CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro" – Part V.2

Article 1 – Purpose

IESO has entered into Power Contracts with Generators. The agreed-upon reference prices and future quantities [IESO: what is meant by future quantities? These contracts have a contract capacity but no real indication of energy output.] set out therein were determined based on commitments made by IESO to provide Generators with long-term price certainty, so as to encourage the construction and development of facilities for the purpose of long-term operation and generation of electricity 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 programs (the "Green Generation Initiative"). The terms of the Power Contracts were intended to approximate the anticipated useful life of the related generation assets [IESO: is this factually correct? Is highlighted portion necessary?]; 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 ratepayers a "Global Adjustment" (part of which is available to IESO to pay this shortfall).

Each month, the IESO determines the Global Adjustment payable by consumers for the consumption of electricity in the Province. A component of the Global Adjustment is the amount by which the reference prices in the Power Contracts exceed the market price for electricity for the quantities of electricity specified under the Power Contracts for the relevant period. **[IESO: this is only true for Power Purchase Agreements (i.e. contracts for differences). There are also gas contracts and hydroelectric contracts with payment mechanics that are not contracts for differences.]** The relationship between the past, present and future benefits to Ratepayers from the Green Generation Initiative, on the one hand, and the costs of 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 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 "Fair Allocation Plan").

If a Fair Allocation Plan determines that the equitable allocation of the Global Adjustment to the Ratepayers of a particular time period in respect of the Power Contracts should be reduced below the amount otherwise determined, the amount payable by such Ratepayers to Electricity Distributors in respect of such period, and in turn by the Electricity Distributors to the IESO, would, in the aggregate, be less than the amount payable by the IESO to the Generators under the Power Contracts 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. **[IESO: as discussed at the meeting, the funding shortfall for the IESO that will need to be**

recovered from OPG trust is the difference between the new rate mitigation RPP price and what RPP would have been without rate mitigation. To be confirmed whether RPP forecasting variance is included or not in funding shortfall to be included in regulatory asset; and related IESO financing costs.] In order for IESO to cover such a funding shortfall for a period, IESO will need to obtain funding from another source, which could include funding from third party sources operating in public and private capital markets. If a funding obligation is incurred in order to enable the IESO to cover 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 become payable in one or more other periods. [IESO: consider how to manage risk if financing entity cannot purchase]

It will be necessary to provide 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 become due and payable. This Part imposes irrevocable and non-bypassable financial obligations of Ratepayers to pay amounts incurred in respect of such funding obligations when they become due and payable. Such financial obligations will constitute property rights and interests, which will take the form of the Regulatory Asset contemplated in this Part [IESO: IESO supports characterization of property right as right to collect, rather than obligation of unknown future Ratepayers; see further comments below under Article 6]. The Regulatory Asset will be sold and absolutely assigned and will belong to one or more newly created financing entities, which in turn will finance their purchase of such Regulatory Asset by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf the financing entities by an administrative agent (initially OPG), under the Treasury Plan contemplated in this Part. The Treasury Plan will seek to reasonably match the payment obligations arising under funding obligations and borne by the future Ratepayers of the period in which such payment obligations become due, with the costs and benefits of the Green Generation Initiative attributed to such future Ratepayers under the Fair Allocation Plan.

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

Article 2 - Definitions

In this Part:

"Absolute Assignee" means, in respect of a Regulatory Asset, a [IESO: suggestion accommodates series of regulatory assets] person to whom a Regulatory Asset Owner assigns, transfers, conveys, sells, contributes, sets over, exchanges or disposes all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the transferring Regulatory Asset Owner's right, title and interest in, to and in respect of the Regulatory Asset [IESO: does the term include a secured party].

"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 Agent whose records shall be determinative for the purposes of this Part in the absence of a manifest calculation error.

"Additional Funding Charges" means, for a Reference Period, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by the Regulated Asset Owner during the Reference Period and that were incurred or committed to directly or indirectly in connection with the incurrence of Funding Obligations under the Treasury 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 Agent on behalf of, the Regulatory Asset Owner under the Treasury Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on the Regulatory Asset Owner or incurred by the Regulatory Asset Owner under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Administrative Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Treasury Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Invoicing Agent, 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 the Regulatory Asset Owner; (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 placement fees, underwriting fees, fees and related issuing expenses; (m) any rating agency fees; and (n) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith for recovery and payment under the Treasury 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 Treasury Plan in compliance with the requirements set out in Schedule 2.

"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 Owner.

"Alternative Invoicing Agent" means a person appointed under Section 4(8) to assume the invoicing and other activities of any Electricity Distributor under Article 4, as agent for and on behalf of the Regulatory Asset Owner.

"Attribution Methodology"[1] means the methodology specified in the Fair Allocation Plan for allocating the Period Transition Charges for a Reference Period to the individual Ratepayers of the applicable Ratepayer Group.

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[1] A key question will be how the overall costs will be spread across the rate base. For simplicity, overall costs could be spread across the rate base based on a *per capita* (ratepayer) concept. This would generally mean that all consumers who are invoiced in a month would pay the same Transition Charge, and to the extent that the invoiced amounts (i.e., the Transition Charges billed for a month) are higher or lower than the actual costs, due to a change in the Consumer Base, that difference should (among other things) be reflected in the True-Up calculation for the

"Collected Amount Adjustment" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Administrative Agent equal to (a) the Estimate of the Finance Amount for the Reference Period, minus (b) the sum of all Transition Charge Collections for the Reference Period.[2]

["Consumer Base" means, for a Reference Period, the total number of Ratepayers in the Ratepayer Group determined by the Administrative Agent as of the [third] Business Day immediately preceding the first day of the Reference Period.]

"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 to an Absolute Assignee.

"Electricity Distributor" means, in respect of a Service Area, the distributor of electricity to residences located in such Service Area.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections 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 Electricity Distributor (or in its stead, an Alternative Invoicing Agent) in respect of electricity charges and related services and amounts incurred, assessed or attributed in respect of a residence **[IESO: LDCs should not be confined to residences. The eligible class of consumers is broader than residential.]** located in the Electricity Distributor's designated Service Area.

"Estimate" means, in relation to costs, expenses or payments in respect of Funding Obligations for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Administrative Agent 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 the absence of a manifest calculation error.

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

"Finance Amount" means, in respect of a Reference Period, the sum (without duplication) of the following amounts for the Reference Period: (a) Repayments; (b) Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

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relevant reference period (see "Collected Amount Adjustment"). To the extent that a different allocation method is adopted (such as based on actual electricity use by individual consumers), the divisor for the Transition Charge will need to be modified.

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

“Finance Receipts” means, for a Reference Period, all amounts received by or on behalf of the Regulatory Asset Owner 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 Owner 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 Treasury 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 Treasury Plan.

“Funding Costs” means, for a Reference Period, 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 during the Reference Period in respect of all 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 Funding Obligation, exceeds (b) the aggregate of all Finance Receipts for the Reference Period.

“Funding Obligation” means each payment obligation (including indebtedness, payment obligations arising under or in respect of derivatives, payment obligations owing to service providers, administrative agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies) incurred by the Regulatory Asset Owner [IESO: note that Financing Entity may not be owner prior to incurrence debt] under the Treasury Plan in order to fund a Funding Shortfall for a Reference Period, including any Refinancing of another such payment obligation. [IESO: Qualification of an obligation as a “Funding Obligation” should not be conditional upon compliance of the obligation with the Treasury Plan. This introduces unnecessary investor risk.]

“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. **[IESO: the funding shortfall for the IESO that will need to be recovered from OPG trust is the difference between the new rate mitigation RPP price and what RPP would have been without rate mitigation; it will not be**

solely referable to the "Power Contracts". To be confirmed whether RPP forecasting variance is included or not in funding shortfall to be included in regulatory asset; and related IESO financing costs.]

"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 in accordance with the Fair Allocation Plan. **[IESO: it is likely sufficient to relate this only to the Fair Allocation Plan, given how that is defined, without tying the deferred GA to the Power Contracts, as currently defined.]**

"Generator" means a generator of electricity that is subject to this Act.

"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.

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

"IESO Applied Surplus" means, for a Reference Period, the lesser of (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 and (b) the IESO Unapplied Surplus on the last day of the immediately preceding Reference Period. **[IESO: definition not necessary. Funding Shortfall definition should not be based on this defined term nor IESO Power Contract Net Payment nor GA Power Contract Contribution for Reference Period. Definitions are not necessary to determine Funding Shortfall, which is not derived from amounts payable to specific contracts, but rather the difference between what is invoiced to LDCs and amounts collected by LDCs from the eligible class of consumers. The original definition of Funding Shortfall and the incorporated terms are relevant to the Fair Allocation Plan and determining the policy of spreading recovery of the deferred amounts fairly over time.]**

"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 to IESO 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.

"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 to IESO 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 Owner in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"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.

"Period Transition Charge" 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. **[IESO: depending on how recovery is to be implemented, this could be converted into an input into the OEB's RPP price setting process. The charge, or perhaps a volumetric recovery rate, may still be relevant for those eligible consumers who are not RPP consumers.]**

"Pledge" means a lien, mortgage, charge, right of set-off [IESO: not applicable, delete] or security interest granted to or in favour of a Pledgee by a Regulatory Asset Owner 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.

"Pledgee" means a person to whom [or for whose benefit] a Regulatory Asset Owner 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.[3] **[IESO: this definition only includes PPAs, which are contracts for differences. The contracts the Ministry wants to reference would also include gas and hydro contracts that are not contracts for differences. We are not certain all the detail around basis of payment is necessary; consider whether highlighted portion is appropriate.]**

"Province" means Her Majesty the Queen in right of Ontario.

"Ratepayer" means present and future [retail] consumers of electricity [in Ontario] 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 LDC or not, to the transmission and distribution system assets located in Ontario and who are taking electric delivery service within Ontario, 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 [IESO: "electric generation services" are not purchased from transmission or distribution owners/operators] and whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or IESO.[4]

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[3] Should this contemplate the possibility of additional or amended power contracts?

[4] Need to describe consumers in a fashion that is broad and not weakened by a bypass risk.

[IESO: for factual accuracy, the IESO does not own transmission assets. It controls the IESO controlled grid. Should be corrected to say owned by electricity Distributors or transmitters, or operated by the IESO]

"Ratepayer Group" means, in relation to a Reference Period, the Ratepayers who receive Electricity Invoices during the Reference Period. **[IESO: will all eligible consumers actually receive an Electricity Invoice? We understand some of the eligible class of consumers are not LDC customers – e.g., suite-metered customers.]**

"Redemption Amount" means the amount payable by or on behalf of a Regulatory Asset Owner to redeem, prepay or repurchase a Funding Obligation, 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 Date] to (and including) June 30, 2017, (b) each six month period commencing [July 1st and January 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Refinancing" means that a Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Regulated Asset Owner by applying the net proceeds obtained by the Regulated Asset Owner incurring one or more other Funding Obligations.

"Regulatory Asset" means the property right and interest described in Section 6(1). [IESO: consider whether one regulatory asset or a series of regulatory assets, and given that there will be a series of sales]

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

"Regulatory Asset Owner" means, in respect of a Regulatory Asset. collectively, (a) IESO, to the extent that it has retained any ownership [IESO: consider use of a broader term, not tied to the property analysis, for e.g., "has rights in respect of"; also, consider whether provision need be made for retention of a co-ownership interest. Consider **redrafting as "IESO, until there has been a Disposition of the Regulatory Asset by the IESO"? The current phrasing may suggest even after a sale the IESO may retain an interest.**] interest in, **]** to or under the Regulatory Asset 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, which together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

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

"Related Rights" means all rights of any kind (whether in tort, contract or otherwise) of the Regulatory Asset Owner that attach or are attendant or incidental to any of the other property rights or interests that comprise the 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 in accordance with any Funding Obligation or, if no such day is specified in relation to 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 Finance Reserve Deposit) of, all or a portion of the amount advanced to the Regulatory Asset Owner under a Funding Obligation.

"Repayment" means a payment by a Regulatory Asset Owner made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing.

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

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

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

"Treasury Plan" means the written plan prepared by the Administrative Agent in compliance with Article 8 to set forth the basis upon which, among other things: (a) any Disposition may be made or effected; (b) any Funding Obligations may be incurred in order to fund a Funding Shortfall, 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; and (h) the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied.

"Transition Charge" means, in respect of a Reference Period, [one-sixth] of the Period Transition Charge, [divided by the Consumer Base[5]].

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

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[5] See footnote 1, above.

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

"Undertaking of the Province" means the undertaking of the Province given under Section 10(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]. **[IESO: we understand this definition to be the amounts the IESO has not recovered from LDCs due to this rate mitigation program. Is this equivalent to "Funding Shortfall"?]**

Article 3 – Transition Charges

(1) **Ratepayer Obligation to Pay a Transition Charge** – Each Ratepayer shall pay each Transition Charge attributed to it and specified as such [IESO: may want to retain flexibility as to how the amount is recovered; consider leaving to be addressed by regulation] in any Electricity Invoice issued to such Ratepayer by its Electricity Distributor or by an Alternative Invoicing Agent under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) **Indebtedness of Ratepayers** – Until paid, a Transition Charge attributed to a Ratepayer and recorded 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 indebtedness of the Ratepayer to the Regulatory Asset Owner. Such indebtedness shall constitute a single and separate debt obligation owing by the Ratepayer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Ratepayer under the Electricity Invoice or otherwise.

(3) **No Set-Off or Reduction** – A Ratepayer 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 by its Electricity Distributor, the Regulatory Asset Owner or any other person.

(4) **Allocation of Ratepayer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a Ratepayer 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 deeded to constitute a Transition Charge Collection.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred in compliance with the Treasury Plan (including any adjustments based on modifications to such Funding Obligations made in compliance with the Treasury Plan or as a result of amendments to the Treasury Plan made in accordance with Section 8(3)) are deemed to be irrevocable, final and effective without any further action. 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 in accordance with the Treasury Plan. In no case shall a Funding Obligation incurred under the Treasury Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(6) **[Anti-avoidance; No-by-pass** – Transition Charges attributed to a Ratepayer in respect of any Finance Amount incurred under with the Treasury 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

(1) Inclusion of Transition Charges in Electricity Invoices – Each Electricity Distributor and if applicable any Alternative Invoicing Agent shall, as an agent of the Regulatory Asset Owner, specify the Transition Charge to be attributed to a Ratepayer 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 Invoicing Agent to the Ratepayer in respect of such Reference Period. **[IESO: if the amounts that need to be recovered over a reference period are combined into the RPP price (and prices to be paid by other eligible Class B consumers who are not RPP), then special invoicing provisions are not necessary. Instead what would be necessary is a process where the amount needed to be recovered over the reference period would be determined by [OPG?/Ministry?;] and provided to OEB as an input into the RPP price setting process. The places in article 4 where IESO is in square brackets are not roles for the IESO. We do not have a basis for determining what needs to be recovered, over what period or by whom.]**

(2) **Calculation of the Period Transition Charge** – Not later than one month prior to the first day of a Reference Period, [IESO][6] or if applicable the [Alternative Collection Agent][7] shall calculate the Period Transition Charge applicable to the Reference Period. [IESO: this may be a more appropriate obligation for the OEB to undertake, albeit with necessary input from the IESO, LDCs, Financing Entity. As a general observation, it is the IESO's view that details concerning Invoicing of Transition Charges (Article 4) and Collections and Remittances (Article 5) are complex and as much detail as possible should be left to be addressed through regulations, OEB license conditions/codes, IESO market rules/manuals, etc.]

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, [IESO] or if applicable the [Alternative Collection

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[6] IESO's role will need to be discussed. Not sure if this mechanism is an IESO role or perhaps it's an OEB role. That will need to be discussed with the stakeholders. Currently, the rates for this class of customer are established by the OEB every six months having regard to the projections etc., of GA, and any variances from the prior period. This might end up fitting into that regime (although presumably we wouldn't want it to be built into the rate like GA is today-ie., it would be a separate line item). This section will also need to catch "bypass" customers.

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

Agent] shall apply the Attribution Methodology to determine the Transition Charges to be attributed to the Ratepayers of the applicable Ratepayer Group. [IESO: see comment above]

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, [IESO] or if applicable the [Alternative Collection Agent] shall inform each Electricity Distributor and if applicable any Alternative Invoicing Agent of the Transition Charges to be specified in the Electricity Invoices to be issued to each Ratepayer of the applicable Ratepayer Group who has a billing address in the Electricity Distributor's Service Area. [IESO: see comment above]

(5) **Adjustments** – The amount of any Transition Charge attributed to a Ratepayer by [IESO] and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, in the absence 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, bill and invoice the Transition Charges.

(7) **Successors of IESO** – Any successor of IESO 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 Invoicing Agent** – If a Replacement Event occurs in respect of any Electricity Distributor, the Regulatory Asset Owner shall be permitted, by an instrument in writing, to appoint an Alternative Invoicing Agent 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 Invoicing Agent 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 Invoicing 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 Invoicing Agent to perform such obligations and duties on behalf of the Regulatory Asset Owner.

(9) **Regulatory Asset Owner has Standing** – The Regulatory Asset Owner may bring actions against any Electricity Distributor, IESO, Alternative Invoicing Agent or any other person who may be authorized to issue Electricity Invoices to Ratepayers for a failure to impose, attribute, bill or invoice Transition Charges. Any court of the Province [and the OEB] shall have jurisdiction over any actions brought before it by a Regulatory Asset Owner in relation to any such failure.

(10) **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, any Alternative Invoicing Agent or any [Alternative Collection Agent] to ensure that Transition Charges are properly attributed to Ratepayers and specified as such in Electricity Invoices.

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 Owner, undertake [diligent efforts] to collect amounts owing by Ratepayers in respect of Transition Charges attributed to such Ratepayers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent. [IESO: consider whether the rights of the regulatory asset owner ought not also to be conferred after a realization event upon the Pledgee]

(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 and deposit such Transition Charge Collections into its Regulatory Asset Account. 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 be deemed to hold such amounts in trust for the Regulatory Asset Owner [IESO: consider "shall be held in trust", rather than "shall be deemed to be held in trust"].

(3) **Electricity Distributor Remittances** – On each [applicable Remittance Date], an Electricity Distributor shall remit all Transition Charge Collections received by it from Ratepayers 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 Owner, undertake reasonable to accept and collect Electricity Distributor Remittances.

(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 be deemed to hold such amounts in trust for the Regulatory Asset Owner. [IESO: consider "shall be held in trust", rather than "shall be deemed to be held in trust"].

(6) **IESO Remittances** – On each [Settlement Date], IESO and if applicable the Alternative Collection Agent shall remit all amounts on deposit in its Regulatory Asset Account to or to the account of the Regulatory Asset Owner.

(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** – Any successor of IESO 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 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 Ontario or invoices or collects electricity distribution rates in Ontario[8], then such person shall, if requested by the Regulatory Asset Owner, be obligated to act diligently to (a) facilitate the invoicing and collect of any Transition Charges applicable to Ratepayers 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 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) exercise all enforcement rights of the Regulatory Asset Owner or Pledgee for the benefit of the Regulatory Asset Owner or Pledgee; and (e) remit any Transition Charge Collections to the Regulatory Asset Owner or Pledgee, as applicable.

(10) **Regulatory Asset Owner has Standing** – The Regulatory Asset Owner and any Pledgee may bring actions against any Electricity Distributor, IESO, Alternative Invoicing Agent, any owner of electricity distribution system assets in Ontario or any other person who may be authorized to collect electricity distribution and use charges from Ratepayers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances under Article 5. Any court of the Province [and the OEB] shall have jurisdiction over any actions brought before it by a Regulatory Asset Owner in relation to any such failure. **[IESO: we don't think this is the intent but the highlighted text suggests IESO could be liable for failure of LDCs to pay invoiced amounts. IESO can seek to enforce payment obligation of LDC but IESO is not principally liable. We assume this is meant to indicate if the IESO fails to invoice or remit the amounts.]**

(11) **Appointment of an Alternative Collection Agent** – If a Replacement Event occurs in respect of any Electricity Distributor or IESO, the Regulatory Asset Owner shall 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 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 an 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

[8] 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.

Asset on behalf of the Regulatory Asset Owner. **[IESO: the concept of Replacement Event as regards the IESO is problematic. Instead consider successor to IESO having same obligations]**

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of the Regulatory Asset Owner, any Absolute Assignee and any Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any Ratepayer, 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.] **[IESO: Consider treating set-off against the IESO as a deemed collection]**

(13) **[Sequestration** – If any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in Ontario 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 a Regulatory Asset Owner or Pledgee and without limiting any other remedies available to the applying party, 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 Owner or Pledgee.] [Such order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or other person or entity authorized to collect Transition Charges, as applicable.]

(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.

Article 6 – The Regulatory Asset

(1) **Composition** – The Regulatory Asset shall constitute a property right and interest of the Regulatory Asset Owner in the following:

a. the present and future obligations and indebtedness of each Ratepayer to pay Transition Charges attributed to the Ratepayer from time to time in accordance with Article 2, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices;

b. the present and future obligations of each Electricity Distributor and if applicable the Alternative Invoicing Agent to impose, attribute, bill and invoice the Transition Charges in accordance with Article 4;

c. the present and future obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to 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;

d. the present and future obligations of IESO and if applicable the Alternative Collection Agent to accept Electricity Distributor Remittances and to remit IESO Remittances to or to the account of the Regulatory Asset Owner, 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;

e. all Transition Charge Collections;

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

g. all Related Rights; and

h. all proceeds of or derived from the foregoing.

The Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, attributed, 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.

[IESO: Consideration should be given to defining the "Regulatory Asset" in terms of a franchise, right or licence conferred upon the IESO or the Financing Entity. This can be seen in both the Duke and the LIPA transactions.

LIPA

> *"The 2016B Restructuring Property is a property right consisting generally of the irrevocable right to impose, bill and collect 2016B Restructuring Charges from Customers, the right to adjust those 2016B Restructuring Charges and the right to all revenues, collections, claims, payments, money or proceeds of or arising from the 2016B Restructuring Charges and the property, rights and interests created under Financing Order No.4."*

Duke

> *"The nuclear asset-recovery property includes the right to impose, bill, collect and receive, through the nuclear asset-recovery charges payable by customers who receive electric transmission or distribution service from DEF or its successors or assignees under rate schedules approved by the Florida Commission or under special contracts, including the State and other governmental entities, an amount sufficient to pay principal and interest and other amounts in connection with the bonds. …*

The Financing Act provides that the right to collect Payments based on the nuclear asset-recovery charge is a present property right that may be pledged, assigned or sold in connection with the issuance of the bonds.

The nuclear asset-recovery property is not a receivable, and the principal collateral securing the bonds is not a pool of receivables."

The following is the cautionary language in the Duke prospectus, even with the revised property interest language (there is similar language in the LIPA prospectus):

DEF will represent in the sale agreement, and the Financing Act, provides that the nuclear asset-recovery property sold pursuant to such sale agreement constitutes a present property right on the date that it is first transferred to us in connection with the issuance of the bonds. Nevertheless, no assurance can be given that, in the event of a bankruptcy of DEF a court would not rule that the applicable nuclear asset-recovery property comes into existence only as customers use electricity.

If a court were to accept the argument that the applicable nuclear asset-recovery property comes into existence only as customers use electricity, no assurance can be given that a security interest in favor of the bondholders would attach to the nuclear asset-recovery charges in respect of electricity consumed after the commencement of the bankruptcy case or that the nuclear asset-recovery property has been sold to us. If it were determined that the nuclear asset-recovery property had not been sold to us, and the security interest in favor of the bondholders did not attach to the applicable nuclear asset-recovery charges in respect of electricity consumed after the commencement of the bankruptcy case, then we would have an unsecured claim against DEF. If so, there would be delays and/or reductions in payments on the bonds. Whether or not a court determined that nuclear asset-recovery property had been sold to us pursuant to a sale agreement, no assurances can be given that a court would not rule that any nuclear asset-recovery charges relating to electricity consumed after the commencement of the bankruptcy could not be transferred to us or the indenture trustee.]

(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 made under the Treasury Plan shall be permitted and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Absolute Assignee a valid property right and interest in, to and under the Regulatory Asset (or relevant portion thereof) in accordance with the terms of such Disposition [, provided that the description of Regulatory Asset in the agreement giving effect to the Disposition expressly refers to this Part]. [Other than as required by the Treasury Plan, no consent of any person shall be required to give effect to a Disposition.] [IESO: References to the Treasury Plan should be directory only, and a failure to comply with the Treasury Plan should not invalidate any incurrence of debt, transfer or grant of security.] 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 revenues 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.

(3) **Deemed Perfection and Priority of Dispositions** – At the time a Disposition is made, the absolute assignment of the property rights and interest in the Regulatory Asset subject to the Disposition shall be deemed [IESO: Consider here and elsewhere avoiding the use of the term "deemed"] to have been and shall be perfected [IESO: unless the Regulatory Asset is an account, perfection of an absolute transfer is not relevant] , 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 have priority over any liens in favour of such other persons. [IESO: the IESO's proposed statutory language attempted to buttress this disposition by providing for a contemporaneous divesting and vesting of statutory rights. This was intended to have the effect of divorcing the effectiveness of the disposition from the property analysis]

(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 may be made to secure any 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 in accordance with the terms of the Pledge [IESO: is the intent that the security interest arise by agreement (in which case is it intended that the PPSA applies) or does it arise by operation of statute, in which case the PPSA would not apply, PPSA Section 4(1)(a))] , provided that the description of Regulatory Asset in the agreement giving effect to the Pledge expressly refers to this Part]. Other than as required by the Treasury Plan, no consent of any person shall be required to give effect to a Pledge made to secure any Funding Obligation. [IESO: References to the Treasury Plan should be directory only, and a failure to comply with the Treasury Plan should not invalidate any incurrence of debt, transfer or grant of security.]

(5) **Deemed Perfection and Priority of Pledges** - Any Pledge made by a Regulatory Asset Owner in accordance with the Treasury Plan [IESO: References to the Treasury Plan should be directory only, and a failure to comply with the Treasury Plan should not invalidate any incurrence of debt, transfer or grant of security] shall be deemed to have been and 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 Owner making the Pledge and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the pledging Regulatory Asset Owner [IESO: Should address competing claims to the asset as opposed to the 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 that are subject to such a Pledge that are received by the Regulatory Asset Owner 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 [IESO: note that registration of a financing statement is not excluded in (4);may want to consider registration of a financing statement under the PPSA as it is a simple act and may lessen the artificiality of the security interest] A Pledge shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the Regulatory Asset subject to the Pledge unless the Pledgee has otherwise agreed in writing. Any Pledgee shall have a perfected security interest in revenues or other proceeds arising from the Transition Charge 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 revenues or other proceeds with other funds. [A Pledgee shall cause a financing statement to be filed in respect of a Pledge for informational purposes only under the [PPSA]. [IESO: see above]

(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 [IESO: Consider default rights of Pledgee]

(7) **Collective Action Required** – If a Regulatory Asset Owner's right and interest 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] basis with each other Regulatory Asset Owner [IESO: consider in the co-ownership scenario whether an absolute assignee should be required to obtain the cooperation of the IESO], and any agreement among all of the Regulatory Asset Owners in furtherance of such collective action shall be valid and binding on each Regulatory Asset Owner and each Absolute Assignee, Pledgee and successor of a Regulatory Asset Owner in accordance with its terms [IESO: Is it necessary to provide that an agreement among named parties is binding upon those parties, or is it the intend to extend the binding effect to non-parties].

Article 7 – Establishment of the Fair Allocation Plan

(1) **Adoption of the Fair Allocation Plan** – The Minister of Energy may by written order 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, except if amended, amended and restated or terminated by a further written order issued by the Minister of Energy [in compliance with Section •].

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Unrecovered Transition Costs across present and future Ratepayer Groups on a basis that the Minister of Energy, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters[9]:

1. Unrecovered Transition Costs 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.

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

3. The share of Unrecovered Transition Costs allocable to a particular Ratepayer 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 Group over such Reference Period.

4. The estimated Unrecovered Transition Costs to be allocated to a Ratepayer Group and any future Ratepayer Group at a particular time should not exceed the estimated value of the Related Generating Assets based on their remaining useful lives or terms, measured in respect of the period following such particular time.

5. No future Ratepayer Group should bear an unreasonably disproportionate share of the Unrecovered Transition Costs. Except in exceptional circumstances or in the case of any backward-looking adjustment made as contemplated in 7, below, the share of the Unrecovered Transition Costs to be allocated under a Fair Allocation Plan to any future Ratepayer Group should have regard to [Insert formula if a year-over-year maximum amount is determined to be appropriate][10].

6. A reasonable estimate of the rate of inflation should be applied to equate the relative values of the nominal amount of Unrecovered Transition Costs to be allocable to Ratepayer Groups over time.

7. Backward-looking adjustments to a Fair Allocation Plan may be made to achieve a fair distribution among Ratepayers of the benefits of the Green Generation Initiative to that Ratepayer Group over an applicable Reference Period, including

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[9] 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.

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

to provide an abatement to one or more Ratepayer Groups to the extent that one or more earlier Ratepayer Groups are considered by the Minister of Energy to have borne an unfair share of the Unrecovered Transition Costs.

(3) **Attribution Methodology** – The Fair Allocation Plan shall specify an objective methodology (the "Attribution Methodology") for the purposes of allocating the Period Transition Charges across all of the Ratepayers of a particular Ratepayer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that are considered by the Minister of Energy to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation. [may have regard to considerations such as their relative electricity usage rates and usage patterns; the relative geographic density of individual Ratepayer's residence *[See basis for GA allocation method for other principles]]*

(4) **[Confirmation][Review] of the Fair Allocation Plan** – [OEB?] **[IESO: subject to accountant review.]**

Article 8 – The Treasury Plan

(1) **Power to Prepare and Implement the Treasury Plan** – The Administrative Agent shall prepare and propose the adoption of a Treasury Plan that is consistent with the principles, parameters, requirements and conditions set forth in Schedule 3, together with and subject to such conditions and requirements as may be specified in a further written order of the Minister of Energy or in accordance with the Regulation. If the Administrative Agent is unwilling or unable to prepare and propose the adoption of a Treasury Plan, the Minister of Energy may by written order designate one or more other persons to prepare and implement such a Treasury Plan.

(2) **Required Terms and Conditions of the Treasury Plan** – The Treasury Plan shall establish the basis for 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 Treasury Plan shall be consistent with the principles, parameters, requirements and conditions set forth in Schedule C.

(3) **Power to Review and Approve the Treasury Plan** – The Minister of Energy may by written order designate one or more persons to review and, if considered necessary, require and prescribe amendments of the Treasury Plan and may specify conditions and requirements in respect of such review and prescriptions as may be specified in such written order.

(4) **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. [IESO: References to the Treasury Plan should be directory only, and a failure to comply with the Treasury Plan should not invalidate any incurrence of debt, transfer or grant of security]. 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 Treasury 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 Treasury 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) **Obligation to Apply IESO Remittances** – The Administrative Agent shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Regulatory Asset Owner, or otherwise in respect of or as proceeds from the Regulatory Asset shall only be applied or used to pay Finance Amounts when they are due and payable and for no other purpose.[11]

(6) **Non-Recourse** – The Treasury 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 Invoicing Agent, and Alternative Collection Agent, the Administrative Agent, the OEB or the Province, 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 expressly pursuant to any Funding Obligation or obligation in relation to a Finance Amount [IESO: Not sure that follow this carve-out; consider impact on obligations incurred under regulatory asset purchase agreements]. [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].]

(7) **Incurrences are Binding** – Despite any failure to adhere to the Treasury Plan or to comply with any requirement of this Part, all amounts payable or becoming due and payable by or on behalf of the Regulatory Asset Owner under or in connection with any obligation purporting to be a Funding Obligation, shall be deemed to be binding for the purposes of this Part, including in determining the amount of Transition Charges, despite any impairment or defect resulting from such failure. [IESO: consider whether this can be expanded to cover conveyances of property and grants of security]

Article 9 – Compliance Matters

(1) **Right of the [OEB] to Inspect Books and Records** - For the purpose of investigating compliance with the provisions of this Part, 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.

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[11] 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.

(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 Province, 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 authority 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.

(3) **[Other Rating 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, including any Electricity Distributor, IESO, Generator or the Administrative Agent, nothing in this Part shall prevent the [OEB] or any successor regulator from taking into account the collection by or attribution to such person of administrative or servicing fees in excess of the actual incremental costs incurred by such person of providing administrative or servicing services.]

Article 10 – Undertaking of the Province

(1) **No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections** – The Province may not in any way take or permit any action to reduce, impair, postpone or terminate the obligation of Ratepayers to pay Transition Charges or impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, either directly or indirectly. The Province undertakes that the amount of Transition Charges determined hereunder shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by the Province.

(2) **Undertaking and Agreement** – The Province undertakes to and agrees with the Regulatory Asset Owner, including any Absolute Assignee from time to time, and any Pledgee from time to time, that the Province will 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, collected and remitted for the benefit of the Regulatory Asset Owner, including any Absolute Assignee from time to time, and any Pledgee from time to time.

(3) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Province, 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 – Regulations

Regulations may be made under this Part 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 expectations of the Province associated with any Regulated Asset Owner incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Costs; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Treasury 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;

(c) to set out reasonable expectations regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(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 [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by the Regulatory Asset Owner 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 Treasury Plan.

Article 12- Miscellaneous

(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 Ontario.

(2) **Conflict of law** – In the event of conflict between this Part 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 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 shall be required with respect to the actions to be taken in compliance with this Part, including under the Treasury Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Part or the Treasury 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 Treasury 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, if any provision of this Part 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 that is taken by any person who is or may become obligated or have duties that arise under this Part [or under any Funding Obligation] and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Part 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 are intended to be severable and that the Legislature would have enacted this Part even if any Article, Section, paragraph or subparagraph of this Part held to be unconstitutional or invalid had not been included in this Part.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3

Principles, Parameters, Requirements and Conditions for Establishing the Treasury Plan

Section [X] – Procedure to Adopt a Treasury Plan

(1) Submission of Treasury Plan – The person(s) designated by written order of the Minister of Energy under Section 8(1) shall prepare a Treasury Plan and submit it to the Minister of Energy and any person designed by the Minister of Energy under Section 8(2) to review such Treasury Plan [within the time period specified in such written order]/[within [•] days of such written order]. Such person(s) shall implement any changes proposed under Section [X](3) and submit the revised Treasury Plan to the **[OEB]** for approval within [within the time period specified in such written order]/[within [•] days of such written order].

(2) Content of Treasury Plan – Any Treasury Plan shall have regard to the following specifications:

a. A description of how the incurrence of Funding Obligations by present and future Designated Ratepayers will be on a basis that is consistent with their respective allocations of costs and benefits as contemplated in the Fair Allocation Plan;

b. The form, amount and timing of Funding Obligations under the Treasury Plan; and

c. the entities involved in the incurrence of Funding Obligations and execution of the Treasury Plan.

(3) Review of Treasury Plan– The Minister of Energy, or the person(s) designated by written order of the Minister of Energy under Section 8(2), shall review the Treasury Plan submitted in accordance with Section [X](1) and propose any changes to such Treasury Plan that are necessary or desirable to align the Treasury Plan with the requirements set out the [Minister's Order].

(4) Approval of Treasury Plan – The **[OEB]** shall have the power to and shall approve or disapprove of the Treasury Plan based solely on whether the Treasury Plan includes the specifications contemplated under Section [X](2) and whether those specifications [accord with] the assumptions, conditions, requirements and standards set out in the Treasury Plan and the order(s) of the Minister of Energy issued under Section 8(1) and 8(2). If the **[OEB]** fails to approve or disapprove any Treasury Plan within [30] days of [receiving such Treasury Plan],[12] the Treasury Plan is deemed to have been approved.

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[12] Consider whether the Minister's order should set out timelines for each of steps contemplates by this Section [X], or whether these time periods should be hard-coded into the legislation.

Section [X] – Creation of the [OPG Financing Entity]

(1) **Creation of the [OPG Financing Entity] –** The person(s) designated by written order of the Minister of Energy under Section 8(1) to implement a Treasury Plan may [create] one or many entities, each known as a "OPG Financing Entity" having regard to the following principles:

a. No part of the revenue or assets of a OPG Financing Entity 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. OPG Financing Entity shall be authorized to:

   i. issue bonds contemplated by a Treasury 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 Treasury Plan and for administrative services;

   iii. pledge the Regulatory Asset to secure bonds contemplated by a Treasury Plan.

c. So long as any bonds contemplated under a Treasury Plan are outstanding, OPG Financing Entity shall not be authorized to merge or consolidate, directly or indirectly, with any person or entity.

d. OPG Financing Entity 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 Treasury Plan. [IESO: Consider whether the Treasury Plan can be directory only, non-compliance should not go to validity or enforceability].

e. OPG Financing Entity shall cause the proceeds of any bond issuance contemplated under a Treasury Plan 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 Treasury Plan. [IESO: Consider whether the Treasury Plan can be directory only, non-compliance should not go to ability to pay interest]

f. So long as the Regulatory Asset is pledged to secure bonds issued under a Treasury Act, the OPG Financing Entity must apply revenues from the collection of Transition Charges only to repay bonds and other costs as provided for in a Treasury Plan.

[IESO: Consider whether it is helpful to investors if some aspects of the SPV requirements applicable to the OPG Financing Entity can be incorporated into the statute]

(2) **Governance of [OPG Financing Entity] –** A person or persons that effect the creation of OPG Financing Entity shall design the governance of OPG Financing Entity having regard to the following principles:

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]**