Version 3

This confidential draft document is provided for discussion purposes only. It should not be construed as representing ~~a~~the position adopted by the Government of Ontario on any of the topics included or not included in this document. 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.

A proposal to create Legislation.

~~Intergenerational Fairness in Hydro Rates~~

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions ~~will~~may 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 renewable energy, and~~. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory ~~and contractual~~ framework related to the generation and sale of electricity ~~to ensure~~, which has promoted and continues to promote significant investment ~~in decarbonizing and~~to enable phasing out of coal fired generation, modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom,[2] and conservation and demand management.

~~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 facilities in a manner that allocates~~The Government of Ontario is committed to ensuring that the costs of ~~and benefits from~~ these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and future generations of consumers.

Therefore, Her Majesty, by and with the advice and consent of t[redacted]tive Assembly of the Province of Ontario, enacts as follows:

CONTENTS

[1] Note: pl[redacted]ble of the *Green Energy Act, 2009.*

[2] Note: pl[redacted]use 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la pr[redacted]és à la production d'énergie électrique, ainsi que de cette production meme".

[3] N[redacted]see opening flush of s. 92A (4) of the Constitution Act, 1867

PART I
GENERAL

Interpretation

Definitions

~~1.~~**1xx.** (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means~~…~~ the amount determined under section 10xx; ("French")

[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs; ("French")

"clean energy costs" means, in respect of a reference period, the [redacted]he costs allocated to specified consumers during the reference perio[redacted]t of the clean energy initiative, including as a result of past, present and e[redacted]l costs incurred in respect of,

(a) the estimated costs to be incurred b[redacted]er section 25.33 of the *Electricity Act, 1998* or any provisi[redacted] successor to that provision, which relate to contracts for,

(i) renewable energy gen[redacted]or capacity,

(ii) conservation a[redacted]anagement, including storage,

(iii) energy effic[redacted]

(iv) natural [redacted]ration and capacity, excluding contracts relating to an[redacted] by the IESO under section 78.2 of the *Ontario Energy* [redacted]*t, 1998* and excluding such other contracts as may be [redacted]ibed, or

[redacted] payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

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

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

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

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

“~~Fair Allocation Plan” means a plan prepared under section X; (“French”)~~ fair adjustment” means the determination of the rate payable for electricity in accordance with Part II; (“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 **]; (“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”)~~

“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 20xx for the reference period; (“French”)

“investment asset” means ~~all or part of the regulatory asset that is deemed to be an~~the investment asset ~~under~~created as described in section ~~x~~22xx; (“French”)

~~1 FLS~~4 Note - this is similar to the definition of “electricity vendor” in the Ontario Rebate for Electricity Consumers Act, 2016 "investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

"investment interest" means an ownership interest in the investment asset, which entitles an investment asset owner to the rights and benefits specified in the agreement under which the ownership interest is transferred;

"invoice amount" means the ~~sum of the following amounts: 1. The commodity price of the electricity used during the invoice period.~~amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

~~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 under section 25.33 of the *Electricity Act, 1998*.~~

~~4.The amount of any harmonized sales tax payable under Part IX [redacted] *Excise Tax Act* (Canada); ("French")~~

"licensed distributor" means a person licensed under Part V[redacted]*tario Energy Board Act, 1998* to own or operate a distribution system; ("Fre[redacted]

"licensed retailer" means a person who is lice[redacted]t V of the *Ontario Energy Board Act, 1998* to retail electricity; ("Fre[redacted]

"Minister" means the Minister of Energy[redacted]ember of the Executive Council as may be assigned the administratio[redacted]s Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribe[redacted]ons; ("prescrit")

"reference period" means[redacted]

(a) the period [redacted] May 1, 2017 and ending on October 31, 2017,

(b) ever[redacted]nth period following the period mentioned in clause (a)~~,~~ or such [redacted]d as may be set out in ~~a~~the Fair Allocation Plan; ("French")

"refinan[redacted]means a repayment or repurchase of a funding obligation for cancellation [redacted]behalf of ~~the owner of~~ an investment asset owner 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~~right 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~~to recover the IESO funding shortfall; (“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 cr[redacted]ut in subsection (3); (“French”)

“specified consumer” means,

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

(b) such other person as may b[redacted]d; (“French”)

“Toronto Hydro” means Toron[redacted]ric System Limited; (“French”)

“transfer” means an assig[redacted]onveyance, disposition or sale; (“French”)

~~“weekday means [O.[redacted] definition]; (“French”)~~

Specified cons[redacted]

(2) For[redacted]f clause (a) of the definition of “specified consumer” in subsection (1), the [redacted]ust 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 [redacted]ion 5 of that Act, or

   iv. a property that includes one or more hous[redacted]nd that is owned or leased by a co-operative within the m[redacted]e *Co-operative Corporations Act*.

5. The person satisfies such criteria as [redacted]scribed.

Invoice amount~~, exclusions~~
(2.1) Subject to subsection (2.2) and the [redacted]ions, the invoice amount for a specified consumer includes the following amo[redacted]

1. In circumstances wh[redacted]ectricity is provided by a licensed distributor or a licensed retailer, the[redacted]ng:

   i. The co[redacted] price of the electricity used during the invoice period.

   i[redacted] and charges set out in the applicable rate order issued by the [redacted]rd under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

   [redacted] Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

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

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(~~2) For the purposes of the definition of "invoice amount" in subsection (1), an~~2.2) Except as otherwise prescribed by the regulations, the 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 a[redacted]ued by the ~~Ontario Energy~~ Board under subsection 78 (3) of the [redacted]*nergy Board Act, 1998*:

   i. A fixed monthly service charge paya[redacted]eration facility within the meaning of section 56 o[redacted]*Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a[redacted]e charge" or "retail service charge".

   iii. A rate rider.

5. Any other prescribe[redacted]ts.

Representative consume[redacted]

(3) For the purposes[redacted]ion of "representative consumer" in subsection (1), the consumer,

(a)[redacted]ectricity 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 *Ontario Energy Board Act, 1998*;

(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.

Transfer

(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the IESO purports to dispose of its interest in the regulatory asset with the result of a named person becoming the owner of an investment interest.

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

2xx. (~~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 [redacted] Legislature being to give separate and independent effect to the extent of its [redacted] every provision contained in this Act.

Same, funding obligation

(~~6~~2) The fact that any provision of this Act is held to b[redacted]eases to be in effect for any reason does not affect a funding oblig[redacted]ncurred under this Act before the day that the provision was held to be inval[redacted]d to be in effect.

Purpose

~~2.~~3xx. (1) The purposes of this Act are[redacted]

(a) to ensure that ~~the cost~~[redacted]energy ~~initiative~~costs are fairly ~~distributed~~allocated [redacted]d ~~customers over time;~~consumers over time and that the process [redacted] the Province raises money to fund the costs reflects the fair[redacted]n; and

(b) to recogni[redacted]~~ng-term benefits of the~~that clean energy ~~initiative that~~b[redacted]ave accrued and that will accrue over time ~~and~~ will continue to be[redacted]esent and future electricity consumers in the Province~~;~~

[2] ~~FL~~[5] N[redacted]s from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*
[3] ~~FL~~[redacted]lease 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;[4] and (f) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service~~.

Crown bound

~~3.~~4xx. This Act binds the Crown.

Protection and ~~guarantee of scheme~~assurances

Prohibition

~~4.~~5xx. (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, with the approval of the Lieutenant Governor in Council, 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,~~on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding financial commitments, financial arrangements, indemnities or similar transactions.

~~(a) a contravention of subsection (1);~~

[4] ~~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 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]

~~IESO obligations~~
~~(5) If the IESO fails to carry out its obligations under this Act for any reason, including because the IESO 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~~

Fair adjustment, May 1, 2017 to April 30, 2018
Definition
~~**5.** This Part applies in respect of the five year period b~~[redacted]~~May 1, 2017 and ending on April 30, 2022.~~**6xx.** (1) In this sec[redacted]

"average baseline invoice amount" means the [redacted]onthly invoice amount that would be payable by a representative consumer u[redacted]erage baseline rate; ("French")

"average baseline rate" means the ave[redacted]hat would be payable effective May 1, 2017 by the class of consume[redacted] by the regulations under the *Ontario Energy Board Act, 1998* fo[redacted]f subsection 79.16 (1) of that Act, as determined by the Board b[redacted]g the method prescribed by the regulations under clause 79.16 (1) (b) o[redacted]; ("French")

~~[NOTE: THIS IS A [redacted]APTATION OF THE "FAIR ADJUSTMENT" CONCEPT. F[redacted]2 TO 5, THE LGIC WILL PASS A REGULATION TO LIMIT THE IN[redacted]O REDUCED HYDRO BILLS TO REFLECT A FURTHER "FAIR A[redacted]". THE SUM OF ALL FAIR ADJUSTMENTS WILL CORRE[redacted]HE SUM (TIME VALUE ADJUSTED) OF THE PAYMENTS BY PAST P[redacted]YERS OF MORE THAN THEIR FAIR SHARE OF THE GREEN~~

[5] ~~N[redacted]ator: See s. 9 of the Public Authorities Protection Act.~~

~~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 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.]~~

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

~~**Determination of rates, first twelve months**~~

Rate determination

~~**6.** (1) The Ontario Energy Board shall determine~~(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] 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~~is the average rate that would be payable by a representative consumer in order for the representative consumer ~~by applying the method set out in subsection (2). 2. Determine the average~~to receive a 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]~~is 25 per cent less than the ~~monthly~~average baseline 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]

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 Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect those costs.~~

Sub-meter customers

~~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,~~(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

~~i. that begins no later than 7 p.m. on every weekday and ends,~~(4) The rate mentioned in subsection (2) shall be,

~~A. no earlier than 7 a.m. on the next day if the next day is a weekday, or~~(a) determined by the Board within seven business days after this section receives Royal Assent; and

~~B. no earlier than 12 a.m. on the next day if the next day is Saturday, Sunday or a holiday, and~~(b) effective as of the first day of the calendar month immediately following the determination.

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

Transition

~~ii. that begins no later than 12 a.m. on every Saturday, Sunday and holiday and ends no earlier than,~~(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

A. ~~12 a.m. on the next day, if the next day is Saturday, Sunday or a holiday, or~~(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

B. ~~7 a.m. on the next day if the next day is a weekday.~~ (b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate receives the difference between the rate [redacted] their invoice and the applicable rate as a lump sum credit on the fi[redacted] issued after the invoices have been adapted or by such other means a[redacted]rescribed by the regulations.

~~**Determination of rates, on and after**~~**Fair adjustment[redacted]18 to April 30, 2022**

~~7. On and after May 1, 2018, the Board shall~~ [redacted] The Lieutenant Governor in Council may, [to more fairly measure and allo[redacted]an energy costs and clean energy benefits among present and future generations[redacted]d consumers,] make regulations prescribing the rate for electricity payabl[redacted]~~consumer in the following manner:~~specified consumers and sub-me[redacted]omers during the period beginning on May 1, 2018 and ending on April 30,[redacted]

~~1. Determine the rate b~~[redacted]~~g the steps set out in section 6.~~

~~2. Adjust the rate~~ [redacted]~~ed under paragraph 1 for inflation in accordance with the regulations.~~

PART III
[redacted]LEAN ENERGY ADJUSTMENT ~~**PERIOD**~~

~~**Applica**~~[redacted]

~~**8x.** Th~~[redacted]~~plies in respect of the period beginning on May 1, 2022 and ending on Ap~~[redacted]

~~[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~~8xx. (1) ~~Subject to subsection (1.1), upon~~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 investment asset owners, 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 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~~clean energy adj[redacted]is inconsistent with the ~~Fair Allocation Plan~~fair allocation calcul[redacted]ble at the time when the payment is due; and

(b) whether the ~~payments relate~~clean e[redacted]tment relates to funding obligations that were incurred [redacted] ~~did not comply~~was inconsistent with the Financing Plan~~; and [~~[redacted] ~~UNDER CONSIDERATION. SEEMS OVERBROAD]~~.

Indebtedness of specified co[redacted]

(4) An unpaid clean energy a[redacted]t that is required to be paid by a specified consumer under this secti[redacted]tutes indebtedness of the consumer to ~~the~~each investment asset ~~owners~~o[redacted]espect of ~~their~~each owner's respective ~~interests~~interest in the investment ass[redacted]

Same

(5) The [redacted]mentioned in subsection (4) is a single and separate debt obligation owed b[redacted]ified consumer and may be enforced independently from any other paymen[redacted]ation or indebtedness owing by the specified consumer under the invoice or oth[redacted]~~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~~9xx. (1) ~~Any~~The amount of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's 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)]~~**10xx.** (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1.

True up amount

(2) ~~The Ontario Energy Board may 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]~~For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

~~**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~~1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

~~**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]~~2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

i. differences between amounts billed and amou [redacted] ted due to various factors, including applicable taxe [redacted] r defaults and delays, billing lags and write-offs, and

ii. variations in billings due to [redacted] lectricity consumption.

IESO to ~~invoice~~issue remittance notice to el [redacted] endors
~~12x~~**11xx.** (~~2~~1) The IESO shall, in accor [redacted] egulations, issue ~~an invoice~~a remittance notice to each electricity venc [redacted] he ~~clean energy adjustments~~electricity vendor's portion, as determined in ac [redacted] vith the regulations, of the clean energy adjustment in respect of a refere [redacted]

IESO to collect
(~~3~~2) The IESO shall, as a [redacted] of the investment asset ~~owner, make reasonably diligent efforts to~~owners, collect t [redacted] energy ~~adjustments~~adjustment from electricity vendors [in accordance with t [redacted] settlement process set out in the market rules made under section 32 of t [redacted] *Act, 1998]*.

Collect [redacted]
~~(3.1) T~~ [redacted] ~~shall establish an account in which to record its collection of the followi~~ [redacted] All of the following amounts received by the IESO shall, until paid to or for

the benefit of the investment asset owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those accounts:

1. Amounts ~~remitted from accounts established under section 31.~~described in subsection 12 (4).

2. Payments made by specified consumers directly to the IESO as electricity vendor~~, in respect of clean energy adjustments.~~

~~**Deposit**~~ ~~(4) The IESO shall promptly deposit all amounts received in respect of clean energy adjustments into the account established~~ under subsection 8 (~~3.1). [NOTE: CONSIDER FEASIBILITY OF DAILY SEGREGATION/ REMITTANCES]~~1).

Same, held in trust

(~~2) The amounts collected are deemed to~~4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be held in trust for the investment asset ~~owner~~owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of th [redacted] ergy ~~adjustments~~adjustment to or for the benefit of the ~~regulator~~ [redacted] t asset ~~owner~~owners in accordance with the regulations.

~~**Electricity vendor to apply rate**~~

Collection of outstanding amounts, regulat [redacted] applicable fair allocation calculation made by [redacted] ial Services Manager under Part IV, the IESO may collect the difference [redacted] onsumers.

Electricity vendor to invoice specifi [redacted] **ners**

12xx. (~~2~~1) The electricity vend [redacted] an invoice to each specified consumer for the ~~applicable~~consumer's amo [redacted] energy ~~adjustments~~adjustment in accordance with the regulation [redacted]

Electricity vendor to col [redacted]

(~~3~~2) Each electricity [redacted], as an agent of the IESO and the investment asset owners, ~~make~~ [redacted] ~~ligent efforts to~~ collect the clean energy ~~adjustments~~adj [redacted] from specified consumers~~.~~ [in accordance with the monthly settleme [redacted] out in the market rules made under section 32 of the *Electricity Act, 1998*].

Pro rating of payments

~~**14x.** (1) This section applies if, (a)~~ (3) If 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~~, 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 in respect of electricity charges for the same invoice period.

~~**Deposit**~~

Held in trust

(~~3) The~~4) All of the following amounts received by an electricity vendor shall ~~deposit the portion of the payment allocated to clean energy adjustments into the account established under X.~~, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act:

~~**Electricity vendor, account**~~

~~**15x.** (1) Each electricity vendor shall establish and maintain an a~~[redacted] ~~into which the electricity vendor deposits or receives only the following:~~

1. Payments ~~by~~received from or on behalf of specifi[redacted]ers ~~in respect of clean energy adjustments~~under subsection 8 (1).

2. Portions of payments ~~by~~received fr[redacted]f of specified consumers under subsection 8 (1) that are alloc[redacted]clean energy ~~adjustments~~adjustment under subse[redacted]3).

3. Any proceeds arising from the[redacted]e and enforcement of any rights and interests under or in respec[redacted]estment asset.

~~**Held in trust**~~

~~(2) The amounts required to b~~[redacted]~~ted or received into the account are deemed to be held in trust for the invest~~[redacted]~~et owner.~~

Remittance to IES[redacted]

(5) ~~The~~Each e[redacted]dor other than the IESO shall remit amounts ~~received in respect of clea~~[redacted] ~~adjustments~~described in subsection (5) to the IESO for the benefit of the i[redacted] ~~owner~~owners or secured parties in accordance with the regulati[redacted]

~~**Pa**~~[redacted]~~**regulatory asset**~~

Regulations
(~~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.~~ 6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.
~~[NOTE: REQUIRES FURTHER CONSIDERATION.]~~

PART IV
~~FAIR ALLOCATION PLAN AND FINANCING PLAN~~IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment
13xx. (1) [Note: To be elaborated.]

Termination
(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

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

Duties and powers
14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment asset owner.

Same
(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs
(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION ~~PLAN~~AMOUNT

~~**Minister to prepare plan**~~
Financial Services Manager to calculate fair allocation amount
~~**8.** (1) In order to fairly measure and allocate amounts described in section 8.0.1 as of a specified day 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.~~**15xx.** (1) T[redacted]al Services Manager shall calculate the fair allocation amount for the purpo[redacted]

(a) fairly measuring and allocating the estimated clea[redacted]y costs and estimated clean energy benefits among the specified consumers i[redacted]ach reference period; and

(b) aligning funding obligations that ma[redacted]red during each reference period with the allocation of the estimat[redacted]gy costs and estimated clean energy benefits across present[redacted]ure generations of specified consumers.

Amount
(1.1) The fair allocation amou[redacted] a reference period is the sum of the following amounts:

1. The amount, if [redacted]which the estimated [clean energy costs] [clean energy benefits] t[redacted] to specified consumers in respect of the reference peri[redacted]e estimated amount of [the global adjustment] that would be born[redacted]specified consumers in respect of clean energy costs [in the [redacted]is Act].

2. [redacted]ocable portion of the value of any fair adjustment, determined in [redacted]ordance with subsection (3).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

   i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

   ii. The expected number of specified consumers for each reference period.

   iii. The expected electricity consumption rates fo[redacted]erence period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calcu[redacted]r allocation amount in respect of a reference period, a fair adjustmen[redacted]e under Part II in respect of the reference period, the calculation shall incl[redacted]on of the value of the fair adjustment in the fair allocation calculation fo[redacted]re reference period.

Amendments to the ~~plan~~fair allocatio[redacted]ation

(~~2) Subject to the approval of the Lie~~[redacted]~~overnor in Council, the Minister may amend the Fair Allocation Plan~~4[redacted]ial Services Manager may amend the fair allocation calculation from tim[redacted]e ~~Minister~~Financial Services Manager considers appropriate, having [redacted] the requirements of this Act.

Submission of fair alloc[redacted]Minister

(5) The Financial Se[redacted]er shall provide to the Minister the fair allocation calculation and[redacted]ents to the fair allocation calculation.

Effectiv[redacted]

(~~3~~6) Th[redacted]~~ocation Plan~~fair allocation calculation or an amendment to the ~~plan~~fair allocati[redacted]ulation takes effect on the day that ~~the plan~~is 30 days after the fair allocation calculation or the amendment, as the case may be, is ~~approved by the Lieutenant Governor in Council~~provided to the Minister in writing.

Publication

(~~4~~7) The Minister shall ensure that the ~~Fair Allocation Plan~~fair allocation calculation and any amendments to ~~the plan~~it 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,~~

~~[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 or expected to be incurred by the IESO on or after that day 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 or expected to be incurred on or after that day. (“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 should not be allocated in respect of any period of time after April 30, 2047.~~

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

2. ~~The share of the amounts allocated to specified consumers who receive an invoice in respect of a reference period should be proportionate to a reasonable assessment of the benefits derived by those consumers during that reference period.~~

3. ~~The specified consumers to whom an invoice is issued during a reference period should not bear an unreasonably disproportionate share of the amounts allocated.~~

4. ~~Adjustments should be made over time if the Minister is of the opinion that specified consumers have paid more than is reasonably proportionate.~~

5. ~~Allocation of amounts should be determined for each reference period.~~

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

~~**Compliance**~~
~~**8.2** The IESO and the Financial Services Manager shall not, at any time, exceed the limits set out 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]~~

FINANCING PLAN

Financial Services Manager to prepare ~~plan~~Financing Plan

~~11.~~**16xx.** (1) The Financial Services Manager shall prepare and provide to the Minister a written 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~~to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred or potential transfers should be made for the purposes of this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align the expected finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period.

2. Incurrences and transfers should be implemented in a [redacted]at, as the Financial Services Manager considers to be reasonab[redacted]ost effective and reflects prevailing market terms and conditions.

3. Reasonable assumptions should be [redacted] such matters as may be prescribed.

[Note for reference: List of items for consider[redacted]gulation: (a) anticipated IESO funding shortfalls and related transfer amount[redacted]aturities of funding obligations; (c) the availability of refinancings, reden[redacted]pportunities and liquidity terms and conditions in order to achieve the obj[redacted]emplated in section X(1)(a); (d) the availability of currency and inter[redacted]ng facilities for the purpose of mitigating any differences between the ex[redacted]amounts becoming due and payable during a reference period and the fair[redacted]n amount for the reference period; (d) the amount and potential variability o[redacted]es and related financing costs; (e) available capital markets in which funding[redacted]ons may be incurred.]

Amendments [redacted] plan

(~~2) The financ~~[redacted]~~manager may propose amendments to the Financing Plan at any time.~~[redacted]cial Services Manager may amend the Financing Plan at any time, without[redacted]f the Minister, subject to the requirements set out in this section. ~~[NOTE~~[redacted]~~NANCING PLAN IS SUPPOSED TO BE FLEXIBLE, UNLIKE THE FA~~[redacted]~~AL 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.]~~

Limitation, first five year period
(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference [redacted]ween the fair allocation amount for the reference period and the am[redacted]e fair adjustment for the reference period].

Confidentiality of plan
(4) The Financing Plan is deemed to be a record subje[redacted]17 of the *Freedom of Information and Protection of Privacy Act.*

~~**Compliance with Plan**~~**Implementation of Fi[redacted]lan**
~~**11.1** The Financial Services Manager sh[redacted] the Financing Plan.~~
~~[NOTE: PROBABLY TOO RIGID A ST[redacted]IENT – SEE ABOVE. ALSO, OPG SEEMS TO HAVE ACCOUNTING [redacted]ITH THIS SORT OF MANDATORY DIRECTION – NEED TO CON[redacted]~~

~~**Contents of plan**~~
~~**12.** (1) The Financing P[redacted]be prepared in accordance with the regulations and shall include such matters[redacted]be prescribed, which may include the following: 1. A description of one[redacted]e transfers that may be made in respect of the regulatory asset established un[redacted]~~**xx.** (1) The Financial Services Manager shall incur funding obligations and[redacted]ransfers in material conformity with the applicable Financing Plan.

~~2.[redacted]ription of the basis upon which funding obligations may be incurred in a [redacted]ner that is consistent with the applicable Fair Allocation Plan.~~

Same

~~3. A description~~(2) For greater certainty, section [paramountcy of ~~the~~ funding obligations ~~mentioned in paragraph 2, which may include the following:~~] applies despite the failure of the Financial Services Manager to comply with subsection (1).

~~i. Indebtedness.~~

~~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.~~

~~iv. Refinancing an existing funding obligation by applying the net proceeds obtained by incurring other funding obligations.~~

~~[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 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~~Financing entities

(~~2) If~~3) In accordance with the Financing Plan, 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~~may establish one or more ~~special purpose~~ financing entities that may incur funding obligations and make transfers.

~~[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]~~

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

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

~~(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]~~

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~~vendor, the ~~IESO, 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~~Effect of amendment to Fair Allocation Plan

(4) No ~~change to a funding obligation shall result from an amendment to the Fair Allocation 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?]~~funding obligation incurred and no transfer made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

PART V
THE REGULATORY ASSET ~~[AND INVESTM~~[redacted]~~ET]~~

~~**Regulatory asset established**~~

~~**22.** (1) The IESO has property rights and interests, w~~[redacted]~~constitute a regulatory asset, in the recovery of the IESO f~~[redacted]~~.~~

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for [redacted] of a portion of the regulatory asset, any references in this Part to the [redacted] deemed to be references to the portion of the regulatory asset transferre[redacted]

[Note ~~to draft – Is it sufficient to say “~~[redacted]~~*ights and interests in the recovery of the IESO funding shortfall*”? Does~~ [redacted] ~~he right to enforce other parties’ obligations that would allow for the shortf~~[redacted]~~red by the IESO?]~~: This is meant to assist with clarity in the subsequent [redacted]s.]

~~**Limitation**~~

Variance account

~~(1.1) The righ~~[redacted]~~e IESO funding shortfall under subsection (1) is subject~~**19xx.** (1) The Board [redacted] accounting order to authorize the IESO to do the following~~ limits~~:

1. [redacted]~~ount recovered in respect of a reference period may not exceed the~~ [redacted]~~unt by which the [fair allocation] in respect of a reference period exceeds~~

~~the amount of the clean energy adjustment for the reference period.~~Create a variance account for the purposes of this Act.
~~[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]~~

2. ~~No part of the funding shortfall shall be recovered 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]~~Record the IESO funding shortfall in the variance account from time to time.

~~**Order**~~
~~(2) The Ontario Energy Board may,~~3. Recover the IESO funding shortfall in accordance with section X and the regulations~~, by order specify how the IESO funding shortfall must be recorded~~.

No hearing
(2) The order of the Board shall be made in writing and without holding a hearing.

~~**Recording in books determinative**~~
No appeals, etc.
(3) ~~A recording in its books is determinative of the amount of IESO funding shortfall at the time of the recording.~~No appeal lies from the order of the Board.

IESO funding shortfall
~~**22.2**~~**20xx.** (1) The IESO shall determine the IESO funding shortfall for each month in ~~a reference period by calculating the difference between~~ the following ~~amounts~~manner:

1. ~~The~~Calculate the sum of all invoice amounts issued to specified consumers for the month if Part II of this Act did not apply.

2. ~~The~~Calculate 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 value of any consideration received as part of a transfer be reflected in this section?]~~

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

(2) ~~The determination under subsection (1) shall~~

Same

adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers.

~~[NOTE: FUNDING SHORTFALL DESCRIPTION MAY ALSO RELFECT ADJUSTMENT BASED ON ESTIMATE TO ACTUAL FROM EARLIER MONTH]~~

Recording of IESO funding shortfall

(3) IESO shall record the IESO funding shortfall from time to time, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall in the variance a[redacted]eterminative of the amount of IESO funding shortfall at the time of the reco[redacted]

Regulatory asset established

21xx. (1) The IESO has the right, exercisable [redacted] with this Act and the regulations, to recover the IESO funding short[redacted]

Same, restrictions

(2) The IESO's right to recover the IES[redacted]ng shortfall under subsection (1) is subject to the following:

1. The IESO shall not [redacted]ollect the IESO funding shortfall from specified consumers [redacted]May 1, 2022.

2. The process by[redacted]e IESO may recover the IESO funding shortfall shall be establis[redacted]ard, having regard to the amount of the IESO funding shor[redacted]e to time and the [fair allocation calculation].

3. [redacted]estrictions as may be prescribed.

Transfer of regulatory asset

~~23.~~22xx. (1) The IESO may transfer all or a portion of the regulatory asset ~~in accordance with~~to any financing entity under the Financing Plan, which transfer creates the investment asset.

~~Consideration~~

Same

(2) ~~The IESO may receive~~Upon receipt of any payment in 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 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.]~~(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) unless otherwise provided for in this Act, the IESO sh[redacted]o further right, title or interest in, or any obligations in respect of, the[redacted]y asset or in the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity becom[redacted]nt asset owner and acquires an investment interest.

Validity of transfer

23xx. (1) A transfer of a regulatory asse[redacted]r this Act is a valid and enforceable sale and absolute transfer to the investme[redacted]ner of the regulatory asset, and the investment asset created by the t[redacted]be immediately vested in the transferee.

Same

(2) Without limiting subs[redacted]), any transfer that by its terms is intended to constitute a sale or absolute transfer[redacted]treated for all purposes as an absolute transfer of IESO's right to reco[redacted]funding shortfall, and not merely as a security interest, and upon the a[redacted]fer the transferor shall retain no right, title or interest in the regulatory asse[redacted]ing all rights to recover the IESO funding shortfall.

Deemed perfection, etc.
(3) At the time a transfer of a regulatory 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.

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

Priority of transfer
(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 transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset
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.~~**24xx.** If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established
~~**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~~**25xx**.
~~[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~~ (1) The 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 [redacted] payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract o[redacted]) that attach or are attendant or incidental to any of the other propert[redacted] or interests that comprise the regulatory asset owner's regula[redacted]

7. All revenue, collections, claims, pa[redacted]ney and proceeds of or derived from the rights described in paragra[redacted] regardless of whether such revenue, collections, claims, p[redacted]ceeds are imposed, invoiced, collected and maintained toget[redacted]h or commingled with other revenue, collections, claims, paymen[redacted] and proceeds.

~~**Same**~~

~~(3) An investment asset is not~~[redacted]~~ by failure to impose, attribute, invoice, accrue or collect the clean energy a~~[redacted]~~t.~~

No set off, etc.

(42) The inves[redacted]hall not be set off or reduced by any person in any circumstance, [redacted]g,

(a) [redacted]nsumer, an electricity vendor~~, the IESO~~, an agent of the investment asset [redacted]er or an owner of distribution system assets in the Province;~~ [NOTE: IF~~ [redacted]~~HE 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]~~or

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

Exercise of rights
(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act.*

Collective action required
(4) 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 [redacted]d any agreement among that collective in furtherance of the collective[redacted]ll be valid and binding on the investment asset owner as a collective in acc[redacted]ith its terms. [Note: Successors may need to be addressed here.]

Transfer of investment ~~asset~~interest
~~24. The~~**26xx.** An investment asset owner ma[redacted]ll or a portion of its rights and interests in an investment ~~asset~~interest to any [redacted]tment asset owner, including by way of a transfer of a divided or an undi[redacted] accordance with the Financing Plan.

Validity of transfer
~~25.~~**27xx.** (1) A transfer of ~~a r~~[redacted]~~asset or~~ an investment ~~asset~~interest under this Act ~~that is expressed to be a sale o~~[redacted]~~lute assignment~~ is a valid and enforceable sale and absolute ~~assignment~~transf[redacted] ~~regulatory asset or~~ investment ~~asset, as the case may be,~~interest and confers up[redacted]wner of the investment ~~asset~~interest acquired a valid property right and in[redacted], to and under the applicable investment ~~asset~~interest in accordance wi[redacted]f the transfer.

Same
(2) Wit[redacted]ting subsection (1), ~~any~~a transfer that by its terms is intended to constitu[redacted]e or absolute transfer shall be treated for all purposes as an absolute tra[redacted]~~ESO'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)~~interest, and not merely as a ~~pledge thereof~~security interest, 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)~~interest, subject to the transfer, including all rights to ~~recover the IESO funding shortfall or~~ the investment ~~asset~~interest arising after ~~such transfer. [NOTE: ADDRESSES POSSIBLE RECHARACTERIZATION CONSIDERATIONS. MARKET WILL EXPECT TO SEE THIS GIVEN SECURITIZATION CONCEPTS IN PLAY.]~~the transfer.

Deemed perfection, etc.

(3) At the time a transfer of ~~a regulatory asset or~~ an investment ~~asset~~interest 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 owner shall have priority over any liens in favour of such other persons.

~~**Administration of investment asset**~~

~~**26.** (1) The Financial Services Manager shall administer a~~ [redacted] ~~ent asset on behalf of the owner of the investment asset. [NOTE: TO BE ELA~~ [redacted] ~~ED]~~

~~**Review of costs**~~

~~(2) The Ontario Energy Board shall review th~~ [redacted] ~~rative costs of the Financial Services Manager. [NOTE: TO BE ELABOR~~ [redacted]

Investment asset owner may grant ~~ple~~ [redacted] urity interest

~~**27.**~~**28xx.** (1) ~~The owner of an~~An inv [redacted] set owner may grant a ~~pledge to or in favour of a person in, to and~~secu [redacted] ver all or a specified portion of its right, title and interest in, to and und [redacted] nt ~~asset in connection with any~~interest to or in favour of any person to secu [redacted] ing obligation.

~~**Types of pledge**~~

~~(2) A pledge may be~~ [redacted] ~~mortgage, charge, right of set-off or security interest.~~

Validity

(~~3) The~~ [redacted] ~~made to secure a funding obligation and when granted~~2) A security [redacted] granted under this Act shall be valid and enforceable in accordance with its term [redacted] ~~hall 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~~security interests

(~~x~~3) ~~For purposes~~All provisions of the *Personal Property Security Act*~~, the regulatory asset shall be~~ shall apply to the investment asset and each investment interest on the basis that it is intangible personal property~~ and any pledge made~~, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment ~~asset in respect of~~interest to secure 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, 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 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~~4) All proceeds of ~~the~~an investment ~~asset~~interest that are subject to the ~~pledge~~security interest and that are received by the applicable investment asset owner shall immediately be subject to the ~~pledge~~security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(~~9~~5) The ~~pledge~~security interest 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~~interest subject to the ~~Pledge~~security interest, subject to the written consent of the person to whom the ~~pledge~~security interest has been granted.

Same

(~~10~~6) The person to whom the ~~pledge~~security interest 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 i~~[redacted]~~tment asset that comprises less than the entire property right and interest co~~[redacted]~~by the investment asset, the right or interest shall only be enforced by the~~ [redacted]~~sset owner collectively and in coordination with all other~~ [redacted]~~et owners, and any agreement among that collective in furtheranc~~[redacted]~~llective action shall be valid and binding on the investment asset owner as a co~~[redacted]~~accordance with its terms. [Note: It seems that successors may nee~~[redacted]~~d here. Also Pledgees have not yet been addressed in this draft.]~~

~~**Exercise of rights**~~

~~**29.** The rights of the investm~~[redacted]~~wner to collect and enforce its rights and interests in, to and in respect o~~[redacted]~~estment asset shall be exercised in accordance with section [xx].~~

PART VI
MISCELLANEOUS

Appoint[redacted]t, invoicing or collection

~~**34.**~~**29xx**[redacted]cribed circumstance applies, the Lieutenant Governor in Council may by regu[redacted]ppoint 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**~~**30xx.** 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~~**31xx.** (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy ~~adjustments~~adjustment, defaults on any required remittance of ~~Clean~~the 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~~, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the ~~applying party, shall order the sequestration and payment of the Clean energy adjustment Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Regulatory Asset Owner or Pledgee.] [Such~~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**~~**32xx.** 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 investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict
~~38.~~33xx. 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,~~ security interest.

No further approvals, etc.
~~39.~~34xx. 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~~35xx. (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 [redacted] by a person mentioned in subsection (1) to which it would otherwise [redacted].

References in marketing materials and offering docume[redacted]
~~98x~~36xx. No person shall include, in marketing materials [redacted]g documents relating to the financing of funding obligations, references to a[redacted]igations, guarantees or undertakings arising under this section unless [redacted] requirements, if any, are satisfied.

Non-application, Financial Administra[redacted]
~~99x~~37xx. Section 28 of the *Financial A[redacted]ration Act* does not apply with respect to any transaction or agreement or unde[redacted]quired, permitted, contemplated or authorized, directly or indirectly[redacted]ct.

Regulations
~~100x~~38xx. The Lieutena[redacted]nor in Council may make regulations,

(a) defining a[redacted]in this Act….

(b) pres[redacted]ypes of payment obligations that constitute funding obligations;

[7] [redacted] s. 51 of the Electricity Act, 1998

(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]
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.~~1)~~ ~~to enter~~0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements wi[redacted]~~cial purpose financing entities established under (name of~~ [redacted]y person for the purposes of the *Ontario* Fair Hydro *Plan* [redacted]*17*;

(~~q.2)~~ ~~to engage~~ii) engaging in activitie[redacted]aking payments to and receiving payments ~~fro~~[redacted]~~purpose financing entities established under (name of~~ [redacted]templated under the *Ontario* Fair Hydro *Plan* *Act*~~?)], as requi~~[redacted]~~hat Act,~~, *2017* and to engage in related settlement acti[redacted]

(~~q.3)~~ ~~to engage~~iii) en[redacted] activities related to the creation, transfer and administr[redacted]gulatory asset created under ~~[(name of new~~the *Ont*[redacted]*Hydro Plan Act*~~?)]~~, *2017*, which activities may include[redacted]

(~~i~~iv) in[redacted]ies in relation to the regulatory asset

(~~ii~~v[redacted]ng the regulatory asset ~~to [any special purpose financing~~ [redacted]~~ies established under (name of new Fair Hydro Act?)]~~for [redacted]ideration;

8 ~~Fl[redacted]ndments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as an[redacted]o the EA, 1998).~~

(~~iii~~) ~~transferring the regulatory asset to third parties; (q.4~~vi) acting as a recovery agent under the ~~[(name of new~~*Ontario Fair Hydro Plan Act*~~?)]~~*, 2017*;

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

~~Objects of~~Same, Ontario ~~Power Generation Inc.~~Fair Hydro Plan Act, 2017

53.1 (~~1) The~~1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include~~, in addition to any other objects,~~ exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. ~~Establishing, operating and supervising the activities~~ [redacted] ~~ecial purpose financing entities established under (name of new Fa~~ [redacted] ~~ct?)].~~Preparing reports on behalf of the financing entity.

3. ~~Providing financial and other support to the I~~ [redacted] ~~ctivities under the [name of new Fair Hydro Act?].~~Enf [redacted] ts of the financing entity.

4. ~~Engaging in such financing, borrow~~ [redacted] ~~g and related activities and transactions to support the IES~~ [redacted] ~~m or long-term financing.~~Signing offering doc [redacted] s as sponsor or otherwise on behalf of the financing entity.

5. ~~Providing equity, no~~ [redacted] ~~prescribed amount, to support the financing capacity [any specia~~ [redacted] ~~e financing entities established under (name of new Fair Hydro Act~~ [redacted] ising the powers and performing the duties of the Financial Servi [redacted] ager under the *Ontario Fair Hydro Plan Act, 2017*

~~[Note: Still to~~ [redacted] ~~for the new F~~ [redacted] ~~o Bill: *if OPG is the Financial Services Manager, it shall be required*~~ [redacted] ~~*accounting of the amounts it charges the trust for the financing entity to*~~ [redacted] ~~*60 days in advance of the commencement of the fiscal year for the OPG trust/sp*~~ [redacted] ~~*urpose vehicle*]~~

6.Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017.*

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~~the *Ontario Fair Hydro Plan* *Act*~~].~~, *2017.*

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 [redacted]orporation does not apply in respect of amounts payable to Ontario Power Gene[redacted] or a subsidiary of Ontario Power Generation Inc. as a result of its functions[redacted]ancial Services Manager under ~~[new~~the *Ontario Fair Hydro Plan* *Act*~~].~~, *20*[redacted]

[Note: Drafting still to be added to the EA co[redacted]endments: ***All fees charged by OPG as the FSM shall be approved by the*** [redacted]***re they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONT[redacted]ERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *O*[redacted]***y Board Act, 1998*** **would be amended by adding the following paragr**[redacted]

6. To facilitate the [redacted]ation of the [TBD - language should link up with language from [redacted]]

205x. Section [redacted] **Act would be amended by adding the following subsection**

[Note - s[redacted]*aft new subs. 70 (2.1)* ~~– instructions on pp. 8-9 of Rider instruct~~[redacted]~~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~~ESTIMATED FINANCE AMOUNT

~~[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]~~

Estimated finance amount

1. The estimated finance amount ~~of the clean energy adjustment~~ for a reference period shall be determined by ~~calculating~~estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all ~~payments made by owners of an investment asset~~ [amounts that are payable during the reference period?] by or on be[redacted] investment asset owners to satisfy an obligation to repay, redeem[redacted]hase, or to provide for the repayment, redemption or repurchase[redacted]or a portion of the amount advanced to the owners under a funding [redacted]n, excluding any payment made by applying the proceeds of a [redacted]

~~[Note: Para. 1 is the definition of "repayment[redacted]kes doc. However, that definition include bracketed text that says: (in[redacted]king Finance Reserve Deposits). I don't understand this because (1) Finance R[redacted]osit is listed as a separate line item in the definition of "finance amoun[redacted]para. 4 below). In order to avoid duplication, can we exclude "finance[redacted]posits" from para. 1?]~~

~~[NOTE THAT SHO[redacted]ONCEPT OF RESERVE DEPOSITS AS INCURRENCES IF[redacted]LD MEAN THAT THE PROCEEDS FROM A TRANSFER W[redacted]REDUCED FROM FACE VALUE WITH THE RESULT THA[redacted]WOULD BE TRANSFERRING IAs AT A DISCOU[redacted]~~

2. The [redacted]nding costs for the reference period, ~~as determined under~~ [redacted]~~his Schedule.~~determined as follows:

[redacted] Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

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

3. The sum of all amounts payable during the reference period by or on behalf of ~~owners of~~ investment ~~assets~~asset owners 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 t[redacted]e period, as determined under section 3 to this Schedule.

5. The sum of any other amounts paya[redacted] ~~of investment assets for~~during the reference period by o[redacted]f investment asset owners that were incurred or committed to direc[redacted]ectly in connection with the incurrence of funding obligati[redacted]nancing Plan during the reference period, which may include suc[redacted]nts as may be prescribed.
~~[Note: Para. 5 is based on the definit[redacted]ditional funding charges".]~~

Funding costs
2. For the purposes of paragra[redacted]section 1 to this Schedule, the funding costs for a reference period are deter[redacted] taking the following steps:

~~1. Calculate t[redacted]egate of all interest and other periodic finance charges accr[redacted] becoming payable or paid by or on behalf of owners of inve[redacted]ssets during the reference period in respect of all funding [redacted]including the following:~~

~~[redacted]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?]~~by or on behalf of investment asset owners 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~~by or on behalf of investment asset owners 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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Input:	
Document 1 ID	file://\\Catou-ogfspuwss\217803$\G\Les Wong's Documents\Fair Hydro Plan\Legislation\Fair Hydro Act (April 15 2017) Consultationv4.docx
Description	Fair Hydro Act (April 15 2017) Consultationv4
Document 2 ID	file://\\Catou-ogfspuwss\217803$\G\Les Wong's Documents\Fair Hydro Plan\Legislation\Fair Hydro Plan Act (April 20 2017) Consultation v3.docx
Description	Fair Hydro Plan Act (April 20 2017) Consultation v3
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	570
Deletions	567
Moved from	25
Moved to	25
Style change	0
Format changed	0
Total changes	1187