ■ and ■, the Monthly GA Deferral in a GA Mitigation Deferral Account (each such account, a "Principal GAMD Account").

4. At the time of each financing by a Financing Entity (defined below), OPG will determine the expected financing costs (comprising total interest charges over the term of the debt instruments) and advise the IESO of such amount, whereupon the IESO shall establish (and OEB shall accept the establishment of) an additional account (which shall be identifiable with respect to the particular financing for which it was determined) (each such account, a "Finance Cost Account").

5. When establishing the commodity price for electricity, the OEB shall take into account the Principal GAMD Account and the Finance Cost Account. If any legislative or regulatory amendment is required for this purpose, it should be drafted generally so that even if there are future changes to the RPP scheme, those changes would not affect the GA deferral mechanism.[2]

6. The IESO shall have the right to recover from RPP consumers (plus other consumers prescribed by regulation), all Monthly GA Deferral amounts recorded in Principal GAMD Accounts and Finance Cost Accounts, in accordance with orders to be issued from time to time by the OEB. **[Note: Confirm whether this needs to go through the OEB, or whether it can be provided for by the legislation without OEB involvement]**. In

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[1] 17% plus existing 8% Ontario Rebate for Electricity Consumers = 25%. With respect to the mechanics for determining the amount of GA deferral, OPG's modelling group is working on a refinement to the MOE's model. Based on this work, OPG may propose a more formulaic approach to determining the amount of GA deferral (e.g. by building in the calculation / parameters right into the legislation as opposed to the IESO making a determination of how much GA to defer).

[2] Consideration should be given to whether the OEB will need to amend its "Regulated Price Plan Manual" which sets out in detail how it will go about calculating RPP prices based on the regulation.

making an order for the recovery of amounts recorded in the Principal GAMD Accounts and Finance Cost Accounts, the OEB shall:

a) accept the balances recorded therein; and

b) issue such orders without a hearing, through delegated authority and within a specified timeframe (or, in the alternative, the OEB Act could allow the OEB to choose not to have a hearing given it is administrative in nature or at most conduct a written hearing).

7. The IESO shall enter into agreements from time to time, no less frequently than **[annually] [Note: depends on bridge financing available to IESO]** for the sale of the right to record and recover (and all incidental rights relating to) specified Principal GAMD Accounts and Finance Cost Accounts (the "Regulatory Assets").[3]

   a) OPG shall establish and control one or more entities (each, a "Financing Entity") whose primary purpose is to purchase Regulatory Assets from the IESO and fund such purchases and its operating costs by issuing debt instruments secured by a first priority security interest over Regulatory Assets.

   b) The IESO shall enter into sale agreements relating to Regulatory Assets only with a Financing Entity at such times as may be determined by OPG.

   c) The purchase price to be paid by a Financing Entity shall be paid in cash and shall equal the aggregate amount of all assigned Principal GAMD Accounts, **[less the issuance costs associated with the related financing as conclusively determined by OPG]**. There shall be no payment to IESO in respect of any assigned Finance Cost Accounts. **[Note: This leaves IESO to fund the issuance costs and it is not clear if it would have the financial resources to do this. An alternative would be for OPG to fund the upfront issuance costs and include these issuance costs within the applicable Finance Cost Account to be recovered from the Regulatory Asset over time.]**

   d) The Financing Entity will fund all purchases of Regulatory Assets through debt offerings managed by OPG on behalf of the Financing Entity.

   e) Prior to each sale of Regulatory Assets by the IESO to a Financing Entity, the IESO will be authorized to obtain bridge financing to satisfy its obligations to contracted generators, prescribed generators and other parties to whom it is obligated pursuant to the global adjustment under section 25.33 of the Electricity Act.

   f) The purchase price received by the IESO from each sale of Regulatory Assets will be used to repay such bridge financing, or in certain instances, to directly pay the obligations referred to in paragraph e).

[3] To ensure these agreements are not subject to review by the OEB as part of the IESO's administrative rate proceeding, the Electricity Act should deem each such agreement to be a prudent contract (similar to the current provision for the IESO entering into a supply contract on the Minister's direction).

g) If a sale agreement referred to in paragraph b) describes the transaction between the IESO and a Financing Entity as a sale, then such transaction shall conclusively be a sale for all purposes and may not be re-characterized or found by a court to be a loan or any other arrangement.

h) A financing entity shall grant security over its Regulatory Assets to a trustee on behalf of all of its debtholders and such security interest shall be a first-ranking security interest by virtue of the Electricity Act, notwithstanding any provision of the PPSA or any other provincial statute to the contrary.

8. Any capital required by a Financing Entity to purchase Regulatory Assets that it is unable to raise from capital markets or private debt markets shall be provided by OPG.

9. The IESO shall agree to service the Regulatory Assets on behalf of each Financing Entity at no additional charge. In such capacity the IESO shall ensure that all LDCs include the relevant amounts required to be billed for all Regulatory Assets and the Costs Deferral Accounts (referred to below). The IESO will be responsible for overseeing the billing, collecting and remitting such amounts to the Financing Entities.

10. **[Placeholder for how the true up mechanism will work: describe what each of IESO, OPG and OEB shall do in such regard.]**

11. The legislation will include a "Provincial pledge" modelled on the state pledge provided in analogous U.S. legislation.

12. Each Financing Entity shall have the right to record in a Costs Deferral Account the administrative costs and fees incurred by the Financing Entity, including amounts paid to OPG for purposes of administering the Financing Entity and any return on investment payable by the Financing Entity in respect of OPG's capital invested in the Financing Entity.

13. Each Financing Entity shall have the right to recover the prudently incurred amounts recorded in the Costs Deferral Account on an annual basis in accordance with orders to be issued by the OEB from time to time.

a) Each Financing Entity shall apply to the OEB annually to dispose of the recorded balance

b) The IESO shall make payments to the Financing Entity in accordance with such order of the OEB then in effect

c) Each such order shall permit the Financing Entity to recover its approved amount over a period of 12 months

d) The IESO shall collect the amounts specified in such orders of the OEB pursuant to s. 25.33 of the Electricity Act (i.e. through the global adjustment)

e) Until the Cost Deferral Accounts are recovered as described above, OPG shall provide each Financing Entity with the funding required to carry on its operations (for greater certainty, excluding financing costs).

14. Each year, the IESO shall determine, and provide notice to the Trust, of the amount of deferred GA costs that it expects to be recovered from RPP consumers (plus other consumers prescribed by regulation) during the upcoming year, having regard to (a) the decline, if any, in the total GA from the prior year, and (b) any direction received from the Minister pursuant to a directive power to be provided.

15. Upon receiving such notice from the IESO,

    a) The OEB shall accept the balances but shall ensure amounts accurately recorded

    b) The IESO shall make payments to the Trust in accordance with such orders of the OEB then in effect

    c) The IESO shall be required to collect the amounts specified in such orders from OEB-licensed local distribution companies ("LDCs") pursuant to s. 25.33 of the Electricity Act (which will need to be amended to allow for this)

    d) LDCs shall be required to collect the amounts specified from their consumers using fixed fees applicable to each customer connection for members of the applicable customer class, namely RPP consumers (plus other consumers prescribed by regulation) **[Note: This is proposed on the assumption that it provides greater certainty of recovery as compared to a volumetric charge in the face of declining consumption, as well as to be consistent with move towards fixed distribution rates]**

    e) LDCs shall be required to remit the collected amounts to IESO within a specified timeframe

    f) IESO shall be required to remit the collected amounts, received from all LDCs, to the Trust within a specified timeframe

16. Each Financing Entity will use the proceeds to pay back the principal and interest amounts on its debt and will record corresponding reductions in its Regulatory Assets as funds are received.

Initial Legislative Drafting Comments

- We noted that certain aspects of the draft legislation suggest that there may be related government initiatives (i.e. to potentially utilize funds from the Greenhouse Gas Reduction Account to reduce the GA) that will need to be considered by the working group in the overall structuring of the plan.

- Consider stating that one of the purposes of the legislation is to amortize the capital costs of assets used to generate electricity over the expected useful life of the assets. (Section 1(f))

- Instead of referencing the Fair Hydro Financing Trust throughout, we would recommend authorizing OPG to establish entities that it will control for the purpose of financing the purchase of Regulatory Assets and define these as "Financing Entities".

- There are a few references to the Regulatory Asset commencing in January 2027, but it will be necessary to fund interest on the bonds before that date (for accounting treatment and financeability purposes) and possibly also principal (pending further discussions with the banks and rating agencies).

- There is a reference to the recovery period ending in 2047. We suggest building in a process to potentially extend that period (e.g. subject to **[OEB]** approval of such an extension) in order to accommodate further adjustments to smooth the impact of the GA recovery on consumer bills at the time, which may be needed depending on how electricity prices, GA payments, interest rates, etc. fluctuate over that period.

- When defining "deferral amount" (Section 25.33(1.2)(a)), we would suggest referring to the amounts paid to IESO by the Financing Entities (instead of the amounts borrowed by the financing vehicle since the Regulatory Asset is not limited to the amount borrowed). We note that a large portion of the deferral amount will not be borrowed by the financing vehicle but may be an equity contribution from OPG.

- A number of provisions (Sections 25.33 (1.3) to (1.6) and 25.34(i) in particular) are drafted as if there is a loan from the financing vehicle to IESO that IESO has to repay. In order for this to be a true sale, where the money received by IESO represents the purchase price paid for the Regulatory Asset, then such payment cannot be characterized as a debt owing by IESO to the Trust. When the IESO is paying the deferral amount to the financing vehicle, it is not repaying a loan but instead collecting and remitting these amounts to the financing vehicle as owner of the Regulatory Asset.

- To preserve flexibility for OPG's financing approaches in connection with the GA deferral, it would be prudent to ensure that OPG can operate its generation business both directly and through subsidiaries. Accordingly, we would recommend that Section 53.1 be revised to contemplate OPG owning and operating generation facilities directly or through one or more subsidiaries. Consideration should also be given to adding reference to OPG being permitted to hold interests in the Financing Entities, loan money to the Financing Entities and manage and administer the activities of the Financing Entities.

- The reference to the "Corporation" in Section 53.61(1) to be clarified – is this meant to refer to OEFC?

- In Section 53.6.1(4), considering referencing all Acts and regulations (rather than just the EA and the OBCA). This would ensure other relevant provincial legislation (fraudulent conveyances, PPSA, etc.), is picked up in ring-fencing OPG. Note that the reference to subsidiaries should carve out the Financing Entities.

- Consider adding a provision to the effect that Section 28 of the FAA does not apply with respect to any transaction authorized by these Parts.

- As noted above, to ensure the Regulatory Asset sale agreements are not subject to review by the OEB as part of the IESO's administrative rate proceeding, consider adding a provision to the Electricity Act deeming each such agreement to be a prudent contract (similar to the current provision for the IESO entering into a supply contract on the Minister's direction).