

Version ~~3~~4

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A proposal to create Legislation.

~~Ontario's Fair Hydro Plan Act, 2017,~~ An Act to provide for the fair allocation of costs of electricity over time, if enacted

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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 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/LA* vs. *RA/LA 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. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.¹ These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

~~The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment 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.~~

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than \$50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second,

¹ ~~Note~~FLS: please see the preamble of the *Green Energy Act, 2009*.

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

the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments, and the ~~raising of money to fund the investments,~~³ associated charges to consumers are allocated fairly among present and future generations of consumers.

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

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I GENERAL

Interpretation

Definitions

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 or accruing to 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 value of the costs allocated to specified consumers ~~during the reference period~~ as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

- (a) the estimated costs ~~amounts~~ to be ~~incurred~~ paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,
 - (i) renewable energy generation or capacity,
 - (ii) conservation and demand management, ~~including~~
 - (iii) energy storage,
 - ~~(iii)~~ (iv) energy efficiency,
 - ~~(iv)~~ (v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or
 - ~~(v)~~ (vi) 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 sources and technologies,
- (b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and
- (c) promoting conservation and demand management; (“French”)

“electricity vendor”⁴² means ~~the IESO,~~

- (a) a licensed distributor,
- (b) a licensed retailer,
- (c) the IESO in circumstances where the IESO directly invoices a specified consumer, or
- (d) such other person as may be prescribed; (“French”)

“fair ~~adjustment~~” ~~means the determination of the rate payable for electricity in accordance with Part II; (“French”)~~ allocation amount” means the amount determined in under section 15xx;

“financing entity” means an entity established or caused to be established under subsection 17xx (3); (“French”)

“Financial Services Manager” means ~~Ontario Power Generation Inc. [or such other person or entity as may be appointed as~~ the Financial Services Manager ~~by the Minister~~ appointed under section ~~**~~ 13xx; (“French”)

“Financing Plan” means the plan prepared under section ~~X~~ 16xx, as amended from time to time in accordance with this Act; (“French”)

“funding obligation” means ,

- (a) a payment obligation incurred ~~by or on behalf of the~~ in connection with the transfer of a regulatory asset ~~owner or an investment asset owner under section X or the refinancing of an existing funding obligation, or~~
- (b) a payment obligation that meets such other criteria as may be prescribed; (“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”)

⁴ ~~Note~~ ² FLS - this is similar to the definition of “electricity vendor” in the Ontario Rebate for Electricity Consumers Act, 2016

“investment asset” means the ~~investment asset created as~~ rights and interests described in section 22xx; (“French”)

“investment ~~asset~~interest owner” means a financing entity that ~~acquires~~has acquired and holds an investment interest ~~in the investment asset~~; (“French”)

“investment interest” means ,

- (a) an ownership interest in the ~~investment asset, which entitles an~~ investment asset-
~~owner to, and~~
- (b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the ~~ownership~~-interest is transferred; (“French”)

“invoice amount” means ~~the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario during to a period of time specified on an invoice issued by an electricity vendor~~consumer; (“French”)

“invoice period” means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; (“French”)

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

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

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

“Ontario Power Generation Inc.” means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; (“Ontario Power Generation Inc.”)

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

“reference period” means,

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

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or
~~such shorter~~

(ii) any period shorter than six months, as may be ~~set out in the Fair Allocation Plan~~prescribed; (“French”)

“refinancing” means ~~a, subject to the regulations, a redemption,~~ repayment or repurchase of a funding obligation ~~for cancellation by or on behalf 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 right and interest established under section ~~X to recover the IESO funding shortfall~~21xx; (“French”)

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

“specified consumer” means,

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

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

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

“transfer” means ~~an assignment, conveyance, disposition or sale~~ [TBD]; (“French”)

“unit sub-metering” has the same meaning as in the Energy Consumer Protection Act, 2010; (“activités liées aux compteurs divisionnaires d’unité”)

“unit sub-meter provider” has the same meaning as in the *Energy Consumer Protection Act, 2010*; (“fournisseur de compteurs divisionnaires d’unité”)

Specified consumers

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

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.
2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.
3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.
4. The person’s account with the electricity vendor relates to,
 - i. a dwelling,
 - ii. a property within the meaning of the *Condominium Act, 1998*,
 - iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or
 - iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.
5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to ~~subsection (2.2) and~~ the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

- i. The commodity price of the electricity used ~~during the invoice period~~.
 - ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act*, ~~1998~~ 1998 and in effect on April 30, 2017.
 - iii. 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~~ in respect of the amounts mentioned in subparagraphs i, ii and iii;
 - v. Any other amounts as may be prescribed.
2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. (“French”)

Same, exclusions

(2.2) ~~Except as otherwise prescribed by~~ Subject to the regulations, ~~the~~ an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.
2. Penalties or interest.
3. Charges that do not relate to the use of electricity.
4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:
 - i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as “microFIT”.
 - ii. A charge labelled as a “specific service charge” or “retail service charge”.
 - iii. A rate rider [of the prescribed type or class].
5. Any other prescribed amounts.

Representative consumer

~~(3) For the purposes of the definition of “representative consumer” in subsection (1), the consumer,~~

- ~~(a) purchases electricity directly from Toronto Hydro;~~
- ~~(b) has an account with Toronto Hydro that falls within a residential rate classification as specified in a rate order made by the Board under section 78 of the *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.~~

Effect of invalidity, etc.⁵³

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if ~~some~~one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

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

Purpose

3xx. (1) The purposes of this Act are,⁶⁴

⁵~~Note~~³FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

⁶~~Note~~⁴FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

- (a) to ensure that clean energy costs are fairly allocated among present and future specified consumers ~~over time and that the process by which the Province raises money to fund the costs reflects~~ and reflect the fair allocation; and
- (b) to recognize that clean energy benefits ~~that~~ have accrued and ~~that~~ will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

- (a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;
- (b) except as expressly permitted by this Act, reduce the ~~amount of the~~ clean energy adjustment determined under this Act 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 on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding ~~financial commitments, financial arrangements, indemnities~~ the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

- (a) authorize the Minister of Finance, on behalf of the Province,
 - (i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

- (ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;
- (b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and
- (c) specify a maximum liability for the guarantee or indemnity.

PART II

FAIR ADJUSTMENT OF ELECTRICITY RATES

~~Fair adjustment, May 1, 2017 to April 30, 2018~~

Definition

Definitions

6xx. ~~(1)~~ In this ~~section~~ Part,

~~“average baseline invoice amount” means the average monthly invoice amount that would be payable by a representative consumer under the average baseline rate~~ effective date” means the date determined under section 6.5xx; (“French”)

~~“average baseline rate” means the average rate that would be payable effective May 1, 2017 by~~ RPP rate” means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan”; (“French”)

“specified RPP consumer” means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, ~~as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act;~~
2. The consumer is subject to the RPP rate. (“French”)

~~“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”)~~

Rate determination

Specified RPP consumer, first fair adjustment

6.1xx ~~(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~~ (1) The rate for electricity payable by a specified RPP consumer for the period beginning on May 1, 2017, the effective date and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is 25 per cent less lower than the average baseline monthly invoice amount for that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the Ontario Energy Board Act, 1998.

Sub-meter customers

Same

~~(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).~~ For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

Determining rate

~~(4) The rate mentioned in subsection (2) shall be—~~

Specified consumers (non-RPP), first fair adjustment

6.2xx The rate for electricity payable by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1).

Determination by Board

~~(a) determined by the Board within~~ **6.3xx** The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent; and.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt its billing practices and invoices to reflect the new rates.

Effective date

~~(b)~~ 6.5xx The rates determined under section 6.3xx are effective ~~as~~ on the earlier of the following days:

1. The first day of the ~~calendar~~ month immediately following the ~~determination~~ last day of the seven-day period referred to in section 6.4xx.
2. July 1, 2017.

Transition

6.6xx ~~(5) If, for technical or operational reasons,~~ 1) This section applies if 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,~~ section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.
2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

- (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) ~~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 determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

~~Fair adjustment, May 1, 2018 to April 30, 2022~~

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may, ~~[to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,]~~ make regulations prescribing the ~~rate~~methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

Sub-meter customers

7.1xx 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 applicable rate determined under this Part.

PART III CLEAN ENERGY ADJUSTMENT

Specified consumers to pay ~~clean energy adjustment~~

8xx. (1) Upon receipt of an invoice that includes ~~an amount in respect of the~~ clean energy adjustment, a specified consumer shall pay the ~~clean energy adjustment~~amount to the electricity vendor, as agent of the investment ~~asset~~interest 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.

Same

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

- (a) whether the clean energy adjustment ~~is~~was determined in a manner that was inconsistent with ~~the fair allocation calculation applicable at the time when the payment is due~~this Act; and
- (b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was ~~inconsistent~~not in material conformity with the Financing Plan.

Indebtedness of specified consumer

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

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer ~~under the invoice or otherwise.~~

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of ~~clean energy adjustment~~ amount

9xx. (1) ~~The~~ An amount in respect 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~~ resulting from the clean energy 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 a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment**Financial Services Manager to determine**

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period ~~shall be determined as follows:~~ by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, true up amount

~~1. Calculate the~~ (2) The estimated finance amount ~~for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.~~ ~~2. Add~~ and the true up amount ~~for the reference period, as shall be~~ determined in accordance with the ~~prescribed method, to the estimated finance amount calculated~~ regulations.

Regulations re true up amount

(3) The regulations under ~~paragraph 1.~~

~~True up amount~~ (2) ~~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~~ subsection (2) shall have regard to the following principles:

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.
2. The method for determining the true up amount should take into account historical and reasonably foreseeable,
 - i. differences between the estimated and actual finance amount for the immediately preceding reference period,
 - ii. differences between amounts ~~billed~~invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and
 - ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to ~~issue remittance notice to electricity vendors~~ receive amounts

~~11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period.~~

~~IESO to collect~~ (2) The IESO shall, as an agent of the investment ~~asset~~interest owners, ~~collect~~receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the ~~monthly settlement process set out in regulations and~~ the market rules made under section 32 of the *Electricity Act, 1998/1998*.

Collection account **Account**

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment ~~asset~~interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of ~~collecting~~receiving those ~~accounts~~amounts:

1. Amounts described in subsection ~~1211xx~~ (42).
2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(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~~interest owner ~~in accordance with subsection (6)~~, be ~~received and~~ held in trust ~~by the IESO~~ for the investment ~~asset~~interest 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 the clean energy adjustment to or for the benefit of the investment ~~asset~~interest owners in accordance with the regulations.

~~Collection of outstanding amounts, regulatory asset~~

~~(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect the difference from specified consumers.~~

Electricity vendor to invoice specified consumers

12xx. (1) ~~The~~Each electricity vendor shall issue an invoice to each ~~of its~~ specified ~~consumer~~consumers for the ~~amount payable by the~~ consumer²~~s amount in respect~~ of the clean energy adjustment, ~~as determined by applying the rate set by the Board under subsection 10xx (2) and~~ in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as ~~an agent of the IESO and~~ the investment ~~asset~~interest owners, collect ~~amounts in respect of~~ the clean energy adjustment from specified consumers ~~in accordance with the~~ ~~monthly settlement process set out in the market rules made under section 32 of the Electricity Act, 1998/~~regulations.

Pro rating of payments

(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 the amount paid is less than the total amount payable, 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~~ in respect of the same ~~invoice~~ period.

Held in trust

(4) ~~All of the following amounts~~ Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment asset interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment ~~asset owners or a secured party to whom a security interest in an investment interest is granted under this Act:~~

- ~~1. Payments received from or on behalf of specified consumers under subsection 8 (1).~~
- ~~2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).~~ 3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset interest owners.

Remittance to IESO

(5) Each electricity vendor ~~other than the IESO~~ shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset interest owners ~~or secured parties~~ in accordance with the regulations.

Regulations

~~(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.~~

PART IV IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

~~13xx. (1) [Note: To be elaborated.]~~ 13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

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~~(2) The Minister may terminate an appointment,~~the Minister of a Financial Services Manager and~~ 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~~interest owners.

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~~10xx.
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 AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate ~~the~~^a fair allocation amount ~~for the purposes of;~~ ^(a) in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of ~~each~~^{the} reference period;~~and.~~

Timing of calculation

~~(b) aligning funding obligations that may be~~^{1.1)} The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during each the reference period] ~~with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers~~.

Amount

~~(1.1.2)~~ The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated ~~clean energy costs~~^H and estimated clean energy benefits ~~to be~~ allocated to specified consumers in respect of the reference period ~~exceeds~~^{would have exceeded} the estimated amount of [the global adjustment] ~~that would be~~ the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs ~~in~~^{for} the ~~absence of this Act~~^{reference period}.
2. ~~An allocable~~^A portion of the value of any fair adjustment, ~~determined in accordance with subsection (3).~~ that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the ~~fair allocation amount~~ [or in developing the fair allocation calculation?], ~~subject to subsection (3)~~ estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] 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~~allocated to the specified consumers in respect of a reference period should be determined ~~based on~~ [Insert principles] ~~in accordance with the regulations.~~
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~~in respect of each reference period.
 - iii. The expected electricity consumption rates ~~for~~in respect of each reference period.

~~Allocation of fair adjustment~~

Method

~~(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period.~~

~~Amendments to the fair allocation calculation~~

~~(4) The Financial Services Manager may amend the~~shall calculate a fair allocation ~~calculation from time to time,~~amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

~~Submission of fair allocation~~Notification to Minister

~~(5) The Financial Services Manager shall provide to~~notify the Minister of the methods used to calculate the fair allocation ~~calculation~~amount and any ~~amendments to the fair allocation calculation~~changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare ~~and provide to the Minister~~ a written plan entitled the Financing 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 acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

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 with the ~~expected~~estimated finance amount, as determined ~~under Schedule 4 in accordance with the regulations,~~ that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined ~~for~~in respect of 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~~in respect of the reference period.
2. Incurrences ~~and transfers~~ should be implemented in a manner that, as in the opinion of the Financial Services Manager ~~considers to be,~~ is reasonable, ~~is~~ cost effective and that reflects prevailing market terms and conditions.
3. Reasonable assumptions should be made regarding such matters as may be prescribed.

~~[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount~~

~~and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]~~

~~Amendments to approved plan~~

~~(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.~~

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 amounts payable in respect of the clean energy adjustment ~~for~~in respect of 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 between the fair allocation amount for in respect of the reference period and the amount of the fair adjustment for in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

~~Confidentiality of plan~~

~~(45) The Financing Plan is following are deemed to be ~~a record~~records subject to ~~section-17~~clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*.~~

1. The Financing Plan.
2. Reports referred to in subsection (3.1).
3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations ~~and make transfers~~ in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, ~~section [paramountcy of funding obligations]~~ subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations ~~and make transfers~~.

Prohibition

~~(33.1)~~ (1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., 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 or other agreement.

Effect of amendment to ~~Fair Allocation Plan~~ fair allocation amount

(4) ~~No~~ Each funding obligation incurred and ~~no~~ each transfer made by ~~the Financial Services Manager shall be affected by any inconsistency~~ a financing entity is deemed to be consistent with the Financing Plan, ~~including any inconsistency with the principles set out in section X and [the fair allocation amount].~~

PART V THE REGULATORY ASSET

~~Interpretation, portion of regulatory asset~~

~~**18xx.** If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.~~

~~[Note: This is meant to assist with clarity in the subsequent provisions.]~~

Variance account

~~19xx. (1) The Board shall issue an accounting order to authorize the IESO to do the following:~~

- ~~1. Create a variance account for the purposes of this Act.~~
- ~~2. Record the IESO funding shortfall in the variance account from time to time.~~
- ~~3. Recover the IESO funding shortfall in accordance with section X and the regulations.~~

No hearing

~~(2) The order of the Board shall be made in writing and without holding a hearing.~~

No appeals, etc.

~~(3) No appeal lies from the order of the Board.~~

IESO funding shortfall

~~20xx. (1) The IESO shall determine the~~ IESO funding shortfall for each month ~~in the following manner:~~ shall be determined in accordance with the regulations.

Electricity vendors to provide information

- ~~1. Calculate the sum of all invoice amounts issued to specified consumers for the month if Part II of this Act did not apply.~~ (2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.
- ~~2. Calculate the sum of all invoice amounts issued to specified consumers for the month.~~
- ~~3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.~~

Same

~~(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity used by specified consumers, the IESO shall record an adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers.~~ 3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

~~20.1xx~~ (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording ~~of IESO funding shortfall~~ in variance account

~~(32)~~ The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall ~~from time to time, including adjustments~~ for each month.
2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21~~xx~~ and any transfer under section ~~22, in the variance account~~22~~xx~~.
3. Such other adjustments as may be prescribed.

Recording determinative

~~(4) A3~~ Subject to any finding of [manifest error], a recording ~~of~~ by the IESO ~~funding shortfall~~ in the variance account ~~is~~ of the balance is, as of the time of the recording, determinative of the ~~amount of IESO funding shortfall~~ balance at the time ~~of the recording~~.

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the ~~IESO funding shortfall~~ balance recorded in the variance account from specified consumers.

~~Same, restrictions~~

Limitation

~~(2) The IESO's right to recover the IESO funding shortfall under~~ Despite subsection (1) ~~is subject to, the following: 1. The IESO shall not be entitled to collect the IESO funding shortfall~~ all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

~~2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].~~ (3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

~~3- Such other restrictions as may be prescribed.~~ (4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

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

Same

(2) Upon receipt by IESO of ~~any~~ payment in consideration ~~for the transfer,~~

- (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 shall have~~ of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity ~~becomes an investment asset owner and~~ acquires an investment interest and becomes an investment asset owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment ~~asset~~interest owner of the regulatory asset, ~~and the investment asset created by the transfer shall be immediately vested in the transferee.~~

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including 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.

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~~

Effect of transfer

~~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.~~ (1) The first transfer of the regulatory asset or a portion of it creates the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests ~~without duplication of~~ investment interest owners:

1. The right to impose, ~~bill,~~ invoice, collect ~~and,~~ receive and recover amounts in respect of 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 and recover amounts in respect of the clean energy adjustment that are imposed, ~~billed and~~ invoiced and recoverable 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 for amounts in respect of the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.
6. All rights of any kind ~~(whether in tort, contract or otherwise) that attach or are attendant or incidental~~ related to any of the other property rights or interests that comprise the ~~regulatory asset owner's regulatory asset~~ investment interest.
7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether ~~such revenue, collections, claims, payments and proceeds are imposed,~~ it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

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

- (a) by a consumer, an electricity vendor, an agent of the investment asset interest owner or an owner of distribution system assets in the Province;
- (b) in connection with any default, ~~bankruptcy, reorganization or other insolvency proceeding~~ of a person mentioned in clause (a); 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~~ Part III of this Act.

Collective action required

(4) If the investment asset interest 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 interest owner collectively and in coordination with all other investment asset interest

owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment ~~asset~~interest owner as a collective in accordance with its terms.

[Note: Successors may need to be addressed here.]

Transfer of investment interest

26xx. An investment ~~asset~~interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment ~~asset~~interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon ~~the owner of the investment interest acquired~~asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment ~~asset~~interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

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

Investment ~~asset~~interest owner may grant security interest

28xx. (1) An investment ~~asset~~interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the ~~owner of an~~ investment interest owner 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.

Proceeds

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

Perfection

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

Same

(6) The person to whom the 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~~ccount 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.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

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

31xx. (1) A court in the Province may, upon application by an investment ~~asset~~interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment ~~asset~~interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

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

Same

~~(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order.~~

Choice of law

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

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 security interest.

No further approvals, etc.

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~~determination of the ~~Fair Allocation Plan~~fair allocation amount.

Immunity

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 a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under ~~this~~ section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28⁷⁵

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations; in respect of the following matters:

- (a) ~~defining any term used in this Act....~~1. ⁶Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.
- 2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

⁷~~Note~~⁵ FLS - see s. 51 of the Electricity Act, 1998

⁶ FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

- (b) ~~prescribing~~^x Prescribing types of payment obligations that constitute funding obligations;
- (a)x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment~~;~~;
- (b)x. governing the inclusion of ~~adjustments~~^{information} 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~~]

- x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act⁷;
- x. prescribing the time within which any action required by this Act may be required to be done;
- x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII⁸ AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

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

- (q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *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 with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

⁷ FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

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

- (ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;
- (iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,
- (iv) incurring liabilities in relation to the regulatory asset
- (v) transferring the regulatory asset for consideration;
- (vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out “and” at the end of clause (a) and by adding the following clauses:

- (c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and
- (d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(1.1) Subsection 25.33 (2) of the Act is amended by striking out “and” at the end of clause (a) and by adding the following clauses:

- (c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and
- (d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

- 4. A consumer who is,
 - i. a [specified consumer within the meaning of] the Ontario Fair Hydro Plan Act, 2017, or

- ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998*].

(3) Clause 25.33 (4) (b) of the Act is amended by adding “or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*” at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding “or under the *Ontario Fair Hydro Plan Act, 2017*” at the end

201x. Section 53.1 of the Act ~~would be~~ is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under ~~that~~the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of ~~the *Ontario Fair Hydro Plan*~~that ~~Act, 2017,~~ including ~~the following:~~ 1. ~~Entering~~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 be paid by~~ the financing ~~entity~~entities for those services.

~~2. Preparing reports on behalf of the financing entity.~~

~~3. Enforcing the rights of the financing entity.~~

~~4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.~~

~~5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*~~

~~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.

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

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Deemed assets, entity

~~202x. Section 89 of the Act would be amended by adding the following subsection:~~ (1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

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

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

~~subsection:~~ (a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

Exception

~~(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to b) the assets and liabilities of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.~~ any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

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

Definition, financing entity

(1.4) For the purposes of this section, “financing entity” has the same meaning as in the *Fair Hydro Plan Act, 2017*.

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

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

6. To facilitate the implementation of the ~~[TBD – language should link up with language from new Act.]~~ *Ontario Fair Hydro Plan Act, 2017*.

205x. ~~Section~~ Subsection 70 (2.1) of the Act ~~would be~~ is amended by adding the following ~~subsection~~ paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.
2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.
3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

~~[Note – still need to draft new subs. 70 (2.1)]~~

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

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~~
~~ESTIMATED FINANCE AMOUNT~~

Estimated finance amount

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

- ~~1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.~~
- ~~2. The sum of all funding costs for the reference period, determined as follows:~~
 - ~~i. 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 investment 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.~~
- ~~4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.~~
- ~~5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the~~

~~Financing Plan during the reference period, which may include such amounts as may be prescribed.~~

Funding costs

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

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:~~

- ~~1. Calculate the sum of all amounts deposited 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 by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.~~
- ~~3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.~~

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Padding cell	

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