CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro" – Part V.2

Torys Introductory Comments

1. We accept that for operational and perhaps constitutional reasons there should be a Fair Allocation Plan and a Treasury Plan (which we would prefer be renamed "Financing Plan"). But the risk of non-compliance with either Plan is not one that investors should be expected to assume. They are not in a position to do due diligence on the point. Therefore, the Province must assume responsibility for non-compliance with the Fair Allocation Plan and the Financing Plan as part of its Undertaking in Article 10.

2. This draft contemplates that anyone can be a Regulatory Asset Owner. The earlier drafts that we received through MOE contemplated that only a "Financing Entity" could be a Regulatory Asset Owner. We note that there are advantages and disadvantages to either approach and there could also be a political dimension to the decision (i.e., the risk of "undesirable" Regulatory Asset Owners). We note that this draft does not even have a definition of "Financing Entity" (as in the approach reflected in this draft such a definition is not necessary; although we do note that it would be illogical to define any role for OPG as Administrative Agent if there is no role for Financing Entities in the legislation). In case a decision is made to limit Regulatory Asset Owners to Financing Entities, we propose the following definition for "Financing Entity": "means any entity established at the initiative of and managed by OPG for the purposes of supporting the Financing Plan". In addition, we would propose that another part of the legislation (dealing with amendments to the Act relating to OPG) provide that "in the case of any Financing Entity that is a wholly-owned subsidiary of OPG, such subsidiary would not be subject to Part VI of the *Electricity Act* (Ontario) and in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act". We are still working on tax efficiency and bankruptcy remoteness for Financing Entities and this would add flexibility.

3. It is important that the legislation provide as much flexibility as possible to enable third party financing. The current draft presumes that "the" Regulatory Asset will be a single growing asset in which different persons may own an undivided co-ownership interest. This is too restrictive. We strongly suggest that the legislation be drafted so as to provide that there may be more than one co-owned Regulatory Asset by referring to "a" Regulatory Asset rather than "the" Regulatory Asset. Regulatory Assets must be capable of being aggregated, so as to become larger, and disaggregated to facilitate absolute sales (rather than being limited to selling co-ownership interests as the only option).

4. Our preference continues to be for the smallest role possible for OEB. Whatever that role is, it is essential that any approvals or consents by the OEB be completed <u>before</u> any financing that is dependent on such approval or consent and, once OEB's

determination is made it must be irrevocable and non-appealable. For example, after the initial approvals of the Fair Allocation Plan/Financing Plan there would be no further OEB review, etc. If there is subsequent review required, no debt issued prior to that point would be affected and the Financing Entity would not be able to buy Regulatory Assets/issue additional debt until such subsequent review occurred (so the Province will have to step in again with the IESO to provide interim financing in those circumstances).

5. We understand the Ministry is pursuing a report that will assess which are the relevant generation facilities and what are their asset lives in an effort to identify the total value that can be extended to future ratepayers, but that report will not be available until after the legislation is in place. The legislation must provide sufficient flexibility in the event the analysis finds there is not enough value that can be extended to future generations so as to support 17% reduction for ratepayers over the next 5 years. Also consider how the analysis will address the risk that generators may choose to retire their facilities at the end of their current Power Contracts and not invest in extending service lives to secure further power contracts at what is likely to be a lower price than they are getting presently? If facilities are retired, how will this affect the Fair Allocation Plan and the constitutional issue (because future ratepayers would be asked to pay for benefits that they never receive).

6. We believe that rather than try to create and manage layers of contractual relationships between each Regulatory Asset Owner and all Electricity Distributors, it is necessary for IESO to be the sole statutory Servicer and for IESO to manage the relationships with the Electricity Distributors (as it does now).

7. We were under the impression that in order for the Regulatory Asset to come into existence it had to begin with IESO recording a deficit or a deferral. The Regulatory Asset comes into existence upon IESO recording that deferred amount. Without that recorded amount, it is difficult to see what IESO is assigning. We believe that the legislation must stipulate that IESO shall record the amount of any monthly deficiency and that this recording creates the Regulatory Asset. We also have been advised by the Dealer's counsel that there would be a concern if IESO had the ability to indefinitely cover Funding Obligations by continuously creating new Regulatory Assets, so the legislation should provide an end date beyond which IESO could no longer create new Regulatory Assets.

Article 1 – Purpose

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 a 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 a Regulatory Asset.

"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 Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including (without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the Administrative Agent on behalf of, a Regulatory Asset Owner under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on a Regulatory Asset Owner or incurred by on behalf of a 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 Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of 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 Financing Plan.

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

"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 Servicer or a Regulatory Asset Owner, as the case may be.

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer, as agent for and on behalf of a 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. **[NTD: Who will be responsible for determining this attribution methodology? Currently, OEB has legislative authority for setting electricity rates so it would seem that this authority would have to be delegated elsewhere by the Province to avoid OEB regulatory oversight. If it is intended that the OEB would be reviewing and approving the Fair Allocation Plan in any way (which we understand has not been determined), OPG could accept this so long as the FAP is only subject to OEB review and approval before any regulatory assets are purchased and before any debt is issued by the financing entity. This would result in delays in financings so the IESO would need to fund the shortfall on an interim basis and obtain funding to do this. Once the Fair Allocation Plan is reviewed and approved (if this is the intention), there would need to be assurance that there would be no further OEB review. If there is opportunity for further review, it is essential that such review have no impact on prior issued debt and any further financings would be put on hold until such review is completed (during which time the IESO would again need to fund the shortfall on an interim basis and obtain necessary funding). Finally, please consider moving this entire concept to the Regulations.]**

"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 True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up 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 [30th] day immediately preceding the first day of the Reference Period.] **[NTD: It would not be practical for OPG as Administrative Agent to have to figure out the number of ratepayers in the group every 6 months. If the Transition Charge is made to be volumetric and not flat fee per connection, this likely becomes unnecessary. On this point, we note that since benefits of the deferral will flow to consumers on a volumetric basis, if costs are to be imposed other than on a volumetric basis this may give rise to constitutional issues]**

---

[1] A key question will be how the overall costs will be spread across the rate base **[NTD: Incorrect use of the term. "Rate base" refers to the capital invested in the utility that is used to determine return component of rates under cost of service rate setting. It is not related to customer demand or cost of power. Perhaps "customer base" is what was intended]**. 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 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.

"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 a 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. **[NTD: Don't know why definition refers specifically to residences as distributors serve other classes of customers too. Suggest defining with reference to the distributor licensed by the OEB in respect of a Service Area. Service Areas are identified in those licences]**

"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 Collection Agent) or by the Servicer **[NTD: For Ratepayers billed directly by IESO.]** in respect of electricity charges and related services and amounts incurred, assessed or attributed in respect of connectivity to a distribution network in the Electricity Distributor's designated Service Area. **[NTD: Not sure this should be limited to residences given the class of customers eligible under the deferral program. Also suggest just calling this electricity bills as they are generally not referred to as invoices]**

"Estimate" means, in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Administrative Agent 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" means a plan developed by the Ministry of Energy to allocate the costs and benefits of the Green Generation Initiative equitably across present and future Ratepayers.

"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.

"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 Financing Plan, exceed (b) any Finance Reserve Withdrawals.

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

"Financing 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.

"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 principal, interest and other financing charges on 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 and all taxes payable in connection with the foregoing) incurred by or on behalf of the Regulatory Asset Owner (other than IESO) in order to fund the purchase of a Regulatory Asset, including any Refinancing of another such payment obligation. **[NTD: Assumes IESO itself will not have Funding Obligations covered under the statute.]**

"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.

"GA Power Contract Contribution" means, for a Reference Period, the aggregate of the payments to be made by the applicable Ratepayer Group in respect of the portion of the Global Adjustment attributable to the Power Contracts in accordance with the Fair Allocation Plan. **[NTD: Need to confirm that when IESO has a shortfall in a given month between what it receives and what it owes under the GA, that the IESO has ability to isolate or calculate each of the three distinct bases for that variance, being (a) existing volume-based variances which are rolled into subsequent month GA and trued-up every 6 months under RPP, (b) existing variances attributable to OREC which are funded by province, and (c) new variances attributable to Fair Hydro program which will be funded by sales to Financing Entities. It may not be necessary or practical to segregate those in the hands of each distributor, unit sub-metering provider and retailer so long as IESO can segregate them once received based on information provided by those parties through IESO Portal or otherwise]**

"Generator" means a generator of electricity that is subject to this Act. **[NTD: Generator is a defined term in other legislation (OEB Act, Electricity Act) so this should be a distinct term such as "FH Generator" to avoid confusion]**

"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. [**NTD: If adjustments for Fair Hydro deferral program are to be applied after existing GA adjustments, then this needs a new name. Existing adjustments are GA and additional adjustments are a separate concept such as "FH Adjustment"]**

"Green Generation Initiative" means the Province's initiative to encourage the long-term construction and development of facilities for the purpose of generating electricity using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, and energy from waste and biomass, including under the Province's various procurement, standard offer and feed in tariff programs.

"IESO" means the Independent Electricity System Operator created pursuant to ■.

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

"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.

"Pledge" means a lien, mortgage, charge, right of set-off 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 a Regulatory Asset.

"Pledgee" means a person to whom 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]

"Province" means the Province of Ontario.

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

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

Electricity Distributors or IESO.[4] **[NTD: These should be referred to as "FH-Eligible Consumers" or similar and should align with the description of the eligible customer class provided by the Ministry, i.e. same as OREC-eligible consumers except for consumers served by Independent Power Authorities (who do not pay GA). Careful in use of the word "retail" as that seems to imply customers of retailers, which are part of but only a small part of the FH-Eligible Consumers. Remove reference to transmission-connected customers because not all such customers would be FH-Eligible]**

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

"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. **[NTD: Not sure if any reason for selecting these dates, but would suggest aligning with RPP re-setting periods of May 1 and November 1 or, better yet, do not hardwire into the legislation but move to Regulations.]**

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

"Regulatory Asset" means the property right and interest described in Section 6(1).

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; (b) for the Servicer, any bank account into which the Servicer deposits Transition Charge Collections, Electricity Distributor Remittances or Servicer Remittances, in each case which account shall be segregated from its other accounts and held in trust for the Regulatory Asset Owners.

"Regulatory Asset Owner" means, collectively, (a) IESO, to the extent that it has retained any ownership 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).

---

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

[Note: As per introductory comments, consider if this should be limited to Financing Entities.]

“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, or to provide for the repayment (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.

“Retailers” means ■. **[Note: include in Ratepayers]**

“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. **[NTD: This Act will not establish permitted service areas. Distributors are licensed by the OEB. Each license specifies the distributor’s service area. Not clear why service area is a necessary concept for the legislative framework, particularly since it will be irrelevant when the role of the distributors is expanded to retailers and unit sub-metering providers who do not have service areas]**

“Servicer” means the entity appointed by a Regulatory Asset Owner as its agent to manage the billing, collection and remittance of Transition Charges, initially being IESO.

“Servicer Remittances” means, for a Settlement Date, all Transition Charge Collections and Electricity Distributor Remittances received by the Servicer 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 the Servicer to recover payment of amounts payable by Electricity Distributors to the Servicer in accordance with Article 5.

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

“Transition Charge” means the non-bypassable portion of the charges billed under any Electricity Invoice issued to a Ratepayer, which amount may or may not be specifically identified in such Electricity Invoice, the collections of which are to be applied to recover Funding Obligations and includes all unpaid arrears of such charges from previous periods. **[NTD: If benefit of deferral is provided on a volumetric basis (i.e. the more you consume, the more you save), so too should the costs of the deferral be charged on a volumetric basis. Otherwise, it likely raises constitutional issues. As such, don't divide by consumer base but rather the charge should be set based on forecast volumes of demand as is the case with RPP. That produces a rate "adder" to be billed to consumers. To the extent amounts do not get recovered due to differences between forecast and actual, those would need to be identified and rolled into the amount needed for recovery in the next period]**

"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 a Regulatory Asset.

"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 related True-Up Period, minus (b) the Actual Finance Amount for such related True-Up Period, plus (c) the Collected Amount Adjustment.

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

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

"Unit Sub-Metering Providers" means ■. **[Note: Include in Ratepayers.]**

"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].

Article 3 – Transition Charges

(1) **Ratepayer Obligation to Pay a Transition Charge** – Each Ratepayer shall pay all Transition Charges charged to it in any Electricity Invoice issued to such Ratepayer by its Electricity Distributor or by an Alternative Collection Agent under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice. **[NTD: If distributors and others are unable to reflect the charge as a distinct line item on bills in time for May 1 implementation, then the charge will not be "specified" and therefore no obligation to pay. Suggest removing requirement that it be specified. Also suggest saying the obligation on FH-Eligible Consumers is to pay "all" Transition Charges that are "charged" to them, rather than each charge attributed to it. Note that terms of payment as between consumers and distributors are set out in the distributor's conditions of service, which are implied terms of contract as between them. Not sure if similar applies for retailers and unit sub-metering providers. Electricity bills may not set out all terms of payment]**

(2) **Indebtedness of Ratepayers** – Until paid, a Transition Charge attributed to a Ratepayer 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. 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. **[NTD: There is no contractual or other direct relationship between ratepayer and regulatory asset owner. Consumer has relationship only with distributor. Suggest that this program rely on the existing framework which obligates consumers to pay distributors and distributors to collect those amounts and remit to IESO together with information needed by IESO to perform settlement, rather than trying to create and overlay a separate set of similar obligations on ratepayers, distributors and the IESO through this legislation. For greater comfort, consideration could be given to establishing deemed conditions of licenses for distributors, retailers and unit sub-metering providers, which conditions would require them to collect and remit amounts in accordance with this legislation. There are precedent provisions under the OEB Act for deemed conditions of licences. An added benefit may be that this could be considered a further element of OEB "oversight" (from perspective of the accountants) as license conditions are enforceable provisions under the legislation]**

(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 first to the payment in full of related Transition Charges before any amounts are allocated to other invoiced amounts.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations [incurred under the Financing Plan] (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 8(3)) are deemed to be irrevocable, final and effective without any further action **[NTD: Need to consider possibility of errors being made and allowing for corrections]**. [For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period whether or not the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable whether or not the related Funding Obligation was properly incurred under the Financing Plan.] In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan. **[NTD: Move second last sentence to Regulations.]**

(6) [NTD: Too vague to be meaningful. Catch through definition of Electricity Invoice.]

Article 4 – Invoicing of Transition Charges

(1) Inclusion of Transition Charges in Electricity Invoices – Each Electricity Distributor and if applicable any Alternative Collection Agent shall, as an agent of the Servicer, 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 Collection Agent to the Ratepayer in respect of such Reference Period **[NTD: Distributor should not have discretion to specify the charge. All they should be doing is applying the charge to the bill based on the rate adder that is determined by OEB, based on information from Financing Entities which it must accept, in concert with setting RPP price]**. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be due and owing.

[NTD: We suggest moving sub-sections (2), (3) and (4) to Regulations.]

(2) Calculation of the Period Transition Charge – Not later than one month prior to the first day of a Reference Period, [IESO][5] or if applicable the [Alternative Collection Agent][6] shall calculate the Period Transition Charge applicable to the Reference Period.

(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 Agent] shall apply the Attribution Methodology to determine the Transition Charges to be attributed to the Ratepayers of the applicable Ratepayer Group.

(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 Servicer 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. **[NTD: Currently, the OEB and not the IESO has jurisdiction to set rates and charges for electricity. If this role is to be given to IESO, they would need to be given this power. It seems that this role fits better with the OEB, in which case we would suggest that OEB should determine the FH Charge based on information it receives from the Financing Entities, which information it must be required to accept, and that it should do so as part of the process it now applies to set RPP rates. OEB would essentially be taking the amounts from the**

---

[5] 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.

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

Financing Entities and applying them to forecast demand levels for the FH-Eligible Consumer class that it will need to get from IESO in order to develop a rate adder that distributors, retailers and unit sub-metering providers will then be required to apply to consumer bills]

(5) **Adjustments** – The amount of any Transition Charge attributed to a Ratepayer by the Servicer 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 and bill the Transition Charges.

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

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

(9) **Regulatory Asset Owner has Standing** – The Regulatory Asset Owner may bring actions against any Electricity Distributor, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to Ratepayers for a failure to impose or bill 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. **[NTD: Consideration should be given to having such matters first go through the OEB, particularly if the obligation to bill, collect or remit is deemed to be a condition of license for distributors, IESO, retailers and unit sub-metering providers, which would be enforceable provisions under the OEB Act and within OEB jurisdiction to enforce]**

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

(11) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor, any Alternative Servicer 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 Servicer, undertake 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.

(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 hold such amounts in trust for the Regulatory Asset Owner.

(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 the Servicer.

(4) **Duty to Collect Electricity Distributor Remittances** – The Servicer shall, as an agent of the Regulatory Asset Owner, accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from Ratepayers that pay their Electricity Invoices directly to the Servicer. **[NTD: Consider building this obligation into a deemed condition of licence for the IESO.]**

(5) **Segregation of Electricity Distributor Remittances** – The Servicer shall [promptly] segregate Electricity Distributor Remittances and Transition Charge Collections from other payments received or held by it and deposit such Electricity Distributor Remittances and Transition Charge Collections into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances and Transition Charge Collections having been made into its Regulatory Asset Account, the Servicer shall hold such amounts in trust for the Regulatory Asset Owner.

(6) **Servicer Remittances** – On each [Settlement Date], the Servicer 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) **IESO Successors** – Any IESO Successor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Electricity Distributor Remittances and Transition Charge Collections and to remit Servicer Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[7] **[NTD: This does not make sense because a person who acquires distribution system assets or is authorized to collect distribution rates must be a licensed electricity distributor and would therefore take on the obligations of a distributor]**, then such person shall, if requested by the Regulatory Asset Owner, be obligated to act diligently to (a) facilitate the invoicing and collection 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 **[NTD: Everything from "including" onward is unnecessary because ratepayers in a distributor's service are necessarily would include all consumers connected to the distribution system and taking distribution service in the 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 **[NTD: This is governed by the Conditions of Service for distributors and under the Distribution System Code, but not sure what equivalents are for consumers served by retailers and unit sub-metering providers]**; (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, the Servicer, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from Ratepayers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit Servicer 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. **[NTD: Consideration should be given to having such matters first go through the OEB, particularly if the obligation to bill, collect or remit is deemed to be a condition of license for distributors, IESO, retailers and unit sub-metering providers, which would be enforceable provisions under the OEB Act and within OEB jurisdiction to enforce]**

[NTD: Redundant: Up to Servicer to deal with LDCs.]

[NTD: Redundant.]

---

[7] 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.

(11) **[Sequestration** – If any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or Servicer 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 Servicer Remittances, as applicable, for the benefit of the Regulatory Asset Owner or Pledgee.] **[NTD: Suggest a broader remedy such as appointment of a receiver.]**

(12) **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 – Regulatory Assets

(1) **Composition** – A Regulatory Asset shall constitute an existing, present property right consisting of the following rights of the Regulatory Asset Owner:

a. the right to record the Regulatory Asset in its accounts;

b. the right to impose, invoice, collect and received Transition Charges, Electricity Distributor Remittances and Servicer Remittances in an amount necessary to recover all of its Funding Obligations as the same become due and payable;

c. the right to receive all present and future payment obligations of Ratepayers, Electricity Distributors and the Servicer arising pursuant to Article 4 and Article 5;

d. the right to obtain periodic adjustments to the Transition Charges in accordance with Article ■ [true-up procedure] as necessary to recover the Funding Obligations as the same become due and payable;

e. the right to all amounts held in each Regulatory Asset Account;

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

g. all Related Rights.

A 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.

(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 **[NTD: No reason why Financing Plan should restrict assignability of Regulatory Asset → At worst may affect enforceability of related Funding Obligations, if any.]** 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 parties to the governing documentation have expressly stated that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the Regulatory Asset Owner's applicable right, title, and interest in, to and under the Regulatory Asset (or relevant portion thereof), and not merely as a Pledge thereof.

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

(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. No consent of any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Deemed Perfection and Priority of Pledges** - Any Pledge made by a Regulatory Asset Owner 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, 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 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. 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 Transition Charge Collections or other related proceeds that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. [A Pledgee shall cause a financing statement to be filed in respect of a Pledge describing the Regulatory Asset as "intangible" property for informational purposes only under the [PPSA].

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 **[NTD: Not clear what type of authority this refers to. LGIC makes orders. Minister can be given power to issue directives. Legislation can require Minister to issue plans, such as the LTEP. Minister can require others to prepare plans. Need to clarify how this is being done. It would also be unusual for the FAP to be issued by the Minister but then made subject to review and approval by the OEB (as some have considered). Not aware of any other examples where OEB had power to review something coming from the Minister]**. 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 such principles as may be prescribed. **[NTD: Move to Regulations.]**

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][8].

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 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.] **[NTD: Need to understand what this is contemplating – could it result in crediting back to customers certain amounts after they have already been paid because FAP realizes they should have deferred more to the future? This sounds unworkable and would create significant uncertainty if the effects of a FAP could be undone by a subsequent FAP]**

(3) Attribution Methodology – The Fair Allocation Plan may 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. **[NTD: Who develops the methodology? How can it be objective if it requires Minister to have regard to certain principles and parameters? Is such methodology needed if charge is made to be volumetric?]**

(4) [Confirmation][Review] of the Fair Allocation Plan – [OEB?]

Article 8 – The Financing Plan

[NTD: Consider how much of this Article can be moved to Regulations.]

(1) Power to Prepare and Implement the Financing Plan – In compliance with a [written order][***MOE to confirm process.***] of the Minister of Energy, the Administrative Agent shall prepare and propose the adoption of a Financing Plan. If the Administrative Agent is unwilling or unable to prepare and propose the adoption of a Financing Plan, the Minister of Energy may by written order designate one or more other persons to prepare

---

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

and implement such a Financing Plan. **[NTD: Why not just say that AA shall prepare . . .]**

(2) **Required Terms and Conditions of the Financing Plan** – The Financing 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 Financing Plan shall be consistent with the principles, parameters, requirements and conditions as may be prescribed]. **[NTD: Not clear what sort of order power is envisioned or why this cannot be baked into the regs without need for Minister to ask for it]**

(3) **Power to Review and Approve the Financing Plan** – The Minister of Energy may, by written order, designate one or more persons to review the Financing Plan and to review and assess the consistency of the Funding Obligations incurred with such Financing Plan, and the Minister of Energy may specify requirements in respect of such review in such written order. The Administrative Agent, or such other person(s) as may be designated by written order of the Minister of Energy made pursuant to Section 8(1), shall make any such amendments to the Financing Plan, and submit a revised Financing Plan to the **[OEB]** for approval within [the time period specified in such written order]/[[•] days of such written order].[***Consider periodic amendments to the Financing Plan following an annual review; provided that amendments cannot affect the existing Funding Obligations. Consider the level of oversight the MoE/OEB will have over this process?***] **[NTD: This sounds like a very cumbersome two-step review and approval process. First Minister can get someone to review and assess the plan and then OEB must approve it? What is the point of having two processes? What value would OEB be expected to add, given the nature of the Financing Plan and OEB expertise? What is the contemplated outcome of the first part of this review by the Minister or designate?]**

(4) **Approval of Financing Plan –** The **[OEB]** shall have the power to and shall approve or disapprove of the Financing Plan based solely on whether the Financing Plan is consistent with (i) the principles, parameters, requirements and conditions set forth in Schedule 3, (ii) such other conditions and requirements as may be specified in a written order of the Minister of Energy [or in accordance with the Regulation] [and (iii) the Fair Allocation Plan]. If the **[OEB]** approves the Financing Plan, then such Financing Plan shall be implemented by the Administrative Agent. If the OEB disapproves of the Financing Plan or otherwise fails to approve the Financing Plan, then the Administrative Agent shall re-submit the Financing Plan with such amendments as the Administrative Agent shall consider necessary for the Financing Plan to be approved by the OEB. **[NTD: If the OEB is required to review and approve the Financing Plan in any, OPG could accept this only if the Financing Plan is subject to OEB review and approval before any regulatory assets are purchased and before any debt is issued by the financing entity. This would result in delays in financings so the IESO would need to fund the shortfall on an interim basis and obtain funding to do this. Once the Financing Plan is reviewed and approved (if this is the intention), there would need to be assurance that there would be no further OEB review. If there is opportunity for further review, it is essential that such review have no impact on prior issued debt and any further financings would be put on hold until such**

review is completed (during which time the IESO would again need to fund the shortfall on an interim basis and obtain necessary funding)

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

(6) **Establishment of Special Purpose Entities** – If the implementation of the Financing Plan contemplates the establishment of one or more special purpose finance entities to incur Funding Obligations under the Financing Plan, as an Absolute Assignee and on a basis that limits the recourse for the payment of such Funding Obligations to such Absolute Assignee's interest in, to and under the Regulatory Asset, the Administrative Agent shall have regard to the characteristics as may be prescribed.] **[NTD: Consider introducing concept of a Financing Entity defined as per our introductory notes.]**

(7) **Obligation to Apply Servicer 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.[9]

(8) **Non-Recourse** – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, and Alternative Collection Agent, the Administrative Agent, the OEB, the Province or the Lieutenant Governor in Council, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Part or expressly pursuant to any Funding Obligation or obligation in relation to a Finance Amount. [All Funding Obligations shall contain a

---

[9] 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.

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].]

(9) **Incurrences are Binding** – Despite any failure to adhere to the Financing Plan or to comply with any requirement of this Part or Part VIII, including the Fair Allocation Plan, 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 Act, including in determining the amount of Transition Charges, despite any impairment or defect resulting from such failure and any associated Transition Charges will be deemed to be in accordance with the Fair Allocation Plan and the Financing Plan.

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. **[NTD: Does this include Financing Entities? If so, the outcome of such investigation cannot adversely impact on FE's ability to recover regulatory asset amounts. See existing audit rights of OEB to avoid duplication]**

(2) **Power to Investigate Compliance and Impose Regulatory Sanctions** - Subject to the limitations set forth regarding the irrevocability of Transition Charges and the Undertaking of the Lieutenant Governor in Council, nothing in this Part shall (a) prevent or preclude the [OEB] from investigating the compliance of any person who is or may become obligated or have duties that arise under this Part [or any Funding Obligation] with the terms and conditions of this Part and requiring compliance by such person therewith; or (b) prevent or preclude the 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. **[NTD: The outcome of such investigation cannot adversely impact on FE's ability to recover regulatory asset amounts.]**

(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.] **[NTD: OPG believes that it is important for the legislation to provide (likely in the part of the Bill dealing with OPG specific amendments) that the risks and cost consequences to OPG of being an Administrative Agent or of consolidating a Financing Entity for accounting purposes shall <u>not</u> be considered by the OEB in setting the regulated payment amounts for OPG.]**

Article 10 – Undertaking of the Lieutenant Governor in Council

(1) **No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections** – The Lieutenant Governor in Council 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, including through the introduction of any bill or the passing of any legislation or regulation. The Lieutenant Governor in Council 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 Lieutenant Governor in Council, including through the introduction of any bill or the passing of any legislation or regulation. **[NTD: Consider whether LGIC is the proper reference.]**

(2) **Undertaking and Agreement** – The Lieutenant Governor in Council 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 Lieutenant Governor in Council 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, including through the introduction of any bill or the passing of any legislation or regulation.

The Lieutenant Governor in Council undertakes and agrees with the Regulatory Asset Owners that if IESO becomes insolvent or otherwise incapable of performing its obligations under this Part, an IESO Successor will be established capable of performing such obligations in order that the Regulatory Asset Owners may appoint the IESO Successor as an Alternative Servicer. The Lieutenant Governor in Council undertakes and agrees with the Regulatory Asset Owners to fully compensate the Regulatory Asset Owners for any failure by the Lieutenant Governor in Council to comply with its undertakings and agreements in this Article 10(2) for any loss suffered by the Regulatory Asset Owner as a result of such failure.

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

Article 11 – 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 Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Part;

(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 Financing 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 the Province.

(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 Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Part or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Part, 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.

[NTD: OPG specific amendments to be included in the Bill.]

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 Financing Plan

The Financing Plan shall have regard to the following principles, parameters, requirements and conditions:[***Consider others.***]

(1) the Financing Plan shall, in respect of each Reference Period, describe the allocations of Unrecovered Transition Costs to each Reference Group as contemplated by the Fair Allocation Plan;

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

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

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

(5) the Financing Plan shall reflect the outcome of a financial model that incorporates the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges attributed to a hypothetical Ratepayer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation having regard to the application of the Allocation Methodology); [***Consider what outputs from OPG will be tested by the OEB and when. The modelling in the Financing Plan may permit the OEB to check progress against the model from time to time, which may provide a basis for the MoE/OEB to require a review/amendment to the Financing Plan if the ongoing operation of the program results in significant deviation from the model. Consider whether this flexibility is desirable.***]

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

a. whether the Regulatory Asset Owner[s] will require committed access to short term liquidity to cover estimated Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not obligate a Regulatory Asset Owner to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Unrecovered Transition Costs to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the Administrative Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations shall not obligate a Regulatory Asset Owner to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Unrecovered Transition Costs to the applicable Reference Group under the Fair Allocation Plan;

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

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

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

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

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

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

(7) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the Funding Shortfall from time to time on a basis that is consistent with the allocations of

Unrecovered Transition Costs to applicable Reference Groups under the Fair Allocation Plan;

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

(9) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Administrative Agent and other agents and service providers to the Regulatory Asset Owner[s] may be determined, allocated and paid;

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

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

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

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

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

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

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

CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

Schedule 4

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

(1) Powers and Abilities:

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

b. Each Regulatory Asset Owner shall be authorized to:

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

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

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

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

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

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

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

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

a. **[Number of trustees]**

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

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

d. **[Quorum and meetings]**

e. **[Fiduciary duty]**

f. **[Isolation, separateness and other “non-consolidation” and “bankruptcy remoteness” criteria]**

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

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