Version 2

This ~~confidential draft~~ document is ~~provided~~a draft intended for discussion purposes only. It ~~should not be construed as representing a position adopted by the Government of Ontario on any of the topics included or not included in this document.~~ may not be relied upon to interpret the legislation, if an Intergenerational Fairness in Hydro Rates Act, or any related act, is enacted by the Legislature. The notes included in this document are intended ~~only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature~~to assist the review of this discussion document only.

A proposal to create Legislation.

Intergenerational Fairness in Hydro Rates Act, 2017, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL TO ANY FINAL BILL PRIOR TO INTRODUCTION.

[Notes re this draft:
- all numbering of provisions will need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- **need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)***]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix ~~including~~**that includes** renewable energy~~, and~~**. The Government is also committed** to removing barriers to and promoting opportunities for renewable energy projects.[1]

The Government of Ontario has established a regulatory and contractual framework related to the generation and sale of electricity to ensure significant investment in decarbonizing and modernizing **sites and facilities in the Province for** the generation of electrical energy and the production therefrom.[2]

Given the long-term benefits that future generations of Ontarians will receive from many of these investments, it is appropriate and fair to raise money in respect of these generating **sites and** facilities[3] in a manner that allocates the costs of ~~and benefits from~~ these investments fairly among present and future consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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[1] **FLS: please see the preamble of the *Green Energy Act, 2009.***

[2] **FLS: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".**

[3] **FLS: please see opening flush of s. 92A (4) of the Constitution Act, 1867**

PART I
GENERAL

Interpretation
Definitions

1. (1) In this Act,

"clean energy adjustment" means~~. . .~~ **the amount determined under section 11x; ("French")**

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in renewable energy projects ~~[which use~~**and** cleaner **energy** sources ~~of energy]~~**and technologies, including alternative energy sources**,

(b) removing barriers to and promoting opportunities for renewable energy projects **and cleaner energy sources and technologies and clean energy**, and

(c) promoting ~~a green economy [including~~ conservation and demand management~~]~~; ("French")

"electricity vendor"[~~1~~**4**] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

[Note – still to draft: unit sub-meter providers and their customers.]

"Fair Allocation Plan" means ~~a~~**the** plan prepared under section X**, as amended from time to time in accordance with this Act**; ("French")

"Financial Services Manager" means Ontario Power Generation Inc. or such other **person or** entity as may be ~~prescribed~~**appointed as the Financial Services Manager by the Minister under section 12.1**; ("French")

"Financing Plan" means ~~a~~**the** plan prepared under section X**, as amended from time to time in accordance with this Act**; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner under section x; ("French")

"holiday" means ~~[O. Reg. 95/05 definition];] ("French")~~**New Year's Day, Family Day, Good Friday, Christmas Day, Boxing Day, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day and, if any of those days falls on a Saturday or Sunday, the weekday next following that day that is not one of those days; ("jour férié")**

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section X for the reference period; ("French")

[~~1~~**4**] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016 “investment asset” means all or part of the regulatory asset that is deemed to be an investment asset under section x; (“French”)

“invoice amount” means**, in respect of a consumer,** the sum of the following amounts:

1. The commodity price of the electricity **[**used **by the consumer?]** during the invoice period.

2. The rates and charges set out in the applicable rate order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

3. Any adjustment required **[in respect of the consumer?]** under section 25.33 of the *Electricity Act, 1998*.

4. The amount of any harmonized sales tax payable **[by the consumer?]** under Part IX of the *Excise Tax Act* (Canada); (“French”)

“licensed distributor” means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; (“French”)

“licensed retailer” means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; (“French”)

“Minister” means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; (“ministre”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“reference period” means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a)~~,~~ or such shorter period as may be set out in ~~a~~**the** Fair Allocation Plan; (“French”)

“refinancing” means a repayment or repurchase of a funding obligation for cancellation by or on behalf of the owner of an investment asset by applying the net proceeds obtained by the owner incurring one or more other funding obligations; (“French”)

“regulation” means a regulation made under this Act; (“règlement”) “regulatory asset” means the regulatory asset established under section X~~ or, if any part of that regulatory asset has been transferred under this Act, the portion of the regulatory asset that is not deemed to be an investment asset~~; (“French”)

~~[NOTE: CURRENT PROPOSAL IS THAT THE REGULATORY ASSET WILL REPRESENT THE RIGHT OF RECOVERY. UPON A TRANSFER OF AN INVESTMENT INTEREST, THE QUANTUM OF THE RIGHT OF RECOVERY FOR THE REGULATORY ASSET WILL BE REDUCED. THE TRANSFER OF AN INVESTMENT INTEREST WILL RESULT IN IESO RELINQISHING ANY INTEREST IN THE TRANSFERRED INVESTMENT INTEREST, AND WILL RESULT IN THE TRANSFEREE ACQUIRING THE RIGHT OF RECOVERY OF AN INTEREST IN THE CLEAN ENERGY ADJUSTMENTS DETERMINED BY REFERENCE TO FINANCE AMOUNTS INCURRED BY OR ON BEHALF OF THE TRANSFEREE.]~~

“representative consumer” means a consumer who meets the criteria set out in subsection (3); (“French”)

“specified consumer” means,

(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; (“French”)

“Toronto Hydro” means Toronto Hydro-Electric System Limited; (“French”)

“transfer” means an assignment, conveyance, disposition or sale; (“French”)

“weekday~~ means [O. Reg. 95/05 definition]; (“French”)~~**” means any Monday, Tuesday, Wednesday, Thursday or Friday that is not a holiday. (“jour de semaine”)**

Specified consumers

(2) For the purposes of clause (a) of the definition of “specified consumer” in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount, exclusions

(2) For the purposes of the definition of "invoice amount" in subsection (1), an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the Act;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

~~Intention of the Legislature~~[~~2~~]Effect of invalidity, etc.[5]

1.1 (~~5~~**1**) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(~~6~~**2**) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

2. (1) The purposes of this Act are,[~~3~~6]

(a) to ensure that the costs of the clean energy initiative are fairly distributed among specified customers over time;

(b) to recognize the long-term benefits of the clean energy initiative that accrue over time and will continue to benefit present and future electricity consumers in the Province;

[~~2~~5] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[~~3~~6] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

(c) to promote the use of clean energy sources and technologies, including low carbon, alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario;

(d) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity;

(e) to facilitate the maintenance of a financially viable electricity industry, including by raising money in respect of sites and facilities in the Province for the generation of electrical energy and the production therefrom;[47] and

(f) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.

Crown bound

3. This Act binds the Crown.

Protection and guarantee of scheme

Prohibition

4. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may enter into agreements for the purposes of guaranteeing that compensation will be paid to an investment asset owner for losses suffered as a result of,

(a) a contravention of subsection (1);

[47] FLS - as per the note in the Preamble on this language, please see 92A (4) of the *Constitution Act, 1867.*

(b) a change in law that would adversely affect the rights under this Act of an **investment asset** owner~~ of an investment asset~~;

(c) approval by the Lieutenant Governor in Council of a Fair Allocation Plan, or an amendment to a Fair Allocation Plan, that fails to recognize the principles set out in section x; or

(d) a final determination by a court of final jurisdiction rendering invalid or ineffective all or any of the provisions of this Act.[~~5~~8]

~~IESO~~Electricity vendors, obligations

(5) If ~~the IESO~~**an electricity vendor** fails to carry out its obligations under this Act for any reason, including because the ~~IESO~~**electricity vendor** is dissolved or restructured or because it becomes insolvent, the Government of Ontario shall carry out those obligations or ensure they are carried out by another appropriate entity.

PART II
FAIR ADJUSTMENT ~~PERIOD~~

~~**Application of Part**~~

~~**5.** This Part applies in respect of the five year period beginning on May 1, 2017 and ending on April 30, 2022.~~

~~[NOTE: THIS IS A ROUGH ADAPTATION OF THE "FAIR ADJUSTMENT" CONCEPT. FOR YEARS 2 TO 5, THE LGIC WILL PASS A REGULATION TO LIMIT THE INCREASE TO REDUCED HYDRO BILLS TO REFLECT A FURTHER "FAIR ADJUSTMENT". THE SUM OF ALL FAIR ADJUSTMENTS WILL CORRESPOND TO THE SUM (TIME VALUE ADJUSTED) OF THE PAYMENTS BY PAST RATEPAYERS OF MORE THAN THEIR FAIR SHARE OF THE GREEN COSTS (I.E., AS A RESULT OF THE EXISTING AMORTIZATION RATE OF GREEN COSTS THROUGH THE GA CALCULATION). THE VALUE OF THOSE PAST OVER-PAYMENTS WILL BE A LIMIT ON THE TOTAL AMOUNT OF FAIR ADJUSTMENTS. THE CONCEPT IS MORE FLEXIBILE THAN THE SUGGESTION HERE, WHICH RELATES ONLY TO THE FIRST 5 YEARS – ALTHOUGH THAT IS CERTAINLY THE CURRENT FOCUS. THE IDEA FOR NOW IS THAT THE ACT WILL REDUCE HYDRO BILLS FOR THE FIRST YEAR, AND EACH OF THE FOLLOWING 4 YEARS BY REGULATION – IN AGGREGATE EQUAL TO THE PAST OVER-CHARGES. TO ENSURE THAT THE INCURRENCE OF FUNDING OBLIGATIONS AND CORRESPONDING FINANCE AMOUNTS DO NOT CONFLICT WITH THE FAIR ADJUSTMENT (AND REDUCED HYDRO RATES), THERE WILL BE A MORATORIUM ON CLEAN ENERGY ADJUSTMENTS DURING THE FIRST 5 YEARS (ON BOTH IESO CHARGE THROUGH~~

[~~5~~8] Note to translator: See s. 9 of the Public Authorities Protection Act.

~~RECOVERIES AND IN RESPECT OF FINANCE AMOUNTS PAYABLE DURING THESE FIRST 5 YEARS – PROVIDED THAT IF THE LGIC DOES NOT ULTIMATELY DETERMINE THAT A FAIR ADJUSTMENT WILL APPLY IN A YEAR, THE BALANCE, UNDER THE FAP, WILL BE RECOVERABLE BY WAY OF A PASS-THROUGH OF FINANCE AMOUNTS /IESO RECOVERIES. THE IDEA WILL BE THAT THE LGIC WILL DETERMINE THE AMOUNT OF A FAIR ADJUSTMENT PRIOR TO THE RELEVANT PERIOD TO WHICH IT APPLIES. NOTE THAT THE PAST OVERPAYMENTS WILL BE FACTORED INTO THE FAP ON A GO FORWARD BASIS, IN ADDITION TO THE CONTINUING GREEN COSTS – AND AMORTIZED OVER THE LONGER PERIOD. THE FOLLOWING PROVISION ADDRESSES ONLY THE FIRST YEAR OF THE FAIR ADJUSTMENT.]~~

Determination of rates, ~~first twelve months~~May 1, 2017 to April 30, 2018

6. (1) The Ontario Energy Board shall determine the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 in the following manner:

1. Determine the average rate payable by a representative consumer ~~by applying the method set out~~ in **accordance with** subsection (2).

2. Determine the average monthly invoice amount that would be payable by a representative consumer under the rate determined under paragraph 1.

3. Determine the amount that is [# tbc] per cent less than the monthly invoice amount determined under paragraph 2.

4. Determine the average rate payable by a representative consumer that would result in the monthly invoice amount mentioned in paragraph 3 for a representative consumer.

[Note: Query whether 79.16 of the OEBA should be replaced to clearly state that the price-setting work that the OEB does under the RPP is authorized and that the work it must do to accommodate the Fair Adjustments is also authorized going forward.]

Determination of baseline, average rate

(2) For the purposes of paragraph 1 of subsection (1), the ~~follow method applies:~~[6]**average rate payable shall be determined as follows:**[9]

1. The Board shall determine rates in a manner that is consistent with the Standard Supply Service Code issued by the Board.

2. ~~In determining the rates, the~~**The** Board shall forecast the ~~cost~~**costs** of electricity to be consumed by the ~~consumers to whom the rates apply~~**representative**

~~6~~9 FLS: Please see section 6 of O. Reg. 95/05 (a bilingual reg).

consumer, taking into consideration adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect those costs.

3. The Board shall set an off-peak period associated with the regulated price referred to as RPEMOFF in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board,

   i. that begins no later than 7 p.m. on every weekday and ends,

      A. no earlier than 7 a.m. on the next day if the next day is a weekday, or

      B. no earlier than 12 a.m. on the next day if the next day is Saturday, Sunday or a holiday, and

   ii. that begins no later than 12 a.m. on every Saturday, Sunday and holiday and ends no earlier than,

      A. 12 a.m. on the next day, if the next day is Saturday, Sunday or a holiday, or

      B. 7 a.m. on the next day if the next day is a weekday.

Determination of rates, on and after May 1, 2018

7. On and after May 1, 2018, the Board shall determine the rate for electricity payable by a specified consumer ~~in the following manner~~**as follows**:

1. Determine the rate by applying the steps set out in section 6.

2. Adjust the rate determined under paragraph 1 for inflation in accordance with the regulations.

PART III

CLEAN ENERGY ADJUSTMENT ~~PERIOD~~

~~**Application of Part**~~

~~**8x.** This Part applies in respect of the period beginning on May 1, 2022 and ending on April 30, 2047.~~

~~[NOTE: CONSISTENT WITH THE EARLIER NOTE, THE MORATORIUM IS LIFTED IF THE LGIC DETERMINES THAT NO FAIR ADJUSTMENT WILL APPLY, IN WHICH CASE CEAs WILL APPLY DURING THE FIRST 5 YEARS.~~

~~THE DIVISION OF TIME CONTEMPLATED IN THIS DRAFT IS MORE INFLEXIBLE THAN WE HAVE ENVISIONED]~~

Specified consumers to pay clean energy adjustment

9x. (1) Subject to subsection (1.1), upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor**, as agent of the owner of the investment asset,** in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

~~[NOTE: MODIFY TO REFLECT THAT THE PAYMENT IS MADE TO AN EV, AS AGENT FOR THE INVESTMENT ASSET OWNERS]~~

Limitation

(1.1) No clean energy adjustment ~~is payable by~~**shall be collected from** a specified consumer~~ on a day~~ before May 1, 2022. ~~[NOTE: MODIFY TO REFLECT EARLIER NOTES]~~

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether ~~payment of the amounts~~**the clean energy adjustment** is inconsistent with the Fair Allocation Plan applicable at the time when the payment is due;**and**

(b) whether the ~~payments relate~~**clean energy adjustment relates** to funding obligations that were incurred in a manner that ~~did not comply~~**was inconsistent** with the Financing Plan~~; and [NOTE: UNDER CONSIDERATION. SEEMS OVERBROAD]~~**.**

Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to ~~the~~**each** investment asset ~~owners~~**owner** in respect of ~~their~~**each owner's** respective ~~interests~~**interest** in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise. ~~[NOTE: ENFORCEMENT WILL BE LIMITED UNDER THE ACT, SO THAT INVESTMENT ASSET OWNERS CAN'T SERVE NOTICES ON RATEPAYERS DIRECTLY, OTHER THAN THROUGH A SPECIFIED AGENT AND PROCESS – SEE BELOW]~~

Irrevocability of clean energy adjustment

10x. (1) Any clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is ~~an~~**a calculation** error ~~in calculations made~~ by the electricity vendor.

Determination of clean energy adjustment

11x. (1) The Ontario Energy Board shall apply the method set out in Schedule 1 to determine the amount of the clean energy adjustment payable on a monthly basis by each electricity vendor on behalf of the electricity vendor's specified consumers.~~. [NOTE: THE AMOUNTS WILL BE CALCULATED AS FOLLOWS: (1) FSM (FOR ALL IAOs) WILL INFORM OEB OF PERIOD FINANCE AMOUNTS FOR THE REFERENCE PERIOD (IE ESTIMATE OF FAs PLUS PAST TRUE UP ALLOCATION) (2) OEB WILL ATTRIBUTE THAT AGGREGATE AMOUNT BASED ON RPP-LIKE RATE DETERMINATION FOR CUSTOMERS OF THE RELEVANT CLASSES (3) OEB WILL TELL EVs THE RATES APPLICABLE TO THEIR CUSTOMERS, SO THAT THE FULL AMOUNT IN (1) IS RECOVERED (BASED ON EXPECTED COLLECTION RATES AND NONE PAYMENTS)]~~

True up amount

(2) The Ontario Energy Board may**, in accordance with the regulations,** adjust the amount determined under Schedule 1 from time to time to address the any difference between the amount of the clean energy adjustment payable in respect of the reference period and the amount of the clean energy adjustment collected as of the date of the determination.~~ [NOTE: THIS IS ONLY A PARTIAL DESCRIPTION OF THE TRUE UP. SEE EARLIER DRAFTING INSTRUCTION FOR SUGGESTED APPROACH – I.E., DESCRIBE BROADLY THE NATURE OF THE CALCULATION AND THEN SPECIFY THE CALCULATION IN A DETAILED CALCULATION TO BE INCLUDED IN A REGULATION]~~

~~**Same, regulations** (3) The Lieutenant Governor in Council may make regulations governing the calculation under subsection (2) and how the amount is to be applied to the clean energy adjustment.~~

Communication to electricity vendors

(4) The Ontario Energy Board shall communicate to each electricity vendor information relating to the clean energy adjustment to be allocated by the electricity vendor to each specified consumer in respect of a reference period.~~ [NOTE: WE ARE~~

~~NOT SURE THERE IS A ROLE FOR IESO. WE THOUGHT THE PERIOD FINANCE AMOUNTS WOULD BE FORWARED BY FSM TO OEB DIRECTLY]~~

IESO to invoice electricity vendors

12x. (2) The IESO shall issue an invoice to each electricity vendor for the clean energy ~~adjustments~~**adjustment** in accordance with the regulations.

IESO to collect

(3) The IESO shall, as an agent of the investment asset owner, make reasonably diligent efforts to collect **the** clean energy ~~adjustments~~**adjustment** from electricity vendors.

Collection account

(3.1) The IESO shall establish an account in which to record its collection of the following:

1. Amounts remitted from accounts established under section ~~31.~~**15x.**
2. Payments made by specified consumers directly to the IESO as electricity vendor, in respect of clean energy ~~adjustments~~**adjustment**.

Deposit

(4) The IESO shall promptly deposit all amounts received in respect of **the** clean energy ~~adjustments~~**adjustment** into the account established under subsection (3.1). ~~[NOTE: CONSIDER FEASIBILITY OF DAILY SEGREGATION/ REMITTANCES]~~

Same, held in trust

(2) The amounts collected are deemed to be held in trust for the investment asset owner.

IESO to remit

(5) The IESO shall remit amounts received in respect of **the** clean energy ~~adjustments~~**adjustment** to or for the benefit of the ~~regulatory~~**investment** asset owner in accordance with the regulations.

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable Fair Allocation Plan, **the IESO may collect the difference from specified consumers.**

Electricity vendor to apply rate

13x. (1) Each electricity vendor shall**,** ~~[~~in accordance with the ~~regulations?]~~**codes and orders of the Ontario Energy Board,** determine the proportionate share of **the** clean energy ~~adjustments~~**adjustment** payable on a monthly basis by each of its specified consumers.

Electricity vendor to invoice specified consumers

(2) The electricity vendor shall issue an invoice to each specified consumer for the applicable amount of **the** clean energy ~~adjustments~~**adjustment** in accordance with the regulations.

Electricity vendor to collect

(3) Each electricity vendor shall, as an agent of the IESO, make reasonably diligent efforts to collect clean energy adjustments from specified consumers.

Pro rating of payments

14x. (1) This section applies if,

(a) an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices; and

(b) the amount paid is less than the total amount payable.

Same

(2) The electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices.

Deposit

(3) The electricity vendor shall deposit the portion of the payment allocated to **the** clean energy ~~adjustments~~**adjustment** into the account established under X.

Electricity vendor, account

15x. (1) Each electricity vendor shall establish and maintain an account into which the electricity vendor deposits or receives only the following:

1. Payments by specified consumers in respect of **the** clean energy ~~adjustments~~**adjustment**.

2. Portions of payments by specified consumers that are allocated to **the** clean energy ~~adjustments~~**adjustment** under subsection ~~30~~**14x** (2).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Held in trust

(2) The amounts required to be deposited or received into the account are deemed to be held in trust for the investment asset owner.

Remittance to IESO

(5) The electricity vendor shall remit amounts received in respect of **the** clean energy ~~adjustments~~**adjustment** to the IESO for the benefit of the investment asset owner in accordance with the regulations.

~~**Payment re regulatory asset**~~

~~(x) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable Fair Allocation Plan, the difference is payable to the IESO by the specified consumers. [NOTE: REQUIRES FURTHER CONSIDERATION.]~~

PART IV
FAIR ALLOCATION PLAN AND FINANCING PLAN

MINISTER TO PREPARE FAIR ALLOCATION PLAN

Minister to prepare plan

8. (1) In order to fairly measure and allocate amounts described in section 8.0.1 ~~as of a specified day~~**for a reference period** among specified consumers for the purposes of this Act, the Minister shall prepare and provide to the Lieutenant Governor in Council a written plan entitled the Fair Allocation Plan~~ to take effect on the specified day~~.

Amendments to the plan

(2) Subject to the approval of the Lieutenant Governor in Council, the Minister may amend the Fair Allocation Plan from time to time, as the Minister considers appropriate, having regard to the requirements of this Act.

Effective date

(3) The Fair Allocation Plan or an amendment to the plan takes effect on the day that the plan or the amendment, as the case may be, is approved by the Lieutenant Governor in Council.

Publication

(4) The Minister shall ensure that the Fair Allocation Plan and any amendments to the plan are made available to the public in a manner that the Minister considers appropriate.

Amounts to be allocated

8.0.1 The amounts referred to in subsection 8 (1) are, in relation to a ~~specified day~~**reference period**,

~~[NOTE: THE IDEA IS THAT THE EXPECTED FUTURE GREEN COSTS WILL BE INCLUDED AS COSTS, AND RATHER THAN AMORTIZING THEM BASED ON THE TERMS OF THE POWER CONTRACTS, THE COSTS WILL BE AMORTIZED AND PASSED THROUGH BASED ON A MORE ACCURATE AMORTIZATION SCHEDULE TIED MORE TO THE COSTS AND BENEFITS OF THE GREEN PLAN OVER THE NEXT 30 YEARS. IN ADDITION, TO THE EXTENT THAT THERE HAVE BEEN OVER-CHARGES (BASED ON THE SHORT AMORTIZATION OF GREEN COSTS) SINCE 2005, THOSE OVERAGES WILL BE ADDED TO THE AMOUNT OF THE FAP COSTS TO BE AMORTIZED OVER THE FUTURE – I.E., THE FUTURE GENERATIONS WOULD HAVE BENEFITED FROM AN ARTIFICALLY LOW SHARE OF THE COSTS SINCE THE RATEPAYERS FOR 2005 – 2017 PAID TOO MUCH, SO WE SHOULD BE ABLE TO ADD THOSE TO THE FUTURE GROUPS AND RECOGNIZE A FAIR ADJUSTMENT FOR CURRENT RATEPAYERS]~~

(a) the costs incurred by the IESO ~~before that day~~**previously** or expected to be incurred by the IESO ~~on or~~**during the reference period and** after ~~that day~~**the reference period** in relation to,

  (i) payments made or expected to be made under section 78.1 of the *Ontario Energy Board Act, 1998*, other than payments made under contracts with Bruce Power L.P or Bruce Power A. L.P. or their successors or assigns, and

  (ii) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*; and

(b) such other costs, benefits or amounts as may be prescribed, in respect of the clean energy initiative, made or received before ~~that day~~**the reference period** or expected to be incurred ~~on~~**during** or after ~~that day~~**the reference period**. (“French”)

Principles

8.1 In preparing the Fair Allocation Plan or any amendments to the plan, the Minister shall have regard to the following principles:

1. ~~The amounts~~**Costs of the clean energy initiative** should ~~not be allocated in respect of any period of time after April 30, 2047.~~**be allocated among specified consumers during the period beginning on the day this Act comes**

into force and ending on April 30, 2047 or such later day as may be prescribed.

~~1.1 At no time should the Fair Allocation Plan impair any investment asset, outstanding funding obligation or clean energy adjustment.~~

2. The ~~share~~**allocation** of the ~~amounts allocated to~~**costs among** specified consumers ~~who receive an invoice in respect of a reference period~~ should be proportionate to ~~a reasonable assessment of~~ the benefits ~~derived by~~**of the clean energy initiative to** those **specified** consumers ~~during that reference period~~**over time**.

3. ~~The specified consumers to whom an invoice is issued during~~**During** a reference period**, no specified consumer** should ~~not~~ bear an unreasonably disproportionate share of the ~~amounts allocated~~**costs**.

4. ~~Adjustments should be made over time if the Minister is of the opinion that specified consumers have paid more than is reasonably proportionate.~~**To the extent that specified consumers have borne an unreasonably disproportionate share of the costs over periods that occurred before the coming into force of this Act, the allocation should provide for a fair adjustment for those specified consumers.**

5. ~~Allocation of amounts should be determined for each reference period.~~**The allocation of costs among specified consumers over future reference periods should include reasonable assumptions about the time value of money, the rate of inflation, electricity consumption and the composition of specified consumers as a class of individuals.**

~~6. A reasonable estimate of the rate of inflation should be applied [in accordance with the regulations?].~~

~~**Compliance**~~
Implementation

8.2 The IESO ~~and the Financial Services Manager~~ shall **ensure that the IESO funding shortfall during a reference period does** not~~, at any time,~~ exceed the ~~limits~~**maximum amount** set out **for the reference period** in the ~~applicable~~ Fair Allocation Plan.

~~[NOTE: THIS IS TOO STRONG. THE IDEA IS THAT IESO'S RIGHT OF RECOVERY WILL BE LIMITED IN A REFERENCE PERIOD BY THE FAP AMOUNT FOR THE PERIOD, MINUS THE FINANCE AMOUNTS FOR THE PERIOD. IN THIS WAY, THE IESO WILL BE ENTITLED TO PASS-THROUGH RECOVERIES IN A WAY THAT AFFECTS THE HYDRO BILLS OF EACH~~

~~REFERENCE PERIOD RATEPAYERS IN A WAY THAT TRACKS THE FAP. SIMILARLY, IF IESO HAS TRANSFERRED ITS RECOVERY RIGHTS TO A IAO, THEN THE RELATED CEAs FOR THAT IAO WILL BE INSIDE THE FAP – AGAIN, SO THAT THE RATEPAYERS OF THAT PERIOD DO NOT BEAR A DISPROPORTIONATE BURDEN FOR THOSE COSTS. THESE CONCEPTS ARE REFLECTED IN THE MECHANICS DEALING WITH IESO RECOVERIES AND PASSING THROUGH CEAs, AND SO THIS SECTION CAN PROBABLY BE REMOVED]~~

FINANCIAL SERVICES MANAGER **TO PREPARE** FINANCING PLAN

Ontario Power Generation Inc. appointed as Financial Services Manager

8.3 Subject to section 12.1, Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Financial Services Manager to prepare plan

11. (1) The Financial Services Manager shall prepare and provide to the Minister a plan entitled the Financing Plan for the purpose of ensuring that decisions made under this Act are cost~~-~~ effective and consistent with the Fair Allocation Plan.

Consistency with Fair Allocation Plan

(2) The Financing Plan in effect at any given time shall be consistent with the applicable Fair Allocation Plan.

Amendments to approved plan

(~~2~~**3**) The ~~financial services manager~~**Financial Services Manager** may propose amendments to the Financing Plan at any time.

[~~NOTE: THE FINANCING PLAN IS SUPPOSED TO BE FLEXIBLE, UNLIKE THE FAP. FORMAL AMENDMENTS WOULD MAKE THIS TOO RIGID. THE FSM SHOULD KEEP RECORDS OF THE FP OVERTIME, SO THAT FUNDING DECISIONS CAN BE DETERMINED BASED ON THE PRINCIPLES AND THERE IS A MEASURE OF ACCOUNTABILITY FOR THE FSM, INSOFAR AS THE RECORD-KEEPING WILL ALLOW THE MINISTER TO DO A PERIODIC CHECK TO MAKE SURE THAT FUNDING OBLIGATIONS WERE INCURRED IN MATERIAL CONFORMITY WITH THE FSM'S EVOLVING FP. THE CONCEPT OF THE FP IS TO CREATE DISCIPLINE, THOUGHFULNESS AND SOME MEASURE OF ACCOUNTABILITY FOR FSM IN MAKING FINDING DECISIONS.]~~**Note - still need to deem Financial Plan to be third party confidential information for the purposes of s. 17 of FIPPA?]**

~~Compliance with Plan~~Implementation of Financing Plan

11.1 The Financial Services Manager shall ~~comply with~~**implement** the Financing Plan.

~~[NOTE: PROBABLY TOO RIGID A STATEMENT – SEE ABOVE. ALSO, OPG SEEMS TO HAVE ACCOUNTING ISSUES WITH THIS SORT OF MANDATORY DIRECTION – NEED TO CONFIRM]~~

Contents of plan

12. (1) ~~The Financing Plan shall be prepared in accordance with the regulations and shall include such matters as may be prescribed, which may include~~**In preparing the Financing Plan, the Financial Services Manager shall have regard to** the following:

1. ~~A description of one or more transfers that may be made in respect of the regulatory asset established under Part **.~~**The allocation of costs of the clean energy initiative among specified consumers over reference periods, as described in the Fair Allocation Plan.**

2. ~~A description of the basis upon which funding obligations may be incurred in a manner that is consistent with the applicable Fair Allocation Plan.~~**The estimated IESO funding shortfall for each reference period.**

3. ~~A description of the~~**The** funding obligations ~~mentioned in paragraph 2, which may include the following:~~**incurred as part of the consideration for the sale of the regulatory asset.**

~~i.~~ ~~Indebtedness.~~**4. The need for the clean energy adjustment payable by a specified consumer to be proportionate to the benefit that the specified consumer receives from the clean energy initiative.**

~~ii. Payment obligations arising under or in respect of derivatives.~~

~~iii. 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.~~

5. Reasonable compensation for the Financial Services Manager on terms that balance market terms and conditions with the interests of specified consumers.

~~iv. Refinancing an existing funding obligation by applying the net proceeds obtained by incurring other funding obligations.~~**6. Such other matters as may be prescribed.**

~~[NOTE: PRINCIPLES AND PARAMETERS ARE UNDER CONSIDERATION AND WILL BE INCLUDED IN THE REGULATION.]~~

Limitation

(1.1) The Financing Plan shall not provide for the ~~payment~~**collection** of the clean energy adjustment by specified consumers before May 1, 2022. ~~[NOTE: WOULD PREFER TO SAY (1) NO CEAs IN THE FIRST 5 YEARS UNTIL, FOR A YEAR, THE LGIC CONFIRMS THAT THERE WILL NOT BE A FAIR ADJUSTMENT FOR THAT YEAR. SEE MECHANICS, ABOVE.]~~

Special purpose financing entities

(2) ~~If the Financial Services Manager is a prescribed entity, the Financing Plan may, in accordance with the regulations, provide for the establishment by that entity of one or more special purpose financing entities that may incur funding obligations.~~**The Financing Plan may provide for the Financial Services Manager to,**
~~[Note: I understand that OPG doesn't need authority to establish a SPV beyond existing OPG authority under the EA, but do you still want something like subs. (2) for an entity other than OPG? It almost makes it look like OPG is not authorized to do so, since the provision singles out prescribed entities. Need to consider further]~~

(a) if the Financial Services Manager is Ontario Power Generation Inc., establish one or more special purpose financing entities **under subsection 53.1 (1.2) of the *Electricity Act, 1998*, that may incur funding obligations; or**

~~[NOTE: THIS CONCEPT SHOULD BE MOVED TO THE REGULATION]~~

(b) if the Financial Services Manager is appointed under section 12.1, establish one or more special purpose financing entities under subsection (3) that may incur funding obligations.

~~**Limit on liquidation, etc. of [special purpose funding entities]**~~
Same

(3) ~~The Financing Plan shall not provide for a [special purpose funding entity] tbe be liquidated, dissolved or voluntarily wound-up until at least one year after all of the funding obligations the entity has incurred have been satisfied. [NOTE: MOVE TO THE REGULATION]~~**If the Financial Services Manager is appointed under section 12.1, it may create one or more special purpose entities in order to more efficiently conduct its activities under this Act.**

Prohibition

(3) The ~~Financing Plan~~**Financial Services Manager** shall not provide for funding obligations to be incurred with any recourse to any assets of ~~the~~**an** electricity ~~vendors, the IESO~~**vendor**, the Ontario Energy Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform

obligations or duties arising under this Act or under the express terms of a funding obligation.

Funding obligations unaffected by amendment to Fair Allocation Plan

(4) No change to a funding obligation shall result from an amendment to the Fair Allocation Plan **or Financing Plan** that is made after the funding obligation has been incurred.

~~[Note: Consider Article 8 (9) entitled "incurrences are binding" -- I believe we have already stated in the Part dealing with the regulatory asset that the rights are enforceable etc. even if charges have been imposed in a manner that does not follow the Financing Plan. Is more drafting required?]~~

Termination of appointment

12.1 (1) The Minister may [by what means? Written order?] terminate an appointment as Financial Services Manager under section 8.3 or subsection (2) if,

(a) the Minister has advised the appointee that the Financing Plan is not consistent with the Fair Allocation Plan;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(2) Upon terminating an appointment under subsection (1), the Minister may, in accordance with the regulations, **appoint a new person or entity as the Financial Services Manager.**

PART V
THE REGULATORY ASSET [AND INVESTMENT ASSET]

Regulatory asset established

22. (1) The IESO has property rights and interests, which together constitute a regulatory asset, in the recovery of the IESO funding shortfall.

[Note to draft - Is it sufficient to say "*property rights and interests in the recovery of the IESO funding shortfall*"? Does that convey the right to enforce other parties' obligations that would allow for the shortfall to be recovered by the IESO?]

Limitation

(1.1) The right to recover the IESO funding shortfall under subsection (1) is subject to the following limits:

1. The amount **of the IESO funding shortfall** recovered in respect of a reference period may not exceed the amount ~~by which the [fair allocation] in respect of a~~**determined in the Fair Allocation Plan for the** reference period ~~exceeds~~**, minus** the amount of the clean energy adjustment for the reference period. ~~[NOTE: CONSIDER IF THIS SHOULD BE A MAXIMUM OR A MANDATORY FLOW-THROUGH. IF THE IESO RECOVERIES PLUS CEAs FOR A PERIOD ARE LESS THAN THE FAIR ALLOCATION FOR A PERIOD, THEN THE RATEPAYERS OF THE PERIOD WILL BENEFIT FROM A LESSER SHARE OF THE COSTS THAN WOULD BE INDICATED BY THE FAP]~~**[Note: Will want to link up the language in para. 1 above with the language relating to this in provision above that authorizes the IESO to collect this amount (where some of the R.A. has not been sold) - s. 12x (6).]**

2. No part of the **IESO** funding shortfall shall be ~~recovered~~**collected from specified consumers** before May 1, 2022. ~~[NOTE: TOO RIGID. SEE CONCEPT OF FAIR ADJUSTMENT, ABOVE]~~

Same

(2) The establishment of the regulatory asset is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

Recording of IESO funding shortfall in books

22.1 (1) Subject to the approval by order of the Ontario Energy Board, the IESO shall record the IESO funding shortfall from time to time in its books~~. [NOTE: THIS SHOULD ALSO INCLUDE ADJUSTMENTS WHEN THERE IS A TRANSFER OR RECOVERY – I.E., THE REGULATORY ASSET AMOUNT RECORDED SHOULD BE REDUCED]~~**, including adjustments resulting from any transfer of the regulatory asset.**

Order

(2) The Ontario Energy Board may, in accordance with the regulations, by order specify how the IESO funding shortfall must be recorded.

Recording in books determinative

(3) A recording in its books is determinative of the amount of IESO funding shortfall at the time of the recording.

No hearing

(4) The order of the Ontario Energy Board shall be made in writing and without holding a hearing.

No appeals, etc.

(5) No appeal lies from the order of the Ontario Energy Board.

Judicial review

(6) The *Judicial Review Procedures Act* does not apply to an order made under this section.

IESO funding shortfall

22.2 (1) The IESO shall determine the IESO funding shortfall for each month in a reference period by calculating the difference between the following amounts:

1. The sum of all invoice amounts issued to specified consumers for the month.

2. The sum of all invoice amounts that would have been issued to specified consumers for the month if paragraphs 1 and 2 of section 7.2 did not apply.

[Note: ~~Should the~~**The** value of any consideration received as part of a transfer **should** be reflected in this section~~?~~ **-- see below para. 2 of subs. 23 (2) which says the payment should cause a reduction in the shortfall.**]

Same

(2) The determination under subsection (1) shall be made based on the amount of electricity actually used by specified consumers during the reference period. ~~[NOTE: FUNDING SHORTFALL DESCRIPTION MAY ALSO RELFECT ADJUSTMENT BASED ON ESTIMATE TO ACTUAL FROM EARLIER MONTH]~~

Transfer of regulatory asset

23. (1) The IESO may transfer the regulatory asset in accordance with the Financing Plan.

Consideration

(2) The IESO may receive consideration for the transfer of the regulatory asset, subject to the following rules:

1. The prospective ~~owner of the~~ investment asset ~~to be acquired through the transfer~~**owner** shall pay to the IESO an amount equal to all or part of the IESO funding shortfall. ~~[NOTE: INVESTMENT ASSET TO BE BASED ON FACE VALUE SO THAT THE IESO RECOVERY IS DOLLAR-FOR-DOLLAR. THIS MEANS THAT ACCRUALS WILL BE NEEDED FOR INITIAL PERIOD, RATHER THAN THE TRUST BUYING INVESTMENT INTERESTS AT A DISCOUNT AND HOLDING BACK ISSUE PROCEEDS TO FUND THOSE AMOUNTS.]~~

2. Upon receipt of the payment, the IESO shall record the payment as a reduction of the ~~AGGREGATE~~ IESO funding shortfall in its books.

3. Upon receipt of the payment, the IESO shall have no continuing right or interest in, or maintain any right to recover all or any part of the transferred regulatory asset.

Investment asset

Regulatory asset deemed to be investment asset upon transfer

23.1 Upon transfer of the regulatory asset or a portion of the regulatory asset, the regulatory asset or portion is deemed to be an investment asset and is vested in the investment asset owner.

~~[NOTE: DEEMING LANGUAGE TO ADDRESS TRANSFER AND CONVEYANCE IS UNDER CONSIDERATION.]~~

~~[NOTE: THE ASSET TRANSFERRED BY IESO WILL BE A RIGHT OF RECOVERY, BY REFERENCE TO CEAs. THE ASSET ACQUIRED WILL BE AN "INVESTMENT INTEREST", BEING A SHARE (THE TERMS AND ENTITLEMENTS OF WHICH WILL BE DETERMINED UNDER A COLLECTIVE RIGHTS AGREEMENT) OF THE RIGHTS AND RELATED PROCEEDS FROM THE RIGHT TO BILL, ETC., CEAs. THE SUM OF ALL INVESTMENT INTERESTS WILL BE THE "INVESTMENT ASSET".]~~

Same

(2) An investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, 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.

Same

(3) An investment asset is not affected by failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

No set off, etc.

(4) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor~~, the IESO~~, an agent of the investment asset owner or an owner of distribution system assets in the Province;~~ [NOTE: IF THE MECHANICS FOR CASH FLOWS ADOPT THE PRE-EXISTING METHODS AND TERMS AMONG IESO, LDCs AND RATEPAYERS, THIS PROVISION WILL NEED TO RECOGNIZE THAT THOSE TERMS WILL PREVAIL AND NOT BE AFFECTED BY THE NEUTERING OF SET-OFF, ETC.]~~

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a);~~ [NOTE: CONSIDER IN CONTEXT OF FEDERAL BANKRUPTCY POWERS]~~

(c) by any affiliate or successor of a person mentioned in clause (a).

Transfer of investment asset

24. The investment asset owner may transfer all or a portion of its rights and interests in an investment asset to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

25. (1) A transfer of a regulatory asset or an investment asset under this Act that is expressed to be a sale or an absolute assignment is a valid and enforceable sale and absolute assignment of the regulatory asset or investment asset, as the case may be, and confers upon the owner of the investment asset acquired a valid property right and interest in, to and under the applicable investment asset in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall or an investment asset owner's right, title and interest in, to and under an investment asset, as applicable (or relevant portion thereof), and not merely as a pledge thereof, and upon such absolute transfer the transferor shall retain no right, title or interest in regulatory asset or the investment asset (or relevant portion thereof) subject to the transfer, including all rights to recover the IESO funding shortfall or the investment asset arising after such transfer.~~ [NOTE: ADDRESSES POSSIBLE RECHARACTERIZATION CONSIDERATIONS. MARKET WILL EXPECT TO SEE THIS GIVEN SECURITIZATION CONCEPTS IN PLAY.]~~

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset or an investment asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the owner of the investment asset shall have priority over any liens in favour of such other persons.

Administration of investment asset

26. (1) The Financial Services Manager ~~shall~~**may** administer an investment asset on behalf of the ~~owner of the~~ investment asset **owner**.~~ [NOTE: TO BE ELABORATED]~~ **[Note: Consider location of this section with other roles of FSM above.]**

Same

(1.1) The administration of an investment asset may include the following:

1. **Providing information to the Ontario Energy Board in respect of the funding obligation and the determination of the clean energy adjustment in accordance with section 11x.**

2. Providing information to electricity vendors in respect of their obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(2) The Ontario Energy Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations. ~~[NOTE: TO BE ELABORATED]~~

Investment asset owner may grant pledge

27. (1) The owner of an investment asset may grant a pledge to or in favour of a person in, to and over all or a specified portion of its right, title and interest in, to and under the investment asset in connection with any funding obligation.

Types of pledge

(2) A pledge may be a lien, mortgage, charge, right of set-off or security interest.

Validity

(3) The pledge may be made to secure a funding obligation and when granted shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the person to whom the pledge is granted a valid security interest in, to and in respect of the investment asset in accordance with the terms of the pledge.
[Note: Additional content relating to the PPSA has not yet been addressed in any detail. Please review all subsections that contain the (x) below and advise what is needed. Some of this content was already covered by some of the numbered subsections in this draft.]

Perfection and priority of pledges

(x) For purposes of the *Personal Property Security Act*, the regulatory asset shall be intangible personal property and any pledge made by the owner of an investment asset in respect of a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Same

(x) All provisions of the *Personal Property Security Act* shall apply to the regulatory asset on the basis that it is intangible personal property, except to the extent otherwise provided in this section.

Same

(x) All proceeds of a related [Investment Interest?] that are subject to the pledge that are received by the owner of the investment asset shall immediately be subject to the pledge, and the security interest in the proceeds shall be perfected pursuant to the *Personal Property Security Act.*

Same

(x) A pledge perfected under the *Personal Property Security Act* shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the [Investment Interest?] subject to the pledge unless the pledgee has otherwise agreed in writing.

Same

(x) A pledgee shall have a perfected security interest in a related ~~investment interest~~**[Investment Interest?]**, including the owner of the investment asset's rights and interests in and to [the clean energy adjustment?] or other related proceeds in respect of the ~~investment interest~~**[Investment Interest?]** and that are deposited in any [which account?] or other account of any [Electricity Distributor, IESO, Alternative Servicer or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds].

Proceeds

(8) All proceeds of the investment asset that are subject to the pledge and that are received by the investment asset owner shall immediately be subject to the pledge and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(9) The 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 investment asset subject to the Pledge, subject to the written consent of the person to whom the pledge has been granted.

Same

(10) The person to whom the pledge has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

Collective action required

28. If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: It seems that successors may need to be addressed here. Also Pledgees have not yet been addressed in this draft.]

Exercise of rights

29. The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset shall be exercised in accordance with section [xx] **of the *Personal Property Security Act***.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

34. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

35.1 For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

35.2 ~~**[Note: Still to be drafted:**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 clean energy adjustments, defaults on any required remittance of Clean energy adjustment Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by a Regulatory Asset Owner or Pledgee and without limiting any other remedies available to the applying party, shall~~**(1) A court in the Province may, upon application by an investment asset owner [or pledgee?],** order the sequestration and payment of the ~~Clean~~**clean** energy adjustment ~~Collections, Electricity Distribution Remittances and IESO Remittances~~**, collections and remittances**, as applicable, for the benefit of the ~~Regulatory Asset Owner or Pledgee.] [Such order~~**investment asset owner [or pledgee] by any person or entity** authorized to collect **the clean energy adjustment**, defaults on any required remittance of **the clean energy adjustment, collections or remittances.**

Same

(2) An order under subsection (1) does not limit any other remedies available to the **applicant.**

Same

(3) An order under subsection (1) shall remain in full force and effect ~~notwithstanding~~**despite** any bankruptcy, reorganization~~,~~ or other insolvency proceedings with respect to ~~any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or other~~**the** person or entity ~~authorized to collect Clean energy adjustments, as applicable.]~~**who is subject to the order.**

~~**Successors**~~

~~**37.** [Note: Articles 4 (6) and (7) and Articles 5 (7) and (8) are rules about successors to distributors and the IESO being bound by specific requirements. Still to be drafted.]~~

Choice of law

37.1 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, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

38. The provisions of this Act ~~[~~and the regulations~~?]~~ apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or PLEDGE,

No further approvals, etc.

39. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

97x. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

98x. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28~~[7]~~[10]

99x. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

100x. The Lieutenant Governor in Council may make regulations,

(a) governing the calculation **[true-up amount]** and how the amount is to be applied to the clean energy adjustment**.**

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[Note: reg-making powers to be dealt with in subsequent draft]

PART VII~~[8]~~[11]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.**0.1)** **to exercise the powers and rights and to perform the duties and obligations assigned to it under the [Fair Hydro Act];**

(**q.**1) to enter into agreements or arrangements with ~~[any special purpose financing entities established under (name of new Fair Hydro Act?)]~~**for the purposes of the FHA**;

(q.2) to engage in activities related to making payments to and receiving payments ~~from [any special purpose financing entities established under (name of new Fair Hydro Act?)], as required~~**as contemplated** under ~~that Act,~~**the FHA** and to engage in related settlement activities;

~~7~~10 FLS - see s. 51 of the Electricity Act, 1998

~~8~~11 FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

(q.3) to engage in activities related to the **creation,** transfer **and administration** of the regulatory asset created under ~~[(name of new Fair Hydro Act?)]~~**the FHA**, which activities may include,

(i) incurring liabilities in relation to the regulatory asset

(ii) transferring the regulatory asset ~~to [any special purpose financing entities established under (name of new Fair Hydro Act?)]; (iii) transferring the regulatory asset to third parties~~**for consideration**;

(q.4) acting as a recovery agent under the ~~[(name of new Fair Hydro Act?)]~~**FHA**;

201x. ~~Subsection~~Section 53.1 ~~(1)~~ of the Act would be ~~repealed and~~amended by adding the following ~~substituted~~subsections:

~~Objects of Ontario Power Generation Inc.~~
Same, [FHA]

53.1 (~~1) The~~**1.1) In addition to the** objects **mentioned in subsection (1), the objects** of Ontario Power Generation Inc. include **the following**, in addition to any other objects, **relating to** the ~~following~~**FHA**:

1. ~~Owning and operating generation facilities.~~**Exercising the powers and rights and performing the duties and obligations assigned to it under that Act.**

2. ~~Establishing, operating and supervising the activities of [any~~**Entering into contracts and undertakings on behalf of** special purpose financing entities ~~established under (name of new Fair Hydro Act?)]~~**, including pre-formation contracts and undertakings and as principal in relation to matters permitted by that Act subject to the right of reimbursement from amounts available to the financing entity**.

3. ~~Providing financial and other support to the IESO in its activities under the [name of new Fair Hydro Act?].~~**Preparing reports on behalf of the financing entity.**

4. ~~Engaging in such financing, borrowing, lending and related activities and transactions to support the IESO with short-term or long-term financing.~~**Enforcing the rights of the financing entity.**

5. ~~Providing equity, not exceeding the prescribed amount, to support the financing capacity [any special purpose financing entities established under (name of new~~

~~Fair Hydro Act?)].~~**Signing offering documents as sponsor or otherwise on behalf of the financing entity.**

~~[Note: Still to draft:~~
~~for the new Fair Hydro Bill: *if OPG is*~~ **6.** **Exercising the powers and performing the duties of** the Financial Services Manager~~*, it shall be required to provide an accounting of the amounts it charges the trust for the financing entity to the OEB 60 days in advance of the commencement of the fiscal year for the OPG trust/special purpose vehicle*]~~ **under that Act.**

Subsidiaries, etc.

(~~1.1~~**1.2**) Ontario Power Generation Inc. may create one or more subsidiaries**, trusts or special purpose entities** in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under [new Act].

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under ~~[new Act]~~**the FHA**.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 71 of the Act would be amended by adding the following subsection

~~*[Note – still need to draft new subs. 70 (2.1) – instructions on pp. 8-9 of Rider instructions rec'd April 14th]*~~

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

SCHEDULE 1
METHOD FOR DETERMINING AMOUNT OF CLEAN ENERGY ADJUSTMENT FOR REFERENCE PERIOD

~~[NOTE: CEAs WILL BE DETERMINED BASED ON AN ESTIMATE OF COSTS AND REPAYMENTS FOR AN UPCOMING PERIOD, AND BE TRUED UP TO ACTUAL COSTS AND REPYAMENTS IN THE NEXT FOLLOWING PERIOD. THESE MECHANICS CAN BE SEEN IN THE SUMMARY DOCUMENT – "PERIOD FINANCE AMOUNTS" AND SECONDARY DEFINITIONS. THIS FORMULAIC APPROACH IS PREFERRED TO ESTABLISH A SUM CERTAIN OF THE DEBT REPRESENTED BY THE CEAs, ONCE BILLED. IT MAY BE USEFUL TO CREATE A DEFINITION TO ENCOMPASS ALL CEAs FOR A PERIOD, SINCE A CEA IS THE AMOUNT BILLED TO A PARTICULAR CUSTOMER]~~

1. The amount of the clean energy adjustment for a reference period shall be determined by calculating the sum of the following:

1. The sum of all payments made by owners of an investment asset [during the reference period?] to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

[Note: Para. 1 is the definition of "repayment" from the Blakes doc. However, that definition include bracketed text that says: (*including making Finance Reserve Deposits).* I don't understand this because (1) Finance Reserve Deposit is listed as a separate line item in the definition of "finance amount" (see para. 4 below). In order to avoid duplication, can we exclude "finance reserve deposits" from para. 1?]

~~[NOTE THAT SHOULD LIMIT CONCEPT OF RESERVE DEPOSITS AS INCURRENCES IF IT WOULD MEAN THAT THE PROCEEDS FROM A TRANSFER WOULD BE REDUCED FROM FACE VALUE WITH THE RESULT THAT IESO WOULD BE TRANSFERRING IAs AT A DISCOUNT]~~

2. The sum of all funding costs for the reference period, as determined under section 2 to this Schedule.

3. The sum of all amounts payable by or on behalf of owners of ~~investment~~**investement** assets to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

[Note: Para. 3 is the definition of “redemption amount” from the Blakes doc.]
[Note: What is meant by “make-whole” -- need some assistance in order to translate this term accurately. Do you have any examples of bilingual legislation where this term has been used?]

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable by owners of investment assets for the reference period that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

[Note: Para. 5 is based on the definition of “additional funding charges”.]

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

1. Calculate the aggregate of all interest and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of owners of investment assets during the reference period in respect of all funding obligations, including the following:

    i. Standby commitment fees or charges paid to any lender.

    ii. Credit enhancement fees or charges paid to any credit enhancer.

    iii. Liquidity fees or charges paid to any liquidity provider.

    iv. Payments, including termination payments, made under derivatives.

    v. Deposits 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.

2. Calculate the aggregate of all amounts received by or on behalf of the owners of investment assets during the reference period in respect of a funding obligation, including reimbursement of any amounts referred to in subparagraphs 1 i to v.

[Note: Para. 2 is the definition of “finance receipts” in the Blakes doc.]

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

[Note: This section is a modification of the definitions provided in the Blakes document for "Finance Reserve Deposits" and "Finance Reserve Withdrawals". The proposed definition of "FR deposit" involved a subtraction of the "FR withdrawal" so the term 'deposit' was not really descriptive of a pure deposit but rather the balance.]

1. Calculate the sum of all amounts deposited [to what account?] 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.

2. Calculate the sum of all amounts withdrawn from the account during the reference period from deposits previously made [e.g. during a previous reference period?] as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

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Padding cell	

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Moved to	9
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Format changed	0
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