DRAFT SE OPINION

We have acted as counsel for The Independent System Operator (the "**IESO**") in connection with a Master Transfer and Services Agreement dated **[DATE]** (the "**Master Agreement**") entered into between the IESO and ■ (the "**Trust**") and acknowledged and accepted by ■ (the "**Indenture Trustee**").

The opinions expressed herein relate only to the laws of the Province of Ontario (the "**Province**") and the federal laws of Canada applicable therein in effect on the date hereof, and no opinions are expressed as to the laws of any other jurisdiction.

Interpretation

Terms with initial capital letters in this opinion have the meanings given to them in the Master Agreement unless otherwise defined herein. Terms both underlined and in italics have the meanings given to them in the *Fair Hydro Plan Act* (Ontario).

Documents

As such counsel, we have participated in the preparation of and examined an executed copy of each of:

(a) the Master Agreement; and

(b) the initial Transfer Notice dated ■ executed by the Trust and accepted by the IESO (the "**Initial Transfer Notice**").

The Master Agreement and the Initial Transfer Notice are referred to as the "**Initial Transfer Documents**." Each Transfer Notice delivered pursuant to the Master Agreement in respect of a future Transfer under the Master Agreement is referred to as a "**Future Transfer Notice**."

Assumptions

For the purposes of the opinions expressed herein, we have assumed:

(a) the genuineness of all signatures of all parties and the legal capacity of all individuals signing any documents;

(b) the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as certified or photostatic or electronically transmitted copies or facsimiles thereof and the authenticity of the originals of such certified, photostatic or electronically transmitted copies or facsimiles;

(c) that each of the parties, other than the IESO, to the Initial Transfer Documents has all requisite power and capacity to execute and deliver the Initial Transfer Documents and to perform its obligations thereunder, and has taken all necessary action to authorize the execution and delivery of each of the Initial Transfer Documents and the performance of its obligations thereunder;

(d) that each of the parties, other than the IESO, to the Initial Transfer Documents has duly executed and delivered the Initial Transfer Documents;

(e) that each of the Initial Transfer Documents is a legal, valid and binding obligation of each of the parties thereto, other than the IESO, enforceable against each such party by each other party thereto, in accordance with its terms;

(f) that, as at the date of each Transfer, all of the conditions precedent to such "Transfer" under the Master Agreement have been satisfied or waived;

(g) that the Trust is a *financing entity*.

For greater certainty, a specific assumption, limitation or qualification in this opinion is not to be interpreted to restrict the generality of an assumption, limitation or qualification expressed in general terms that include the subject matter of the specific assumption, limitation or qualification.

General Opinions

Based on and subject to the foregoing and the assumptions and qualifications set out at the end of this opinion, we are of the opinion that:

1. The IESO is a corporation without share capital continued under Part II of the *Electricity Act*.

2. The IESO has the necessary legal capacity, rights, powers and privileges to execute and deliver the Initial Transfer Documents and to perform its obligations thereunder.

3. All necessary action has been taken to authorize the execution and delivery of the Initial Transfer Documents by the IESO and the performance of its obligations thereunder. **[NTD: discuss whether IESO requires any Provincial approvals to enter into the Agreements]**

4. The Initial Transfer Documents have been duly executed and delivered on behalf of the IESO.

5. Each of the Initial Transfer Documents constitutes a legal, valid and binding obligation of the IESO, enforceable against the IESO in accordance with its terms.

6. The execution and delivery by the IESO of the Initial Transfer Documents and the performance by the IESO of its obligations thereunder, do not and will not violate or result in a breach of any statute or regulation of the Province or of Canada that is applicable to the IESO.

7. The execution and delivery by the IESO of the Initial Transfer Documents and the performance of its obligations thereunder do not require the IESO to obtain any consent, authorization or approval of Her Majesty the Queen in right of Ontario, any governmental authority or regulatory body in the Province or any court or tribunal or other similar entity having jurisdiction under the laws of the Province or the federal laws of Canada applicable in the Province, or to make any filing or provide any notice to any such entity, other than such consents and approvals as have been obtained or filings or notices that have been made, in each case copies of which have been provided to you.

8. Pursuant to Section 26(3) of the *Fair Hydro Plan Act* (Ontario) (the "**Act**") and the Master Agreement, upon receipt by the IESO of the payment by the Trust of an amount equal to the portion of the IESO's *regulatory asset* set out in the Initial Transfer Notice or the payment by the Trust of an amount equal to the portion of the IESO's *regulatory asset* set out in a duly executed and delivered Future Transfer Notice, (a) the balance in the *variance account* shall be reduced by the amount of the payment; (b) the *regulatory asset* shall be adjusted accordingly; (c) the Trust shall acquire a corresponding *investment interest*, the transfer of which shall constitute a valid and enforceable assignment, conveyance and sale by the IESO to the Trust which shall be deemed to have been and shall be perfected, vested, valid and binding as against the IESO and all other persons who have any claim of any kind against the IESO, regardless of whether such persons who have claims against the IESO have received notice of the transfer, and the property rights and interests acquired by the Trust shall have priority over any liens in favour of those persons; and (d) the IESO shall retain no further right, title or interest in the corresponding *investment interest*, all without the necessity of any further formalities or deliveries.

Insolvency

We have been asked to consider whether creditors, a receiver, a liquidator, a monitor, an administrator or a trustee in bankruptcy of the IESO (collectively, "**Creditors**") could look successfully to the Issuer Investment Interest acquired by the Trust pursuant to Transfers completed pursuant to the Initial Transfer Documents and any Future Transfer Notices entered into after the date hereof to satisfy a claim against the IESO after the completion of the applicable Transfers. For the purposes of the following, we have assumed that each Future Transfer Notice will be in the form thereof attached to the Master Agreement and will be properly completed and executed by authorized officers of the IESO and the Trust.

For the purposes hereof, "**Insolvency Statutes**" means the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**"), the *Assignments and Preferences Act* (Ontario), the *Winding-Up and Restructuring Act* (Canada) (the "**WRA**") and the *Fraudulent Conveyances Act* (Ontario).

For the purposes of our opinions expressed below, we have assumed that:

(a) at the date of each Transfer, the IESO is not an insolvent person, in insolvent circumstances or on the eve of or in contemplation of insolvency or unable to meet its engagements, as applicable, within the meaning of any of the Insolvency Statutes;

(b) the IESO will not become an insolvent person or be put in insolvent circumstances, as applicable, within the meaning of any of the Insolvency Statutes by entering into or immediately after completing, the transactions contemplated by the Initial Transfer Documents and the Future Transfer Notices, as applicable;

(c) at the date of each Transfer, there has not been filed by or in respect of the IESO a petition for a receiving order, an assignment in bankruptcy, a notice of intention to file a proposal in bankruptcy, a proposal, an application to hold a meeting of creditors, an application seeking to propose a plan to creditors or an application seeking to obtain a stay, or any similar proceedings under any of the Insolvency Statues;

(d) at the date of each Transfer, no person shall have assumed control of the *regulatory asset* or any portion thereof through execution, attachment, garnishment, charging order, equitable execution or other legal process;

(e) the IESO has entered into the Master Agreement for the purpose of completing Transfers thereunder and receiving the consideration specified in the Initial Transfer Documents and the Future Transfer Notices;

(f) the IESO has entered into the Initial Transfer Documents and will enter into the Future Transfer Notices in good faith and not with a view to giving the Trust or any other person a preference over creditors of the IESO and not for the purpose or with the intent of injuring, obstructing, impeding, defeating, disturbing, hindering, delaying, prejudicing or defrauding the rights and claims of creditors or others against the IESO, providing payment or security for payment to the Trust or for any other purpose relating in any way to the claims of creditors or others against the IESO;

(g) the consideration paid by the Trust to acquire the Issuer Investment Interest pursuant to the Initial Transfer Documents and to be paid pursuant to Future Transfer Notices represents fair and reasonable value thereof and is at least equal to the fair market value thereof; and

(h) at the date of each Transfer, the IESO is not a party to any agreement with the Trust under which the former would be legally responsible for the obligations of the latter.

In our opinion, in a bankruptcy, insolvency, liquidation or winding-up of the IESO, the Issuer Investment Interest would not form part of the assets or property of the IESO within the meaning of the applicable Insolvency Statues. The Trust is a separate entity from the IESO which, absent any agreement to the contrary, would not be legally responsible for the obligations of the IESO. As such, Creditors could not look successfully to the Issuer Investment Interest to satisfy a claim which they may have against the IESO, whether before or after a liquidation proceeding of the

IESO or in any other proceeding instituted by or against the IESO under the applicable Insolvency Statutes.

Reviewable Transactions

We have also been asked to consider whether the Transfer to the Trust of the Issuer Investment Interest pursuant to the Initial Transfer Documents and the Future Transfer Notices could be declared to be void or be set aside by a court upon the application of Creditors of the IESO pursuant to the preferences, transfer at undervalue, and fraudulent conveyances provisions of the applicable Insolvency Statutes. Pursuant to the preferences, transfer at undervalue, and fraudulent conveyances provisions of the applicable Insolvency Statutes, to the extent relevant, certain transactions may be declared to be void or set aside in circumstances therein specified, which may be summarized as follows:

(a) a transaction entered into by an insolvent debtor or a debtor who knows that it is on the eve of insolvency with the intention, or having the effect of giving any of its creditors a preference over its other creditors;

(b) a transaction entered into within three months immediately preceding an initial bankruptcy event by an insolvent debtor with any creditor with the intention of giving that creditor a preference over another creditor;

(c) a transaction entered into within twelve months immediately preceding an initial bankruptcy event by an insolvent debtor with a creditor who is not at arm's length that has the effect of giving that creditor a preference over another creditor;

(d) a transfer or disposition of property or provision of services made with the intention of defeating, hindering, delaying or defrauding creditors or others of their claims against the transferor;

(e) a transfer or disposition of property or provision of services without consideration or for which the consideration received is conspicuously less than the fair market value of the property or services sold or disposed of ("**Transfer at Undervalue**") that is made with any person within twelve months immediately preceding the commencement of an insolvency, bankruptcy, liquidation or winding-up proceeding, where the transferor was insolvent (or rendered insolvent) at the time of the transfer and intended to defraud, defeat or delay the interests of any creditor;

(f) a Transfer at Undervalue made with a person who is not at arm's length within twelve months preceding the commencement of an insolvency, bankruptcy, liquidation or winding-up proceeding;

(g) a Transfer at Undervalue made with a person who is not at arm's length between one year and five years preceding the commencement of an insolvency, bankruptcy, liquidation or winding-up proceeding, where the transferor was insolvent (or rendered insolvent) at the time of the transfer and intended to defraud, defeat or delay the interests of any creditor;

(h) a contract or conveyance made or act done with the fraudulent intent to impede, obstruct or delay creditors in their remedies against a company, or with the intent to defraud the creditors of a company or any of them, and so made done and intended with the knowledge of the person contracting or acting with the company, and that has the effect of impeding, obstructing or delaying creditors in their remedies, or of injuring any of them;

(i) a sale, deposit, pledge or transfer made of any property by a company (as defined in the WRA) in contemplation of insolvency by way of security for payment to any creditor, or where any property, goods, effects or valuable security are given by way of payment by a company to any creditor whereby that creditor obtains or will obtain an unjust preference over other creditors;

(j) a gratuitous contract, conveyance or contract without consideration or with a merely nominal consideration, made within three months immediately preceding the commencement of a winding-up proceeding;

(k) a contract by which creditors are injured, obstructed or delayed, made by a company (as defined in the WRA) unable to meet its engagements with a person who knows of that inability or has probable cause for believing that such inability exists, or after that inability has become public and notorious;

(l) a contract or conveyance for consideration by which creditors are injured or obstructed, made by a company (as defined in the WRA) unable to meet its engagements with a person ignorant of that inability, whether a creditor of the company or not, and before that inability has become public and notorious but within 30 days before the commencement of a winding-up proceeding; or

(m) a payment made within 30 days before the commencement of a winding-up proceeding by a company (as defined in the WRA) unable to meet its engagements in full, to a person who knows of that inability or has probable cause for believing that inability exists.

Any potential Transfer at Undervalue may be reviewed by a court pursuant to the BIA or the CCAA, upon the application of a trustee in bankruptcy or monitor (or a creditor who has obtained a court order authorizing such creditor to commence such a proceeding in its own name), to determine whether the bankrupt or debtor company gave or received fair market value for the property or services concerned in the transaction. If the consideration given by the insolvent person in such a transaction was conspicuously less than the fair market value of the property or services concerned in such transaction, then a judgment may be given by the court against the other party to such transaction for the difference between such consideration and the fair market value.

We are of the opinion that the Transfer to the Trust of the Issuer Investment Interest pursuant to the Initial Transfer Documents and the Future Transfer Notices would not be declared void or be set aside by a court upon the application of a Creditor pursuant to the applicable preferences and fraudulent conveyances provisions of any of the Insolvency Statutes and would not be held by a court to constitute a Transfer at Undervalue.

Assumptions, Limitations and Qualifications

The foregoing opinions are subject to the following assumptions, limitations and qualifications:

(a) with respect to the opinions expressed under the heading "General Opinions", enforceability of the rights and remedies provided in the Initial Transfer Documents may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent preference and conveyance, transfer at undervalue, assignment and preference and other similar laws of general application relating to or affecting creditors' rights;

(b) the availability of equitable remedies, including, without limitation, the remedies of specific performance and injunctive relief, may only be granted in the discretion of a court of competent jurisdiction;

(c) indemnification provisions set out in any of the Initial Transfer Documents may be unenforceable to the extent that a court decides that any payment required thereunder would derogate from the court's discretion in respect of indemnified amounts, or would be inconsistent with the court's determination by whom and to what extent indemnified amounts shall be paid;

(d) the awarding of costs of or incidental to proceedings authorized to be taken in court or before a judge are in the discretion of the court or judge and the court or judge has the full power to determine by whom and to what extent such costs shall be paid;

(e) the provisions contained in any of the Initial Transfer Documents which purport to sever any provision therein which is prohibited or unenforceable under applicable law without affecting the enforceability or validity of the remainder of such Agreement would be enforced only to the extent that a court determined that such prohibited or unenforceable provision could be severed without impairing the interpretation and application of the remainder of such Initial Transfer Document;

(f) the effectiveness of terms exculpating a party from a liability or duty otherwise owed by it to another may be limited by law;

(g) enforcement may be limited to the extent that a court construes any provision of the Initial Transfer Documents to constitute a penalty or forfeiture;

(h) the records or a certificate, determination, notification or opinion of a party to the Initial Transfer Documents as to any matter provided for in the Initial Transfer Documents may be held by a court not to be conclusive if it can be shown to have an unreasonable or arbitrary basis or in the event of manifest error;

(i) a court may give effect to waivers or amendments notwithstanding that they are not in writing and executed by the parties;

(j) no opinion is expressed as to the enforceability of Section 7.2 of the Master Agreement (i) as it relates to the right of the Trust to appoint a Successor Servicer by reason that the IESO is insolvent or that a notice of intention or a proposal has been filed in respect of the IESO pursuant to the BIA; or (ii) in the face of any applicable order made by a court of competent jurisdiction pursuant to the CCAA;

(k) the *Personal Property Security Act* (Ontario) may affect the enforcement of certain rights and remedies under the Initial Transfer Documents to the extent that these rights and remedies are inconsistent with or contrary to such legislation;

(l) no opinion is expressed as to the creation or perfection of a security interest in any property, nor have we effected any registrations under the *Personal Property Security Act* (Ontario);

(m) without limiting the opinions expressed under the headings "Insolvency" and "Reviewable Transactions", no opinion is expressed regarding the ranking or priority of any interest of the IESO or the Trust in any *regulatory asset*, *investment interest* or other property;

(n) no opinion is expressed with respect to the effectiveness of any covenant of any party to any Initial Transfer Document not to institute bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or take any action to appoint a receiver or order the winding-up or liquidation of another Person;

(o) no opinion is expressed as to compliance with the *Personal Information Protection and Electronic Documents Act* (Canada) or any other privacy laws;

(p) the enforceability of the Agreements is subject to the limitations contained in the *Limitations Act, 2002* (Ontario).

This opinion is given in connection with the transactions contemplated by the Agreements, for the benefit of the addressees, and is not to be relied upon for any other purposes or by any other party (except the permitted assigns of the addressees), nor is it to be quoted from or made public in any way, without our prior written consent. **[NTD: Should be addressed to the Trust, the Indenture Trustee (for the benefit of itself and other present and future Specified Creditors, including assignees) and the applicable rating agencies.]**

Yours truly,