APPENDIX 2: FAIR HYDRO PLAN STRUCTURE

PART A SUMMARY OF ONTARIO'S DRAFT PROPOSED FAIR HYDRO PLAN, "AN ACT TO PROVIDE THE FAIR ALLOCATION OF COSTS OF ELECTRICITY OVER TIME"

SUMMARY OF THE ONTARIO FAIR HYDRO PLAN ACT, 2017, IF ENACTED (THE "ACT")

The following is a high level summary of the key provisions of the Act.[1]

1. **Purpose of the Act**

- to ensure that clean energy costs and clean energy benefits are fairly allocated among present and future specified consumers (described below);
- to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province; and
- to align clean energy costs with clean energy benefits, in order to provide fairness for specified consumers.

2. **Provincial Pledge & Guarantees**

- No action or omission by the Ontario Energy Board (the "**OEB**"), the Minister of Energy (the "**Minister**") or the Crown will be effective to reduce, impair, postpone or terminate the obligations of specified consumers to pay amounts in respect of the clean energy adjustment (described below) or to impair or postpone the invoicing, collection or remittance of the clean energy adjustment.
- The Minister and the Minister of Finance may together, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province with any person in respect of the Act, including agreements regarding the performance of IESO or electricity vendors under the Act or similar transactions.
- The Lieutenant Governor in Council may, by order: (i) authorize the Minister and the Minister of Finance, acting together on behalf of the Province, to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment asset on behalf of the Province, including determining the terms of any such guarantee or indemnity; and (ii) specify terms and conditions that must be included in any such guarantee or indemnity.

[1] This summary is based on the May 1, 2017 draft legislation.

3. **<u>Specified Consumers & Reduction to Electricity Bills (such reduction, the "fair adjustment")</u>**

- The class of "specified consumer" eligible for the reduction in electricity bills under the Act includes consumers that are eligible for the Ontario Rebate for Electricity Consumers (OREC) program (or such other person as may be prescribed by regulation).

- From July 1, 2017 until April 30, 2018, electricity rates payable by a "regulated rate consumer" (a specified consumer that is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1988* (the "**OEB Act**")) will be the rate that would result in a fictional regulated rate consumer who meets the prescribed criteria being charged an invoice amount that is 25% less than the regulated rate that would otherwise have been determined by the OEB (which reduction includes the existing 8% OREC reduction).

- The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the OEB after April 30, 2018 for the purpose of, among other things, determining electricity rates for specified consumers.

- Any prescribed methodology to be applied after June 30, 2021 must have regard to the fair allocation amount (described below), any clean energy adjustments payable and such other matters as may be prescribed.

4. **<u>Creation and Transfer of Regulatory Asset</u>**

- Each month, IESO will, in accordance with the regulations, determine the shortfall resulting from the fair adjustment and record this amount in a variance account.

- IESO will have the right to recover the balance recorded in the variance account from specified consumers and this right will be a "regulatory asset" under the Act. IESO will not be entitled to collect the balance recorded in the variance account from specified consumers before May 1, 2021.

- IESO may from time to time transfer a specified portion of the regulatory asset to a financing entity established by OPG, in its capacity as Financial Services Manager, in accordance with the Financing Plan (described below) for a cash purchase price and upon such sale the balance in IESO's variance account will be reduced by the amount of such payment.

- Financing entities may incur funding obligations to purchase all or a portion of the regulatory asset from IESO, but are under no obligation to make such purchases.

- Upon the transfer of all or a portion of the regulatory asset to a financing entity, the financing entity acquires an interest in the investment asset (called an "investment interest") that is a current and irrevocable property right consisting of the right to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers or electricity vendors, as applicable.

5. Clean Energy Adjustment

- The "clean energy adjustment" is the amount that will be payable by specified consumers to cover the cost of the fair adjustment and the costs to finance the fair adjustment.

- OPG, as Financial Services Manager, will determine the clean energy adjustment payable by specified consumers for each month of a reference period.[2] The clean energy adjustment is equal to the estimated finance amount in respect of a reference period, *plus* the true up amount (determined in accordance with the regulations) in respect of the reference period, *divided by* the number of months in a reference period.[3]

- The IESO will, as an agent for each financing entity, collect the clean energy adjustment from electricity vendors, which will in turn collect such amounts from specified consumers, and such amounts will be remitted by IESO to the financing entity.

- If electricity bills are not paid in full by specified consumers, payments shall be allocated to the clean energy adjustment and other amounts payable under the bill on a pro rata basis.

6. Fair Allocation Amount

- Before the first funding obligation is incurred, the Minister will calculate a fair allocation amount (i.e. an amount used to measure and allocate the estimated clean energy costs and estimated clean energy benefits fairly among specified consumers) in respect of each reference period by applying such methods as the Minister considers appropriate and in accordance with certain steps, and with regard to certain principles, as set out in the Act.

- The Minister will provide the fair allocation amount in respect of each reference period to the Financial Services Manager.

- A calculation of the fair allocation amount may be changed by such person as prescribed by the regulations. However, no such change shall effect any clean energy adjustment that has been determined or any funding obligation that has been incurred.

7. OPG's Role as Financial Services Manager & the Financing Plan

- OPG is appointed as Financial Services Manager under the Act.

- As Financial Services Manager, OPG will prepare and provide to the Minister a Financing Plan to be used to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest. OPG may amend the Financing Plan at any time.

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[2] In the Act, "reference period" refers to the period beginning on July 1, 2017 and ending on October 31, 2017 and every six month period thereafter from November 1, 2017 to April 30, 2047 (or such shorter period as may be prescribed in the regulations).

[3] The parties intend that any taxes that may be payable by a financing entity will be recovered from ratepayers. OPG understands that the Province will address this in the regulations.

- OPG, as Financial Services Manager, will administer the investment asset on behalf of the financing entities.

- Subject to any limitations prescribed in the regulations, OPG, as Financial Services Manager, may establish and charge fees (after submitting them to the OEB for approval) to recover its costs as Financial Services Manager and to recover any other type of expenditure which is permitted under regulation to be recovered.[4]

- The Financing Plan will be prepared having regard to the following principles:

  (i) funding obligations should be incurred such that, along with any funding obligations already incurred, the estimated finance amount that would, subject to any refinancing, become due and payable during a reference period will reasonably align with the fair allocation amount determined in respect of the reference period, in each case after reducing the fair allocation amount to reflect determinations of the OEB pursuant to the fair adjustment;

  (ii) incurrences should be implemented in a manner that OPG determines is reasonable, cost effective and that reflects prevailing market terms and conditions; and

  (iii) reasonable assumptions should be made regarding such matters as may be prescribed in the regulations under the Act.

- Until April 30, 2021, no funding obligation shall be incurred that would result in amounts payable in respect of the clean energy adjustment unless:

  (i) the amounts are payable in respect of a reference period in respect of which the OEB has not made any determinations under the fair adjustment; or

  (ii) if the OEB has made a determination under the fair adjustment in respect of a reference period, the funding obligations incurred would not result in amounts payable in respect of the clean energy adjustment during the reference period in an amount that exceeds the limit determined in accordance with the regulations.

- OPG, as Financial Services Manager, shall ensure that funding obligations incurred for the purposes of the Act are incurred in a manner that is consistent with the Financing Plan, but each funding obligation incurred by a financing entity is deemed to satisfy such requirement.

- OPG, as Financial Services Manager, shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, OPG, the OEB, 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 the Act or under the express terms of a funding obligation or other agreement.

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[4] OPG/Torys have advised the Province that, for accounting purposes, the fees payable to OPG should be set out in the regulations and must be set at a market rate (i.e. greater than cost-recovery).

- No action or other civil proceeding shall be commenced against any employee of the Province or OPG for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under the Act or the regulations or any alleged neglect or default in the exercise or performance in good faith of such a power or duty.

8. <u>Other Consequential Amendments to the Electricity Act and the OEB Act</u>

- The Electricity Act will be amended:

  (i) to expand the objects of OPG to ensure it has the authority to perform its duties under the Act, including carrying on activities through subsidiaries; and

  (ii) to make it clear that, in any proceeding, the assets and liabilities of the financing entities do not form part of the assets and liabilities of OPG and vice versa.

- The OEB Act will be amended to clarify that any OEB order under the Act in respect of OPG or any of its activities under the Act are not in respect of its regulated activities (i.e. related to a prescribed generation facility or the output therefrom).