ONTARIO ENERGY BOARD

IN THE MATTER OF an application made by Hydro One Networks Inc. on March 31, 2017 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B) for an order or orders approving just and reasonable rates and other charges for electricity distribution to be effective January 1, 2018 and for each following year effective January 1 through December 31, 2022;

AND IN THE MATTER OF the Decision and Order dated March 7, 2019 in EB-2017-0049; and

AND IN THE MATTER OF sections 40 and 42 of the Ontario Energy Board's *Rules of Practice and Procedure.*

MOTION RECORD AND BOOK OF AUTHORITIES, HYDRO ONE NETWORKS INC. (motion for review and variance)

Date: June 5, 2019

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INDEX TO MOTION RECORD AND BOOK OF AUTHORITIES

Tab	Authority
A	Reform of Ontario's Funding Rules for Defined Benefit Pension Plans: Description of Proposed Funding Rules published December 14, 2017
B	O. Reg 250/18 (2018-04-20)
C	Excerpts of *Pension Benefits Act* and O. Reg. 909: *Pension Benefits Act* ss. 55, 55.1, 109 and 110 O. Reg. 909 ss. 4, 5, 7.0.2 and 14(1)
D	FSCO guidance on funding reform of August 29, 2018
E	O. Reg 105/19 (2019-05-21)
F	Excerpt of the Ontario Energy Board's Decision with Reasons in the Natural Gas Electricity Interface Review (EB-2006-0322/0338/0340)
G	Excerpt of *Ontario Energy Board v. Ontario Power Generation Inc*. 2015 SCC 44.
H	*Enbridge Gas Distribution Inc. v. Ontario Energy Board* (2006), 210 O.A.C.
I	*Flamborough (Town) v. National Energy Board (Can)* [1987] FCJ No 460.

TAB A

Reform of Ontario’s Funding Rules for Defined Benefit Pension Plans: Description of Proposed Funding Rules

On May 19, 2017, the government announced that it would be implementing a new framework for defined benefit (DB) pension plans. The new funding framework for DB pension plans includes:

1. Shortening the amortization period from 15 years to 10 years for funding a going concern shortfall in the plan.

2. Consolidating going concern special payment requirements into a single schedule when a new report is filed.

3. Requiring the funding of a reserve within the plan, called a Provision for Adverse Deviations (PfAD).

4. Requiring funding on a solvency basis if needed to improve the plan's funded status to 85 per cent on a solvency basis.

5. Increasing the guarantee provided by the Pension Benefits Guarantee Fund from $1,000 per month to $1,500 per month.

6. Providing funding rules for benefit improvements and restricting contribution holidays to improve benefit security.

These changes would not apply to jointly sponsored pension plans (JSPPs) that are listed in s. 1.3.1(3) of Regulation 909 (the Regulation) under the *Pension Benefits Act.* The changes would also not apply to specified Ontario multi-employer pension plans (SOMEPPs), but would apply to MEPPs providing defined benefits that are not SOMEPPs. In June 2017, the government announced that it would be implementing a new framework for target benefit multi-employer pension plans. Consultations on the rules applicable to these plans will be held separately.

This posting provides details of the proposed amendments to the Regulation to implement many of the May 2017 proposals. The intention is for these changes to apply to valuation reports dated on or after December 31, 2017, that are filed after the new framework comes in force, except if otherwise noted. The Ministry encourages interested stakeholders to provide feedback on all aspects of these proposed changes to ensure the changes best achieve the government’s objectives of protecting benefits for workers and retirees while helping keep workplace pension plans affordable, enabling Ontario businesses to grow and compete. Comments on these proposals should be received by the Ministry of Finance by **January 29, 2018**.

Proposals regarding certain aspects of the new framework for DB pension plans, including providing a discharge of liabilities when annuities are purchased for retirees or deferred plan members, requirements for funding policies and governance policies and

changes to the PBGF under the new $1,500 per month guarantee, will be posted for consultation in the near future.

Please note that, except for the modifications detailed in this posting, the current requirements of the Regulation will continue to apply. For example, rules regarding frequency of filing valuation reports will not change.

Solvency Funding Rules

Determination of Solvency Special Payments

Currently, a pension plan has a solvency deficiency on a valuation date if the sum of the solvency liabilities, the solvency liability adjustment and the prior year credit balance exceeds the sum of the solvency assets and the solvency asset adjustment. Also, excluding certain options for funding that have been temporarily available, a solvency deficiency must be amortized over five years, starting not later than one year after the valuation date.

These rules would be amended so that special payments would be based not on a solvency deficiency but on a reduced solvency deficiency, equal to the positive difference, if any, between the sum of 85% of the solvency liabilities, 85% of the solvency liability adjustment and the prior year credit balance, and the sum of the solvency assets and the solvency asset adjustment. The reduced solvency deficiency would be funded over five years starting not later than one year after the valuation date.

Solvency Excess and Transition

Currently, a pension plan has a solvency excess on a valuation date if the sum of the solvency assets and the solvency asset adjustment exceeds the sum of the solvency liabilities, the prior year credit balance, and the solvency liability adjustment. If a plan has a solvency excess, it means that its scheduled special payments are more than sufficient to meet solvency funding requirements. Note that a plan need not be fully funded on a solvency basis to have a solvency excess.

If a pension plan has a solvency excess, the permanent rules in the Regulation allow for a reduction in the length of the amortization period in respect of any existing solvency special payment schedule but prohibit a reduction in the monthly payment amounts.

Under the proposed new funding framework, a pension plan would have a solvency excess on a valuation date if the sum of the solvency assets and the solvency asset adjustment, exceeds the sum of the prior year credit balance, 85% of the solvency liabilities, and 85% of the solvency liability adjustment. As is currently the case, if a pension plan has a solvency excess, the Regulation would allow for a reduction in the length of the amortization period in respect of any existing solvency special payment schedule but would prohibit a reduction in the monthly payment amounts.

Also, as a one-time transition measure, in the first valuation report filed under the proposed new funding framework, a solvency excess could be used to reduce either the monthly payment amount or amortization period in respect of a previously established solvency special payment schedule, provided that the schedule has less than six years remaining. This recognizes that existing solvency special payments have been determined based on a 100% solvency funding goal and allows them to be adjusted to reflect an 85% goal.

Previous Solvency Funding Relief

Under the proposed new funding framework, new elections to use one or more options under solvency relief measures introduced in 2016 would not be permitted. For example, a plan administrator would not be able to elect to amortize a reduced solvency deficiency over 10 years.

Also, special rules would no longer apply for determining the solvency asset adjustment (e.g., s. 5.6 (6) 8 iii and 8.1 iii ;s. 5.6.1 (6) 6 iv and 7 iv; and s. 5.6.2(6) 6 v and 7 v) and governing the rules for solvency excess (e.g., s. 5.6 (6) 1; s. 5.6.1 (6) 1; and s. 5.6.2 (6) 1) for plans for which certain relief measures were elected. Instead, the Regulation would be amended to ensure that all previously scheduled solvency special payments, including those established under temporary solvency relief, are taken into account when determining the solvency asset adjustment. Solvency excess would be governed under the general provisions, amended as described above.

Temporary Solvency Funding Relief for Public Sector Plans (Regulation. 178/11)

There are 25 public sector plans that have received temporary solvency funding relief provided through Reg. 178/11 (the BPS Regulation). These plans are listed in Schedules 1 and 2 of the BPS Regulation. Since the permanent solvency funding target would be reduced to 85% in the proposed framework, the government is proposing the following rules to assist the transition of these plans to the new funding framework.

- Any valuation filed before the effective date of the proposed regulation would be filed using the funding rules under the BPS Regulation.

- Also, any valuation with a valuation date before December 31, 2017 would be filed using the funding rules under the BPS Regulation.

- Any valuation with a valuation date on or after December 31, 2017 that is filed on or after the effective date of the proposed new funding framework would be filed using the funding rules under the new regulation.

- Conditions and restrictions on contribution holidays and benefit improvements as described in subsection 4(4) of the BPS Regulation continue to apply until

stipulations described in subsection 12(7) or subsection 16(3) of the BPS Regulation, as applicable, are satisfied.

Letters of Credit

Under the proposed new funding framework, a letter of credit would be able to be reduced if 85% of the sum of the solvency liabilities and the solvency liability adjustment is less than or equal to the sum of:

- The solvency assets;
- An amount, which may be positive or negative, by which the value of the solvency assets are adjusted as a result of applying an averaging method that stabilizes short-term fluctuations in the market value of the plan assets; and
- The present value of the total amount of all letters of credit held in trust for the pension fund, after the reduction in the amount of the letter of credit.

This would recognize the new requirements to fund 85% of solvency liabilities, rather than 100% of solvency liabilities. For example, it would mean that if a plan is 70% funded on a solvency basis, letters of credit could be used to fund solvency special payments for 15% of solvency liabilities, and no other payments determined on a solvency basis would be required.

Going Concern Funding Rules

Going Concern Funding Deficiencies

Under the proposed new funding framework, separate schedules of special payments would not be maintained for going concern unfunded liabilities established in different valuation reports. Instead, special payments for unfunded liabilities would be consolidated into one 10-year schedule that begins one year after the plan's valuation date. Going concern special payments set out in a report would apply to the period commencing one year after the effective date of the report until one year after the effective date of the subsequent report.

However, separate schedules would be maintained when needed to fund benefit improvements. A separate schedule would also be maintained when a plan is established for a past service unfunded actuarial liability, which provides for benefits in respect of the period prior to its effective date.

Funding for Indexation

Funding pre- and post-retirement indexation (escalated adjustments) would be required under the new framework on the same basis as for other benefits. However, contributions in respect of the PfAD would not be required for either the going concern

liabilities or the normal cost in respect of future indexation.

Provision for Adverse Deviations and Related Contribution Requirements

A PfAD would be a percentage used to determined additional contributions in respect of the normal cost and in respect of the going concern liabilities of a plan. Under the proposed new funding framework:

- Contributions for the PfAD in respect of the normal cost would be paid by the employer along with the employer's normal cost contributions; however, members of JSPPs (not listed in s. 1.3.1 of the Regulation) may share in making these contributions, as with any other required contributions. These contributions would be determined by multiplying the PfAD by the normal cost; however, as noted previously, costs for future indexation would be excluded from the normal cost to determine PfAD contribution requirements.

- The PfAD in respect of accrued liabilities would be determined by multiplying the PfAD by the going concern liabilities, excluding liabilities for future indexation. Any unfunded portion would be included in a plan's going concern unfunded liability and amortized over 10 years. For example, if a plan's PfAD is 10% and its going concern assets are 95% of going concern liabilities, then going concern special payments would be created that are intended to increase assets by 15% of liabilities.

The PfAD would depend on whether the plan is open or closed to new members.
If a pension plan has a DB provision that is closed to new members, its PfAD would be determined using the requirements for closed plans.

A plan's PfAD would also depend on the proportion of assets that are not considered fixed income in the target asset mix that will be required to be set out in its Statement of Investment Policies and Procedures (SIP&P) effective on the valuation date. However, if the administrator knows or ought to know that the target asset mix is expected to change, the PfAD must reflect the anticipated target asset mix.

For purposes of the PfAD, non-fixed income assets would include all equities and employer issued securities. Fixed income assets would generally include bonds, cash, term deposits, short-term notes and treasury bills, GICs, and insured contracts, including annuities held as plan assets. Fixed income assets could include a variety of securities that have different features; however, they would be of a certain quality that can be used to support pension liabilities. For example, the Regulation would provide details on characteristics of bonds that would not constitute fixed income assets for purposes of the PfAD.

Also, 50% of specified investments that are alternative investments (e.g., real estate, resource properties, income producing properties, infrastructure, mortgage loans) would be considered non-fixed income assets. This acknowledges that these investments

have both fixed income and non-fixed income characteristics. Mutual fund assets would be allocated as fixed income or non-fixed income depending on the securities in which the fund invests. For example, the portion of a plan's investment in a balanced fund considered fixed income would depend on how much of the balanced fund is allocated to assets that would be classified as fixed income for purposes of the PfAD.

The PfAD would be the sum of three components:

- A fixed component of 5% for closed plans and 4% for open plans. This would strengthen the funding of going concern unfunded liabilities under rules that include a "fresh start" for going concern special payments.

- A component dependent on the plan's asset mix, to encourage investments appropriate for funding long-term pension obligations. This component would be determined by the table below. If the percent of non-fixed income assets is between two values in the first column, then the PfAD component is obtained by linearly interpolating between the PfAD values; for example, if a closed plan's investments are 55% non-fixed income (midway between 50% and 60%), then the PfAD component for the asset mix would be 6% (midway between 5% and 7%).

Percent of non-fixed income assets	PfAD for Closed plans	PfAD for Open plans
0%	0%	0%
20%	2%	1%
40%	4%	2%
50%	5%	3%
60%	7%	4%
70%	11%	6%
80%	15%	8%
100%	23%	12%

- A component based on the plan's going concern discount rate, added only if the discount rate exceeds a benchmark discount rate (BDR) defined in the Regulation. This component would reduce the likelihood of inadequate contribution requirements that could result from inappropriate assumptions. Specifically, the PfAD would be increased by the duration of the plan's going concern liabilities multiplied by the difference between the plan's best estimate discount rate, gross of all expenses, and the BDR. In this context, the duration would be the percent increase in liabilities due to a one percent decrease in the discount rate. The BDR would be the sum of:

    - The rate given by CANSIM V122544 (Government of Canada long bond yield - see Bank of Canada website) in the month of the valuation date;

- The proportion of plan's target asset mix allocated to non-fixed income investments times 5% (i.e., a risk premium of 5% on non-fixed income assets);

- The proportion of plan's target asset mix allocated to fixed income investments times 1.5% (i.e., a risk premium of 1.5% on fixed income assets); and

- 0.5% for diversification.

Example of Application of the Provision for Adverse Deviations

An open plan's assets are 40% fixed income and 60% non-fixed income. The actuary's best estimate discount rate is 6.5%, gross of all expenses, and the duration of the plan's liabilities is 15. If the yield on Government of Canada long bonds is 2.27%:

- The plan's BDR is 2.27% + (0.6 x 5%) + (0.4 x 1.5%) + 0.5% = 6.37%.

- The plan's PfAD would be 4% + 4% + 15 x (6.5% – 6.37%) = 9.95%.

If a plan with no indexing has going concern liabilities of $100,000, assets of $90,000, and a normal cost of $12,000, the PfAD on the normal cost would be 9.95% of $12,000, or $1,194. The plan's going concern unfunded liability would be

Liabilities + PfAD on liabilities – assets
$100,000 + (9.95% x $100,000) – $90,000 = $19,950.

Going concern special payments required until the next valuation report is filed would be the amount determined by amortizing $19,950 over 10 years. However, required contributions based on this schedule of special payments would be made only for the period commencing one year after the effective date of the report until one year after the effective date of the subsequent report, when a new schedule of special payments would be established based on the updated going concern funded position of the plan.

Adjusting Going Concern Special Payment Schedules

Under the proposed new funding framework, most going concern special payment schedules would be consolidated at each valuation. However, consistent with the goal of strengthening funding for benefit improvements, special payments to fund benefit

improvements and for past service unfunded actuarial liabilities that are established for a new plan would be maintained and have fixed schedules.

- The present value of going concern special payments in respect of any benefit improvement (including one with an effective date on the valuation date) or a past service unfunded actuarial liability would be included in the plan's going concern assets.

- If on a valuation date the sum of a plan's going concern assets exceeds the sum of the going concern liabilities, the provision for adverse deviations in respect of the going concern liabilities, and the prior year credit balance, then the excess could be used to reduce the length of the amortization period of any of the fixed schedules but cannot be used to reduce the monthly payment amounts of those fixed schedules.

Benefit Improvements

Bill 177, the *Stronger, Fairer Ontario Act (Budget Measures), 2017,* amends unproclaimed section s. 14.0.1 of the *Pension Benefits* Act to allow the government to prescribe a funding level below which benefit improvements could not be made.

Under the proposed new funding framework, regulations would allow benefits to be improved in a plan only if after the improvement the solvency ratio is at least 85% and the going concern funded ratio is at least 90%. A lump sum contribution would be permitted to satisfy these requirements. In this context, the going concern funded ratio would be the ratio of the value of the going concern assets (excluding the value of any going concern special payments) to the going concern liabilities (which would not include the PfAD in respect of the liabilities).

The increase in the going concern liabilities and the PfAD in respect of those liabilities that arises after a benefit improvement is made would be funded over five years on a going concern basis, beginning on the effective date of the amendment that improves benefits. Surplus could be used to fully or partially fund the benefit improvement. Special payment schedules to fund benefit improvements would not be consolidated with other going concern special payment schedules.

Contribution Holidays

Under the proposed new funding framework, surplus would be available for a "contribution holiday", in which surplus is used to lower the contribution requirements of an employer or members for the normal cost and the PfAD in respect of the normal cost, if:

- The plan's PfAD is fully funded on a going concern basis (e.g., if the plan's PfAD is 15%, then the value of the plan's assets determined on the basis of a going concern valuation, including accrued and receivable income but excluding the

amount of any letter of credit held in trust for the pension plan, must be at least 115% of the plan's going concern liabilities);

- After reducing the solvency assets by the amount of surplus used to lower contribution requirements, the plan's transfer ratio is at least 1.05;
- A cost certificate is filed each year a contribution holiday is taken; and
- Notice is provided to plan participants, any unions representing members, and the plan's advisory committee (if there is one).

In addition, the value of assets that could be used to take a contribution holiday for a year would be limited to 20% of the plan's available actuarial surplus, as identified in the plan's last filed valuation report. The available actuarial surplus in a particular fiscal year covered by the report would be 20% of the lesser of:

- the amount by which the value of the plan's assets determined on the basis of a going concern valuation, including accrued and receivable income but excluding the amount of any letter of credit held in trust for the pension plan, exceeds the sum of going concern liabilities, the provision for adverse deviations in respect of going concern liabilities, and the prior year credit balance, and
- the amount, if any, by which the solvency assets could be reduced such that the transfer ratio would equal 1.05.

With the exception of designated plans or individual pension plans, a contribution holiday could be taken only if an actuarial cost certificate is filed with the Superintendent within the first 90 days of the plan's fiscal year. The actuarial cost certificate would set out the estimated available actuarial surplus based on estimated going concern liabilities, estimated solvency liabilities, and estimated liabilities for excluded benefits (other than those payable under qualifying annuity contracts). The amount of available actuarial surplus that can be used to reduce contributions for normal cost and PfAD on the normal cost for a particular fiscal year would be the lesser of:

- the amount of available actuarial surplus for the particular fiscal year, as set out in the last filed report; and
- the amount of estimated available actuarial surplus as set in the actuarial cost certificate for the particular fiscal year.

However, the rules regarding the cost certificate would be slightly modified in the fiscal year a valuation report is filed. An actuarial cost certificate would still be filed with the Superintendent. However, once the new report has been filed, the amount of available actuarial surplus to reduce contributions for normal costs in the fiscal year could be based on the new report and any restriction imposed by the actuarial cost certificate would be lifted. A catch-up contribution, calculated using existing rules (see s. 12 of the

Regulation), may be required if the contributions based on the cost certificate are less than what the filed report indicated.

The proposed new requirements for contribution holidays would commence on the valuation date of the first report filed under the new framework.

Transitional Funding Rules

If the total contribution requirements (i.e., the total of normal cost requirements, all required special payments, and any required payments due to the PfAD) for a plan under the proposed new funding framework are greater than the total contribution requirements under the current rules, transitional rules under the proposed new framework would allow the increase to be phased in. For the three years following the valuation date of the first report filed under the proposed new funding framework, plans would not have to pay the full amount of the increase, if any, in contributions due to the new rules. For example, suppose the first report prepared under the new framework has a valuation date of January 1, 2020, then:

- In 2020, contribution requirements would be exempt from increases due to the new rules.
- In 2021, one third of the increase in contributions would be required.
- In 2022, two thirds of the increase in contributions would be required.

This means sponsors would have at least three years to adjust to new funding requirements due to the PfAD, the shorter amortization period, and new funding rules for indexation (if applicable).

Disclosure Requirements

The Regulation requires plan administrators to send annual statements to active members and biennial statements to retired members and former members. For the first statement sent to active members, former members or retired members once the proposed new funding framework is in effect, the administrator would be required to include an explanation that funding rules have changed, including a description of the reduction in solvency funding requirements from 100% to 85% and a description of the requirement to fund a PfAD on a going concern basis.

Consequential Amendments regarding Surplus

Certain regulatory adjustments to the rules for surplus withdrawal from a continuing plan would be made to maintain consistency with the funding rules. Note that Bill 177 requires an additional amount to remain in a continuing pension plan after a surplus withdrawal in respect of the PfAD (see Schedule 33, s. 30 of Bill 177).

When assessing if a plan has a surplus, the Regulation currently requires that the greater of the going concern liabilities and the solvency liabilities be used.

The Regulation would be amended to require that, when determining whether a plan has a surplus, the liabilities used would be the greater of:

- the solvency liabilities plus the liabilities for any benefits excluded from the solvency liabilities (other than those payable under qualifying annuity contracts); and

- the going concern liabilities plus the PfAD in respect of the going concern liabilities.

The same liabilities would be used to determine the requirements for the amount of remaining surplus after a withdrawal is made from a continuing plan under subclause 79(1)(d)(ii) of the *Pension Benefits Act*.

Furthermore, surplus plan assets would not be available for assessments that employers are required to pay to the Pension Benefits Guarantee Fund, meaning s. 7(4) of the Regulation would be repealed.

TAB B

Français

ONTARIO REGULATION 250/18

made under the

PENSION BENEFITS ACT

Made: April 18, 2018
Filed: April 20, 2018
Published on e-Laws: April 20, 2018
Printed in *The Ontario Gazette*: May 5, 2018

Amending Reg. 909 of R.R.O. 1990
(GENERAL)

1. The French version of Regulation 909 of the Revised Regulations of Ontario, 1990 is amended by striking out "solde créditeur de l'exercice antérieur" wherever it appears and substituting in each case "solde créditeur de l'année antérieure".

2. (1) The definition of "going concern assets" in subsection 1 (2) of the Regulation is amended by striking out "and" at the end of clause (a), by revoking clause (b) and by substituting the following:

(b) if the report has a valuation date before December 31, 2017 or is in respect of a jointly sponsored pension plan listed in subsection 1.3.1 (3), the present value of any special payments in respect of a going concern unfunded liability disclosed in previously filed reports, and

(c) if the report has a valuation date on or after December 31, 2017 and is not in respect of a jointly sponsored pension plan listed in subsection 1.3.1 (3),

(i) the present value of special payments in respect of any past service unfunded actuarial liability, other than special payments required to liquidate any past service unfunded liability determined in the report,

(ii) the present value of special payments described in clause 5 (1.0.0.1) (e) in respect of any plan amendment that increases going concern liabilities, and

(iii) the present value of special payments in respect of a going concern unfunded liability that are scheduled for payment within one year after the valuation date of the report and that are disclosed in the previously filed report, excluding any special payments described in subclause (i);

(2) Subsection 1 (2) of the Regulation is amended by adding the following definitions:

"going concern excess" means, in respect of a pension plan, the amount, if any, by which the going concern assets of the pension plan exceed the sum of,

(a) the going concern liabilities of the pension plan,

(b) the amount equal to the provision for adverse deviations in respect of the going concern liabilities of the pension plan, and

(c) the prior year credit balance of the pension plan; ("excédent à long terme")

"going concern funded ratio" means, in relation to a pension plan, the ratio of "Y" to "Z" where,

"Y" is the amount by which the value of the assets of the pension plan determined on the basis of a going concern valuation, including accrued and receivable income but excluding the amount of any letter of credit held in trust for the pension plan, exceeds the prior year credit balance, and

"Z" is the total amount of the going concern liabilities of the pension plan; ("ratio de capitalisation à long terme")

(3) The definition of "going concern unfunded liability" in subsection 1 (2) of the Regulation is revoked and the following substituted:

"going concern unfunded liability" means,

(a) for a report with a valuation date before December 31, 2017 or that is in respect of a jointly sponsored pension plan listed in subsection 1.3.1 (3), the amount, if any, by which the sum of the going concern liabilities and the prior year credit balance exceeds the going concern assets, and

(b) for a report with a valuation date on or after December 31, 2017, other than a report in respect of a jointly sponsored pension plan listed in subsection 1.3.1 (3), the amount, if any, by which the sum of the going concern liabilities, the amount equal to the provision for adverse deviations in respect of going concern liabilities and the prior year credit balance exceeds the going concern assets; ("passif à long terme non capitalisé")

(4) The definition of "past service unfunded actuarial liability" in subsection 1 (2) of the Regulation is revoked and the following substituted:

"past service unfunded actuarial liability" means,

(a) the amount of going concern unfunded liability that arose on a valuation date before December 31, 2017 resulting from the provision of benefits with respect to employment prior to the effective date of the pension plan or from an amendment to a pension plan that provides benefits for employment prior to the date of the amendment where the employment had not previously been recognized for the purposes of the provision of pension benefits, or

(b) the amount of going concern unfunded liability that arose on a valuation date on or after December 31, 2017 resulting from the provision of benefits with respect to employment prior to the effective date of the pension plan; ("passif actuariel pour services antérieurs non capitalisé")

(5) Subsection 1 (2) of the Regulation is amended by adding the following definitions:

"provision for adverse deviations" means the percentage determined under section 11.2 to be the provision for adverse deviations; ("provision pour écarts défavorables")

. . . . .

"reduced solvency deficiency", in relation to a report, means the amount determined in accordance with section 1.3.2 for a pension plan that provides defined benefits; ("déficit de solvabilité réduit")

(6) The definition of "solvency liabilities" in subsection 1 (2) of the Regulation is amended by striking out "clause 14 (8) (c)" in the portion before clause (a) and substituting "clauses 14 (8) (c) and 14 (8.0.4) (f)".

(7) Subsection 1 (2) of the Regulation is amended by adding the following definition:

"solvency ratio" means, in relation to a pension plan, the ratio of "Y" to "Z" where,

"Y" is the amount by which the sum of the total amount of the solvency assets of the pension plan related to defined benefits and ancillary benefits plus the total amount of any letters of credit held in trust for the pension plan exceeds the prior year credit balance, and

"Z" is the total amount of the solvency liabilities related to defined benefits and ancillary benefits of the pension plan; ("ratio de solvabilité")

(8) Subclause (a) (ii) of the definition of "transfer ratio" in subsection 1 (2) of the Regulation is revoked and the following substituted:

(ii) the sum of,

(A) if the report has a valuation date before December 31, 2017 or is in respect of a jointly sponsored pension plan listed in subsection 1.3.1 (3),

(1) the amount by which the sum of the estimates of normal cost given under clauses 14 (7) (a) and (b) in the report exceeds the sum of the estimates given under clause 14 (7) (c) in the report for the periods in respect of which the estimates under clauses 14 (7) (a) and (b) are given, and

(2) the sum of the special payments required to be made under this Regulation during the periods in respect of which the estimates under clauses 14 (7) (a) and (b) are given;

(B) if the report has a valuation date on or after December 31, 2017 and is not in respect of a jointly sponsored pension plan listed in subsection 1.3.1 (3),

(1) the amount by which the sum of the estimates of normal cost given under clauses 14 (8.0.2) (a) and (b) and the estimates of the amount equal to the provision for adverse deviations in respect of the normal cost given under subclause 14 (8.0.2) (c) (ii) in the report exceeds the sum of the estimates given under clause 14 (8.0.2) (d) in the report for the periods in respect of which the estimates under clauses 14 (8.0.2) (a) and (b) and subclause 14 (8.0.2) (c) (ii) are given, and

(2) the sum of the special payments required to be made under this Regulation during the periods in respect of which the estimates under clauses 14 (8.0.2) (a) and (b) and subclause 14 (8.0.2) (c) (ii) are given,

(9) Subsection 1 (4) of the Regulation is amended by striking out "or a transfer ratio".

(10) Subsection 1 (5) of the Regulation is amended by striking out "a past service unfunded liability, a solvency deficiency, a solvency liability" and substituting "a past service unfunded actuarial liability, a solvency deficiency, a reduced solvency deficiency, a solvency liability".

3. Section 1.1 of the Regulation is revoked.

4. (1) Clause 1.2 (1) (c) of the Regulation is amended by adding "actuarial" before "liability".

(2) Subsection 1.2 (1) of the Regulation is amended by,

(a) striking out "the present value" at the beginning of clause (d) and substituting "if the report has a valuation date before December 31, 2017 or is in respect of a jointly sponsored pension plan listed in subsection 1.3.1 (3), the present value";

(b) striking out "and" at the end of subclause (d) (iii) and adding the following clause:

(d.1) if the report has a valuation date on or after December 31, 2017 and is not in respect of a jointly sponsored pension plan listed in subsection 1.3.1 (3),

(i) the present value of all special payments referred to in clauses 5 (1.0.0.1) (a), (b) and (e) that are scheduled for payment within a period that begins on the valuation date of a report and continues until the end of a five-year period that begins on a date not later than 12 months after the valuation date, and

(ii) the present value of all special payments referred to in clauses 5 (1.0.0.1) (f), (g), (h) and (i), other than special payments required to liquidate any reduced solvency deficiency determined in the report; and

(3) The definitions of "D" and "E" in subsection 1.2 (2) of the Regulation are revoked and the following substituted:

"D" is the amount described in subsection (2.1), and

"E" is the amount described in subsection (2.2), and

(4) Section 1.2 of the Regulation is amended by adding the following subsections:

(2.1) In the formula in subsection (2), "D" is,

(a) for a report with a valuation date before December 31, 2017 or that is in respect of a jointly sponsored pension plan listed in subsection 1.3.1 (3), the present value of any special payments referred to in clause 5 (1) (e) that are scheduled for payment within the applicable period described in the definition of "C" in subsection (2), other than any special payments required to liquidate any solvency deficiency determined in the report; and

(b) for a report with a valuation date on or after December 31, 2017, other than a report in respect of a jointly sponsored pension plan listed in subsection 1.3.1 (3), the present value of any special payments referred to in clauses 5 (1.0.0.1) (f), (g), (h) and (i), other than any special payments required to liquidate any reduced solvency deficiency determined in the report.

(2.2) In the formula in subsection (2), "E" is,

(a) for a report with a valuation date before December 31, 2017 or in respect of a jointly sponsored pension plan listed in subsection 1.3.1 (3), the present value of the normal cost, which is determined using a benefit allocation method, for the applicable period described in the definition of "C" in subsection (2); and

(b) for a report with a valuation date on or after December 31, 2017, other than a report in respect of a jointly sponsored pension plan listed in subsection 1.3.1 (3), the present value of the normal cost and the amount equal to the provision for adverse deviations in respect of the normal cost, determined using a benefit allocation method, for the applicable period described in the definition of "C" in subsection (2).

(5) Subsection 1.2 (3) of the Regulation is amended by striking out "For the purposes of subsections (1) and (2), the present value" at the beginning of the portion before clause (a) and substituting "For the purposes of subsections (1) and (2), for a report with a valuation date before December 31, 2017 or in respect of a jointly sponsored pension plan listed in subsection 1.3.1 (3), the present value".

(6) Section 1.2 of the Regulation is amended by adding the following subsection:

(3.1) For the purposes of subsections (1) and (2), for a report with a valuation date on or after December 31, 2017, other than a report in respect of a jointly sponsored pension plan listed in subsection 1.3.1 (3), the present value of special payments, required contributions, the normal cost and the provision for adverse deviations in respect of the normal cost must be calculated as of the valuation date of the report using,

(a) the interest rates that were used in the report to calculate the solvency liabilities, if the solvency liability adjustment is zero; or

(b) the average interest rates that were used in the report to calculate the solvency liability adjustment, if the solvency liability adjustment is not zero.

5. Subsection 1.3.1 (3) of the Regulation is amended by adding the following paragraph:

8. OMERS Supplemental Pension Plan for Police, Firefighters and Paramedics, registered under the Act as number 1175892.

6. The Regulation is amended by adding the following section:

1.3.2 (1) For the purposes of this Part, the reduced solvency deficiency, in relation to a report, of a pension plan that provides defined benefits is the amount determined in accordance with this section.

(2) The amount of the reduced solvency deficiency of a pension plan, as of a particular valuation date, is the amount by which “A” exceeds “B” where,

“A” is the sum of,

(a) 85 per cent of the pension plan’s solvency liabilities,

(b) 85 per cent of the pension plan’s solvency liability adjustment, and

(c) the pension plan’s prior year credit balance as of the valuation date; and

“B” is the sum of the pension plan’s solvency assets and the solvency asset adjustment as of the valuation date.

7. Subsection 3 (1) of the Regulation is revoked and the following substituted:

(1) Where an amendment to a pension plan reduces or increases contributions or creates or changes a going concern unfunded liability or solvency deficiency, the administrator shall file a report containing,

(a) the plan’s going concern funded ratio on the date the amendment is effective;

(b) a description of any lump sum contribution that was made to fund any increase in going concern liabilities or solvency liabilities, or both, due to the amendment; and

(c) any of the information required in a report under section 14 that might be affected by the amendment.

8. The Regulation is amended by adding the following section:

3.0.1 (1) For the purposes of clause 14.0.1 (1) (b) of the Act,

(a) the prescribed level of the solvency ratio is 80 per cent; and

(b) the prescribed level of the going concern funded ratio is 80 per cent.

(2) Despite subsection (1), in the case of an amendment to a pension plan in respect of which a contribution is made to the pension fund that is at least equal to the greater of the increase in going concern liabilities and the increase in solvency liabilities resulting from the amendment, for the purposes of clause 14.0.1 (1) (b) of the Act,

(a) the prescribed level of the solvency ratio is the level that is at least equal to the plan’s solvency ratio if no such amendment were made; and

(b) the prescribed level of the going concern funded ratio is the level that is at least equal to the plan’s going concern funded ratio if no such amendment were made.

(3) The contribution referred to in subsection (2) is in addition to any contribution otherwise required under the Act.

(4) Subsections (1) and (2) do not apply to an amendment to a pension plan if,

(a) the amendment is filed before May 1, 2018; or

(b) the amendment implements a benefit improvement agreed to in a collective agreement before May 1, 2018 if the collective agreement is in place immediately before that date.

(5) Subsections (1) and (2) do not apply to a jointly sponsored pension plan listed in subsection 1.3.1 (3).

9. (1) Section 4 of the Regulation is amended by adding the following subsection:

(0.1) In this section,

“consolidated prior solvency deficiency” has the same meaning as in section 5.5.3.

(2) Section 4 of the Regulation is amended by adding the following subsections:

(1.1) Every pension plan shall also set out the obligation of the employer or any person or entity required to make contributions on behalf of the employer and, in the case of a jointly sponsored pension plan, the obligation of the members of the pension plan, if applicable, to contribute in respect of,

(a) the provision for adverse deviations in respect of the normal cost;

(b) any plan amendment that increases going concern liabilities; and

(c) any reduced solvency deficiency under the plan.

(1.2) Clause (1.1) (c) does not apply to a jointly sponsored pension plan listed in subsection 1.3.1 (3).

(1.3) Any plan amendments that are required for the purpose of complying with subsection (1.1) shall be made within 12 months after the date the first report for the pension plan with a valuation date on or after December 31, 2017 is filed under section 3, 13 or 14.

(3) Subsection 4 (2) of the Regulation is amended by striking out "subsection (2.1)" in the portion before clause (a) and substituting "subsections (2.1) and (2.1.1)".

(4) Clause 4 (2) (a) of the Regulation is amended by striking out "all contributions" at the beginning and substituting "in the case of a report with a valuation date before December 31, 2017, all contributions".

(5) Subsection 4 (2) of the Regulation is amended by adding the following clauses:

(a.1) as of the date the first report with a valuation date on or after December 31, 2017 is filed under section 3, 13 or 14, all contributions, including contributions for the provision for adverse deviations in respect of the normal cost, any going concern unfunded liability, solvency deficiency and reduced solvency deficiency, and money withheld by payroll deduction or otherwise from an employee, that are received from employees as the employees' contributions to the pension plan;

. . . . .

(b.1) as of the date the first report with a valuation date on or after December 31, 2017 is filed under section 3, 13 or 14, all contributions required to pay the amount equal to the provision for adverse deviations in respect of the normal cost determined in accordance with section 11.1;

(6) Section 4 of the Regulation is amended by adding the following subsections:

(2.1.1) If the payments required under subsection (2) are greater than they would have been under that subsection as it read immediately before May 1, 2018, an employer who is required to make contributions under a pension plan, or if a person or entity is required to make contributions under the pension plan on behalf of the employer, that person or entity, and, if applicable, the members of the pension plan or their representative, shall make payments to the pension fund or to an insurance company, as applicable, that are not less than the amount calculated using the formula,

$$A - [(A-B) \times C]$$

in which,

"A" is the total of the payments required under subsection (2) for the year based on the most recently filed report,

"B" is the total of the payments that would have been required under subsection (2) as it read immediately before May 1, 2018,

"C" is the value described in subsection (2.1.2).

(2.1.2) The value of "C" in the formula in subsection (2.1.1) is the value determined in accordance with the following:

1. For a pension plan that provides defined benefits where the obligation of the employer to contribute to the pension fund is limited to a fixed amount set out in a collective agreement that exists on May 1, 2018:
   i. The value of "C" is equal to one in the year that is the earlier of,
      A. 2021, and
      B. the year in which the collective agreement expires.
   ii. In any year prior to the year described in subparagraph i, the value of "C" is equal to one.
   iii. In the year immediately following the year described in subparagraph i, the value of "C" is equal to one.
   iv. In the year immediately following the year described in subparagraph iii, the value of "C" is equal to 0.667.
   v. In the year immediately following the year described in subparagraph iv, the value of "C" is equal to 0.333.
   vi. In any year following the year described in subparagraph v, the value of "C" is zero.
2. For any other pension plan:
   i. In the first year following the valuation date of the first report filed with a valuation date that is on or after December 31, 2017, the value of "C" is equal to one.
   ii. In the year immediately following the year described in subparagraph i, the value of "C" is equal to 0.667.
   iii. In the year immediately following the year described in subparagraph ii, the value of "C" is equal to 0.333.
   iv. In any year following the year described in subparagraph iii, the value of "C" is zero.

(7) Paragraph 1.2 of subsection 4 (2.3) of the Regulation is amended by striking out "14, the amount" and substituting "14 that is before December 31, 2017, the amount".

(8) Subsection 4 (2.3) of the Regulation is amended by adding the following paragraphs:

1.2.1 If, at the valuation date of a report filed under section 3, 13 or 14 with a valuation date that is on or after December 31, 2017, the amount determined under clause (a) of the definition of "going concern assets" in subsection 1 (2) is not less than the sum of going concern liabilities determined using a benefit allocation method and the amount equal to the provision for adverse deviations in respect of going concern liabilities determined using the benefit allocation method, the present value of the required contributions for the five-year period referred to in paragraph 1.3 must not be less than the sum of the following, subject to paragraph 1.2.2:

i. The present value of the contributions for that period that would be made for the normal cost for the plan.

ii. The amount equal to the provision for adverse deviations in respect of the normal cost.

1.2.2 The amounts mentioned in subparagraphs 1.2.1 i and ii shall be determined using the benefit allocation method after the application of any available actuarial surplus to reduce the normal cost and the provision for adverse deviations in respect of the normal cost in accordance with subsection 7.0.3 (1) or, if the pension plan is a jointly sponsored pension plan listed in subsection 1.3.1 (3), after the application of any actuarial gains to reduce the normal cost in accordance with subsection 7 (3).

(9) Paragraph 1.3 of subsection 4 (2.3) of the Regulation is amended by adding "or 1.2.1" after "1.2" in the portion before subparagraph i.

(10) Paragraph 2 of subsection 4 (2.3) of the Regulation is amended by adding "with a valuation date before December 31, 2017 or in respect of a plan that is a jointly sponsored pension plan listed in subsection 1.3.1 (3)" after "14".

(11) Subsection 4 (2.3) of the Regulation is amended by adding the following paragraph:

2.0.1 If, at the valuation date of a report filed under section 3, 13 or 14 with a valuation date that is on or after December 31, 2017 in respect of a plan that is not a jointly sponsored pension plan listed in subsection 1.3.1 (3), the amount determined under clause (a) of the definition of "going concern assets" in subsection 1 (2) is less than the sum of going concern liabilities determined using a benefit allocation method and the amount equal to the provision for adverse deviations in respect of going concern liabilities determined using the benefit allocation method, the present value of the required contributions, as determined under the actuarial cost method used by the plan, must not be less than the sum of the following, determined using the benefit allocation method:

i. The present value of the normal cost.

ii. The present value of the amount equal to the provision for adverse deviations in respect of the normal cost.

iii. The present value of the special payments determined in accordance with section 5 that would be required,

A. in respect of any plan amendment that increases going concern liabilities, or

B. to liquidate a going concern unfunded liability.

(12) Paragraphs 2.1, 3 and 3.1 of subsection 4 (2.3) of the Regulation are amended by striking out "paragraphs 1.2 and 2" wherever it appears and substituting in each case "paragraphs 1.2, 1.2.1, 2 and 2.0.1".

(13) Subsection 4 (2.3) of the Regulation is amended by adding the following paragraphs:

4.0.1 In the case of a pension plan that is not a jointly sponsored pension plan, the present values referred to in paragraph 2.0.1 shall be calculated using whichever of the following periods is longest:

i. The period that begins on the valuation date referred to in paragraph 2.0.1 and continues until the end of the remaining amortization period of the going concern unfunded liability.

ii. The period that begins on the valuation date referred to in paragraph 2.0.1 and continues until the end of the amortization period in respect of any plan amendment that increases the going concern liabilities that has the longest remaining amortization period.

iii. The period of five years that begins on the valuation date referred to in paragraph 2.0.1.

. . . . .

4.2 In the case of a jointly sponsored pension plan to which paragraph 2.0.1 applies, the present values referred to in paragraph 2.0.1 shall be calculated using whichever of the following periods is longest:

i. The period that begins on a date that is not later than 12 months after the valuation date referred to in paragraph 2.0.1 and continues until the end of the remaining amortization period of the going concern unfunded liability.

ii. The period that begins on a date that is not later than 12 months after the valuation date referred to in paragraph 2.0.1 and continues until the end of the amortization period in respect of any plan amendment that increases going concern liabilities that has the longest remaining amortization period.

iii. The period of five years that begins on a date that is not later than 12 months after the valuation date referred to in paragraph 2.0.1.

(14) Subparagraph 5 ii of subsection 4 (2.3) of the Regulation is amended by striking out "paragraph 1.2" and substituting "paragraphs 1.2 and 1.2.1".

(15) Subparagraph 5 iii of subsection 4 (2.3) of the Regulation is revoked and the following substituted:

iii. the present values referred to in paragraphs 2 and 2.0.1 shall be calculated based on the period used for the purpose of paragraph 4.1 or 4.2, as the case may be, and the sum of the projected pensionable earnings for each year in the applicable period, and

(16) Subparagraph 7 ii of subsection 4 (2.3) of the Regulation is revoked and the following substituted:

ii. the present value of the required contributions using the increased rates is not less than,

A. the present value of the contributions that would be made for the normal cost for the plan if the benefit allocation method were used, after the application of any actuarial gains to reduce the normal cost in accordance with subsection 7 (3), if paragraph 1.2 applies,

B. if the report has a valuation date on or after December 31, 2017, the sum of the present value of the contributions that would be made in respect of the normal cost for the plan and the provision for adverse deviations in respect of the normal cost for the plan if the benefit allocation method were used, after the application of any available actuarial surplus to reduce the normal cost or the amount equal to the provision for adverse deviations in respect of the normal cost in accordance with subsection 7.0.3 (1) or, if the pension plan is a jointly sponsored pension plan listed in subsection 1.3.1 (3), after the application of any actuarial gains to reduce the normal cost in accordance with subsection 7 (3), if paragraph 1.2.1 applies,

C. the sum of the present value of the normal cost and the present value of the special payments determined in accordance with section 5 that would be required to liquidate any going concern unfunded liability determined using the benefit allocation method, if paragraph 2 applies, or

D. if the report has a valuation date on or after December 31, 2017, the sum of the present value of the normal cost, the present value of the amount equal to the provision for adverse deviations in respect of the normal cost and the present value of the special payments determined in accordance with section 5 that would be required in respect of any plan amendment that increases going concern liabilities or in respect of any going concern unfunded liability determined using the benefit allocation method, if paragraph 2.0.1 applies.

(17) Paragraph 9 of subsection 4 (2.3) of the Regulation is amended by striking out "paragraph 1.2 or 2" and substituting "paragraph 1.2, 1.2.1, 2 or 2.0.1".

(18) Paragraph 10 of subsection 4 (2.3) of the Regulation is amended by striking out "sub-subparagraph 7 ii A or B" and substituting "sub-subparagraph 7 ii A, B, C or D".

(19) Clause 4 (2.4) (b) of the Regulation is amended by striking out "solvency deficiency" at the end and substituting "solvency deficiency, any reduced solvency deficiency and any consolidated prior solvency deficiency".

(20) Section 4 of the Regulation is amended by adding the following subsection:

(2.6.1) If a report filed under section 3 or 14 with a valuation date on or after December 31, 2017 discloses, in respect of a jointly sponsored pension plan for which a benefit allocation method is used to set contribution rates, that an increase in the normal cost is required, an increase in the amount equal to the provision for adverse deviations in respect of the normal cost is required or an increase is required in the amount of contributions that were previously reduced under subsection 7 (3) or subsection 7.0.3 (1), payment of that increase shall commence on a date not later than 12 months after the valuation date.

(21) Subsection 4 (2.8) of the Regulation is revoked and the following substituted:

(2.8) In the case of a jointly sponsored pension plan, contributions referred to in subsection 39 (3) of the Act include contributions made by a member in respect of,

(a) any going concern unfunded liability;

(b) any amendment that increases going concern liabilities;

(c) the provision for adverse deviations in respect of the normal cost; and

(d) any solvency deficiency, reduced solvency deficiency or consolidated prior solvency deficiency.

(22) Subsection 4 (3) of the Regulation is amended by striking out "(b), (c)" and substituting "(b), (b.1), (c)".

(23) The English version of paragraph 3 of subsection 4 (4) of the Regulation is amended by striking out "normal costs" and substituting "normal cost" and by striking out "thirty" and substituting "30".

(24) Subsection 4 (4) of the Regulation is amended by adding the following paragraph:

3.0.1 In the case of a pension plan that provides defined benefits, employer contributions for the normal cost reported under clause 13 (1) (a), clause 14 (7) (a) or clause 14 (8.0.2) (a) and contributions for the provision for adverse deviations in respect of the normal cost reported under subclause 13 (1) (b.1) (ii) or subclause 14 (8.0.2) (c) (ii) for each period covered by a report beginning on or after December 31, 2017, in monthly instalments within 30 days after the month for which contributions are payable, the amount of the instalments to be either a total fixed dollar amount, a fixed dollar amount for each employee or member of the plan or a fixed percentage either of the portion of the payroll related to members of the plan or of employee contributions.

(25) Paragraph 5 of subsection 4 (4) of the Regulation is amended by striking out "other than a payment made under paragraph 4".

10. (1) Section 5 of the Regulation is amended by adding the following subsection:

(0.1) In this section,

"consolidated prior solvency deficiency" and "new solvency deficiency" have the same meaning as in section 5.5.3.

(2) Section 5 of the Regulation is amended by adding the following subsection:

(1.0.0.1) After a report is filed with a valuation date on or after December 31, 2017 for a plan that is not a jointly sponsored pension plan listed in subsection 1.3.1 (3), except as otherwise provided in this section and in sections 4, 7 and 7.0.1, the special payments required to be made shall be not less than the sum of,

(a) for the year beginning on the valuation date of the last filed report, the special payments to liquidate any going concern unfunded liability scheduled for that year as determined in the report filed immediately before the last filed report, other than the special payments described in clauses (c) and (d);

(b) for each year after the year described in clause (a), the special payments required to liquidate any going concern unfunded liability determined in the last filed report, other than the special payments described in clauses (c) and (d), with interest at the going concern valuation interest rate, by equal monthly instalments over a period of 10 years beginning one year after the valuation date of the last filed report;

(c) the special payments required to liquidate a past service unfunded actuarial liability that arose on a valuation date of a report filed before May 1, 2018 with interest at the going concern valuation interest rate, by equal monthly instalments over a period of 15 years beginning on the date it arose;

(d) the special payments required to liquidate a past service unfunded actuarial liability that arose on a valuation date of a report filed on or after May 1, 2018, with interest at the going concern valuation interest rate, by equal monthly instalments over a period of 10 years beginning on the effective date of the pension plan;

(e) where a plan amendment increases the going concern liabilities of the plan, the special payments required to liquidate any increase in the going concern liabilities related to the amendment that exceeds the value of any contribution in respect of the increase before the effective date of the amendment, with interest at the going concern valuation interest rate, by equal monthly instalments over a period of eight years beginning on the effective date of the amendment;

(f) with respect to any reduced solvency deficiency, the special payments required to liquidate the reduced solvency deficiency, with interest at the rates described in subsection (2), by equal monthly instalments over a period of five years beginning on the valuation date of the report in which the reduced solvency deficiency was determined;

(g) with respect to any solvency deficiency that arose on a valuation date of a report filed before May 1, 2018, the special payments required to liquidate the solvency deficiency, with interest at the rates described in subsection (2), by equal monthly instalments over a period of five years beginning on the valuation date of the report in which the solvency deficiency was determined;

(h) despite clause (g), with respect to any new solvency deficiency permitted to be liquidated over 10 years in accordance with subparagraph 5.6 (6) 8 i or 8.1 i, subparagraph 5.6.1 (6) 6 i or 7 i or subparagraph 5.6.2 (6) 6 i or 7 i, the special payments required to liquidate the new solvency deficiency with interest at the rates described in subsection (2), by equal monthly instalments over the period permitted under the relevant subparagraph; and

(i) with respect to any consolidated prior solvency deficiency, the special payments required to liquidate the consolidated prior solvency deficiency, with interest at the rates described in subsection (2), by equal monthly instalments over a period of five years beginning on the valuation date of the report in which the consolidated prior solvency deficiency was determined.

(3) Subsection 5 (1.0.1) of the Regulation is revoked and the following substituted:

(1.0.1) Despite subsection (1) and clauses and (1.0.0.1) (f), (g) and (h), if the valuation date of the report is on or after September 30, 2011, the beginning of the amortization period for special payments to liquidate a solvency deficiency, reduced solvency deficiency or going concern unfunded liability referred to in those clauses and determined in the report may be deferred to a day that is not later than 12 months after the valuation date.

(1.0.2) Clause (1.0.0.1) (b) applies, and clause (1.0.0.1) (e) does not apply, with respect to an increase in the going concern unfunded liability that results from an amendment that,

(a) is made to confer a benefit improvement that is required by law;

(b) is filed before May 1, 2018; or

(c) implements a benefit improvement agreed to in a collective agreement before May 1, 2018 if the collective agreement is in place immediately before that date.

(4) Subsection 5 (1.1) of the Regulation is revoked and the following substituted:

(1.1) Despite subsections (1) and (1.0.0.1), in the case of a jointly sponsored pension plan, the special payments may be determined in accordance with subsection (1.2) as of,

(a) the date the going concern unfunded liability arose, in the case of special payments referred to in clauses (1) (b) and (1.0.0.1) (a), (b), (c) and (d);

(b) the date of an amendment to a pension plan that increases going concern liabilities, in the case of special payments referred to in clause (1.0.0.1) (e); or

(c) the date the solvency deficiency, reduced solvency deficiency or consolidated prior solvency deficiency arose, in the case of special payments referred to in clauses (1) (e) and (1.0.0.1) (f), (g), (h) and (i).

(5) Paragraph 3 of subsection 5 (1.2) of the Regulation is amended by striking out "going concern unfunded liability or solvency deficiency" and substituting "going concern unfunded liability, increase in going concern liabilities due to an amendment to the pension plan, consolidated prior solvency deficiency, reduced solvency deficiency or solvency deficiency".

(6) Paragraph 4 of subsection 5 (1.2) of the Regulation is amended by adding "and subsection (1.0.0.1)" after "and (e)".

(7) Subparagraphs 5 i and ii of subsection 5 (1.2) of the Regulation are revoked and the following substituted:

i. with respect to any going concern unfunded liability, using the interest rate or rates used in the report to determine the going concern unfunded liability,

ii. for a report with a valuation date on or after December 31, 2017 with respect to any going concern unfunded liability or increase in going concern liabilities due to an amendment to a pension plan, using the interest rate or rates used in the report to determine the going concern unfunded liabilities or increase in going concern liabilities due to the amendment, and

iii. with respect to any solvency deficiency, reduced solvency deficiency or consolidated prior solvency deficiency, using the interest rates used in the report to determine the solvency deficiency, reduced solvency deficiency or consolidated prior solvency deficiency.

(8) Subsection 5 (2) of the Regulation is revoked and the following substituted:

(2) The rates of interest to be used in calculating the special payments under clauses (1) (e) and (1.0.0.1) (f), (g), (h) and (i) with respect to a solvency deficiency, reduced solvency deficiency or consolidated prior solvency deficiency are the rates used in the report under section 14 in which the solvency deficiency, reduced solvency deficiency or consolidated prior solvency deficiency was determined for the applicable portions of the amortization period for the special payments.

(9) Subsection 5 (3) of the Regulation is amended by striking out "with respect to a solvency deficiency, the employer is required to make interest payments with respect to the solvency deficiency" and substituting "with respect to a solvency deficiency, reduced solvency deficiency or consolidated prior solvency deficiency, the employer is required to make interest payments with respect to the solvency deficiency, reduced solvency deficiency or consolidated prior solvency deficiency".

(10) Section 5 of the Regulation is amended by adding the following subsection:

(17.1) Despite subsection (17), if, on a valuation date on or after December 31, 2017, the sum of the solvency assets and the solvency asset adjustment exceeds the sum of 85 per cent of the solvency liabilities, 85 per cent of the solvency liability adjustment and the prior year credit balance (such excess being referred to in this subsection as the "solvency excess"), the special payments under clauses (1.0.0.1) (f), (g), (h) and (i) with respect to solvency deficiencies, reduced solvency deficiencies or consolidated prior solvency deficiencies arising before the valuation date that are scheduled for payment after the valuation date shall be adjusted in accordance with the following rules:

1. Where the solvency excess is greater than or equal to the present value of the special payments under clauses (1.0.0.1) (f), (g), (h) and (i), the special payments shall be reduced to zero.

2. Where the solvency excess is less than the present value of the special payments under clauses (1.0.0.1) (f), (g), (h) and (i), the monthly rate of the special payments shall not be changed but the amortization period or periods for the special payments shall be reduced so as to reduce the solvency excess to zero.
3. Despite paragraph 2, for the first report of a pension plan filed under section 3 or 14 or submitted under section 4 for which the valuation date is on or after December 31, 2017 and where the solvency excess is less than the present value of the special payments under clauses (1.0.0.1) (f), (g), (h) and (i), the monthly rate of the special payments may also be reduced so as to reduce the solvency excess to zero for any amortization period for which special payments end within six years after the valuation date.
4. Paragraph 3 does not apply for special payments in respect of a consolidated prior solvency deficiency established in a report with a valuation date on or after December 31, 2017.

(11) Paragraphs 3 and 4 of subsection 5 (17.1) of the Regulation, as made by subsection (10), are revoked.

11. (1) Paragraph 1 of subsection 5.6 (6) of the Regulation is amended by adding "but before December 31, 2017" after "solvency relief report".

(2) Subsection 5.6 (6) of the Regulation is amended by adding the following paragraph:

1.1 For greater certainty, for a report with a valuation date on or after December 31, 2017, subsection 5 (17.1) applies with respect to adjusting the monthly rate of special payments or amortization periods for the special payments, and paragraph 1 does not apply.

(3) Subparagraph 8 iii of subsection 5.6 (6) of the Regulation is amended by striking out "the day on which the new solvency deficiency is liquidated" in the portion before sub-subparagraph A and substituting "December 31, 2017".

(4) Subsection 5.6 (6) of the Regulation is amended by adding the following paragraph:

8.0.1 For greater certainty, for a report with a valuation date on or after December 31, 2017, clause 1.2 (1) (d.1) applies with respect to determining the solvency asset adjustment, and subparagraph 8 iii does not apply.

(5) Subparagraph 8.1 iii of subsection 5.6 (6) of the Regulation is amended by striking out "the new solvency deficiency is liquidated" in the portion before the formula and substituting "December 31, 2017".

(6) Subsection 5.6 (6) of the Regulation is amended by adding the following paragraph:

8.2 For greater certainty, for a report with a valuation date on or after December 31, 2017, subsection 1.2 (2) applies with respect to determining the solvency asset adjustment, and subparagraph 8 iii does not apply.

12. (1) Paragraph 1 of subsection 5.6.1 (6) of the Regulation is amended by striking out "on a valuation date after the valuation date of the solvency relief report under this section" in the portion before subparagraph i and substituting "on a valuation date that is after the valuation date of the solvency relief report under this section but that is before December 31, 2017".

(2) Subsection 5.6.1 (6) of the Regulation is amended by adding the following paragraph:

1.1 For greater certainty, for a report with a valuation date on or after December 31, 2017, subsection 5 (17.1) applies with respect to adjusting the monthly rate of special payments or amortization periods for the special payments, and paragraph 1 does not apply.

(3) Subparagraph 6 iv of subsection 5.6.1 (6) of the Regulation is amended by striking out "for a valuation date after the valuation date of the solvency relief report but before the day on which the new solvency deficiency is liquidated or the day on which the new solvency deficiency determined under section 5.6 is liquidated, whichever is later" in the portion before sub-subparagraph A and substituting "for a valuation date that is after the valuation date of the solvency relief report but that is before December 31, 2017".

(4) Subsection 5.6.1 (6) of the Regulation is amended by adding the following paragraph:

6.1 For greater certainty, for a report with a valuation date on or after December 31, 2017, clause 1.2 (1) (d.1) applies with respect to determining the solvency asset adjustment, and subparagraph 6 iv does not apply.

(5) Subparagraph 7 iv of subsection 5.6.1 (6) of the Regulation is amended by striking out "but before the new solvency deficiency is liquidated or before the new solvency deficiency determined under section 5.6 is liquidated, whichever is later" in the portion before the formula and substituting "but that is before December 31, 2017".

(6) Subsection 5.6.1 (6) of the Regulation is amended by adding the following paragraph:

7.1 For greater certainty, for a report with a valuation date on or after December 31, 2017, subsection 1.2 (2) applies with respect to determining the solvency asset adjustment, and subparagraph 7 iv does not apply.

13. (1) Subsection 5.6.2 (1) of the Regulation is amended by striking out "and before December 31, 2018" and substituting "and before May 1, 2018".

(2) Paragraph 1 of subsection 5.6.2 (6) of the Regulation is amended by striking out "on a valuation date after the valuation date of the solvency relief report under this section" in the portion before subparagraph i and substituting "on a valuation date that is after the valuation date of the solvency relief report under this section but that is before December 31, 2017".

(3) Subsection 5.6.2 (6) of the Regulation is amended by adding the following paragraph:

1.1 For greater certainty, for a report with a valuation date on or after December 31, 2017, subsection 5 (17.1) applies with respect to adjusting the monthly rate of special payments or amortization periods for the special payments, and paragraph 1 does not apply.

(4) Subparagraph 6 i of subsection 5.6.2 (6) of the Regulation is amended by adding "or clause 5 (1.0.0.1) (h)" after "5 (1)".

(5) Subparagraph 6 v of subsection 5.6.2 (6) of the Regulation is amended by striking out "for a valuation date after the valuation date of the solvency relief report but before the day on which the new solvency deficiency is liquidated, the day on which the new solvency deficiency determined under section 5.6 is liquidated or the day on which the new solvency deficiency determined under section 5.6.1 is liquidated, whichever is the latest" in the portion before sub-subparagraph A and substituting "for a valuation date that is after the valuation date of the solvency relief report but that is before December 31, 2017".

(6) Subsection 5.6.2 (6) of the Regulation is amended by adding the following paragraph:

6.1 For greater certainty, for a subsequent report described in subparagraph 6 v with a valuation date on or after December 31, 2017, clause 1.2 (1) (d.1) applies with respect to determining the solvency asset adjustment, and subparagraph 6 v does not apply.

(7) Subparagraph 7 i of subsection 5.6.2 (6) of the Regulation is amended by adding "or clause 5 (1.0.0.1) (h)" after "5 (1)".

(8) Subparagraph 7 v of subsection 5.6.2 (6) of the Regulation is amended by striking out "for a valuation date that is after the valuation date of the solvency relief report but before the new solvency deficiency is liquidated, before the new solvency deficiency determined under section 5.6 is liquidated or before the new solvency deficiency determined under section 5.6.1 is liquidated, whichever is the latest" in the portion before the formula and substituting "for a valuation date that is after the valuation date of the solvency relief report but that is before December 31, 2017".

(9) Subsection 5.6.2 (6) of the Regulation is amended by adding the following paragraph:

7.1 For greater certainty, for a subsequent report described in subparagraph 7 v with a valuation date on or after December 31, 2017, subsection 1.2 (2) applies with respect to determining the solvency asset adjustment, and subparagraph 7 v does not apply.

14. Subsection 5.7 (7) of the Regulation is revoked and the following substituted:

(7) The administrator shall retain all notices of objection it receives until the earlier of the date the new solvency deficiency is liquidated and the date that is 11 years after the valuation date of the solvency relief report and shall provide copies of the notices to the Superintendent on request.

15. (1) Subsection 5.10 (3) of the Regulation is amended by striking out "until the new solvency deficiency has been liquidated" and substituting "until the earlier of the date the new solvency deficiency has been liquidated and the date that is 11 years after the valuation date of the solvency relief report".

(2) Subsection 5.10 (4) of the Regulation is amended by adding the following paragraph:

7.1 For a progress report that is sent after a report with a valuation date on or after December 31, 2017, the estimated annual contributions required to fund the normal cost of the plan, the amount equal to the provision for adverse deviations in respect of the normal cost and all special payments set out in the report referred to in paragraph 6.

16. (1) Section 6 of the Regulation is amended by adding the following subsection:

(0.1) In this section,

"consolidated prior solvency deficiency" has the same meaning as in section 5.5.3.

(2) Subsection 6 (4.2) of the Regulation is amended by adding "for a report with a valuation date before December 31, 2017" after "clause (4) (a)" in the portion before paragraph 1.

(3) Section 6 of the Regulation is amended by adding the following subsections:

(4.3) For the purposes of clause (4) (a) for a report with a valuation date on or after December 31, 2017, the required contributions are sufficient if, for each year of the period covered by the report, they are not less than the sum of the following amounts, determined using a benefit allocation method:

1. The normal cost of the plan.

2. The amount equal to the provision for adverse deviations in respect of the normal cost of the plan.
3. The special payments set out in a previous report to be paid in the year following the valuation date with respect to any going concern unfunded liability, other than special payments for a past service unfunded actuarial liability set out in a previous report with a valuation date on or after December 31, 2017.
4. The special payments set out in a previous report with a valuation date on or after December 31, 2017 that remain to be paid in respect of any amendment that increases the going concern liabilities or past service unfunded actuarial liability.
5. The special payments set out in a previous report that remain to be paid with respect to any solvency deficiency, reduced solvency deficiency or consolidated prior solvency deficiency.
6. The special payments to be paid with respect to any going concern unfunded liability that is determined in the report.
7. The special payments to be paid with respect to any plan amendment that increases going concern liabilities or past service unfunded actuarial liability that is determined in the report.
8. The special payments to be paid with respect to any reduced solvency deficiency that is determined in the report.

(4.4) If the payments required under subsection (4.3) are greater than they would have been under subsection (4.2) as it read immediately before May 1, 2018, the required contributions are sufficient if, for each year of the period covered by the report, they are not less than the amount calculated using the formula,

$$A - [(A-B) \times C]$$

in which,

“A” is the total of the payments required under subsection (4.3) for the year based on the most recent report filed,

“B” is the total of the payments that would have been required for the year under subsection (4.2) as it read immediately before May 1, 2018,

“C” is the value described in subsection (4.5).

(4.5) The value of “C” in the formula in subsection (4.4) is the value determined in accordance with the following:

1. For a pension plan that provides defined benefits where the obligation of the employer to contribute to the pension fund is limited to a fixed amount set out in a collective agreement that exists on May 1, 2018:
   i. The value of “C” is equal to one in the year that is the earlier of,
      A. 2021, and
      B. the year in which the collective agreement expires.
   ii. In any year prior to the year described in subparagraph i, the value of “C” is equal to one.
   iii. In the year immediately following the year described in subparagraph i, the value of “C” is equal to one.
   iv. In the year immediately following the year described in subparagraph iii, the value of “C” is equal to 0.667.
   v. In the year immediately following the year described in subparagraph iv, the value of “C” is equal to 0.333.
   vi. In any year following the year described in subparagraph v, the value of “C” is zero.
2. For any other pension plan:
   i. In the first year following the valuation date of the first report filed with a valuation date that is on or after December 31, 2017, the value of “C” is equal to one.
   ii. In the year immediately following the year described in subparagraph i, the value of “C” is equal to 0.667.
   iii. In the year immediately following the year described in subparagraph ii, the value of “C” is equal to 0.333.
   iv. In any year following the year described in subparagraph iii, the value of “C” is zero.

17. (1) Subsection 6.0.4 (2) of the Regulation is amended by striking out “Subsections 6 (4.1) and (4.2)” at the beginning and substituting “Section 3.0.1, subsections 5 (1.0.0.1), 6 (4.1), (4.2) and (4.3), section 7.0.1 and subsection 11 (4)”.

(2) Section 6.0.4 of the Regulation is amended by adding the following subsections:

(2.1) Despite section 11.2, the provision for adverse deviations is zero with respect to a report to which this section applies.

(2.2) Despite subsection 1 (2), in respect of a report described in subsection (1),

"going concern assets" means the sum of,

(a) the value of the assets of the pension plan determined on the basis of a going concern valuation, including accrued and receivable income but excluding the amount of any letter of credit held in trust for the pension plan, and

(b) the present value of any special payments in respect of a going concern unfunded liability disclosed in previously filed reports.

18. The heading before section 7 of the Regulation is revoked and the following substituted:

ACTUARIAL GAIN, GOING CONCERN EXCESS AND CONTRIBUTION HOLIDAYS

19. (1) Section 7 of the Regulation is amended by adding the following subsection:

(1.1) Subsection (1) does not apply to a report with a valuation date on or after December 31, 2017, unless the report is in respect of a jointly sponsored pension plan listed in subsection 1.3.1 (3).

(2) Subsection 7 (3) of the Regulation is amended by striking out "normal costs" and substituting "normal cost".

(3) Subsection 7 (3.1) of the Regulation is amended by striking out the portion before clause (a) and substituting the following:

(3.1) Despite subsection (3), for a plan that provides defined benefits, other than designated plans or individual pension plans, for a fiscal year of the plan ending after June 29, 2017 and before January 1, 2020, an actuarial gain shall not be used to reduce contributions for the normal cost required to be made by an employer, by a person or entity required to make contributions on behalf of the employer, by members or by any of them for the year unless,

. . . . .

(4) Subsection 7 (4) of the Regulation is revoked.

20. The Regulation is amended by adding the following sections:

7.0.1 (1) The following rules about special payments apply with respect to a report with a valuation date on or after December 31, 2017 for a plan that is not a jointly sponsored pension plan listed in subsection 1.3.1 (3):

1. If the report discloses a going concern excess under the plan that is greater than or equal to the sum of the amounts listed in subsection (2), the special payments determined under clauses 5 (1.0.0.1) (a), (c), (d) and (e) shall be reduced to zero.
2. If the report discloses a going concern excess under the plan that is less than the sum of the amounts listed in subsection (2), the monthly rate of the special payments determined under clauses 5 (1.0.0.1) (a), (c), (d) and (e) shall not be changed but the amortization period or periods for the special payments determined under those clauses shall be reduced so as to reduce the going concern excess to zero.

(2) The amounts referred to in paragraphs 1 and 2 of subsection (1) are the following:

1. The present value of special payments in respect of any plan amendment that increases going concern liabilities.
2. The present value of special payments in respect of a going concern unfunded liability, other than a past service unfunded actuarial liability, determined in the report filed immediately before the current report and scheduled for payment within one year after the valuation date of the current report.
3. The present value of special payments in respect of any past service unfunded actuarial liability.

7.0.2 (1) For the purposes of section 55.1 of the Act, the available actuarial surplus of a pension plan is the following:

1. In the case of a plan with respect to which special payments are required or are deferred under subsection 5 (1.0.0.1) or (1.0.1) for the year, zero.
2. In the case of any other plan, the lesser of the following:
   i. The amount by which the value of the assets of the pension plan, determined on the basis of a going concern valuation, including accrued and receivable income but excluding the amount of any letter of credit held in trust for the pension plan, exceeds the sum of going concern liabilities, the amount equal to the provision for adverse deviations in respect of going concern liabilities and the prior year credit balance.
   ii. Whichever of the following amounts applies to the plan:
      A. In the case of a plan that is a public sector pension plan, the amount that, if it were deducted from the solvency assets of the pension plan, would reduce the solvency ratio to 1.05.
      B. In the case of any other plan, the amount that, if it were deducted from the solvency assets of the pension plan, would reduce the transfer ratio to 1.05.

(2) The amounts referred to in paragraph 2 of subsection (1) shall be based on figures from the last report of the plan filed under section 3 or 14 or submitted under section 4.

7.0.3 (1) In any year following the valuation date of the first report filed on or after December 31, 2017 for a plan that is not a jointly sponsored pension plan listed in subsection 1.3.1 (3), available actuarial surplus may be applied to reduce contributions for normal cost and contributions for the provision for adverse deviations in respect of the normal cost required to be made by the employer, by a person or entity required to make contributions on behalf of the employer, by the members of the pension plan or by any of them.

(2) Any available actuarial surplus not applied under subsection (1) may be applied to pay the annual assessment to the Guarantee Fund otherwise required by subsection 37 (1) to be paid by the employer.

(3) Despite subsections (1) and (2), for a plan that provides defined benefits, other than designated plans or individual pension plans, available actuarial surplus shall not be used to pay an annual assessment to the Guarantee Fund or to reduce contributions for the normal cost or contributions for the provision for adverse deviations in respect of the normal cost required to be made by an employer, by a person or entity required to make contributions on behalf of the employer, by members or by any of them for the fiscal year unless,

(a) the administrator files with the Superintendent within the first 90 days of the fiscal year an actuarial cost certificate for the fiscal year; and

(b) the amount applied to pay the annual assessment to the Guarantee Fund or to reduce the contributions for the year does not exceed the maximum amount determined under subsection (4) or (5).

(4) For the purposes of clause (3) (b), and subject to subsection (5), the maximum amount of any available actuarial surplus that may be applied to pay an annual assessment to the Guarantee Fund or to reduce contributions for the normal cost and contributions for the provision for adverse deviations in respect of the normal cost for a fiscal year is the lesser of,

(a) the amount, if any, of available actuarial surplus for the fiscal year reported in the last report of the plan filed under section 3 or 14 or submitted under section 4; and

(b) the amount, if any, of estimated available actuarial surplus for the fiscal year as reported in the actuarial cost certificate filed under section 7.1 for that fiscal year.

(5) If a report has been filed under section 3 or 14 or submitted under section 4 with a valuation date that is not earlier than the day immediately before the beginning of the fiscal year in which the report was filed or submitted, and the filing or submission took place after the actuarial cost certificate was filed but within the same fiscal year, clause (4) (b) does not apply with respect to the portion of the fiscal year that begins on the first day of the period covered by the report and ends on the last day of the fiscal year.

21. (1) Subsection 7.1 (2) of the Regulation is amended by striking out the portion before paragraph 1 and substituting the following:

(2) An actuarial cost certificate for a fiscal year before the fiscal year described in subsection (3) must contain the following:

. . . . .

(2) Section 7.1 of the Regulation is amended by adding the following subsection:

(3) An actuarial cost certificate for a fiscal year following a report filed with a valuation date on or after December 31, 2017 must contain the following:

1. An estimate of the normal cost of the plan for the fiscal year commencing on the valuation date of the certificate.
2. An estimate of the amount equal to the provision for adverse deviations in respect of the normal cost of the plan for the fiscal year commencing on the valuation date of the certificate.
3. An estimate of the total employee contributions to the plan to be made during that fiscal year.
4. The pension plan's going concern assets, estimated going concern liabilities, estimated available actuarial surplus if applicable, solvency assets and estimated solvency liabilities, each determined as of the valuation date of the certificate.
5. The prior year credit balance.
6. Estimated liabilities for benefits, other than pension benefits and ancillary benefits payable under qualifying annuity contracts, that were excluded in calculating the solvency liabilities.
7. The estimated transfer ratio, calculated using the solvency assets and estimated solvency liabilities determined in the certificate.
8. If the pension plan is a public sector pension plan, the estimated solvency ratio, calculated using the solvency assets and estimated solvency liabilities determined in the certificate.

22. The Regulation is amended by adding the following section:

8. (1) The administrator shall give notice of a reduction of contributions under section 7.0.3 for the normal cost of the plan or of contributions for the provision for adverse deviations in respect of the normal cost of the plan.

(2) The notice shall be given to,

(a) every member of the plan;

(b) every trade union that represents members of the plan who are employed in Ontario;

(c) every former member of the plan;

(d) every retired member of the plan; and

(e) the advisory committee, if any, established under section 24 of the Act for the plan.

(3) The notice must contain the following:

1. A statement that the documents that create and support the pension plan and the pension fund do not prohibit the reduction of contributions.
2. A statement that contributions required to be made by the employer, by the members of the pension plan or by both of them will be reduced.
3. The period of time during which contributions will be reduced.
4. A statement that the reduction of contributions will not reduce the estimated transfer ratio of the pension plan to less than 1.05.
5. A statement that the plan's going concern assets will be at least equal to the plan's going concern liabilities plus the amount equal to the plan's provision for adverse deviations in respect of going concern liabilities after the reduction of contributions for the period.
6. The estimated transfer ratio of the pension plan, calculated using the solvency assets and estimated solvency liabilities determined in the actuarial cost certificate.

(4) The notice must be given within the first six months of the fiscal year in which the planned reduction is to occur. However, a separate notice to a member, former member or retired member is not required if the administrator includes the information required under subsection (3) in the written statement that is required under section 27 of the Act in the same fiscal year.

23. Section 9 of the Regulation is amended by striking out "normal costs" and substituting "normal cost".

24. Section 11 of the Regulation is amended by adding the following subsection:

(4) This section does not apply to a report with a valuation date on or after December 31, 2017 unless the report is in respect of a jointly sponsored pension plan listed in subsection 1.3.1 (3).

25. The Regulation is amended by adding the following sections:

PROVISION FOR ADVERSE DEVIATIONS

11.1 (1) The amount equal to the provision for adverse deviations in respect of the normal cost for a pension plan is the provision for adverse deviations determined under section 11.2 multiplied by the plan's normal cost.

(2) For the purpose of subsection (1), the plan's normal cost may exclude estimated future costs for escalated adjustments.

(3) The amount equal to the provision for adverse deviations in respect of going concern liabilities for a pension plan is the provision for adverse deviations determined under section 11.2 multiplied by the plan's going concern liabilities as of the valuation date of the last filed report.

(4) For the purpose of subsection (3), the going concern liabilities of a plan may exclude estimated future costs for escalated adjustments and liabilities in respect of benefits for which an annuity contract has been purchased from an insurance company.

11.2 (1) In this section,

"closed plan" means a pension plan at least one portion of which, according to the terms of the plan, does not permit new members to join and accrue defined benefits; ("régime fermé")

"non-fixed income assets" means assets other than fixed income assets. ("actif à revenu non fixe")

(2) The provision for adverse deviations for a pension plan on a particular valuation date is the percentage calculated using the formula,

$$A + B + C$$

in which,

“A” is 0.05 for a closed plan and 0.04 for a plan that is not a closed plan,

“B” is the value determined under subsection (3), and

“C” is the greater of,

(a) zero, and

(b) the value equal to the plan’s duration of going concern liabilities calculated under subsection (5) multiplied by the amount by which “D” exceeds “E” where,

“D” is the plan’s going concern valuation interest rate which shall be gross of any provision for expenses paid or expected to be paid from the fund and may be net of any provision for expenses paid or expected to be paid from the fund for active management of investments, and

“E” is the plan’s benchmark discount rate calculated under subsections (7) to (12).

(3) The value of “B” for the purposes of subsection (2) is the value determined under Table 1 to this section based on the plan’s combined target asset allocation for non-fixed income assets, as determined under subsection (4), in accordance with the following rules:

1. The value of “B” is the value in Column 3 or Column 4 of Table 1, whichever applies, opposite the combined target asset allocation for the non-fixed income assets of the plan under Column 2 of Table 1.
2. If the combined target asset allocation for non-fixed income assets falls between two values in Column 2 of Table 1, the value of “B” shall be interpolated linearly from the values in Column 3 or 4 of Table 1, whichever applies.

(4) The plan’s combined target asset allocation for non-fixed income assets shall be determined in accordance with the formula,

$$100\% - J$$

in which,

“J” is the combined target asset allocation for fixed income assets, determined under subsection (8).

(5) For the purposes of determining the value of “C” under subsection (2), the value equal to the plan’s duration of going concern liabilities shall be calculated using the formula,

$$(F - G) / (G \times 0.01)$$

in which,

“F” is the value of the plan’s going concern liabilities as of the valuation date, determined using a discount rate that is 1 per cent less than the discount rate used in the report, and

“G” is the value of the plan’s going concern liabilities as of the valuation date.

(6) For the purposes of determining the values of “F” and “G” in subsection (5), the going concern liabilities of the plan may exclude estimated future costs for escalated adjustments and liabilities in respect of benefits for which an annuity contract has been purchased from an insurance company.

(7) For the purposes of determining the value of “E” under subsection (2), the plan’s benchmark discount rate is the amount calculated using the formula,

$$0.005 + H + (0.015 \times J) + (0.05 \times K)$$

in which,

“H” is the benchmark yield on long-term bonds issued by the Government of Canada for the valuation date, as determined from the Canadian Socio-Economic Information Management System (CANSIM) series V 39056 compiled by Statistics Canada and available on the website of the Bank of Canada,

“J” is the combined target asset allocation for fixed income assets, determined under subsection (8), and

“K” is the combined target asset allocation for non-fixed income assets, determined under subsection (4).

(8) Subject to subsections (9) to (11), for the purposes of the value of “J” in subsections (4) and (7), the plan’s combined target asset allocation for fixed income assets shall be determined in accordance with the formula,

$$[L + (0.5 \times M) + (N \times P) + (0.5 \times N \times Q)] / (100\% - R)$$

in which,

"L" is the sum of the plan's target asset allocations for each of the investment categories listed in paragraphs 1, 3, 4, 5, 15 and 16 of subsection 76 (12), excluding any portions of the target asset allocations that are allocated to the assets described in "R", expressed as a percentage,

"M" is the sum of the plan's target asset allocations for each of the investment categories listed in paragraphs 6 to 11 and 17 of subsection 76 (12), excluding any portions of the target asset allocations that are allocated to the assets described in "R", expressed as a percentage,

"N" is the plan's target asset allocation for the investment category listed in paragraph 2 of subsection 76 (12), expressed as a percentage,

"P" is the proportion of "N" that is allocated to the investment categories listed in paragraphs 1, 3, 4, 5, 15 and 16 of subsection 76 (12), expressed as a percentage,

"Q" is the proportion of "N" that is allocated to the investment categories listed in paragraphs 6 to 11 and 17 of subsection 76 (12), expressed as a percentage, and

"R" is the portion of the plan's target asset allocation for each investment category listed in paragraphs 1, 3 to 11 and 15 to 17 of subsection 76 (12), expressed as a percentage, that is allocated to annuity contracts that have been purchased from an insurance company in respect of benefits.

(9) In determining the values of "L" and "P" in subsection (8), a target asset allocation for an investment category listed in paragraph 4, 15 or 16 of subsection 76 (12) shall not be included unless the following criteria are met:

1. The plan's statement of investment policies and procedures must set out a minimum rating for target investment allocations of fixed income assets in the investment category that is given by a credit rating agency recognized by a competent authority.
2. At the time at which the values of "L" and "P" are determined, the minimum rating described in paragraph 1 must be at or above one of the following ratings:
   i. The rating set out in Column 3 or 4 of Table 2 to this section, as applicable, opposite a credit rating agency in Column 2 of that Table.
   ii. A rating that is equivalent to the rating described in subparagraph i and that is given by another credit rating agency recognized by a competent authority.

(10) The target asset allocation to be used in determining the values of "L", "M", "N", "P", "Q" and "R" in subsection (8) is the target asset allocation in the plan's statement of investment policies and procedures that is in effect at the time at which the determination is made.

(11) Subject to subsection (12), for a report with a valuation date before December 31, 2019, a plan's actual asset allocations to the applicable investment categories on the valuation date of the report, as set out in the plan's financial statements, may be used instead of the plan's target asset allocations in determining the values of "L", "M", "N", "P", "Q" and "R" in subsection (8).

(12) If a plan's actual asset allocations are used under subsection (11), the plan's actual asset allocation for an investment category listed in paragraph 4, 15 or 16 of subsection 76 (12) shall not be included unless, at the time at which the determination is made, the minimum rating of the asset is at or above one of the following ratings:

1. The rating set out in Column 3 or 4 of Table 2 to this section, as applicable, opposite a credit rating agency in Column 2 of that Table.
2. A rating that is equivalent to the rating described in paragraph 1 and that is given by another credit rating agency recognized by a competent authority.

(13) Despite anything else in this section, the provision for adverse deviations is deemed to be zero for,

(a) a jointly sponsored pension plan listed in subsection 1.3.1 (3); and

(b) a pension plan's liabilities in respect of defined contribution benefits.

TABLE 1
VALUE OF "B" FOR THE PURPOSES OF SUBSECTION (2)

Column 1 Item	Column 2 Combined target asset allocation for non-fixed income assets	Column 3 Value of "B" for closed plan	Column 4 Value of "B" for plan other than closed plan
1.	0%	0	0
2.	20%	0.02	0.01
3.	40%	0.04	0.02
4.	50%	0.05	0.03

5.	60%	0.07	0.04
6.	70%	0.11	0.06
7.	80%	0.15	0.08
8.	100%	0.23	0.12

TABLE 2
MINIMUM FIXED INCOME ASSET RATINGS FOR THE PURPOSES OF SUBSECTIONS (9) AND (12)

Column 1 Item	Column 2 Credit rating agency	Column 3 Rating - bond market securities	Column 4 Rating - money market securities
1.	DBRS	BBB	R-2 (middle)
2.	Fitch Ratings	BBB-	F-3
3.	Moody's Investors Service	Baa3	P-3
4.	Standard & Poor's	BBB-	A-3

26. (1) Subsection 13 (1) of the Regulation is amended by adding the following clause:

(b.1) for a pension plan that has a provision for adverse deviations that is greater than zero,

(i) the provision for adverse deviations for the plan, calculated in accordance with section 11.2, and

(ii) the estimated contributions required to pay the amount equal to the provision for adverse deviations in respect of the normal cost for each year up to the date of the next report;

(2) Clause 13 (1) (j) of the Regulation is revoked and the following substituted:

(j) where the plan provides for an escalated adjustment,

(i) the liability for the future costs of the adjustment included in the determination of the plan's going concern liabilities,

(ii) the future costs for the adjustment included in the normal cost,

(iii) whether and to what extent liabilities for the future costs of the adjustment are taken into account when determining the provision for adverse deviations in respect of the going concern liabilities, and

(iv) whether and to what extent future costs of the adjustment are taken into account when determining the provision for adverse deviations in respect of the normal cost.

(3) Section 13 of the Regulation is amended by adding the following subsection:

(1.0.1) For a plan with an effective date that is on or after January 31, 2018 and on or before May 1, 2018, the administrator shall submit the report described in subsection (1) on or before July 31, 2018.

(4) Subsection 13 (1.1) of the Regulation is amended by adding the following clause:

(a.1) whether there is a reduced solvency deficiency;

(5) Clause 13 (1.1) (b) of the Regulation is revoked and the following substituted:

(b) if there is a solvency deficiency, the amount of the solvency deficiency;

(b.1) if there is a reduced solvency deficiency, the amount of the reduced solvency deficiency and the special payments required to liquidate it in accordance with section 5;

(6) Section 13 of the Regulation is amended by adding the following subsection:

(1.1.1) The report shall also set out any available actuarial surplus for each year up to the date of the next report.

27. (1) Section 14 of the Regulation is amended by adding the following subsection:

(0.2) In this section,

"consolidated prior solvency deficiency" has the same meaning as in section 5.5.3.

(2) Subsection 14 (7) of the Regulation is amended by adding "with a valuation date before December 31, 2017 or that is in respect of a jointly sponsored pension plan listed in subsection 1.3.1 (3)" after "this section" in the portion before clause (a).

(3) Subsection 14 (8) of the Regulation is amended by adding "with a valuation date before December 31, 2017 or that is in respect of a jointly sponsored pension plan listed in subsection 1.3.1 (3)" after "this section" in the portion before clause (a).

(4) Clause 14 (8) (c) of the Regulation is amended by adding "in subsection 1 (2)" before "that are being excluded".

(5) Clause 14 (8) (e.1) of the Regulation is amended by striking out "if applicable, the amount described in subclause 37 (4) (a) (ii)" at the end and substituting "if applicable, the value of "B" described in subsection 37 (4)".

(6) Section 14 of the Regulation is amended by adding the following subsections:

(8.0.1) Subsections (8.0.2) to (8.0.6) do not apply to reports in respect of jointly sponsored pension plans listed in subsection 1.3.1 (3).

(8.0.2) Each report under this section with a valuation date on or after December 31, 2017 shall set out, on the basis of a going concern valuation,

(a) the normal cost in the year following the valuation date of the report and the rule for computing the cost in subsequent years up to the valuation date of the next report;

(b) an estimate of the normal cost in the subsequent years up to the valuation date of the next report;

(c) if a plan has a provision for adverse deviations that is greater than zero,

(i) the provision for adverse deviations for the plan, calculated in accordance with section 11.2, and

(ii) the estimated contributions required to pay the amount that is equal to the provision for adverse deviations in respect of the normal cost for each year up to the date of the next report;

(d) the estimated aggregate employee contributions to the pension plan during the year following the valuation date of the report and the subsequent years up to the valuation date of the next report;

(e) the special payments remaining to be paid after the valuation date with respect to any plan amendment that increases going concern liabilities;

(f) the special payments required with respect to any going concern unfunded liability determined in the previously filed report in accordance with section 5;

(g) the special payments remaining to be paid after the valuation date to liquidate a past service unfunded actuarial liability;

(h) if there is a going concern unfunded liability in the report, the amount of the going concern unfunded liability and the special payments required in respect of it in accordance with section 5;

(i) in the case of a specified Ontario multi-employer pension plan, if there is a going concern unfunded liability in the report, the amount of the going concern unfunded liability and the special payments required to liquidate it in accordance with section 6.0.4;

(j) the present value of future special payments remaining to be paid after the valuation date with respect to any plan amendment that increases going concern liabilities;

(k) the present value of future special payments remaining to be paid after the valuation date with respect to a past service unfunded actuarial liability;

(l) where the plan provides for an escalated adjustment,

(i) the liability for the future costs of the adjustment included in the determination of the plan's going concern liabilities,

(ii) the future costs for the adjustment included in the normal cost,

(iii) whether and to what extent liabilities for the future costs of the adjustment are taken into account when determining the provision for adverse deviations in respect of the going concern liabilities, and

(iv) whether and to what extent future costs of the adjustment are taken into account when determining the provision for adverse deviations in respect of the normal cost; and

(m) the going concern excess or going concern unfunded liability in the plan and, where there is a going concern excess, any intended application of that excess in accordance with section 7.0.1.

(8.0.3) Clauses (8.0.2) (e), (f), (g) and (h) do not apply to a report that is in respect of a specified Ontario multi-employer pension plan.

(8.0.4) Each report under this section with a valuation date on or after December 31, 2017 shall also set out, on the basis of a solvency valuation,

(a) whether there is a solvency deficiency;

(b) whether there is a reduced solvency deficiency;

(c) the special payments remaining to be paid after the valuation date with respect to the solvency deficiency, reduced solvency deficiency or consolidated prior solvency deficiency determined in any previously filed report;

(d) if there is a reduced solvency deficiency in the report, the amount of the reduced solvency deficiency and the special payments required to liquidate it in accordance with section 5;

(e) if there is a solvency deficiency in the report, the amount of the solvency deficiency;

(f) the liabilities referred to in clauses (a) to (h) of the definition of "solvency liabilities" in subsection 1 (2) that are being excluded from the calculation of the solvency liabilities;

(g) whether there is a Guarantee Fund assessment required to be paid under section 37;

(h) if a Guarantee Fund assessment is required to be paid, the PBGF assessment base, the PGBF liabilities and, if applicable, the value of "B" described in subsection 37 (4);

(i) whether the transfer ratio is less than one;

(j) if the transfer ratio is less than one, the transfer ratio; and

(k) the solvency ratio.

(8.0.5) Each report under this section with a valuation date on or after December 31, 2017 shall set out any available actuarial surplus for each year up to the date of the next report.

(8.0.6) If the report indicates that contributions were determined using subsection 4 (2.1.1) or 6 (4.4), the report shall include the information required by clauses (7) (c.1), (c.2), (d), (e) and (f) and (8) (b.1) of this section, calculated in accordance with those provisions as they read immediately before May 1, 2018.

(7) Subsection 14 (8.1) of the Regulation is amended by striking out "and" at the end of clause (b), by revoking clause (c), and by substituting the following:

(c) include the information required under subsection (7) or (8.0.2), as applicable, determined using a benefit allocation method; and

(d) include the information required under subsection (8) or (8.0.4), (8.0.5) and (8.0.6), as applicable.

(8) Section 14 of the Regulation is amended by adding the following subsection:

(10.1) Despite subsection (10), for a report required under this section with a valuation date that is on or after December 31, 2017 and before March 1, 2018, the administrator shall file the report on or before November 30, 2018.

28. Subsection 17 (1) of the Regulation is amended by adding "or reduced solvency deficiency" after "solvency deficiency".

29. (1) Clause 26 (1) (b) of the Regulation is revoked and the following substituted:

(b) the value of the liabilities of the pension plan shall be the greater of "A" and "B" or, if a benefit allocation method is not used to set contribution rates, the greatest of "A", "B" and "C", where,

"A" is the sum of going concern liabilities determined using a benefit allocation method and the amount equal to the provision for adverse deviations in respect of going concern liabilities determined using the benefit allocation method, as disclosed in the last valuation report,

"B" is the sum of solvency liabilities and liabilities for benefits, other than pension benefits and ancillary benefits payable under qualifying annuity contracts, that were excluded in calculating the solvency liabilities, and

"C" is the going concern liabilities determined under the actuarial cost method used by the plan.

(2) Subsection 26 (2) of the Regulation is revoked and the following substituted:

(2) For the purposes of the definition of "B" in subclause 79 (1) (d) (i) of the Act and subclause 79 (1) (d) (ii) of the Act, the liabilities of the pension plan are the greater of "D" and "E", or, if a benefit allocation method is not used to set contribution rates, the greatest of "D", "E" and "F", where,

"D" is the sum of going concern liabilities determined using a benefit allocation method and the amount equal to the provision for adverse deviations in respect of going concern liabilities determined using the benefit allocation method,

"E" is the sum of the solvency liabilities and the liabilities for benefits, other than pension benefits and ancillary benefits payable under qualifying annuity contracts, that were excluded in calculating the solvency liabilities, and

"F" is the going concern liabilities determined under the actuarial cost method used by the plan.

30. (1) Subsection 37 (4) of the Regulation is revoked and the following substituted:

(4) If the assessment date falls on or after January 1, 2019, the amount of the annual assessment is the amount calculated using the formula,

$$A + B$$

in which,

“A” is the lesser of “C” and “D” where,

“C” is the sum of the following amounts:

1. 0.75 per cent of any portion of the PBGF assessment base that is less than 10 per cent of the PBGF liabilities.
2. 1.5 per cent of any portion of the PBGF assessment base that is 10 per cent or more but less than 20 per cent of the PBGF liabilities.
3. 2.25 per cent of any portion of the PBGF assessment base that is 20 per cent or more of the PBGF liabilities.
4. 0.015 per cent of PBGF liabilities; and

“D” is $600 multiplied by the number of persons who were Ontario plan beneficiaries at the end of the plan fiscal year immediately preceding the assessment date, and

“B” is zero or, if an election under subsection 5 (18) is in effect on the assessment date, three per cent of the amount by which “E” exceeds “F” where,

“E” is the amount of the additional liability that would result if, on the valuation date of the last report filed or submitted on or before the assessment date under any of section 3, 4 or 14 for the plan, all plant closure benefits and permanent layoff benefits under the plan were payable for those members in Ontario who, on that date, met the age and service requirements for those benefits, and

“F” is the amount, if any, by which the amount determined under clause (b) of the definition of “PBGF assessment base” in subsection 1 (2) exceeds the PBGF liabilities, both determined as of the valuation date referred to in the definition of “E”.

(2) Subsection 37 (14.1) of the Regulation is revoked.

31. (1) Subclause 40 (1) (p) (v) of the Regulation is revoked and the following substituted:

(v) the transfer ratio of the pension plan as of the valuation date of the report filed most recently under section 13 or 14,

(v.1) the estimated transfer ratio calculated as of the end of the period covered by the statement, calculated in accordance with paragraph 7 of subsection 7.1 (3), and

(2) Clause 40 (1) (q) of the Regulation is revoked and the following substituted:

(q) in the case of a statement required to be provided to members before a report with a valuation date before December 31, 2017 is filed and where special payments are being made to liquidate any liability, a statement to that effect;

(q.1) in the case of a statement required to be provided to members after a report with a valuation date on or after December 31, 2017 is filed and where special payments are being made in respect of any going concern unfunded liability, a statement to that effect;

(q.2) in the case of a statement required to be provided to members after a report with a valuation date on or after December 31, 2017 is filed and where special payments are being made to liquidate any reduced solvency deficiency to increase the plan’s solvency ratio to 85 per cent, a statement to that effect;

(3) Subclause 40 (1) (u) (v) of the Regulation is amended by adding “or reduced solvency deficiency” after “solvency deficiency”.

(4) Section 40 of the Regulation is amended by adding the following subsections:

(3) For a plan that provides defined benefits, the first statement required to be provided to a member after a report with a valuation date on or after December 31, 2017 is filed shall also contain a description of how funding rules for pension plans have changed or will change as a result of amendments to this Regulation effective May 1, 2018, including at least the following information:

1. A description of the difference between solvency funding and going concern funding.
2. A statement that special payments are required under this Regulation for the purpose of increasing the plan’s funded ratio to 85 per cent, as measured on a solvency basis, and that this is a change from the previous requirement to make special payments for the purpose of increasing the plan’s funded ratio to 100 per cent, as measured on a solvency basis.

3. A statement that before the amendments to this Regulation were made, going concern unfunded liabilities were amortized over 15 years and new payment schedules were added when needed but were not consolidated in each new report of the pension plan.
4. A statement that as a result of the amendments to this Regulation, any going concern unfunded liability will be required to be amortized over 10 years and that the payment schedules will be consolidated in each new report of the pension plan.
5. A statement that contributions for the provision for adverse deviations are required under this Regulation and are required to be funded on a going concern basis.

(4) Subsection (3) does not apply to a jointly sponsored pension plan listed in subsection 1.3.1 (3) or a specified Ontario multi-employer pension plan.

32. (1) Subclause 40.1 (1) (m) (i) of the Regulation is revoked and the following substituted:

(i) the transfer ratio of the pension plan as of the valuation date of the report filed most recently under section 13 or 14,

(i.1) the estimated transfer ratio calculated as of the end of the period covered by the statement, calculated in accordance with paragraph 7 of subsection 7.1 (3), and

(2) Clause 40.1 (1) (n) of the Regulation is revoked and the following substituted:

(n) in the case of a statement required to be provided to a former member before a report with a valuation date before December 31, 2017 is filed and where special payments are being made to liquidate any liability, a statement to that effect;

(n.1) in the case of a statement required to be provided to a former member after a report with a valuation date on or after December 31, 2017 is filed and where special payments are being made in respect of any going concern unfunded liability, a statement to that effect;

(n.2) in the case of a statement required to be provided to a former member after a report with a valuation date on or after December 31, 2017 is filed and where special payments are being made to liquidate any reduced solvency deficiency to increase the plan's solvency ratio to 85 per cent, a statement to that effect;

(3) Subclause 40.1 (1) (r) (iii) is amended by adding "or reduced solvency deficiency" after "solvency deficiency".

(4) Section 40.1 of the Regulation is amended by adding the following subsections:

(4) For a plan that provides defined benefits, the first statement required to be provided to a former member after a report with a valuation date on or after December 31, 2017 is filed shall also contain a description of how funding rules for pension plans have changed or will change as a result of amendments to this Regulation effective May 1, 2018, including at least the following information:

1. A description of the difference between solvency funding and going concern funding.
2. A statement that special payments are required under this Regulation for the purpose of increasing the plan's funded ratio to 85 per cent, as measured on a solvency basis, and that this is a change from the previous requirement to make special payments for the purpose of increasing the plan's funded ratio to 100 per cent, as measured on a solvency basis.
3. A statement that before the amendments to this Regulation were made, going concern unfunded liabilities were amortized over 15 years and new payment schedules were added when needed but were not consolidated in each new report of the pension plan.
4. A statement that as a result of the amendments to this Regulation, any going concern unfunded liability will be required to be amortized over 10 years and that the payment schedules will be consolidated in each new report of the pension plan.
5. A statement that contributions for the provision for adverse deviations are required under this Regulation and are required to be funded on a going concern basis.

(5) Subsection (4) does not apply to a jointly sponsored pension plan listed in subsection 1.3.1 (3) or a specified Ontario multi-employer pension plan.

33. (1) Subclause 40.2 (1) (l) (i) of the Regulation is revoked and the following substituted:

(i) the transfer ratio of the pension plan as of the valuation date of the report filed most recently under section 13 or 14,

(i.1) the estimated transfer ratio calculated as of the end of the period covered by the statement, calculated in accordance with paragraph 7 of subsection 7.1 (3), and

(2) Clause 40.2 (1) (m) of the Regulation is revoked and the following substituted:

(m) in the case of a statement required to be provided to a retired member before a report with a valuation date before December 31, 2017 is filed and where special payments are being made to liquidate any liability, a statement to that effect;

(m.1) in the case of a statement required to be provided to a retired member after a report with a valuation date on or after December 31, 2017 is filed and where special payments are being made in respect of any going concern unfunded liability, a statement to that effect;

(m.2) in the case of a statement required to be provided to a retired member after a report with a valuation date on or after December 31, 2017 is filed and where special payments are being made to liquidate any reduced solvency deficiency to increase the plan's solvency ratio to 85 per cent, a statement to that effect;

(3) Subclause 40.2 (1) (q) (iii) is amended by adding "or reduced solvency deficiency" after "solvency deficiency".

(4) Section 40.2 of the Regulation is amended by adding the following subsections:

(4) For a plan that provides defined benefits, the first statement required to be provided to a retired member after a report with a valuation date on or after December 31, 2017 is filed shall also contain a description of how funding rules for pension plans have changed or will change as a result of amendments to this Regulation effective May 1, 2018, including at least the following information:

1. A description of the difference between solvency funding and going concern funding.
2. A statement that special payments are required under this Regulation for the purpose of increasing the plan's funded ratio to 85 per cent, as measured on a solvency basis, and that this is a change from the previous requirement to make special payments for the purpose of increasing the plan's funded ratio to 100 per cent, as measured on a solvency basis.
3. A statement that before the amendments to this Regulation were made, going concern unfunded liabilities were amortized over 15 years and new payment schedules were added when needed but were not consolidated in each new report of the pension plan.
4. A statement that as a result of the amendments to this Regulation, any going concern unfunded liability will be required to be amortized over 10 years and that the payment schedules will be consolidated in each new report of the pension plan.
5. A statement that contributions for the provision for adverse deviations are required under this Regulation and are required to be funded on a going concern basis.

(5) Subsection (4) does not apply to a jointly sponsored pension plan listed in subsection 1.3.1 (3) or a specified Ontario multi-employer pension plan.

34. Paragraph 3 of subsection 47.1 (1) of the Regulation is amended by striking out "2, 3, 4 and 5" and substituting "3, 3.0.1 and 5".

35. Paragraph 3 of section 47.2 of the Regulation is amended by striking out "2, 3, 4 and 5" and substituting "3, 3.0.1 and 5".

36. Subsection 47.7.1 (2) of the Regulation is amended by striking out "1.2 and 2" and substituting "1.2, 1.2.1 and 2".

37. Clause 76 (14) (e) of the Regulation is amended by striking out "normal costs" and substituting "normal cost".

38. Section 78 of the Regulation is amended by adding the following subsections:

(7) The statement of investment policies and procedures shall include the plan's target asset allocation for each investment category listed in subsection 76 (12).

(8) The target asset allocation for an investment category is the target proportion of the plan's assets invested in a particular investment category in proportion to the total target investment in all investment categories, expressed as a percentage.

39. (1) The definition of "B" in the English version of subsection 4 (2) of Schedule 4 to the Regulation is amended by striking out "are adjusted" and substituting "is adjusted".

(2) Section 4 of Schedule 4 to the Regulation is amended by adding the following subsection:

(2.1) If the amount of the letter of credit is reduced, the employer is not required to make the payment referred to in sub-subparagraph 6 iv B of subsection (1) into the pension fund if, as of the date of the most recent report with a valuation date on or after December 31, 2017 filed under section 3 or 14 or submitted under section 3 or 13, "A" minus "B" is less than or equal to "C" where,

"A" is 85 per cent of the sum of the solvency liabilities and the solvency liability adjustment,

“B” is the sum of the solvency assets and the amount, which may be positive or negative, by which the value of the solvency assets is adjusted as a result of applying an averaging method that stabilizes short-term fluctuations in the market value of the plan assets, calculated over a period of not more than five years, and

“C” is the present value of the total amount of all letters of credit held in trust for the pension fund, after the reduction in the amount of the letter of credit.

(3) Subsection 4 (3) of Schedule 4 to the Regulation is revoked and the following substituted:

(3) The present value of the total amount of all letters of credit held in trust for the pension fund must be determined, for the purposes of the definition of “C” in subsection (2) or (2.1), using the same interest rates as those used to determine the amount of the solvency deficiency or reduced solvency deficiency set out in the report referred to in the applicable subsection.

Commencement

40. (1) Subject to subsections (2) to (4), this Regulation comes into force on the later of the day subsection 1 (4) of Schedule 33 to the *Stronger, Fairer Ontario Act (Budget Measures), 2017* comes into force and the day it is filed.

(2) Section 8 comes into force on the latest of the following days:

1. **The day the Regulation is filed.**
2. **The day section 5 of the *Securing Pension Benefits Now and for the Future Act, 2010* comes into force.**
3. **The day subsection 3 (2) of Schedule 33 to the *Stronger, Fairer Ontario Act (Budget Measures), 2017* comes into force.**

(3) Subsection 10 (11) comes into force on January 1, 2021.

(4) Subsections 30 (1), 31 (1), 32 (1) and 33 (1) come into force on January 1, 2019.

Français

Back to top

TAB C

PBA Section 55

Funding

55 (1) A pension plan must provide for funding sufficient to provide the pension benefits, ancillary benefits and other benefits under the pension plan in accordance with this Act and the regulations. R.S.O. 1990, c. P.8, s. 55 (1); 2010, c. 9, s. 39 (1).

Payment by employers, etc.

(2) An employer required to make contributions under a pension plan, or a person or entity required to make contributions under a pension plan on behalf of an employer, shall make the contributions in accordance with the prescribed requirements for funding and shall make the contributions in the prescribed manner and at the prescribed times,

(a) to the pension fund; or

(b) if pension benefits under the pension plan are paid by an insurance company, to the insurance company that is the administrator of the pension plan. R.S.O. 1990, c. P.8, s. 55 (2); 2005, c. 31, Sched. 18, s. 6 (1); 2010, c. 9, s. 39 (2).

Payment by members

(3) Members of a pension plan that provides contributory benefits shall make the contributions required under the plan in the prescribed manner and at the prescribed times. 2005, c. 31, Sched. 18, s. 6 (2).

Same, jointly sponsored pension plans

(4) Members of a jointly sponsored pension plan shall make the contributions required under the plan (including their obligations in respect of any going concern unfunded liability and, except in the case of plans described in subsection 1 (2.1), in respect of any reduced solvency deficiency) in accordance with the prescribed requirements for funding and shall make the contributions in the prescribed manner and at the prescribed times. 2010, c. 24, s. 16; 2017, c. 34, Sched. 33, s. 21

PBA Section 55.1

Contribution holidays

55.1 (1) An employer required to make contributions under a pension plan, or a person or entity required to make contributions under a pension plan on behalf of an employer, may reduce or suspend, in the prescribed manner, contributions for the normal cost of the pension plan and contributions for the provision for adverse deviations in respect of the normal cost of the pension plan if the pension plan has an available actuarial surplus and if such other requirements as may be prescribed are satisfied. 2010, c. 24, s. 17; 2017, c. 34, Sched. 33, s. 22 (1).

Same

(2) The contributions that members of a pension plan are required to make for the normal cost of the pension plan may be reduced or suspended in the prescribed manner if the pension plan has an available actuarial surplus and if such other requirements as may be prescribed are satisfied. 2010, c. 24, s. 17; 2017, c. 34, Sched. 33, s. 22 (2).

Same, jointly sponsored pension plan

(2.1) Any contributions that members of a jointly sponsored pension plan are required to make for the provision for adverse deviations in respect of the normal cost of the pension plan may be reduced or suspended in the prescribed manner if the pension plan has a surplus and if such other requirements as may be prescribed are satisfied. 2017, c. 34, Sched. 33, s. 22 (3).

Exception

(3) However, contributions cannot be reduced or suspended under this section if the documents that create and support the pension plan or the pension fund prohibit the reduction or suspension. 2010, c. 24, s. 17.

Conflict

(4) This section prevails over subsections 55 (2), (3) and (4). 2010, c. 24, s. 17.

No limitation

(4.1) This section does not prevent the reduction or suspension of contributions for normal cost of the pension plan or contributions for the provision for adverse deviations in respect of the normal cost of the pension plan if the reduction or suspension is otherwise authorized by this Act or the regulations. 2019, c. 7, Sched. 48, s. 3.

Interpretation, "available actuarial surplus"

(5) In this section,

“available actuarial surplus” means the portion of the surplus that is determined in accordance with the regulations. 2017, c. 34, Sched. 33, s. 22 (4).

PBA Section 109

Offence

109 (1) Every person who contravenes this Act or the regulations is guilty of an offence. R.S.O. 1990, c. P.8, s. 109 (1).

Idem

(2) Every person who contravenes an order made under this Act is guilty of an offence. R.S.O. 1990, c. P.8, s. 109 (2).

PBA Section 110

Penalty

110 (1) Every person who is guilty of an offence under this Act is liable on conviction to a fine of not more than $100,000 for the first conviction and not more than $200,000 for each subsequent conviction. 1997, c. 28, s. 220 (1).

Persons re corporation

(2) Every director, officer, official or agent of a corporation and every person acting in a similar capacity or performing similar functions in an unincorporated association is guilty of an offence if the person,

(a) causes, authorizes, permits, acquiesces or participates in the commission of an offence referred to in section 109 by the corporation or unincorporated association; or

(b) fails to take all reasonable care in the circumstances to prevent the corporation or unincorporated association from committing an offence referred to in section 109. 1997, c. 28, s. 220 (1).

Penalty

(3) A person who is guilty of an offence described in subsection (2) is liable on a first conviction to a fine of not more than $100,000, and on each subsequent conviction to a fine of not more than $200,000, whether or not the corporation or unincorporated association has been prosecuted for or convicted of an offence arising from the same facts or circumstances. 1997, c. 28, s. 220 (1).

Order for payment

(4) Where a person is convicted of an offence related to the failure to submit or make payment to a pension fund or to an insurance company, the court that convicts the person may, in addition to any fine imposed, assess the amount not submitted or not paid and order the person to pay the amount to the pension fund or to the insurance company. R.S.O. 1990, c. P.8, s. 110 (4).

Enforcement

(5) An order for payment under subsection (4), exclusive of the reasons therefor, may be filed in the Superior Court of Justice and is thereupon enforceable as an order of that court. R.S.O. 1990, c. P.8, s. 110 (5); 2006, c. 19, Sched. C, s. 1 (1).

Time limit

(6) No prosecution for an offence under this Act shall be commenced after five years after the date when the offence occurred or is alleged to have occurred. 1997, c. 28, s. 220 (2).

Regulation 909 Section 4

Payments — general

4. (0.1) In this section,

"consolidated prior solvency deficiency" has the same meaning as in section 5.5.3; ("déficit de solvabilité antérieur consolidé")

"specified period" means, in respect of a report filed under section 3 or 14 or submitted under section 4 or 13, the period beginning on the later of the start of the fiscal year of the plan in which the report was filed or submitted and the valuation date of the report and ending on the day before the day on which the report is filed or submitted. ("période déterminée") O. Reg. 250/18, s. 9 (1); O. Reg. 105/19, s. 5 (1).

(1) Every pension plan shall set out the obligation of the employer or any person or entity required to make contributions on behalf of the employer and, in the case of a jointly sponsored pension plan, the obligation of the members of the pension plan, if applicable, to contribute both in respect of the normal cost and any going concern unfunded liability and solvency deficiency under the plan. O. Reg. 116/06, s. 4 (1).

(1.1) Every pension plan shall also set out the obligation of the employer or any person or entity required to make contributions on behalf of the employer and, in the case of a jointly sponsored pension plan, the obligation of the members of the pension plan, if applicable, to contribute in respect of,

(a) the provision for adverse deviations in respect of the normal cost;

(b) any plan amendment that increases going concern liabilities; and

(c) any reduced solvency deficiency under the plan. O. Reg. 250/18, s. 9 (2).

(1.2) Clause (1.1) (c) does not apply to a jointly sponsored pension plan listed in subsection 1.3.1 (3). O. Reg. 250/18, s. 9 (2).

(1.3) Any plan amendments that are required for the purpose of complying with subsection (1.1) shall be made within 12 months after the date the first report for the pension plan with a valuation date on or after December 31, 2017 is filed under section 3, 13 or 14. O. Reg. 250/18, s. 9 (2).

(2) Subject to subsections (2.1) and (2.1.1), an employer who is required to make contributions under a pension plan or, if a person or entity is required to make contributions under the pension plan on behalf of the employer, that person or entity and, if applicable, the members of the pension plan or their representative shall make payments to the pension fund or to an insurance company, as applicable, that are not less than the sum of,

(a) in the case of a report with a valuation date before December 31, 2017, all contributions, including contributions in respect of any going concern unfunded liability and solvency deficiency and money withheld by payroll deduction or otherwise from an employee, that are received from employees as the employees' contributions to the pension plan;

(a.1) as of the date the first report with a valuation date on or after December 31, 2017 is filed under section 3, 13 or 14, all contributions, including contributions for the provision for adverse deviations in respect of the normal cost, any going concern unfunded liability, solvency deficiency and reduced solvency deficiency, and money withheld by payroll deduction or otherwise from an employee, that are received from employees as the employees' contributions to the pension plan;

(b) all contributions required to pay the normal cost;

(b.1) as of the date the first report with a valuation date on or after December 31, 2017 is filed under section 3, 13 or 14, all contributions required to pay the amount equal to the provision for adverse deviations in respect of the normal cost determined in accordance with section 11.1;

(c) all special payments determined in accordance with section 5;

(c.1) all special payments determined in accordance with sections 5.6, 5.6.1, 5.6.2 and 5.6.3; and

(d) all special payments determined in accordance with sections 31, 32 and 35 and all payments determined in accordance with section 31.1. O. Reg. 712/92, s. 3 (2); O. Reg. 73/95, s. 2 (1); O. Reg. 116/06, s. 4 (2-4); O. Reg. 239/09, s. 2; O. Reg. 329/12, s. 2 (1); O. Reg. 161/16, s. 1; O. Reg. 225/17, s. 1; O. Reg. 250/18, s. 9 (3-5).

(2.1) Despite subsection (2), an employer required to make contributions under a designated plan or an individual pension plan shall not be required to make a payment to the pension fund or to an insurance company, as applicable, that is not an eligible contribution. O. Reg. 73/95, s. 2 (2); O. Reg. 178/12, s. 3 (1).

(2.1.1) If the payments required under subsection (2) are greater than they would have been under that subsection as it read immediately before May 1, 2018, an employer who is required to make contributions under a pension plan, or if a person or entity is required to make contributions under the pension plan on behalf of the employer, that person or entity, and, if applicable, the members of the pension plan or their representative, shall make payments to the pension fund or to an insurance company, as applicable, that are not less than the amount calculated using the formula,

$$A - [(A - B) \times C]$$

in which,

"A" is the total of the payments required under subsection (2) for the year based on the most recently filed report,

"B" is the total of the payments that would have been required under subsection (2) as it read immediately before May 1, 2018,

"C" is the value described in subsection (2.1.2).

O. Reg. 250/18, s. 9 (6).

(2.1.2) The value of "C" in the formula in subsection (2.1.1) is the value determined in accordance with the following:

1. For a pension plan that provides defined benefits where the obligation of the employer to contribute to the pension fund is limited to a fixed amount set out in a collective agreement that exists on May 1, 2018:

   i. The value of "C" is equal to one in the year that is the earlier of,

      A. 2021, and

      B. the year in which the collective agreement expires.

   ii. In any year prior to the year described in subparagraph i, the value of "C" is equal to one.

   iii. In the year immediately following the year described in subparagraph i, the value of "C" is equal to one.

   iv. In the year immediately following the year described in subparagraph iii, the value of "C" is equal to 0.667.

   v. In the year immediately following the year described in subparagraph iv, the value of "C" is equal to 0.333.

   vi. In any year following the year described in subparagraph v, the value of "C" is zero.

2. For any other pension plan:

   i. In the first year following the valuation date of the first report filed with a valuation date that is on or after December 31, 2017, the value of "C" is equal to one.

   ii. In the year immediately following the year described in subparagraph i, the value of "C" is equal to 0.667.

   iii. In the year immediately following the year described in subparagraph ii, the value of "C" is equal to 0.333.

iv. In any year following the year described in subparagraph iii, the value of “C” is zero. O. Reg. 250/18, s. 9 (6).

(2.2) Despite subsections (1) and (2), the amount of contributions required to be made to a pension plan that provides defined benefits may be determined by using an actuarial cost method other than a benefit allocation method if,

(a) the actuarial cost method that is used is consistent with accepted actuarial practice; and

(b) the rules set out in subsection (2.3) are satisfied. O. Reg. 116/06, s. 4 (5).

(2.3) For the purposes of clause (2.2) (b), the rules are as follows:

1., 1.1 REVOKED: O. Reg. 329/12, s. 2 (2).

1.2 If, at the valuation date of a report filed under section 3, 13 or 14 that is before December 31, 2017, the amount determined under clause (a) of the definition of “going concern assets” in subsection 1 (2) is not less than the going concern liabilities determined using a benefit allocation method, the present value of the required contributions for the five-year period referred to in paragraph 1.3 must not be less than the present value of the contributions for that period that would be made in respect of the normal cost for the plan if the benefit allocation method were used, after the application of any actuarial gains to reduce the normal cost in accordance with subsection 7 (3).

1.2.1 If, at the valuation date of a report filed under section 3, 13 or 14 with a valuation date that is on or after December 31, 2017, the amount determined under clause (a) of the definition of “going concern assets” in subsection 1 (2) is not less than the sum of going concern liabilities determined using a benefit allocation method and the amount equal to the provision for adverse deviations in respect of going concern liabilities determined using the benefit allocation method, the present value of the required contributions for the five-year period referred to in paragraph 1.3 must not be less than the sum of the following, subject to paragraph 1.2.2:

i. The present value of the contributions for that period that would be made for the normal cost for the plan.

ii. The amount equal to the provision for adverse deviations in respect of the normal cost.

1.2.2 The amounts mentioned in subparagraphs 1.2.1 i and ii shall be determined using the benefit allocation method after the application of any available actuarial surplus to reduce the normal cost and the provision for adverse deviations in respect of the normal cost in accordance with subsection 7.0.3 (1) or, if the pension plan is a jointly sponsored pension plan listed in subsection 1.3.1 (3), after the application of any actuarial gains to reduce the normal cost in accordance with subsection 7 (3).

1.3 The five-year period referred to in paragraph 1.2 or 1.2.1 must begin,

i. in the case of a pension plan that is not a jointly sponsored pension plan, on the valuation date, or

ii. in the case of a jointly sponsored pension plan, on a date not later than 12 months after the valuation date.

2. If, at the valuation date of a report filed under section 3, 13 or 14 with a valuation date before December 31, 2017 or in respect of a plan that is a jointly sponsored pension plan listed in subsection 1.3.1 (3), the amount determined under clause (a) of the definition of "going concern assets" in subsection 1 (2) is less than the going concern liabilities determined using a benefit allocation method, the present value of the required contributions, which are determined under the actuarial cost method used by the plan, must not be less than the sum of the present value of the normal cost and the present value of the special payments determined in accordance with section 5 that would be required to liquidate any going concern unfunded liability determined using the benefit allocation method.

2.0.1 If, at the valuation date of a report filed under section 3, 13 or 14 with a valuation date that is on or after December 31, 2017 in respect of a plan that is not a jointly sponsored pension plan listed in subsection 1.3.1 (3), the amount determined under clause (a) of the definition of "going concern assets" in subsection 1 (2) is less than the sum of going concern liabilities determined using a benefit allocation method and the amount equal to the provision for adverse deviations in respect of going concern liabilities determined using the benefit allocation method, the present value of the required contributions, as determined under the actuarial cost method used by the plan, must not be less than the sum of the following, determined using the benefit allocation method:

i. The present value of the normal cost.

ii. The present value of the amount equal to the provision for adverse deviations in respect of the normal cost.

iii. The present value of the special payments determined in accordance with section 5 that would be required,

A. in respect of any plan amendment that increases going concern liabilities, or

B. to liquidate a going concern unfunded liability.

2.1 The present values referred to in paragraphs 1.2, 1.2.1, 2 and 2.0.1 shall be determined without reference to paragraphs 7 and 10 and without reference to subsections (2.7) and (2.7.1).

3. The rate or rates of interest to be used in calculating present values referred to in paragraphs 1.2, 1.2.1, 2 and 2.0.1 shall be the rate or rates used in the report for the going concern valuation.

3.1 For the purposes of paragraphs 1.2, 1.2.1, 2 and 2.0.1, the going concern valuation prepared using the benefit allocation method shall use the same rate or rates of interest as those used in the going concern valuation prepared using the actuarial cost method used by the plan.

4. In the case of a pension plan that is not a jointly sponsored pension plan, the present values referred to in paragraph 2 shall be calculated using whichever of the following periods is longer:

i. The period that begins on the valuation date and continues until the end of the remaining amortization period of the going concern unfunded liability that has the longest remaining amortization period.

ii. The period of five years that begins on the valuation date.

4.0.1 In the case of a pension plan that is not a jointly sponsored pension plan, the present values referred to in paragraph 2.0.1 shall be calculated using whichever of the following periods is longest:

i. The period that begins on the valuation date referred to in paragraph 2.0.1 and continues until the end of the remaining amortization period of the going concern unfunded liability.

ii. The period that begins on the valuation date referred to in paragraph 2.0.1 and continues until the end of the amortization period in respect of any plan amendment that increases the going concern liabilities that has the longest remaining amortization period.

iii. The period of five years that begins on the valuation date referred to in paragraph 2.0.1.

4.1 In the case of a jointly sponsored pension plan, the present values referred to in paragraph 2 shall be calculated using whichever of the following periods is longer:

i. The period that begins on a date not later than 12 months after the valuation date and continues until the end of the remaining amortization period of the going concern unfunded liability that has the longest remaining amortization period.

ii. The period of five years that begins on a date not later than 12 months after the valuation date.

4.2 In the case of a jointly sponsored pension plan to which paragraph 2.0.1 applies, the present values referred to in paragraph 2.0.1 shall be calculated using whichever of the following periods is longest:

i. The period that begins on a date that is not later than 12 months after the valuation date referred to in paragraph 2.0.1 and continues until the end of the remaining amortization period of the going concern unfunded liability.

ii. The period that begins on a date that is not later than 12 months after the valuation date referred to in paragraph 2.0.1 and continues until the end of the amortization period in respect of any plan amendment that increases going concern liabilities that has the longest remaining amortization period.

iii. The period of five years that begins on a date that is not later than 12 months after the valuation date referred to in paragraph 2.0.1.

5. In the case of a jointly sponsored pension plan,

i. REVOKED: O. Reg. 329/12, s. 2 (7).

ii. the present values referred to in paragraphs 1.2 and 1.2.1 shall be calculated based on the sum of the projected pensionable earnings for each year in the five-year period referred to in that paragraph,

iii. the present values referred to in paragraphs 2 and 2.0.1 shall be calculated based on the period used for the purpose of paragraph 4.1 or 4.2, as the case may be, and the sum of the projected pensionable earnings for each year in the applicable period, and

iv. the actuarial assumptions used to determine the sums referred to in subparagraphs i, ii and iii of the projected pensionable earnings shall be consistent with those used in the report for the going concern valuation based on the benefit allocation method.

6. Subject to paragraph 7, the required contribution rate for a jointly sponsored pension plan shall be determined as a level percentage of pensionable earnings for each class of members, subject to any variation that is necessary in order to take into account integration with the Canada Pension Plan or the Quebec Pension Plan.

7. If the required contribution rate set out in a report filed under section 3 or 14 in respect of a jointly sponsored pension plan is higher than the required contribution rate determined in the last report filed under section 3, 13 or 14, the required contribution rate may be increased each year for up to three years, commencing not later than 12 months after the valuation date, by at least one third of the difference between the two contribution rates, but only if,

i. the contribution rate after that period is a level percentage of pensionable earnings, subject to any variation that is necessary in order to take into account integration with the *Canada Pension Plan* or the *Quebec Pension Plan*, and

ii. the present value of the required contributions using the increased rates is not less than,

A. the present value of the contributions that would be made for the normal cost for the plan if the benefit allocation method were used, after the application of any actuarial gains to reduce the normal cost in accordance with subsection 7 (3), if paragraph 1.2 applies,

B. if the report has a valuation date on or after December 31, 2017, the sum of the present value of the contributions that would be made in respect of the normal cost for the plan and the provision for adverse deviations in respect of the normal cost for the plan if the benefit allocation method were used, after the application of any available actuarial surplus to reduce the normal cost or the amount equal to the provision for adverse deviations in respect of the normal cost in accordance with subsection 7.0.3 (1) or, if the pension plan is a jointly sponsored pension plan listed in subsection 1.3.1 (3), after the application of any actuarial gains to reduce the normal cost in accordance with subsection 7 (3), if paragraph 1.2.1 applies,

C. the sum of the present value of the normal cost and the present value of the special payments determined in accordance with section 5 that would be required to liquidate any going concern unfunded liability determined using the benefit allocation method, if paragraph 2 applies, or

D. if the report has a valuation date on or after December 31, 2017, the sum of the present value of the normal cost, the present value of the amount equal to the provision for adverse deviations in respect of the normal cost and the present value of the special payments determined in accordance with section 5 that would be required in respect of any plan amendment that increases going concern liabilities or in respect of any going concern unfunded liability determined using the benefit allocation method, if paragraph 2.0.1 applies.

8. For the purposes of paragraph 7, the determination of whether the required contribution rate set out in the report is higher than the required contribution rate determined in the last filed report shall be made without taking into account the ability to increase required contribution rates each year for up to three years under that paragraph, and without taking into account the ability to carry forward amounts under paragraph 10 to reduce those increases.

9. The present values referred to in subparagraph 7 ii shall be calculated using the same period as was used to calculate the present values referred to in paragraph 1.2, 1.2.1, 2 or 2.0.1, whichever is applicable.

10. If paragraph 7 permits the required contribution rate to be increased each year for up to three years and the amount of any increase in the first or second year exceeds one third of the difference between the required contribution rate set out in the report and the required contribution rate determined in the last filed report, the excess may be carried forward to the following year or years and used to reduce the increases in the following year or years, as long as the present value of the required contributions using the increased rates, as adjusted, is not less than the present value referred to in sub-subparagraph 7 ii A, B, C or D, whichever is applicable. O. Reg. 116/06, s. 4 (5); O. Reg. 570/06, s. 2 (1-10); O. Reg. 178/12, s. 3 (2, 3); O. Reg. 329/12, s. 2 (2-9); O. Reg. 250/18, s. 9 (7-18).

(2.4) If, in accordance with subsection (2.2), the amount of contributions required to be made to a pension plan that provides defined benefits is determined by using an actuarial cost method other than a benefit allocation method, the payments to the pension fund or to an insurance company, as applicable, shall not be less than the sum of,

(a) the required contributions determined using the actuarial cost method; and

(b) all special payments determined in accordance with section 5 with respect to any solvency deficiency, any reduced solvency deficiency and any consolidated prior solvency deficiency. O. Reg. 116/06, s. 4 (5); O. Reg. 250/18, s. 9 (19).

(2.5) If the amount of contributions required to be made to a pension plan that provides defined benefits is determined in accordance with subsection (2.2) using an actuarial cost method other than a benefit allocation method, the contributions shall be deemed to be the contributions required to be made under this Regulation and the definitions in section 1 shall apply with necessary modifications. O. Reg. 116/06, s. 4 (5).

(2.6) If a report filed under section 3 or 14 discloses, in respect of a jointly sponsored pension plan for which a benefit allocation method is used to set contribution rates, that an increase in the normal cost is required or that an increase is required in the amount of contributions that were previously reduced under subsection 7 (3), payment of that increase shall commence on a date not later than 12 months after the valuation date. O. Reg. 570/06, s. 2 (11).

(2.6.1) If a report filed under section 3 or 14 with a valuation date on or after December 31, 2017 discloses, in respect of a jointly sponsored pension plan for which a benefit allocation method is used to set contribution rates, that an increase in the normal cost is required, an increase in the amount equal to the provision for adverse deviations in respect of the normal cost is required or an increase is required in the amount of contributions that were previously reduced under subsection 7 (3) or subsection 7.0.3 (1), payment of that increase shall commence on a date not later than 12 months after the valuation date. O. Reg. 250/18, s. 9 (20).

(2.7) If a report filed under section 3 or 14 discloses that there is a going concern unfunded liability that is required to be liquidated in respect of a jointly sponsored pension plan for which a benefit allocation method is used to set the contribution rates, the special payments in respect of the going concern unfunded liability, as determined in accordance with subsection 5 (1.2), may be increased each year for up to three years, commencing not later than 12 months after the valuation date, by at least one third of the special payments, but only if,

(a) the special payments after that period are a level percentage of pensionable earnings for each class of members, subject to any variation that is necessary in order to take into account integration with the *Canada Pension Plan* or the *Quebec Pension Plan*; and

(b) the present value of the special payments, including the increased special payments, over the amortization period is not less than the amount of the going concern unfunded liability. O. Reg. 570/06, s. 2 (12); O. Reg. 178/12, s. 3 (4).

(2.7.1) If subsection (2.7) permits the special payments in respect of the going concern unfunded liability, as determined in accordance with subsection 5 (1.2), to be increased each year for up to three years, and the amount of any increase in the first or second year exceeds one third of the special payments, the excess may be carried forward to the following year or years and used to reduce the increases in the following year or years, as long as the present value of the special payments, including the increased special payments, as adjusted, over the amortization period is not less than the amount of the going concern unfunded liability. O. Reg. 570/06, s. 2 (13).

(2.8) In the case of a jointly sponsored pension plan, contributions referred to in subsection 39 (3) of the Act include contributions made by a member in respect of,

(a) any going concern unfunded liability;

(b) any amendment that increases going concern liabilities;

(c) the provision for adverse deviations in respect of the normal cost; and

(d) any solvency deficiency, reduced solvency deficiency or consolidated prior solvency deficiency. O. Reg. 250/18, s. 9 (21).

(3) Where there is a prior year credit balance, the employer may apply the prior year credit balance to reduce the payments required under clauses (2) (b), (b.1), (c), (c.1) and (d). O. Reg. 712/92, s. 3 (1); O. Reg. 329/12, s. 2 (10); O. Reg. 250/18, s. 1, 9 (22).

(3.1) Subsection (3) does not apply if the pension plan provides defined benefits and a benefit allocation method is not used to set contribution rates. O. Reg. 116/06, s. 4 (6).

(3.2) If employer contributions to a pension plan during the specified period in respect of the most recently filed or submitted report are in excess of the contributions the report requires in respect of the specified period, the employer may apply the amount of the excess contributions to reduce any payment otherwise required in respect of the

pension plan under the report for the period beginning on the day the report is filed or submitted and ending on the earlier of the last day of the fiscal year in which the report is filed or submitted and the filing date of the subsequent report. O. Reg. 105/19, s. 5 (2).

(3.3) Subsection (3.2) does not apply if the most recently filed or submitted report is filed or submitted more than 12 months after the valuation date of the report, even if an extension for the filing or submission of the report is granted by the Superintendent under section 105 of the Act. O. Reg. 105/19, s. 5 (2).

(3.4) Subsection (3.2) does not apply to a jointly sponsored pension plan. O. Reg. 105/19, s. 5 (2).

(4) The payments referred to in subsections (2) and (2.4) shall be made by the employer or, if a person or entity is required to make contributions on behalf of the employer, by that person or entity and, if applicable, by the members of the pension plan within the following time limits:

1. All sums received by the employer from an employee, including money withheld by payroll deduction or otherwise from the employee, as the employee's contribution to the pension plan, within thirty days following the month in which the sum was received or deducted.

2. REVOKED: O. Reg. 116/06, s. 4 (8).

3. In the case of a pension plan that provides defined benefits, employer contributions in respect of the normal cost reported under clause 13 (1) (a) or 14 (7) (a) for each period covered by a report beginning on or after the 1st day of January, 1988, in monthly instalments within 30 days after the month for which contributions are payable, the amount of the instalments to be either a total fixed dollar amount, a fixed dollar amount for each employee or member of the plan or a fixed percentage either of the portion of the payroll related to members of the plan or of employee contributions.

3.0.1 In the case of a pension plan that provides defined benefits, employer contributions for the normal cost reported under clause 13 (1) (a), clause 14 (7) (a) or clause 14 (8.0.2) (a) and contributions for the provision for adverse deviations in respect of the normal cost reported under subclause 13 (1) (b.1) (ii) or subclause 14 (8.0.2) (c) (ii) for each period covered by a report beginning on or after December 31, 2017, in monthly instalments within 30 days after the month for which contributions are payable, the amount of the instalments to be either a total fixed dollar amount, a fixed dollar amount for each employee or member of the plan or a fixed percentage either of the portion of the payroll related to members of the plan or of employee contributions.

3.1 Where all the pension benefits provided under the plan are defined contribution benefits, employer contributions for the plan's fiscal year, in monthly instalments within 30 days after the month for which contributions are payable, the amount of the instalments to be either a total fixed dollar amount, a fixed

dollar amount for each employee or member of the plan or a fixed percentage either of the portion of the payroll related to members of the plan or of employee contributions.

4. REVOKED: O. Reg. 116/06, s. 4 (8).

5. All special payments determined in accordance with section 5, subsection 31 (5) and subsection 35 (5) in equal monthly instalments in accordance with the times for payment set out in sections 5, 31 and 35.

6. All special payments determined in accordance with subsections 31 (1) and (2), section 32 and subsection 35 (3), by annual instalment in accordance with the times for payment set out in sections 31, 32 and 35. O. Reg. 712/92, s. 3 (1); O. Reg. 386/04, s. 1; O. Reg. 116/06, s. 4 (7); O. Reg. 250/18, s. 9 (23-25).

(5) Subject to subsections (10) and (11), if the period covered by a report filed under section 3, 13 or 14 or submitted under this section has ended, and no report covering a subsequent period is filed under section 14 or submitted under this section, the employer or, if a person or entity is required to make contributions on behalf of the employer, that person or entity and, if applicable, the members of the pension plan shall continue to make payments in accordance with the report most recently filed or submitted under section 3, 13 or 14 or this section. O. Reg. 116/06, s. 4 (9); O. Reg. 178/12, s. 3 (6).

(6) The Superintendent may cause a report on a plan to be prepared where,

(a) a report required under section 3, 13 or 14 on the plan has not been filed within one year after the time required by this Regulation; and

(b) the Superintendent is of the opinion that the preparation of a report in accordance with subsection (7) is necessary to ensure that the plan is sufficiently funded to provide the benefits under the plan. O. Reg. 712/92, s. 3 (2); O. Reg. 307/98, s. 2 (1); O. Reg. 144/00, s. 4 (1).

(7) A report under subsection (6) must contain the information required by section 3, 13 or 14, whichever applies. O. Reg. 144/00, s. 4 (2).

(7.1) A report under subsection (6) must be prepared by an actuary chosen by the Superintendent and must be submitted by the actuary to the Superintendent. O. Reg. 144/00, s. 4 (2).

(8) If, during the preparation of a report on a plan, under this section, the Superintendent forms the opinion that the report is no longer necessary to ensure that the plan is sufficiently funded to provide the benefits under the plan, the Superintendent may cause work on the report to cease and the actuary need not submit the report to the Superintendent. O. Reg. 712/92, s. 3 (2); O. Reg. 307/98, s. 2 (3).

(9) If a report is submitted to the Superintendent under subsection (7.1), the employer or, if another person or entity is required to make contributions on behalf of the

employer, that person or entity and, if applicable, the members of the pension plan shall make payments in accordance with the report. O. Reg. 116/06, s. 4 (10).

(10) Except as provided in subsection (11), if a payment requirement set out in a report submitted under subsection (7.1) concerning a plan differs from a payment requirement set out in a report filed by the administrator, the employer or, if another person or entity is required to make contributions on behalf of the employer, that person or entity and, if applicable, the members of the pension plan shall make payments in accordance with the higher requirement. O. Reg. 116/06, s. 4 (10).

(11) If, in the opinion of the Superintendent, a payment in accordance with the higher requirement under subsection (10) is not necessary to ensure that the plan is sufficiently funded to provide benefits under the plan, the payments shall be made in accordance with the lower requirement. O. Reg. 116/06, s. 4 (10).

(12) REVOKED: O. Reg. 144/00, s. 4 (3).

(13) This section does not apply to a pension plan described in subsection 6 (1) unless it is a jointly sponsored pension plan. O. Reg. 116/06, s. 4 (11).

Regulation 909 Section 5

Special payments — general

5. (0.1) In this section,

"consolidated prior solvency deficiency" and "new solvency deficiency" have the same meaning as in section 5.5.3. O. Reg. 250/18, s. 10 (1).

(1) Except as otherwise provided in this section and in sections 4 and 7, the special payments required to be made shall be not less than the sum of,

(a) REVOKED: O. Reg. 178/12, s. 4 (2).

(b) the special payments required to liquidate any going concern unfunded liability, with interest at the going concern valuation interest rate, by equal monthly instalments over a period of 15 years beginning on the valuation date of the report in which the going concern unfunded liability was determined; and

(c), (d) REVOKED: O. Reg. 178/12, s. 4 (4).

(e) with respect to any solvency deficiency arising on or after November 26, 1992, the special payments required to liquidate the solvency deficiency, with interest at the rates described in subsection (2), by equal monthly instalments over the period beginning on the valuation date of the report in which the solvency deficiency was determined and ending on the 31st day of December, 2002, or five years, whichever is longer. O. Reg. 712/92, s. 4; O. Reg. 178/12, s. 4 (1-5).

(1.0.0.1) After a report is filed with a valuation date on or after December 31, 2017 for a plan that is not a jointly sponsored pension plan listed in subsection 1.3.1 (3), except as otherwise provided in this section and in sections 4, 7 and 7.0.1, the special payments required to be made shall be not less than the sum of,

(a) for the year beginning on the valuation date of the last filed report, the special payments to liquidate any going concern unfunded liability scheduled for that year as determined in the report filed immediately before the last filed report, other than the special payments described in clauses (c) and (d);

(b) for each year after the year described in clause (a), the special payments required to liquidate any going concern unfunded liability determined in the last filed report, other than the special payments described in clauses (c) and (d), with interest at the going concern valuation interest rate, by equal monthly instalments over a period of 10 years beginning one year after the valuation date of the last filed report;

(c) the special payments required to liquidate a past service unfunded actuarial liability that arose on a valuation date of a report filed before May 1, 2018 with interest at the going concern valuation interest rate, by equal monthly instalments over a period of 15 years beginning on the date it arose;

(d) the special payments required to liquidate a past service unfunded actuarial liability that arose on a valuation date of a report filed on or after May 1, 2018, with interest at the going concern valuation interest rate, by equal monthly instalments over a period of 10 years beginning on the effective date of the pension plan;

(e) where a plan amendment increases the going concern liabilities of the plan, the special payments required to liquidate any increase in the going concern liabilities related to the amendment that exceeds the lump sum benefit improvement contribution in respect of the increase, with interest at the going concern valuation interest rate, by equal monthly instalments over a period of eight years beginning on the effective date of the amendment;

(f) with respect to any reduced solvency deficiency, the special payments required to liquidate the reduced solvency deficiency, with interest at the rates described in subsection (2), by equal monthly instalments over a period of five years beginning on the valuation date of the report in which the reduced solvency deficiency was determined;

(g) with respect to any solvency deficiency that arose on a valuation date of a report filed before May 1, 2018, the special payments required to liquidate the solvency deficiency, with interest at the rates described in subsection (2), by equal monthly instalments over a period of five years beginning on the valuation date of the report in which the solvency deficiency was determined;

(h) despite clause (g), with respect to any new solvency deficiency permitted to be liquidated over 10 years in accordance with subparagraph 5.6 (6) 8 i or 8.1 i, subparagraph 5.6.1 (6) 6 i or 7 i or subparagraph 5.6.2 (6) 6 i or 7 i, the special payments required to liquidate the new solvency deficiency with interest at the rates described in subsection (2), by equal monthly instalments over the period permitted under the relevant subparagraph; and

(i) with respect to any consolidated prior solvency deficiency, the special payments required to liquidate the consolidated prior solvency deficiency, with interest at the rates described in subsection (2), by equal monthly instalments over a period of five years beginning on the valuation date of the report in which the consolidated prior solvency deficiency was determined. O. Reg. 250/18, s. 10 (2); O. Reg. 105/19, s. 6 (1).

(1.0.1) Despite subsection (1) and clauses and (1.0.0.1) (f), (g) and (h), if the valuation date of the report is on or after September 30, 2011, the beginning of the amortization period for special payments to liquidate a solvency deficiency, reduced solvency deficiency or going concern unfunded liability referred to in those clauses and determined in the report may be deferred to a day that is not later than 12 months after the valuation date. O. Reg. 250/18, s. 10 (3).

(1.0.2) Clause (1.0.0.1) (b) applies, and clause (1.0.0.1) (e) does not apply, with respect to an increase in the going concern unfunded liability that results from an amendment that,

(a) is made to confer a benefit improvement that is required by law;

(b) is filed before May 1, 2018; or

(c) implements a benefit improvement agreed to in a collective agreement before May 1, 2018 if the collective agreement is in place immediately before that date. O. Reg. 250/18, s. 10 (3).

(1.1) Despite subsections (1) and (1.0.0.1), in the case of a jointly sponsored pension plan, the special payments may be determined in accordance with subsection (1.2) as of,

(a) the date the going concern unfunded liability arose, in the case of special payments referred to in clauses (1) (b) and (1.0.0.1) (a), (b), (c) and (d);

(b) the date of an amendment to a pension plan that increases going concern liabilities, in the case of special payments referred to in clause (1.0.0.1) (e); or

(c) the date the solvency deficiency, reduced solvency deficiency or consolidated prior solvency deficiency arose, in the case of special payments referred to in clauses (1) (e) and (1.0.0.1) (f), (g), (h) and (i). O. Reg. 250/18, s. 10 (4).

(1.2) The special payments referred to in subsection (1.1) are determined under the following rules:

1. Each scheduled payment must be a level percentage of the sum of pensionable earnings of the members of the pension plan at the valuation date projected to the date when the scheduled payments commence and, after that date, projected annually until the end of the amortization period without reference to,

    i. changes in the membership of the plan that may occur after the valuation date and that arise from termination of employment or membership, the retirement or death of members or the addition of new members to the plan, or

    ii. any other changes in the membership of the plan that may occur after the valuation date.

1.1 Despite paragraph 1, if there is reason to believe that there will be a material decline in the number of members before the end of the amortization period, the sum in paragraph 1 of the projected pensionable earnings must reflect the expected decline in the sum of projected pensionable earnings.

2. The sum in paragraph 1 of the projected pensionable earnings must be determined based on actuarial assumptions that are consistent with those used to project pensionable earnings in the going concern valuation based on the benefit allocation method.

3. The present value of the scheduled payments at the date described in subsection (1.1) must be equal to the amount of the going concern unfunded liability,

increase in going concern liabilities due to an amendment to the pension plan, consolidated prior solvency deficiency, reduced solvency deficiency or solvency deficiency being liquidated.

4. The amortization periods for each series of scheduled payments must be the same as the respective periods under clauses (1) (b) and (e) and subsection (1.0.0.1), beginning not later than 12 months after the valuation date.

5. The present value of the scheduled payments must be determined,

    i. with respect to any going concern unfunded liability, using the interest rate or rates used in the report to determine the going concern unfunded liability,

    ii. for a report with a valuation date on or after December 31, 2017 with respect to any going concern unfunded liability or increase in going concern liabilities due to an amendment to a pension plan, using the interest rate or rates used in the report to determine the going concern unfunded liabilities or increase in going concern liabilities due to the amendment, and

    iii. with respect to any solvency deficiency, reduced solvency deficiency or consolidated prior solvency deficiency, using the interest rates used in the report to determine the solvency deficiency, reduced solvency deficiency or consolidated prior solvency deficiency. O. Reg. 116/06, s. 5 (1); O. Reg. 570/06, s. 3; O. Reg. 250/18, s. 10 (5-7).

(2) The rates of interest to be used in calculating the special payments under clauses (1) (e) and (1.0.0.1) (f), (g), (h) and (i) with respect to a solvency deficiency, reduced solvency deficiency or consolidated prior solvency deficiency are the rates used in the report under section 14 in which the solvency deficiency, reduced solvency deficiency or consolidated prior solvency deficiency was determined for the applicable portions of the amortization period for the special payments. O. Reg. 250/18, s. 10 (8).

(3) If an employer provides a letter of credit under section 55.2 of the Act instead of making payments into the pension fund with respect to a solvency deficiency, reduced solvency deficiency or consolidated prior solvency deficiency, the employer is required to make interest payments with respect to the solvency deficiency, reduced solvency deficiency or consolidated prior solvency deficiency, calculated at the rate of interest described in subsection (2), unless the interest payments are included in the amount of the letter of credit. O. Reg. 364/12, s. 3; O. Reg. 250/18, s. 10 (9).

(4)-(12) REVOKED: O. Reg. 178/12, s. 4 (6).

(13) The prior year credit balance to be used in a report filed under section 13 for a pension plan is zero. O. Reg. 178/12, s. 4 (7); O. Reg. 250/18, s. 1.

(14), (15) REVOKED: O. Reg. 178/12, s. 4 (8).

(16) Subject to subsections (13), (16.1) and (16.3), the prior year credit balance to be used in any report or actuarial cost certificate required under this Regulation in respect of a plan is the amount calculated using the formula,

$$A + B - C$$

in which,

> "A" is the prior year credit balance stated in the last report or actuarial cost certificate filed or submitted in respect of the plan under this Regulation,
>
> "B" is the total amount of contributions made to the plan by an employer or by a person or entity required to make contributions under the plan on behalf of an employer,
>
> (a) after the valuation date of the last report or actuarial cost certificate filed or submitted in respect of the plan under this Regulation, and
>
> (b) before the valuation date for the report or actuarial cost certificate being prepared, and
>
> "C" is the total amount of contributions that, under section 4, would be required to have been made during the period described in the definition of "B" by an employer or by a person or entity required to make contributions under the plan on behalf of an employer if the contributions had been calculated without reference to any prior year credit balance.

O. Reg. 239/09, s. 3; O. Reg. 178/12, s. 4 (9); O. Reg. 250/18, s. 1; O. Reg. 105/19, s. 6 (2).

(16.1) For a report filed under section 3 or 14 or submitted under section 4 that has a valuation date of December 31, 1998 or later, the prior year credit balance may be reduced to an amount that is,

(a) less than the amount otherwise determined in accordance with subsection (16); and

(b) not less than zero. O. Reg. 144/00, s. 5 (2); O. Reg. 250/18, s. 1.

(16.2) Despite subsections (13), (16) and (16.1), if a pension plan provides defined benefits and a benefit allocation method is not used to set the contribution rates, the prior year credit balance to be used in any report filed or submitted in respect of the pension plan shall be zero. O. Reg. 116/06, s. 5 (2); O. Reg. 178/12, s. 4 (10); O. Reg. 250/18, s. 1.

(16.3) For a report that is the first valuation report with a valuation date on or after December 31, 2017 that is filed or submitted on or after May 1, 2018, the definition of "C" in subsection (16) shall be read as if "and if section 55.1 of the Act did not apply" was added at the end. O. Reg. 105/19, s. 6 (4).

(17) If, on any valuation date, the sum of the solvency assets and the solvency asset adjustment exceeds the sum of the solvency liabilities, the solvency liability adjustment and the prior year credit balance (such excess being referred to in this subsection as the "solvency excess"), the special payments under clause (1) (e) with respect to solvency deficiencies arising before the valuation date that are scheduled for payment after the valuation date shall be adjusted in accordance with the following rules:

1. Where the solvency excess is greater than or equal to the present value of the special payments under clause (1) (e), the special payments shall be reduced to zero.
2. Where the solvency excess is less than the present value of the special payments under clause (1) (e), the monthly rate of the special payments shall not be changed but the amortization period or periods for the special payments shall be reduced so as to reduce the solvency excess to zero. O. Reg. 178/12, s. 4 (11); O. Reg. 250/18, s. 1.

(17.1) Despite subsection (17), if, on a valuation date on or after December 31, 2017, the sum of the solvency assets and the solvency asset adjustment exceeds the sum of 85 per cent of the solvency liabilities, 85 per cent of the solvency liability adjustment and the prior year credit balance (such excess being referred to in this subsection as the "solvency excess"), the special payments under clauses (1.0.0.1) (f), (g), (h) and (i) with respect to solvency deficiencies, reduced solvency deficiencies or consolidated prior solvency deficiencies arising before the valuation date that are scheduled for payment after the valuation date shall be adjusted in accordance with the following rules:

1. Where the solvency excess is greater than or equal to the present value of the special payments under clauses (1.0.0.1) (f), (g), (h) and (i), the special payments shall be reduced to zero.
2. Where the solvency excess is less than the present value of the special payments under clauses (1.0.0.1) (f), (g), (h) and (i), the monthly rate of the special payments shall not be changed but the amortization period or periods for the special payments shall be reduced so as to reduce the solvency excess to zero.
3. Despite paragraph 2, for the first report of a pension plan filed under section 3 or 14 or submitted under section 4 for which the valuation date is on or after December 31, 2017 and where the solvency excess is less than the present value of the special payments under clauses (1.0.0.1) (f), (g), (h) and (i), the monthly rate of the special payments may also be reduced so as to reduce the solvency excess to zero for any amortization period for which special payments end within six years after the valuation date.
4. Paragraph 3 does not apply for special payments in respect of a consolidated prior solvency deficiency established in a report with a valuation date on or after December 31, 2017. O. Reg. 250/18, s. 10 (10).

(18) If on November 26, 1992 a plan provides plant closure benefits or permanent layoff benefits, the employer may elect, by filing written notice with the Superintendent within the time set out in subsection (19), to exclude all plant closure benefits and permanent layoff benefits in calculating the solvency liabilities of the plan. O. Reg. 712/92, s. 4; O. Reg. 178/12, s. 4 (12).

(19) An election under subsection (18) shall be made within the time set out in this Regulation for the filing of the first report on the plan after November 26, 1992 under section 3 or 14. O. Reg. 712/92, s. 4; O. Reg. 178/12, s. 4 (13).

(20) At any time after an election is made under subsection (18), the employer may rescind the election by filing written notice. O. Reg. 712/92, s. 4.

(21) A rescission under subsection (20) is effective from the date on which the written notice is filed. O. Reg. 712/92, s. 4.

(22) An employer who has rescinded an election under subsection (18) shall not make any further election under subsection (18) in respect of the plan. O. Reg. 712/92, s. 4.

(23)-(25) REVOKED: O. Reg. 178/12, s. 4 (14).

Regulation 909 Section 7.0.2

Available actuarial surplus, s. 55.1 of the Act

7.0.2 (1) For the purposes of section 55.1 of the Act, the available actuarial surplus of a pension plan is the following:

1. In the case of a plan with respect to which special payments are required or are deferred under subsection 5 (1.0.0.1) or (1.0.1) for the year, zero.

2. In the case of any other plan, the lesser of the following:

    i. The amount by which the value of the assets of the pension plan, determined on the basis of a going concern valuation, including accrued and receivable income but excluding the amount of any letter of credit held in trust for the pension plan, exceeds the sum of going concern liabilities, the amount equal to the provision for adverse deviations in respect of going concern liabilities and the prior year credit balance.

    ii. Whichever of the following amounts applies to the plan:

        A. In the case of a plan that is a public sector pension plan, the amount that, if it were deducted from the solvency assets of the pension plan, would reduce the solvency ratio to 1.05.

        B. In the case of any other plan, the amount that, if it were deducted from the solvency assets of the pension plan, would reduce the transfer ratio to 1.05. O. Reg. 250/18, s. 20.

(2) The amounts referred to in paragraph 2 of subsection (1) shall be based on figures from the last report of the plan filed under section 3 or 14 or submitted under section 4. O. Reg. 250/18, s. 20.

Regulation 909 Subsection 14(1)

(1) Subject to subsections (2) to (6.1), the administrator of a pension plan shall cause the plan to be reviewed and a report prepared and certified by a person authorized under section 15 at regular intervals, with the first valuation date not more than three years after the date of the establishment of the plan and with valuation dates at intervals of not more than three years thereafter. O. Reg. 712/92, s. 10; O. Reg. 73/95, s. 4 (1).

TAB D

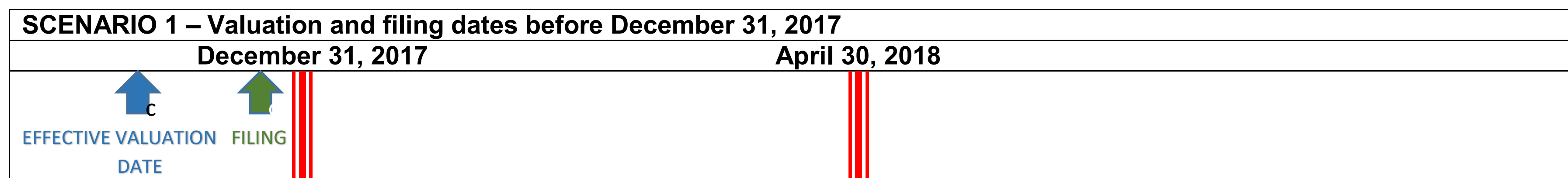
2018 Funding Reform - Ability to take contribution holidays and pay PBGF assessments

In response to the new funding regime (set out in section 55.1 of the Pension Benefits Act (PBA) and Regulation 250/18 which amends Regulation 909) that came into effect on May 1, 2018, FSCO has developed a chart illustrating the rules applicable in five scenarios, based on valuation and filing dates. For each scenario, the chart indicates which provisions govern contribution holidays and whether plan surpluses can be used to pay PBGF assessments.

The chart is based on the following aspects of the new funding regime (unless otherwise indicated, section references are to Regulation 909):

1) Section 55.1 of the PBA came into effect on May 1, 2018 and applies to all pension plans, regardless of the valuation or filing date of the report. Section 55.1 provides that contributions for normal cost (NC) and for the provision for adverse deviations (PfAD) in respect of NC may be reduced or suspended if there is an available actuarial surplus (AAS). AAS is defined under section 7.0.2.
2) The new funding requirements (PfAD & 85% solvency funding threshold) set out in sections 4 and 5 only apply to **a report with a valuation date on and after December 31, 2017 and filed after April 30, 2018**.
3) For reports with **a valuation date on and after December 31, 2017**, section 7(1) does not apply due to section 7(1.1) but the remaining provisions of section 7 (excluding 7(4)) still apply. Therefore, in certain circumstances, plans will be subject to both sections 7 and 7.0.3 and must meet the requirements of both in order to take a contribution holiday.
4) The applicability of section 7.0.3 is premised on the filing date (not the effective date) of a report, i.e., it applies to **a report <u>filed</u> on and after December 31, 2017**.
5) The limitations on the amount of actuarial gain that can be applied to reduce NC set out in sections 7(3.1) and 7(3.2) only apply to fiscal years ending before January 1, 2020.
6) The ability to use an actuarial gain to pay a PBGF assessment under section 7(4) was revoked as at May 1, 2018. Therefore, PBGF assessments may be paid under section 7(4) only if they were paid prior to May 1, 2018. Effective May 1, 2018, AAS may be used to pay PBGF assessments in accordance with section 7.0.3(2) – but only where a valuation report has been filed on or after December 31, 2017.

SCENARIO 1 – Valuation and filing dates before December 31, 2017

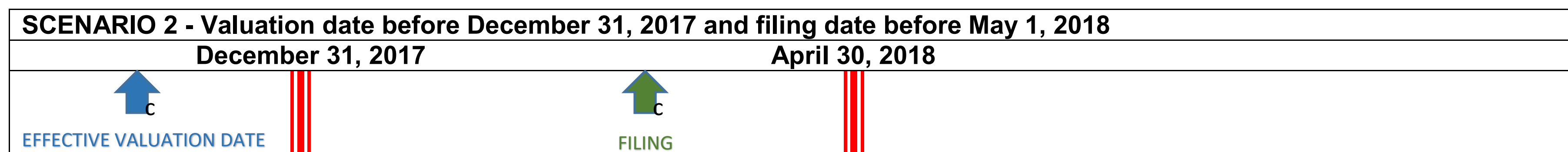


Contribution Holiday		
• 1st plan fiscal year[1] *(assuming no off-cycle filing and no filing extension)*	*Valuation report filed before December 31, 2017* • No TR test • No PfADs for funding • No AAS disclosure	• Sec 14(7) applies since valuation date before Dec. 31/17 (no PfADs and AAS provision) • Sec 7 applies
	PBGF assessment paid on or before Apr 30, 2018 • **Permitted** to be payable from pension fund	• Sec 7(4) applies since it was in effect until May 1, 2018, permits PBGF assessment to be payable from pension fund
	PBGF assessment paid after Apr 30, 2018 • **NOT** permitted to be payable from pension fund	• Sec 7(4) revoked as at May 1, 2018 (no PBGF assessment payable from pension fund)
• 2nd plan fiscal year	*Actuarial cost certificate within 90 days (filed on or before Apr 30, 2018)* • No TR test • No AAS disclosure *PBGF assessment paid after Apr 30, 2018 (likely)* • **NOT** permitted to be payable from pension fund	• Sec 7(3.1) - (provision to require actuarial cost certificate) applies since fiscal year ends before Jan 1/20 • Sec 7.0.2 does not apply as it is not in effect until May 1, 2018 (so no PfADs and AAS provision) • Sec 7(4) revoked as at May 1, 2018 (no PBGF assessment payable from pension fund)
• 2nd plan fiscal year and 3rd plan fiscal year *(if ending before Jan 1, 2020)*	*Actuarial cost certificate within 90 days (filed after Apr 30, 2018)* • Do TR test • Disclose AAS *PBGF assessment paid after Apr 30, 2018* • **NOT** permitted to be payable from pension fund	• Sec 7(3.1) - (provision to require actuarial cost certificate) applies since fiscal year ends before Jan 1/20 • Sec 7.0.2 (and PBA, sec 55.1) in effect at May 1, 2018 so provisions for TR test and PfADs for calculating AAS applies • Include disclosure of AAS at last valuation date[2] as an addendum to last filed valuation report. This may be included in the actuarial cost certificate under Sec 7.1(2) • Sec 7(4) revoked as at May 1, 2018 (no PBGF assessment payable from pension fund) • Useable surplus = min (Sec 7(3.2), Sec 7.0.2[2]))[3]
• 3rd plan fiscal year *(if ending on and after Jan 1, 2020)*	*Actuarial cost certificate not required as per Sec 7(3.1), but needed to fulfill PBA Sec 55.1* • Do TR test • Disclose AAS *PBGF assessment paid after Apr 30, 2018* • **NOT** permitted to be payable from pension fund	• Sec 7.0.2 (and PBA, sec. 55.1) in effect at May 1, 2018 so provisions for TR test and PfADs for calculating AAS applies • Sec 7(4) revoked as at May 1, 2018 (no PBGF assessment payable from pension fund) • Useable surplus = min (Sec 7.0.2[2], sec 7(3))[3]

(1) The valuation report filed later in the year replaces the actuarial cost certificate filed within 90 days of the plan fiscal year.
(2) Where the last valuation report was filed before May 1, 2018, we recognize that a PfAD would not have been identified in that report. In these situations, FSCO will consider alternative approaches to account for the PfAD component of the AAS as at the date of the last valuation.
(3) AAS and actuarial gain revealed at last filed report under section 3 or 14 shall be adjusted to reflect any amounts funded from AAS/actuarial gain since the date of the last valuation.

SCENARIO 2 - Valuation date before December 31, 2017 and filing date before May 1, 2018

December 31, 2017	April 30, 2018



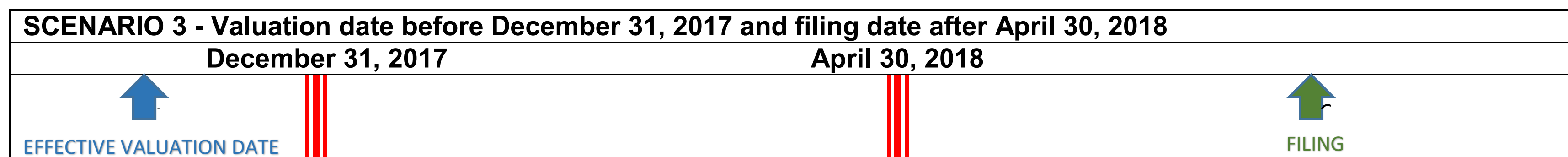
Contribution Holiday		
• 1st plan fiscal year(1) (starting after Apr 1, 2017 and before Dec 31, 2017) *(assuming no off-cycle filing and no filing extension)*	*Valuation report filed before April 30, 2018* • No TR test • No PfADs for funding • No AAS disclosure	• Sec 14(7) applies since valuation date before Dec. 31/17 (no PfADs and AAS provision) • Sec 7 applies
	PBGF assessment paid on or before Apr 30, 2018 • **Permitted** to be payable from pension fund	• Sec 7(4) applies since it was in effect until May 1, 2018, permits PBGF assessment to be payable from pension fund
	PBGF assessment paid after Apr 30, 2018 • **NOT** permitted to be payable from pension fund	• Sec 7.0.3(2) does not apply at the time the report was filed (before May 1, 2018)
• 2nd plan fiscal year	*Actuarial cost certificate within 90 days (filed on or before Apr 30, 2018)* • No TR test • No AAS disclosure *PBGF assessment paid after Apr 30, 2018 (likely)* • **NOT** permitted to be payable from pension fund	• Sec 7(3.1) - (provision to require actuarial cost certificate) applies since fiscal year ends before Jan 1/20 • Sec 7.0.2 (PBA, sec 55..1) does not apply as it is not in effect until May 1, 2018 (so no PfADs and AAS provision) • Sec 7.0.3(2) does not apply at the time the actuarial cost certificate was filed (before May 1, 2018)
• 2nd plan fiscal year (ending before Jan 1, 2020)	*Actuarial cost certificate within 90 days (filed after Apr 30, 2018)* • Do TR test • Disclose AAS *PBGF assessment paid after Apr 30, 2018* • **Permitted** to be payable from pension fund	• Sec 7.0.3 applies since report filed after Dec. 31/17 • Sec 7.0.3(2) applies since timing is after April 30, 2018 • Sec 7.0.2 (PBA, sec 55.1) in effect at May 1, 2018 so provisions for TR test and PfADs for calculating AAS applies • Include disclosure of AAS at last valuation date(2) as an addendum to last filed valuation report and AAS at the date of actuarial cost certificate in the actuarial cost certificate under Sec 7.1(2) • Useable surplus = min (Sec 7(3.2), Sec 7.0.3(4))(4)
• 3rd plan fiscal year (ending on or after Jan 1, 2020)	*Actuarial cost certificate within 90 days* • Do TR test • Disclose AAS *PBGF assessment paid after Apr 30, 2018* • **Permitted** to be payable from pension fund	• Sec 7.0.3 applies since report filed after Dec. 31/17 • Sec 7.0.3(2) applies since timing is after April 30, 2018 • Sec 7.0.2 (PBA, sec 55.1) in effect at May 1, 2018 so provisions for TR test and PfADs for calculating AAS applies • Include disclosure of AAS at last valuation date(2) as an addendum to last filed valuation report (if one is not done) and AAS at the date of actuarial cost certificate in the actuarial cost certificate under Sec 7.1(2) • Useable surplus = min (Sec 7.0.3(4))(3), Sec 7(3))(4)

(1) The valuation report filed later in the year replaces the actuarial cost certificate filed within 90 days of the plan fiscal year.

(2) Where the last valuation report was filed before May 1, 2018, we recognize that a PfAD would not have been identified in that report. In these situations, FSCO will consider alternative approaches to account for the PfAD component of the AAS as at the date of the last valuation.

(3) Useable surplus = Sec 7.0.3(4) after December 31, 2019 as Sec 7(3.1) expires and is not applicable for fiscal years ending on and after January 1, 2020; sec 7(3) still applies after December 31, 2019

(4) AAS and actuarial gain revealed at last filed report under section 3 or 14 shall be adjusted to reflect any amounts funded from AAS/actuarial gain since the date of the last valuation.



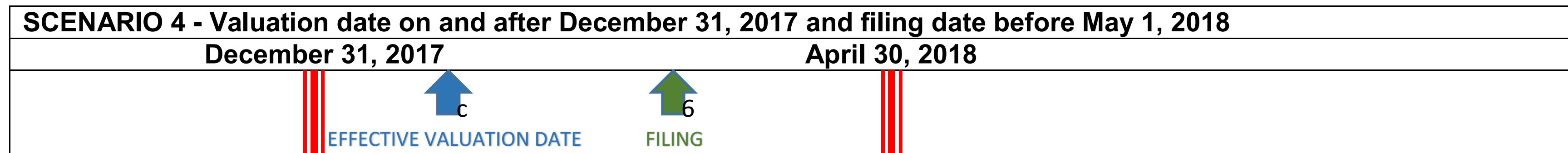
Contribution Holiday		
• 1st plan fiscal year(1) (starting after Aug 1, 2017 and before Dec 31, 2017) *(assuming no off-cycle filing and no filing extension)*	*Valuation filed after April 30, 2018* • Do TR test • No PfADs for funding • Disclose AAS *PBGF assessment paid after Apr 30, 2018* • **Permitted** to be payable from pension fund	• Sec 14(7) applies since valuation date before Dec. 31/17 (no PfADs and AAS provision) • Sec 7.0.3 applies since report filed after Dec. 31/17 • Sec 7.0.3(2) applies since timing is after April 30, 2018 • Sec 7.0.2 (PBA, sec 55.1) in effect at May 1, 2018 so provisions for TR test and PfADs for calculating AAS apply. • Include disclosure of AAS in valuation report even though there is no requirement thereunder • Useable surplus = min (Sec 7(3.2), Sec 7.0.3(4))
• Subsequent plan fiscal years	*Actuarial cost certificate within 90 days* • Do TR test • Disclose AAS *PBGF assessment paid after Apr 30, 2018* • **Permitted** to be payable from pension fund	• Sec 7.0.3 applies since report filed after Dec. 31/17 • Sec 7.0.3(2) applies since timing is after April 30, 2018 • Sec 7.0.2 (PBA, sec 55.1) in effect at May 1, 2018 so provisions for TR test and PfADs for calculating AAS apply. • Include disclosure of AAS at the date of actuarial cost certificate in actuarial cost certificate under Sec 7.1(2) even though there is no requirement thereunder • Useable surplus = min (Sec 7(3.2), Sec 7.0.3(4))(2)(3)

(1) The valuation report filed later in the year replaces the actuarial cost certificate filed within 90 days of the plan fiscal year.

(2) Useable surplus = Sec 7.0.3(4) after December 31, 2019 as Sec 7(3.1) expires and is not applicable for fiscal years ending on and after January 1, 2020; sec 7(3) still applies after December 31, 2019

(3) AAS and actuarial gain revealed at last filed report under section 3 or 14 shall be adjusted to reflect any amounts funded from AAS/actuarial gain since the date of the last valuation.

SCENARIO 4 - Valuation date on and after December 31, 2017 and filing date before May 1, 2018



Contribution Holiday		
• 1st plan fiscal year[(1)] *(assuming no off-cycle filing and no filing extension)*	*Valuation report filed before May 1, 2018* • No TR test • No PfADs for funding • No AAS disclosure *PBGF assessment paid after Apr 30, 2018 (likely)* • **NOT** permitted to be payable from pension fund	• Sec 14(7) (no PfADs and AAS provision) • Sec 7.0.3(2) does not apply since section 7.0.3 not in effect until May 1, 2018
• Subsequent plan fiscal years	*Actuarial cost certificate within 90 days* • Do TR test • Disclose AAS • PBGF assessment **permitted** to be payable from pension fund	• Sec 7.0.3(2) applies since timing is after April 30, 2018 • Sec 7.0.2 (PBA, sec 55.1) in effect at May 1, 2018 so provisions for TR test and PfADs for calculating AAS apply • Include disclosure of AAS at last valuation date[(2)] as an addendum to last filed valuation report (if one is not done). This may be included in the actuarial cost certificate under Sec 7.1(3). • Useable surplus = min (Sec 7(3.2), Sec 7.0.3(4))[(3)(4)]

(1) The valuation report filed later in the year replaces the actuarial cost certificate filed within 90 days of the plan fiscal year.

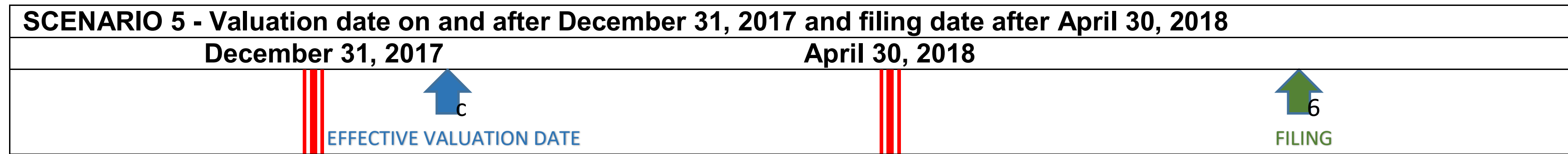
(2) Where the last valuation report was filed before May 1, 2018, we recognize that a PfAD would not have been identified in that report. In these situations, FSCO will consider alternative approaches to account for the PfAD component of the AAS as at the date of the last valuation.

(3) Useable surplus = Sec 7.0.3(4) after December 31, 2019 as Sec 7(3.1) expires and is not applicable for fiscal years ending on and after January 1, 2020; sec 7(3) still applies after December 31, 2019

(4) AAS and actuarial gain revealed at last filed report under section 3 or 14 shall be adjusted to reflect any amounts funded from AAS/actuarial gain since the date of the last valuation.

SCENARIO 5 - Valuation date on and after December 31, 2017 and filing date after April 30, 2018

December 31, 2017 **April 30, 2018**



Contribution Holiday		
• 1st plan fiscal year[(1)] *(assuming no off-cycle filing and no filing extension)*	*Valuation report filed after April 30, 2018* • Do TR test • Include PfADs for funding • Disclose AAS *PBGF assessment paid after Apr 30, 2018* • **Permitted** to be payable from pension fund	• Sec 14(8.0.2) and Sec 14(8.0.5) (PfADs and AAS provisions) • Sec 7.0.2 and 7.0.3 apply • Useable surplus = min (Sec 7(3.2), Sec 7.0.3(4))
• Subsequent plan fiscal years	*Actuarial cost certificate within 90 days* • Do TR test • Disclose AAS • PBGF assessment **permitted** to be payable from pension fund	• Sec 7.0.3 applies • Sec 7.0.2 (PBA, sec 55.1) in effect at May 1, 2018 so provisions for TR test and PfADs for calculating AAS apply • Useable surplus = min (Sec 7(3.2), Sec 7.0.3(4))[(2)(3)]

(1) The valuation report filed later in the year replaces the actuarial cost certificate filed within 90 days of the plan fiscal year.

(2) Useable surplus = Sec 7.0.3(4) after December 31, 2019 as Sec 7(3.1) expires and is not applicable for fiscal years ending on and after January 1, 2020; sec 7(3) still applies after December 31, 2019

(3) AAS and actuarial gain revealed at last filed report under section 3 or 14 shall be adjusted to reflect any amounts funded from AAS/actuarial gain since the date of the last valuation.

TAB E

Français

ONTARIO REGULATION 105/19

made under the

PENSION BENEFITS ACT

Made: May 16, 2019
Filed: May 21, 2019
Published on e-Laws: May 21, 2019
Printed in *The Ontario Gazette*: June 8, 2019

Amending Reg. 909 of R.R.O. 1990
(GENERAL)

1. (1) Subsection 1 (2) of Regulation 909 of the Revised Regulations of Ontario, 1990 is amended by adding the following definition:

"lump sum benefit improvement contribution" means a lump sum contribution that was made before the date a report is filed under subsection 3 (1) to fund, in whole or in part, any increase in going concern liabilities or solvency liabilities, or both, due to an amendment; ("cotisation forfaitaire pour amélioration des prestations")

(2) The definition of "prior year credit balance" in subsection 1 (2) of the Regulation is amended by striking out "subsections 5 (13) to (16) or subsection 5.1 (5)" and substituting "subsections 5 (13) and (16)".

2. Section 1.2 of the Regulation is amended by adding the following subsection:

(1.1) For the purposes of determining the present value of special payments in subclause (1) (d.1) (i), the references to the "last filed report" in clauses 5 (1.0.0.1) (a) and (b) shall be read as references to the report mentioned in subsection (1).

3. Clause 3 (1) (b) of the Regulation is revoked and the following substituted:

(b) a description of the lump sum benefit improvement contribution, if any; and

4. (1) Subsection 3.0.1 (2) of the Regulation is amended,

(a) by adding "lump sum benefit improvement" immediately before "contribution" in the portion before clause (a); and

(b) by striking out "at least" wherever it appears in clauses (a) and (b).

(2) Subsection 3.0.1 (3) of the Regulation is revoked.

(3) Subsection 3.0.1 (5) of the Regulation is revoked and the following substituted:

(5) Section 14.0.1 of the Act does not apply to a jointly sponsored pension plan listed in subsection 1.3.1 (3).

5. (1) Subsection 4 (0.1) of the Regulation is amended by adding the following definition:

"specified period" means, in respect of a report filed under section 3 or 14 or submitted under section 4 or 13, the period beginning on the later of the start of the fiscal year of the plan in which the report was filed or submitted and the valuation date of the report and ending on the day before the day on which the report is filed or submitted. ("période déterminée")

(2) Section 4 of the Regulation is amended by adding the following subsections:

(3.2) If employer contributions to a pension plan during the specified period in respect of the most recently filed or submitted report are in excess of the contributions the report requires in respect of the specified period, the employer may apply the amount of the excess contributions to reduce any payment otherwise required in respect of the pension plan under the report for the period beginning on the day the report is filed or submitted and ending on the earlier of the last day of the fiscal year in which the report is filed or submitted and the filing date of the subsequent report.

(3.3) Subsection (3.2) does not apply if the most recently filed or submitted report is filed or submitted more than 12 months after the valuation date of the report, even if an extension for the filing or submission of the report is granted by the Superintendent under section 105 of the Act.

(3.4) Subsection (3.2) does not apply to a jointly sponsored pension plan.

6. (1) Clause 5 (1.0.0.1) (e) of the Regulation is amended by striking out "the value of any contribution in respect of the increase before the effective date of the amendment, with interest" and substituting "the lump sum benefit improvement contribution in respect of the increase, with interest".

(2) Subsection 5 (16) of the Regulation is amended by striking out "Subject to subsections (13) and (16.1)" at the beginning and substituting "Subject to subsections (13), (16.1) and (16.3)".

(3) Subsection 5 (16) of the Regulation is amended by striking out "Subject to subsections (13), (16.1) and (16.3)" at the beginning and substituting "Subject to subsections (13) and (16.1)".

(4) Section 5 of the Regulation is amended by adding the following subsection:

(16.3) For a report that is the first valuation report with a valuation date on or after December 31, 2017 that is filed or submitted on or after May 1, 2018, the definition of "C" in subsection (16) shall be read as if "and if section 55.1 of the Act did not apply" was added at the end.

(5) Subsection 5 (16.3) of the Regulation, as made by subsection (4), is revoked.

7. (1) The Regulation is amended by adding the following section:

Letters of credit, deemed reduced solvency deficiency

5.1 (1) For the purposes of applying sections 5.2 to 5.5 and Schedule 4, special payments described in clause 5 (1) (e) or clause 5 (1.0.0.1) (g), (h) or (i) to which a letter of credit relates are deemed to be special payments described in clause 5 (1.0.0.1) (f).

(2) For the purposes of applying section 55.2 of the Act, a letter of credit in respect of a solvency deficiency or consolidated prior solvency deficiency is deemed to be in respect of a reduced solvency deficiency.

(2) Section 5.1 of the Regulation, as made by subsection (1), is revoked.

8. Paragraph 4 of subsection 5.2.1 (2) of the Regulation is revoked.

9. Subsection 5.4 (1) of the Regulation is amended by striking out "clause 5 (1) (e)" and substituting "clause 5 (1.0.0.1) (f)".

10. (1) Subsection 6.0.4 (2) of the Regulation is amended by striking out "Section 3.0.1, subsections 5 (1.0.0.1), 6 (4.1), (4.2) and (4.3), section 7.0.1" at the beginning and substituting "Subsections 5 (1.0.0.1), 6 (4.1), (4.2) and (4.3) and 7 (1.1), section 7.0.1".

(2) Section 6.0.4 of the Regulation is amended by adding the following subsections:

(2.0.1) Subsection 78 (7) does not apply to a specified Ontario multi-employer pension plan.

(2.0.2) Section 14.0.1 of the Act does not apply to a specified Ontario multi-employer pension plan.

11. The Regulation is amended by adding the following section after the heading "Actuarial Gain, Going Concern Excess and Contribution Holiday":

Non-application, s. 55.1 of Act

6.3 Section 55.1 of the Act does not apply in respect of the following:

1. A jointly sponsored pension plan listed in subsection 1.3.1 (3) of this Regulation.
2. A pension plan for which the valuation date of the last filed report is before December 31, 2017.
3. A pension plan for which the last filed report was filed before May 1, 2018.

12. (1) Section 7 of the Regulation is amended by adding the following subsections:

(3.1.1) Subsections (3) and (3.1) do not apply in respect of a report that discloses an actuarial gain under the plan if the valuation date of the report is on or after December 31, 2017 and the report is filed or submitted on or after May 1, 2018, unless the report is in respect of a jointly sponsored pension plan listed in subsection 1.3.1 (3).

. . . . .

(4) The requirement set out in clause (3.1) (a) is deemed to be satisfied if the administrator files with the Superintendent an actuarial cost certificate on or before June 30, 2019 for a fiscal year beginning on or after July 1, 2018.

(5) Subject to subsection (6), in any fiscal year for which no special payments are required under section 5 and during which no special payments are deferred under subsection 5 (1.0.1), any actuarial gain not applied under subsection (1) or (3) may be applied to pay the annual assessment to the Guarantee Fund otherwise required by subsection 37 (1) to be paid by the employer.

(6) Subsection (5) applies only in respect of a fiscal year covered by,

(a) a report with a valuation date before December 31, 2017; or

(b) a report that is filed or submitted before May 1, 2018.

(2) Subsection 7 (4) of the Regulation, as made by subsection (1), is revoked.

13. (1) Subsection 7.0.3 (1) of the Regulation is amended by striking out "first report filed on or after December 31, 2017" and substituting "first report filed on or after May 1, 2018 with a valuation date on or after December 31, 2017".

(2) Subsection 7.0.3 (5) of the Regulation is revoked and the following substituted:

(5) If a report has been filed under section 3 or 14 or submitted under section 4 with a valuation date that is not earlier than the day immediately before the beginning of the fiscal year in which the report is filed or submitted, and the report sets out available actuarial surplus, clauses (3) (a) and (4) (b) do not apply with respect to the portion of the fiscal year that begins on the first day of the period covered by the report and ends on the last day of the fiscal year.

14. Subsection 7.1 (3) of the Regulation is amended by adding "on or after May 1, 2018" after "a fiscal year following a report filed" in the portion before paragraph 1.

15. (1) Paragraph 4 of subsection 8 (3) of the Regulation is revoked and the following substituted:

4. One of the following statements:

   i. if the plan is a public sector pension plan, a statement that the reduction of contributions will not reduce the estimated solvency ratio of the pension plan to less than 1.05, or

   ii. if the plan is not a public sector pension plan, a statement that the reduction of contributions will not reduce the estimated transfer ratio of the pension plan to less than 1.05.

(2) Section 8 of the Regulation is amended by adding the following subsection:

(5) Despite subsection (4), where subsection 7.0.3 (5) applies and the planned reduction is to occur more than six months after the start of a fiscal year, the notice must be given within six months following the end of the fiscal year in which the planned reduction is to occur.

16. Section 9 of the Regulation is amended by striking out "normal cost" and substituting "normal costs".

17. (1) The definition of "closed plan" in subsection 11.2 (1) of the Regulation is revoked and the following substituted:

"closed plan" means a pension plan,

(a) that has no members who are entitled to defined benefits, or

(b) in which at least 25 per cent of the members of the plan who are entitled to defined benefits are in a class or classes of employees from which new members are not permitted, according to the terms of the plan, to join the plan and accrue defined benefits; ("régime fermé")

(2) The definition of "A" in subsection 11.2 (2) of the Regulation is amended by striking out "0.05 for a closed plan and 0.04 for a plan that is not a closed plan" and substituting "0.05 for a pension plan that is a closed plan on the valuation date and 0.04 for a pension plan that is not a closed plan on that date".

(3) Subsection 11.2 (9) of the Regulation is amended by revoking the portion before paragraph 1 and substituting the following:

(9) In determining the values of "L" and "P" in subsection (8), any portion of a target asset allocation for an investment category listed in paragraph 4, 15 or 16 of subsection 76 (12) shall not be included unless the following criteria are met:

. . . . .

(4) Paragraph 1 of subsection 11.2 (9) of the Regulation is amended by striking out "target investment allocations of fixed income assets in the investment category that is given by a credit rating agency" and substituting "target asset allocations of fixed income assets in the investment category, or the portion thereof, that is given by a credit rating agency".

(5) Paragraph 2 of subsection 11.2 (9) of the Regulation is amended by striking out "At the time at which the values of "L" and "P" are determined" at the beginning and substituting "As of the valuation date referred to in subsection (2)".

(6) Section 11.2 of the Regulation is amended by adding the following subsections:

(9.1) Any portion of a target asset allocation excluded from the value of "L" in subsection (8) in accordance with subsection (9) shall be included in the value of "M" in subsection (8).

(9.2) Any portion of a target asset allocation excluded from the value of "P" in subsection (8) in accordance with subsection (9) shall be included in the value of "Q" in subsection (8).

(7) Subsection 11.2 (10) of the Regulation is amended by striking out "at the time at which the determination is made" at the end and substituting "as of the valuation date referred to in subsection (2)".

(8) Subsection 11.2 (12) of the Regulation is amended by striking out "the plan's actual asset allocation for an investment category listed in paragraph 4, 15 or 16 of subsection 76 (12) shall not be included unless, at the time at which the determination is made" and substituting "any asset in an investment category listed in paragraph 4, 15 or 16 of subsection 76 (12) shall not be included unless, as of the valuation date referred to in subsection (2)".

(9) Section 11.2 of the Regulation is amended by adding the following subsections:

(12.1) Any asset in the actual asset allocation excluded from the value of "L" in subsection (8) in accordance with subsection (12) shall be included in the value of "M" in subsection (8).

(12.2) Any asset in the actual asset allocation excluded from the value of "P" in subsection (8) in accordance with subsection (12) shall be included in the value of "Q" in subsection (8).

18. Subsection 37 (1) of the Regulation is amended by striking out "subject to subsection 7 (4)" and substituting "subject to subsections 7 (5) and 7.0.3 (2)".

19. Subclause 40 (1) (u) (v) of the Regulation is amended by striking out "or reduced solvency deficiency".

20. Subclause 40.1 (1) (r) (iii) of the Regulation is amended by striking out "or reduced solvency deficiency".

21. Subclause 40.2 (1) (q) (iii) of the Regulation is amended by striking out "or reduced solvency deficiency".

22. (1) Paragraph 11 of subsection 47.9 (4) of the Regulation is revoked and the following substituted:

11. Subsections 7 (1.1) and (3.1.1).

(2) Subsection 47.9 (4) of the Regulation is amended by adding the following paragraph:

21. Subsection 78 (7).

23. (1) Subsection 78 (7) of the Regulation is amended by adding "for assets in respect of defined benefits" after "target asset allocation".

(2) Section 78 of the Regulation is amended by adding the following subsection:

(7.1) Subsection (7) does not apply with respect to a jointly sponsored pension plan listed in subsection 1.3.1 (3).

24. (1) Subparagraph 1 i of section 3 of Schedule 4 to the Regulation is amended by striking out "clause 5 (1) (e)" and substituting "clause 5 (1.0.0.1) (f)".

(2) Sub-subparagraph 6 iv B of subsection 4 (1) of Schedule 4 to the Regulation is amended by adding "or (2.1)" after "subsection (2)".

(3) Subsection 4 (2) of Schedule 4 to the Regulation is amended by adding "or submitted" after "filed" in the portion before the definition of "A".

(4) Subsection 4 (2.1) of Schedule 4 to the Regulation is amended by striking out "filed under section 3 or 14 or submitted under section 3 or 13" in the portion before the definition of "A" and substituting "that is filed or submitted on or after May 1, 2018 under section 3, 4, 13 or 14".

Commencement

25. (1) Subject to subsections (2), (3) and (4), this Regulation comes into force on the day it is filed.

(2) Subsections 6 (3) and (5) come into force on February 1, 2022.

(3) Subsection 7 (2) comes into force on May 1, 2029.

(4) Subsection 12 (2) comes into force on January 1, 2020.

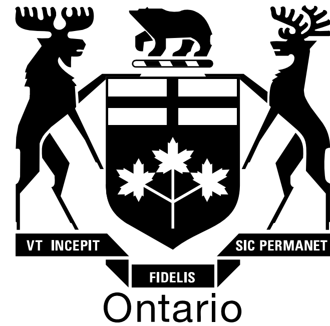
Français

Back to top

TAB F

Ontario Energy Board

Commission de l'Énergie de l'Ontario



EB-2006-0322
EB-2006-0338
EB-2006-0340

MOTIONS TO REVIEW THE NATURAL GAS ELECTRICITY INTERFACE REVIEW DECISION

DECISION WITH REASONS

May 22, 2007

EB-2006-0322
EB-2006-0338
EB-2006-0340

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, (Schedule B);

AND IN THE MATTER OF a proceeding initiated by the Ontario Energy Board to determine whether it should order new rates for the provision of natural gas, transmission, distribution and storage services to gas-fired generators (and other qualified customers) and whether the Board should refrain from regulating the rates for storage of gas;

AND IN THE MATTER OF Rules 42, 44.01 and 45.01 of the Board's *Rules of Practice and Procedur*e.

BEFORE: Pamela Nowina
Vice Chair, Presiding Member

Paul Vlahos
Member

Cathy Spoel
Member

DECISION WITH REASONS

May 22, 2007

EXECUTIVE SUMMARY

In November of 2006 the Board issued a Decision with Reasons in the Natural Gas Electricity Interface Review proceeding (the "NGEIR Decision"). This proceeding was initiated by the Ontario Energy Board in response to issues first raised in the Board's Natural Gas Forum Report issued in 2004. The NGEIR Decision addressed the key issues of natural gas storage rates and services for gas-fired generators, and storage regulation.

In the NGEIR Decision, the Board determined that it would cease regulating the prices charged for certain storage services but that the rates for storage services provided to Union and Enbridge distribution customers will continue to be regulated by the Board.

The Board received three Notices of Motion for review of certain parts of the NGEIR Decision. The Board held an oral hearing to consider the threshold questions that the Board should apply in determining whether the Board should review those parts of the NGEIR Decision and whether the moving parties met the test or tests.

The Board finds that the motions do not pass the threshold tests applied by the Board, except in two areas.

First, the Board finds that the decision to cap the storage available to Union Gas Limited's in-franchise customers at regulated rates to 100 PJ is reviewable.

Second, the Board finds that the decisions regarding additional storage requirements for Union Gas Limited's in-franchise gas-fired generator customers and Enbridge's Rate 316 are reviewable.

TABLE OF CONTENTS

Section A: Introduction **1**
The NGEIR Decision 2
Organization of the Decision 3

Section B: Board Jurisdiction to Hear the Motions **5**

Section C: Threshold Test **16**

Section D: Board Process **19**

Section E: Board Jurisdiction under Section 29 ..... **26**

Section F: Status Quo **34**

Section G: Onus **37**

Section H: Competition in the Secondary Market **38**

Section I: Harm to Ratepayers **42**

Section J: Union's 100 PJ Cap **45**

Section K: Earnings Sharing **50**

Section L: Additional Storage for Generators and Enbridge's Rate 316 ..... **54**

Section M: Aggregate Excess Method of Allocating Storage **59**

Section N: Orders **62**

Section O: Cost Awards **63**

Section A: Introduction

The Board received three Notices of Motion for review of its Decision in the Natural Gas Electricity Interface Review proceeding[1] ("NGEIR"). Motions were filed by the City of Kitchener ("Kitchener") and the Association of Power Producers of Ontario ("APPrO"). There was also a joint notice by the Industrial Gas Users' Association ("IGUA"), the Vulnerable Energy Consumers Coalition ("VECC") and the Consumers Council of Canada ("CCC")

On January 25, 2007, the Board issued a Notice of Hearing and Procedural Order which established a schedule for the filing of factums by the moving parties, any responding parties' factums, and an oral hearing date for hearing the threshold question. On February 8, 2007, factums were filed by Kitchener, APPrO, IGUA, and jointly by CCC and VECC.

Responding factums were filed on February 15, 2007 by Board Staff, Union Gas Limited, Enbridge Gas Distribution Inc., Market Hub Partners Canada Ltd., School Energy Coalition, The Independent Electricity System Operator and BP Canada Energy Company.

In its Procedural Order No.2, the Board indicated that, at the upcoming oral hearing, parties should confine their submissions to the material in their factums and to responding to the factums of other parties. The Board also stated that parties should address only the issues set out in the Board's Procedural Order No. 1, namely:

1) What are the threshold questions that the Board should apply in determining whether the Board should review the NGEIR Decision? and

2) Have the Moving Parties met the test or tests?

---

[1] EB-2008-0551 (November 7, 2006)

On March 5 and 6, 2007, the Board heard the oral submissions of all the parties with the exception of the Independent System Operator and BP Canada who had advised the Board that they would not be appearing at the oral hearing.

The NGEIR Decision

On November 7, 2006 the Board issued its Decision with Reasons in the Natural Gas Electricity Interface Review proceeding (the "NGEIR Decision"). This proceeding was initiated by the Ontario Energy Board in response to issues first raised in the Board's Natural Gas Forum Report issued in 2004. The 123-page NGEIR Decision addressed the key issues of:

1) Rates and services for gas-fired generators, and

2) Storage regulation.

The parties reached settlements with Enbridge and Union on most of the issues related to rates and services for gas-fired generators. These settlements were approved by the Board. The oral hearing and the NGEIR Decision addressed the broad issue of storage regulation and any issues that were not settled in the settlement negotiations.

The issue concerning storage regulation was whether the Board should refrain from regulating the prices charged for storage services under section 29 (1) of the Ontario Energy Board Act, 1998. The Board found that the storage market is workably competitive and that neither Union nor Enbridge have market power in the storage market. The Board determined that it would cease regulating the prices charged for certain storage services; however, the Board found that rates for storage services provided to Union and Enbridge distribution customers will continue to be regulated by the Board.

The motions requested the following decisions made in the NGEIR Decision be either reviewed and changed; cancelled, or clarified, in a new Board proceeding:

Kitchener

- The aggregate excess methodology for allocating storage space
- The 100 PJ cap on Union's regulated storage

APPrO

- Whether short notice balancing service should be included on the tariffs of Union and Enbridge

IGUA/CCC/VECC

- Parts of the NGEIR Decision pertaining to storage, storage regulation and storage allocation be cancelled
- Review to be heard by a different Board panel

The parties outlined the grounds for the motions which included allegations of errors of fact and in some cases, errors of law.

Organization of the Decision

In this Decision, the Board organized the issues raised by the parties into sections that cover the same or similar topics. In each section following the section on the threshold test, the Board identifies the issue or issues raised, and makes a finding whether the issues are reviewable by applying the threshold test.

The sections of this Decision are:

A. Introduction (this section)
B. Board Jurisdiction to Hear Motions
C. Threshold Test
D. Board Process

E. Board Jurisdiction under Section 29
F. Status Quo
G. Onus
H. Competition in the Secondary Market
I. Harm to Ratepayers
J. Union's 100 PJ Cap
K. Earnings Sharing
L. Additional Deliverability for Generators and Enbridge's Rate 316
M. Aggregate Excess Method of Allocating Storage
N. Orders
O. Cost Awards

The Board has reviewed the factums and arguments of all parties but has chosen to set out or summarize the factums or arguments by parties only to the extent necessary to provide context to its findings.

Section B: Board Jurisdiction to Hear the Motions

Under Rule 45.01, the Board may determine as a threshold question whether the matter should be reviewed before conducting any review on the merits.

In the case of IGUA's motion, which raises questions of law and jurisdiction, counsel for Board Staff argued that the Board should not, and indeed could not, review the NGEIR Decision as these grounds are not specifically enumerated in Rule 44.01 as possible grounds for review. Counsel for Board Staff argued that the Board has no inherent power to review its decisions and the manner in which it exercises such power must fall narrowly within the scope of the *Statutory Powers Procedure Act* (SPPA), which grants the Board this power.

The Board's power to review its decisions arises from Section 21.1(1) of the SPPA which provides that:

> A tribunal may, if it considers it advisable and if its rules made under section 25.1 deal with the matter, review all or any part of its own decision or order, and may confirm, vary, suspend or cancel the decision or order.

Part VII (sections 42 to 45) of the Board's Rules of Practice and Procedure deal with the review of decisions of the Board. Rule 42.01 provides that "any person may bring a motion requesting the Board to review all or part of a final order or decision, and to vary, suspend or cancel the order or decision". Rule 42.03 requires that the notice of motion for a motion under 42.01 shall include the information required under Rule 44. Rule 44.01 provides as follows:

> Every notice of motion made under Rule 42.01, in addition to the requirements of Rule 8.02, shall:
>
> > (a) set out the grounds for the motion that raise a question as to the correctness of the order or decision, which grounds may include:

(i) error in fact;

(ii) change in circumstances;

(iii) new facts that have arisen;

(iv) facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time; and

(b) if required, and subject to Rule 42, request a stay of the implementation of the order or decision, or any part pending the determination of the motion.

Counsel for Board Staff argued that while the grounds for review do not have to be exactly as those described, they must be of the same nature, and that to the extent the grounds for review include other factors such as error of law, mixed error of fact and law, breach of natural justice, or lack of procedural fairness, they are not within the Board's jurisdiction. He argued that Rule 44 should be interpreted as an exhaustive list, and that as section 21.1(1) of the SPPA requires that the tribunal's rules deal with the matter of motions for review, the Board's jurisdiction is limited to the matters specifically set out in its Rules.

In support of this interpretation of the Rule 44.01, Counsel relied on the fact that an earlier version of the Board's rules specifically allowed grounds which no longer appear in Rule 44.01. Therefore, it must be assumed that the current Rules are not intended to allow motions for review based on those grounds. The relevant section of the earlier version of the Rules read as follows:

63.01 Every notice of motion made under Rule 62.01, in addition to the requirements of Rule 8.02, shall:

(a) set out the grounds for the motion that raise a question as to the correctness of the order or decision, which grounds may include:

(i) error of law or jurisdiction, including a breach of natural justice;

(ii) error in fact;

(iii) a change in circumstances;

(iv) new facts that have arisen;

(v) facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time;

(vi) an important matter of principle that has been raised by the order or decision;

(b) request a delay in the implementation of the order or decision, or any part pending the determination of the motion, if required, …

Counsel for Board Staff argued that the “presumption of purposeful change” rule of statutory interpretation should be applied to the Board’s Rules. This rule applies generally to legislative instruments and is based on the presumption that legislative bodies do not go to the bother and expense of making changes to legislative instruments unless there is a specific reason to do so. Applied to Rule 44, this means that the Board should be presumed to have intended to eliminate the possibility of motions for review based on grounds which are no longer enumerated. He further argued that because the SPPA requires the Board’s Rules “to deal with the matter”, the

Board can only deal with them in the manner allowed for by its Rules, and any deviation from the Rules will cause the Board to go beyond its power to review granted by Section 21.1(1) of the SPPA.

In general Union and Enbridge supported the argument made by counsel for Board Staff.

Other parties made several arguments to counter those put forward by counsel for Board Staff. These included:

- as the Board's rules are not statutes or regulations but deal with procedural matters the rules of statutory interpretation such as the presumption of purposeful change have little if any application

- to the extent rules of statutory interpretation apply, section 2 of the SPPA specifically requires that the Act and any rules made under it be liberally construed:

  > This Act, and any rule made by a tribunal under subsection 17.1(4) or section 25.1, shall be liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding on its merits

- that the *Interpretation Act* requires that the word "may" be construed as permissive, whereas "shall" is imperative, so the list of grounds in Rule 44 should be considered as examples. In support of this argument, counsel for CCC referred to Sullivan and Dreiger on the Construction of Statutes, Fourth Edition, Butterworths, pp 175*ff* which cites the Supreme Court of Canada decision in *National Bank of Greece (Canada) v. Katsikonouris* (1990), 74 D.L.R. (4th) 197

- that the Ontario Court of Appeal decision in *Russell v. Toronto(City)* (2000), 52 O.R. (3d) 9 provides that a tribunal (in that case the Ontario Municipal Board) cannot use its own policy or practice to restrict the range of matters which it will consider on a motion to review

- that the *Russell* decision gives tribunals a broad jurisdiction to review in contradistinction to the narrow right of appeal to the Divisional Court.

Findings

In the Board's view, in addition to the specific sections of the SPPA and the Board's Rules dealing with motions to review, it is helpful to look at the overall scheme of the SPPA and the Rules to determine the scope of the Board's jurisdiction to review a decision.

Originally, the SPPA was enacted to ensure that decision making bodies such as the Board provided certain procedural rights to parties that were affected by those decisions. These basic requirements apply regardless of whether a tribunal has enacted rules of practice and procedure. They include such requirements as:

- Parties must be given reasonable notice of the hearing (s 6)

- Hearings must be open to the public, except where intimate personal or financial matters may be disclosed (s 9)

- The right to counsel (s 10)

- The right to call and examine witnesses and present evidence and submissions and to conduct cross-examinations of witnesses at the hearing reasonably required for a full and fair disclosure of all matters relevant to the issues in the proceeding (s 10.1)

- That decisions be given in writing with reasons if requested by a party (s 17 (1))

- That parties receive notice of the decision (s 18)

- That the tribunal compile a record of the proceeding (s 20).

In addition to these requirements there are several practices and procedures that tribunals are allowed to adopt, if provision is made for them in an individual tribunal's rules. These include:

- Alternative dispute resolution. Section 4.8 provides that a tribunal may direct parties to participate in ADR if "it has made rules under section 25.1 respecting the use of ADR mechanisms…"

- Prehearing conferences. Section 5.3 provides that "if the tribunal's rules under section 25.1 deal with prehearing conferences, the tribunal may direct parties to participate in a pre-hearing conference…"

- Disclosure of documents. Section 5.4 provides that "if the tribunal's rules made under section 25.1 deal with disclosure, the tribunal may,…, make orders for (a) the exchange of documents, …"

- Written hearings. Section 5.1 (1) provides that "a tribunal whose rules made under section 25.1 deal with written hearings may hold a written hearing in a proceeding."

- Electronic hearings. Section 5.2 provides that "a tribunal whose rules made under section 25.1 deal with electronic hearings may hold an electronic hearing in a proceeding."

- Motions to review. Section 21.1(1) provides that "a tribunal may, if it considers it advisable and if its rules made under section 25.1 deal with the matter, review all or any part of its own decision or order, and may confirm, vary, suspend or cancel the decision or order."

Beyond stating that a tribunal's rules have to "deal with" each of these procedures in order for the tribunal to avail itself of them, there are no restrictions on the way in which they do so. In this regard nothing distinguishes motions to review from the other "optional" procedural matters listed above. A tribunal is free to create whatever procedures it thinks appropriate to handle them, provided they are consistent with the SPPA.

The Board notes that there are situations where the SPPA does not give tribunals full discretion in developing their rules to deal with "optional" procedural powers. For example, section 4.5(3) allows tribunals or their staff to make a decision not to process a document relating to the commencement of a proceeding. This section not only requires a tribunal to have "made rules under section 25.1 respecting the making of such decisions" but also requires that "those rules shall set out … any of the grounds referred to in subsection 1 upon which the tribunal or its administrative staff may decide not to process the documents relating to the commencement of the proceeding;…" While a tribunal can prescribe the grounds for such a decision in its rules, the grounds must come from a predetermined list found in the SPPA. In that case, it is clear that only certain grounds are permitted, and a tribunal must restrict itself to those grounds enumerated in its rules.

The SPPA could put similar restrictions on the development of a tribunal's rules dealing with motions to review, but it does not.

While the Court of Appeal's decision in *Russell v. Toronto* dealt with motions to review under the *Ontario Municipal Board Act* rather than under the SPPA, the power granted to review decisions is effectively the same, so the principles enunciated in the *Russell* decision are applicable to the Board. The Court of Appeal found that the OMB could not

use its own policies and guidelines to restrict the scope of the power to review which was granted to it by statute. The Board therefore finds that it cannot use its Rules to limit the scope of the authority given to it by the SPPA.

The SPPA allows each tribunal to make its own Rules, so as to allow it to deal more effectively with the specific needs of its proceedings. The SPPA does not give the Board the authority to limit the substantive matters within the Board's purview.

The provisions of the SPPA dealing with the making of rules, give tribunals a very wide latitude to meet their own needs, both in the context of creating rules and in each individual proceeding:

> 25.0.1 A tribunal has the power to determine its own procedure and practices and may for that purpose,
>
> (a) make orders with respect to the procedures and practices that apply in any particular proceeding; and
>
> (b) establish rules under section 25.1
>
> 25.1 (1) A tribunal may make rules governing the practice and procedure before it.
>
> (2) The rules may be of general or particular application.
>
> (3) The rules shall be consistent with this Act and with the other Acts to which they relate.
>
> (4) The tribunal shall make the rules available to the public in English and in French.
>
> (5) Rules adopted under this section are not regulations as defined in the *Regulations Act*.
>
> (6) The power conferred by this section is in addition to any other power to adopt rules that the tribunal may have under another Act.

In the Board's view these sections of the SPPA give the Board very broad latitude to determine the procedure best suited to it from time to time. While consistency with the Act is required, the Rules are not regulations, and can be amended from time to time by the Board to suit its evolving needs.

The Board finds that there is nothing in the SPPA to suggest that rules dealing with motions to review should be interpreted or applied any differently from other provisions of the Board's Rules.

The Board's Rules

In addition to Section 2 of the SPPA which provides for a liberal interpretation of the Act and the Rules, the Board's Rules include the following provisions as a guide to their interpretation.

> 1.03 The Board may dispense with, amend, vary or supplement, with or without a hearing, all or any part of any rule at any time, if it is satisfied that the circumstances of the proceeding so require, or it is in the public interest to do so.
>
> 2.01 These Rules shall be liberally construed in the public interest to secure the most just, expeditious and cost-effective determination of every proceeding before the Board.
>
> 2.02 Where procedures are not provided for in these Rules, the Board may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate on the matter before it.

As these provisions are of general application to all of the Board's Rules of Practice and Procedure, the Board finds that each of its individual rules should be read as if the above rules 1.03, 2.01 were part of them, except of course where restricted by the SPPA or another Act. Therefore, the Rules which "deal with the matter" of motions to

review, i.e. Rules 42 to 45, should be read in conjunction with Rules 1.03 and 2.01. Similarly, the rules dealing with alternative dispute resolution, written hearings and so on include Rules 1.03 and 2.01.

The Board finds that it should interpret the words "may include" in Rule 44.01 as giving a list of examples of grounds for review for the following reasons:

- It is the usual interpretation of the phrase;
- It is consistent with section 2 of the SPPA which requires a liberal interpretation of the Rules;
- It is consistent with Rule 1.03 of the Board's rules which allows the Board to amend, vary or supplement the rules in an appropriate case; and
- If the SPPA had intended to require that the power to review be restricted to specific grounds it would have required the rules to include those grounds and would have required the use of the word "shall".

With respect to the application of the principle of presumption of purposeful change urged by counsel for Board Staff, the Board notes that at the same time that its rules were amended to remove certain grounds of appeal from Rule 44.01, Rule 1.03 was also amended. The previous version of Rule 1.03 (then 4.04) read as follows:

> The Board may dispense with, amend, vary, or supplement, with or without a hearing, all or any part of any Rule, at any time by making a procedural order, if it is satisfied that the special circumstances of the proceeding so require, or it is in the public interest to do so.

When compared with the current Rule 1.03, it is apparent that the old rule was more restrictive – amendments had to be made by procedural order, and the circumstances of the proceeding had to be "special". Given the need for a procedural order, it is reasonable to interpret the old rule as applying only to the sorts of matters dealt with in procedural orders, the conduct of the proceeding and not to other provisions of the rules. No such restriction applies in the current Rule 1.03.

The Board finds that to the extent the Rules were amended to remove specific grounds from the list for motions to review, the contemporaneous amendments to Rule 1.03 give the Board the necessary discretion to supplement this list in an appropriate case. The Board presumably was aware of that at the time of the amendments.

The Board therefore finds that it has the jurisdiction to consider the IGUA motion to review even though the grounds are errors of mixed fact and law which do not fall squarely within the list of enumerated grounds in Rule 44.01.

Even if this interpretation of Rule 44.01 is incorrect, the Board can apply Rule 1.03 to supplement Rule 44.01 to allow the grounds specified by IGUA. Given the number of motions for review, the timing involved, the nature of the hearing and the nature of the alleged errors, the Board concludes that it is in the public interest to avoid splitting this case into Motions reviewed by some parties and appealed by others.

This panel is also aware that Appeals to the Divisional Court can only be based on matters of law including jurisdiction. If the position advanced by counsel for the Board staff was accepted, errors of mixed fact and law could not be effectively reviewed or appealed by any body. This, the Board believes is not consistent with Section 2 of the SPPA.

Section C: Threshold Test

Section 45.01 of the Board's Rules provides that:

> In respect of a motion brought under Rule 42.01, the Board may determine, with or without a hearing, a threshold question of whether the matter should be reviewed before conducting any review on the merits.

Parties were asked by the panel to provide submissions on the appropriate test for the Board to apply in making a determination under Rule 45.01.

Board Staff argued that the issue raised by a moving party had to raise a question as to the correctness of the decision and had to be sufficiently serious in nature that it is capable of affecting the outcome. Board Staff argued that to qualify, the error must be clearly extricable from the record, and cannot turn on an interpretation of conflicting evidence. They also argued that it's not sufficient for the applicants to say they disagree with the Board's decision and that, in their view, the Board got it wrong and that the applicants have an argument that should be reheard.

Enbridge submitted that the threshold test is not met when a party simply seeks to reargue the case that the already been determined by the Board. Enbridge argued that something new is required before the Board will exercise its discretion and allow a review motion to proceed.

Union agreed with Board Staff counsel's analysis of the scope and grounds for review.

IGUA argued that to succeed on the threshold issue, the moving parties must identify arguable errors in the decision which, if ultimately found to be errors at the hearing on the merits will affect the result of the decision. IGUA argued that the phrase "arguable errors" meant that the onus is on the moving parties to demonstrate that there is some reasonable prospect of success on the errors that are alleged.

CCC and VECC argued that the moving parties are required to demonstrate, first, that the issues are serious and go to the correctness of the NGEIR decision, and , second, that they have an arguable case on one or more of these issues. They argued that the moving parties are not required to demonstrate, at the threshold stage, that they will be successful in persuading the Board of the correctness of their position on all the issues.

MHP argued that the threshold question relates to whether there are identifiable errors of fact or law on the face of the decision, which give rise to a substantial doubt as to the correctness of the decision, and that the issue is not whether a different panel might arrive at a different decision, but whether the hearing panel itself committed serious errors that cast doubt on the correctness of the decision. MHP submitted that a review panel should be loathe to interfere with the hearing panel's findings of fact and the conclusions drawn there from except in the clearest possible circumstances.

Kitchener argued that jurisdictional or other threshold questions should be addressed on the assumption that the record in NGEIR establishes the facts asserted.

School Energy Coalition argued that an application for reconsideration should only be denied a hearing on the merits in circumstances where the appeal is an abuse of the Board's process, is vexatious or otherwise lacking objectively reasonable grounds.

Findings

It appears to the Board that all the grounds for review raised by the various applicants allege errors of fact or law in the decision, and that there are no issues relating to new evidence or changes in circumstances. The parties' submissions addressed the matter of alleged error.

In determining the appropriate threshold test pursuant to Rule 45.01, it is useful to look at the wording of Rule 44. Rule 44.01(a) provides that:

> Every notice of motion… shall set out the grounds for the motion that raise a question as to the correctness of the order or decision…

Therefore, the grounds must "raise a question as to the correctness of the order or decision". In the panel's view, the purpose of the threshold test is to determine whether the grounds raise such a question. This panel must also decide whether there is enough substance to the issues raised such that a review based on those issues could result in the Board deciding that the decision should be varied, cancelled or suspended.

With respect to the question of the correctness of the decision, the Board agrees with the parties who argued that there must be an identifiable error in the decision and that a review is not an opportunity for a party to reargue the case.

In demonstrating that there is an error, the applicant must be able to show that the findings are contrary to the evidence that was before the panel, that the panel failed to address a material issue, that the panel made inconsistent findings, or something of a similar nature. It is not enough to argue that conflicting evidence should have been interpreted differently.

The applicant must also be able to demonstrate that the alleged error is material and relevant to the outcome of the decision, and that if the error is corrected, the reviewing panel would change the outcome of the decision.

In the Board's view, a motion to review cannot succeed in varying the outcome of the decision if the moving party cannot satisfy these tests, and in that case, there would be no useful purpose in proceeding with the motion to review.

TAB G

> . . . we do not think an affiliate expense should carry a presumption of reasonableness. While the pressures of a competitive market might allow us to assume, in the absence of a showing to the contrary, that nonaffiliate expenses are reasonable, the same cannot be said of affiliate expenses not incurred in an arm's length transaction.

(*U.S. West Communications, Inc. v. Public Service Commission of Utah*, 901 P.2d 270 (Utah 1995), at p. 274)

[94] Treatment of the prudent investment test in American jurisprudence thus indicates that the test has been employed as a tool that may be useful in arriving at just and reasonable outcomes, rather than a mandatory feature of utilities regulation that must be applied regardless of whether there is statutory language to that effect.

(2) Canadian Jurisprudence

[95] Following its emergence in American jurisprudence, several Canadian utility regulators and courts have also considered the role of prudence review and, in some cases, applied a form of the prudent investment test. I provide a review of some of these cases here not in an attempt to exhaustively catalogue all uses of the test, but rather to set out the way in which the test has been invoked in various contexts.

[96] In *British Columbia Electric Railway Co. v. Public Utilities Commission of British Columbia*, [1960] S.C.R. 837, Martland J. observed that the statute at issue in that case directed that the regulator, in fixing rates,

> (*a*) . . shall consider all matters which it deems proper as affecting the rate: [and]

> (*b*) . . . shall have due regard, among other things, to the protection of the public from rates that are excessive as being more than a fair and reasonable charge for services of the nature and quality furnished by the public utility; and to giving to the public utility a fair and reasonable return upon the appraised value of the property of the public utility used, or prudently and reasonably acquired, to enable the public utility to furnish the service. [p. 852]

(Quoting *Public Utilities Act*, R.S.B.C. 1948, c. 277, s. 16(1)(*b*) (repealed S.B.C. 1973, c. 29, s. 187).)

The consequence of this statutory language, Martland J. held, was that the regulator, "when dealing with a rate case, has unlimited discretion as to the matters which it may consider as affecting the rate, but that it must, when actually setting the rate, meet the two requirements specifically mentioned in clause (*b*)": p. 856. That is, the regulator, under this statute, must ensure that the public pays only fair and reasonable charges, and that the utility secures a fair and reasonable return upon its property used *or prudently and reasonably acquired*. This express statutory protection for the recovery of prudently made property acquisition costs thus provides an example of statutory language under which this Court found a non-discretionary obligation to provide a fair return to utilities for capital expenditures that were either used or prudently acquired.

[97] In 2005, the Nova Scotia Utility and Review Board ("NSUARB") considered and adopted a definition of the prudent investment test articulated by the Illinois Commerce Commission:

> . . . prudence is that standard of care which a reasonable person would be expected to exercise under the same circumstances encountered by utility management at the time decisions had to be made. . . . Hindsight is not applied in assessing prudence. . . . A utility's decision is prudent if it was within the range of decisions reasonable persons might have made. . . . The

> prudence standard recognizes that reasonable persons can have honest differences of opinion without one or the other necessarily being imprudent.

(*Nova Scotia Power Inc., Re*, 2005 NSUARB 27 ("*Nova Scotia Power 2005*"), at para. 84 (CanLII))

The NSUARB then wrote that "[f]ollowing a review of the cases, the Board finds that the definition of imprudence as set out by the Illinois Commerce Commission is a reasonable test to be applied in Nova Scotia": para. 90. The NSUARB then considered, among other things, whether the utility's recent fuel procurement strategy had been prudent, and found that it had not: para. 94. It did not, however, indicate that it believed itself to be compelled to apply the prudent investment test.

[98] The NSUARB reaffirmed its endorsement of the prudent investment test in 2012: *Nova Scotia Power Inc. (Re)*, 2012 NSUARB 227 ("*Nova Scotia Power 2012*"), at paras. 143-46 (CanLII). In that case, the utility whose submissions were under review "confirmed that from its perspective this is the test the Board should apply": para. 146. The NSUARB then applied the prudence test in evaluating whether several of the utility's operational decisions were prudent, and found that some were not: para. 188.

[99] In 2006, the Ontario Court of Appeal considered the meaning of the prudent investment test in *Enbridge*. This case is of particular interest for two reasons. First, the Ontario Court of Appeal endorsed in its reasons a specific formulation of the prudent investment test framework:

> – Decisions made by the utility's management should generally be

> presumed to be prudent unless challenged on reasonable grounds.
>
> – To be prudent, a decision must have been reasonable under the circumstances that were known or ought to have been known to the utility at the time the decision was made.
>
> – Hindsight should not be used in determining prudence, although consideration of the outcome of the decision may legitimately be used to overcome the presumption of prudence.
>
> – Prudence must be determined in a retrospective factual inquiry, in that the evidence must be concerned with the time the decision was made and must be based on facts about the elements that could or did enter into the decision at the time. [para. 10]

[100] Second, the Court of Appeal in *Enbridge* made certain statements that suggest that the prudent investment test was a necessary approach to reviewing committed costs. Specifically, it noted that in deciding whether Enbridge's requested rate increase was just and reasonable,

> the [Board] was required to balance the competing interests of Enbridge and its consumers. That balancing process is achieved by the application of what is known in the utility rate regulation field as the "prudence" test. Enbridge was entitled to recover its costs by way of a rate increase only if those costs were "prudently" incurred. [para. 8]

The Court of Appeal also noted that the Board had applied the "proper test": para. 18. These statements tend to suggest that the Court of Appeal was of the opinion that prudence review is an inherent and necessary part of ensuring just and reasonable payments.

[101] However, the question of whether the prudence test was a required feature of just-and-reasonable analysis in this context was not squarely before the Court of

Appeal in *Enbridge*. Rather, the parties in that case "were in substantial agreement on the general approach the Board should take to reviewing the prudence of a utility's decision" (para. 10), and the question at issue was whether the Board had reasonably applied that agreed-upon approach. In this sense, *Enbridge* is similar to *Nova Scotia Power 2012*: both cases involved the application of prudence analysis in contexts where there was no dispute over whether an alternative methodology could reasonably have been applied.

(3) Conclusion Regarding the Prudent Investment Test

[102] The prudent investment test, or prudence review, is a valid and widely accepted tool that regulators may use when assessing whether payments to a utility would be just and reasonable. While there exist different articulations of prudence review, *Enbridge* presents one express statement of how a regulatory board might structure its review to assess the prudence of utility expenditures at the time they were incurred or committed. A no-hindsight prudence review has most frequently been applied in the context of capital costs, but *Enbridge* and *Nova Scotia Power* (both *2005* and *2012*) provide examples of its application to decisions regarding operating costs as well. I see no reason in principle why a regulatory board should be barred from applying the prudence test to operating costs.

[103] However, I do not find support in the statutory scheme or the relevant jurisprudence for the notion that the Board should be *required* as a matter of law, under the *Ontario Energy Board Act, 1998*, to apply the prudence test as outlined in *Enbridge*

TAB H

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2006 CanLII 10734 (ON CA)

COURT OF APPEAL FOR ONTARIO

DOHERTY, MOLDAVER and GILLESE JJ.A.

B E T W E E N :	)	
	)	
ENBRIDGE GAS DISTRIBUTION INC.	)	**David M. Brown and Manizeh Fancy for the appellant in appeal**
	)	
Appellant (Respondent in appeal)	)	
	)	
- and -	)	
	)	**J.L. McDougall, Q.C., Jerry H. Farrell and**
ONTARIO ENGERY BOARD	)	**Michael D. Schafler for the respondent in appeal**
Respondent (Appellant in appeal)	)	
	)	
	)	**Heard: March 23, 2006**

On appeal from the order of the Divisional Court (Lane, Molloy and Power JJ.) dated March 2, 2005.

DOHERTY J.A.:

I

OVERVIEW

[1] This is an appeal with leave by the Ontario Energy Board ("OEB") from the order of the Divisional Court that set aside the order of the OEB made on an application by Enbridge Gas Distribution Inc. ("Enbridge") for a rate increase and directing a new hearing before a different panel of the OEB.

[2] Enbridge is a gas distributor and seller of gas to consumers in Ontario. The OEB is charged with the responsibility of fixing the rate that Enbridge can charge consumers for its gas. Enbridge applied for a rate increase. The OEB refused that request in part and Enbridge appealed to the Divisional Court. The Divisional Court unanimously held that the OEB erred in law in its application of the legal test to be used when deciding whether Enbridge was entitled to a rate increase to reflect higher transportation costs incurred by Enbridge as a result of certain agreements it had entered into. In reaching its conclusion, the Divisional Court read a passage from the reasons of the OEB as demonstrating, contrary to statements made earlier in the reasons of the OEB, that the OEB had improperly used hindsight when deciding whether the added transportation costs incurred by Enbridge justified a rate increase.

2006 CanLII 10734 (ON CA)

[3] I would allow the appeal and restore the order of the OEB. When the impugned passage is read in the context of the entire judgment, it can and should be read in a manner that is consistent with the rest of the reasons of the OEB. When read in that way, the passage demonstrates no error in law.

II

FACTUAL BACKGROUND

[4] Prior to 1996, Enbridge shipped gas from western Canada along the TransCanada pipeline system to Ontario. Beginning in 1996, Enbridge entered into four agreements to acquire transportation services on other pipelines. The first two agreements, Alliance 1 and Alliance 2, provided for transportation along the Alliance pipeline running from Alberta to Chicago. The third agreement, Vector 1, related to transportation along the Vector pipeline running from to Chicago to southwestern Ontario. The fourth agreement, Vector 2, also related to a pipeline running from Chicago to southwestern Ontario but contemplated the transportation of gas sourced in Chicago.

[5] The new routes became operational in 2000. They proved more costly than the TransCanada pipeline route. In 2000, Enbridge applied to the OEB for an increase in its rates effective in 2001. That increase was said to reflect, in part, the added costs attributable to the Alliance and Vector contracts.

[6] Enbridge's application for a rate increase did not proceed to a hearing in 2000. Enbridge entered into a provisional settlement, conditional upon various contentious issues being deferred to a hearing at a later date. As a term of the 2000 settlement, Enbridge agreed to set up what was described as a "notional deferral account". This account was to record the difference between Enbridge's actual transportation costs using the Alliance/Vector pipelines and its notional costs had it used the TransCanada pipeline system.

[7] Enbridge's rate increase application proceeded to hearing in June 2002. It was common ground that Enbridge had added costs as a result of the Alliance/Vector contracts. The issue was whether Enbridge was entitled to recover these costs by increasing its rates.

2006 CanLII 10734 (ON CA)

III

THE DECISION OF THE OEB

[8] On Enbridge's application for a rate increase, the OEB was obliged by s. 36 of the *Ontario Energy Board Act*, *1998*, S.O. 1998, c. 15, to decide whether the rate increase sought was "just and reasonable". In making that decision, the OEB was required to balance the competing interests of Enbridge and its consumers. That balancing process is achieved by the application of what is known in the utility rate regulation field as the "prudence" test. Enbridge was entitled to recover its costs by way of a rate increase only if those costs were "prudently" incurred.

[9] The OEB concluded that the added costs associated with the Alliance 1 and Alliance 2 contracts were not prudently incurred and therefore could not be recovered by way of a rate increase. The OEB did, however, hold that the added costs associated with Vector 1 were prudently incurred and therefore could be recovered. Finally, the OEB held that it had insufficient information to decide whether any added costs associated with the Vector 2 contract were prudently incurred by Enbridge. On its appeal to the Divisional Court, Enbridge challenged the OEB's findings with respect to the Alliance 1 and Alliance 2 contracts.

[10] The approach of the OEB to the "prudence" inquiry is captured in the following extract from its reasons:

> While the parties described it in somewhat varying terms, in the Board's view they were in substantial agreement on the general approach the Board should take to reviewing the prudence of a utility's decision.
>
> The Board agrees that a review of prudence involves the following:
>
> - Decisions made by the utility's management should generally be presumed to be prudent unless challenged on reasonable grounds.

- To be prudent, a decision must have been reasonable under the circumstances that were known or ought to have been known to the utility at the time the decision was made.

- Hindsight should not be used in determining prudence, although consideration of the outcome of the decision may legitimately be used to overcome the presumption of prudence.

- Prudence must be determined in a retrospective factual inquiry, in that the evidence must be concerned with the time the decision was made and must be based on facts about the elements that could or did enter into the decision at the time.

[11] Neither the Divisional Court nor either party to this appeal takes issue with the correctness of the above quoted passage from the OEB's reasons. The "prudence" inquiry described by the Board has two stages. At the first stage, the decision of Enbridge is presumed to have been made prudently unless those challenging the decision demonstrate reasonable grounds to question the prudence of that decision. At the second stage of the inquiry, reached only if the presumption of prudence is overcome, Enbridge must show that its business decision was reasonable under the circumstances that were known to, or ought to have been known to, Enbridge at the time it made the decision.

[12] In the above quoted extract from its reasons, the OEB expressly alluded to the limited role played by hindsight. Hindsight, that is knowledge of facts relevant to the prudence of the business decision gained after the decision was made, could not be used at the second stage of the "prudence" inquiry to determine the ultimate question of whether the decision was prudent. Those facts could, however, be taken into consideration at the first stage in determining whether the presumption of prudence had been rebutted.

[13] The records from the notional deferral account kept by Enbridge demonstrated that, during the ten-month period for which the account operated, Enbridge's transportation costs were significantly higher under the Alliance contracts than those costs would have been had Enbridge used the TransCanada pipeline system. The amount of the added transportation costs could not have been known to Enbridge when it entered into the relevant contracts, but became known to Enbridge only after the ten-month period with the benefit of hindsight. Consequently, the OEB could use the fact of the increased transportation costs incurred by Enbridge to decide whether the presumption of

2006 CanLII 10734 (ON CA)

prudence was rebutted, but could not use that fact in making the ultimate determination of whether Enbridge's decision to enter into the contracts was prudent.

2006 CanLII 10734 (ON CA)

[14] After the OEB accurately described the "prudence" inquiry, it proceeded to apply that inquiry individually to the Alliance 1, Alliance 2, and Vector 1 contracts. The OEB then turned to the Vector 2 contract. That contract was somewhat different than the other three in that it provided for the transportation of gas sourced in Chicago and not Alberta. Accordingly, it was not part of the alternative transportation path created by the other three contracts.

[15] In considering the Vector 2 contract, the OEB said:

> The Board notes that the Vector 2 decision was independent from its previous decisions to enter into the Alliance 1 and 2 and Vector 1 contracts and was not required in order to complete the single continuous transportation path from the western Canada supply basin to southern Ontario. In addition, the Board notes that the cost consequences of the Vector 2 contract were not included in the calculation of the Notional Deferral Account, which is a key element of the Board's prudence review of the Alliance and Vector arrangements [emphasis added].

IV

THE REASONS OF THE DIVISIONAL COURT

[16] The Divisional Court fastened upon reference by the OEB to the notional deferral account as "a key element of the Board's prudence review" in concluding that, despite the earlier proper description of the "prudence" inquiry by the OEB, it had improperly used hindsight gained by reference to the notional deferral account in deciding that the Alliance 1 and Alliance 2 contracts were not prudent.[1]

[17] The Divisional Court applied a correctness standard of review in determining whether the OEB conducted a proper "prudence" inquiry. In this court, counsel for the

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[1] The Divisional Court referred to another passage from the OEB's reasons (para. 3.12.20) and suggested that the OEB had also misused hindsight in that passage. I do not propose to refer to it in detail, as the Divisional Court ultimately determined that this reference alone did not raise "serious concerns" that the OEB had misapplied the "prudence" test. It is sufficient to say that I think it raises no concerns about the misuse of hindsight. The passage indicates that subsequent events validated the risk of higher costs associated with potential in service delays. Enbridge was advised of that risk before it entered into the contracts. The nature and extent of the risk flowing from potential delays was, therefore, properly factored into the second stage of the "prudence" inquiry. The fact that the risk came to pass is some indication of the validity of the risk.

OEB advanced a forceful argument that the standard of review should, at the highest, be one of reasonableness. It is unnecessary to decide the correct standard of review. Assuming without deciding that correctness is the proper standard of review, the reasons of the OEB clear that standard.

2006 CanLII 10734 (ON CA)

[18] The Divisional Court acknowledged that the OEB's reasons must be read as a whole. The court also accepted that the OEB had correctly described the "prudence" inquiry and that the Board was well aware of a distinction which had to be drawn between the use of hindsight in the first and second stage of the inquiry. Despite the OEB's clear statement of the proper test, the Divisional Court ultimately held that the reference to the notional deferral account as a "key element of the prudence review" indicated a misuse of hindsight in respect of all of the contracts, including the Alliance contracts. This single sentence demonstrated to the Divisional Court that, despite the earlier passages from the reasons, the OEB had "slipped in its application of the test and did allow hindsight to creep into its consideration of prudence".

[19] In reaching this conclusion, the Divisional Court must have read the words "prudence review" in the impugned passage as referring only to the second stage of the "prudence" inquiry. On that reading, the OEB had improperly used information provided in the notional deferral account to determine the ultimate question of the prudence of the contracts.

[20] The Divisional Court erred in reading the words "prudence review" as referable only to the second part of the "prudence" inquiry. Taken as a whole, the reasons indicate that the phrase "prudence review" and similar phrases (*e.g.* "review of prudence") were used throughout the reasons, not as terms of art with a fixed single meaning but in different ways in different parts of the reasons. Sometimes the phrase "prudence review" or an equivalent phrase was used to refer to the entire "prudence" inquiry. Sometimes the OEB used the phrase "prudence review" to refer only to the second stage of that inquiry at which the ultimate question of the prudence of the contracts had to be decided. For example, when describing the submissions of Enbridge at para. 3.1.1, the OEB used the phrase "prudence review" to describe the entire process, including the first stage at which the presumption of prudence operated and during which the information provided in the notional deferral account was clearly relevant. Similarly, under the heading "Board Comments and Findings" (para. 3.12) the OEB used the subheading "Review of Prudence" to describe the entire "prudence" inquiry, including the first stage. Other references to the same phrase in the reasons (*e.g.* para. 3.12.5) used the phrase in the narrower sense to refer only to the second stage of the "prudence" inquiry.

[21] Considered in isolation, the phrase "prudence review" in the impugned passage from the reasons of the OEB may be open to the interpretation provided by the Divisional Court. However, the words viewed in isolation can also be taken as referring to the entire

"prudence" inquiry. This latter reading is consistent with earlier usage of similar terminology in the reasons and, more significantly, is consistent with earlier statements describing the "prudence" inquiry and the limited role played by hindsight in that inquiry. I read the phrase "prudence review" as referring to the entire inquiry, which avoids creating a flat out contradiction between that passage and the rest of the judgment insofar as it described the "prudence" inquiry.

2006 CanLII 10734 (ON CA)

[22] Reasons are sometimes internally inconsistent and that inconsistency can demonstrate an error in law. However, the requirement that the reviewing court read reasons as a whole dictates that, where different parts of the same reasons can reasonably be read so as to maintain consistency within the reasons, that reading must be preferred over one which sends the reasons careening off in different directions and creates an error in law.

[23] The reasons of the OEB, read as a whole, do not reveal any legal error in the "prudence" inquiry conducted by the OEB in respect of the Alliance 1 and Alliance 2 contracts.

V

THE OEB'S STANDING TO APPEAL

[24] I will make brief reference to one additional argument made by Enbridge. It submitted that the OEB had no standing to appeal the decision of the Divisional Court to this court. Enbridge contends that the *Ontario Energy Act*, *1998* gives the OEB authority to participate in an appeal taken to the Divisional Court under the right of appeal provided in that statute. Enbridge argues however, that the *Ontario Energy Act*, *1998* does not give the OEB any authority to seek leave to appeal a decision of the Divisional Court in this court.

[25] I agree with counsel for the OEB that, as a party to Enbridge's appeal in the Divisional Court, the OEB had standing to seek leave to appeal to this court. That standing flows not from the *Ontario Energy Act*, *1998* but from s. 6(1)(a) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

[26] Enbridge blended its argument that the OEB did not have standing to appeal the order of the Divisional Court with submissions that the OEB should not be allowed to advance arguments on appeal in support of the correctness of its own decision. In *Children's Lawyer for Ontario v. Goodis* (2005), 75 O.R. (3d) 309 (C.A.), this court held that the extent to which a tribunal will be allowed to make submissions in a proceeding involving a decision of that tribunal is a matter for the discretion of the court in which the proceedings are being conducted. The court also considered the factors relevant to the

exercise of that discretion in the context of a judicial review application. As this is an appeal and not a judicial review application, it may be that the *Goodis* analysis is not applicable. However, assuming in Enbridge's favour that the analysis does apply, I am satisfied that the factors identified in that analysis do not support Enbridge's contention that the OEB should not have been allowed to participate in this appeal.

2006 CanLII 10734 (ON CA)

[27] The OEB advanced essentially two arguments on this appeal. It submitted that the Divisional Court should have used a reasonableness standard of review, and it argued that the reasons of the Board, read as a whole, did not reveal the legal error found by the Divisional Court. The OEB was the only appellant in this court. Its submissions were essential to a proper hearing of both issues.

[28] I do not share Enbridge's concern that the participation of the OEB in this appeal could harm the appearance of the OEB's impartiality in any future proceedings involving Enbridge. This appeal came down to a very narrow point. Everyone agreed that the OEB had outlined the proper approach to be taken on Enbridge's application for a rate increase. The narrow question was whether the OEB had "slipped" in one part of its analysis. There is no reason to think that the Board arguing that the reasons reveal no such "slip" should cause any legitimate concern about the impartiality, real or apprehended, of the OEB in its future dealings with Enbridge. Enbridge is after all a sophisticated entity that has a long standing relationship with the OEB. Like all regulated bodies, I am sure Enbridge wins some and loses some before the OEB. I am confident that Enbridge fully understands the role of the regulator and appreciates that each application is decided on its own merits by the OEB.

VI

[29] I would allow the appeal and restore the order of the OEB. The OEB has not asked for costs and I would make no order as to costs.

RELEASED: "DD" APR 07 2006"

"Doherty J.A."
"I agree: M.J. Moldaver J.A. "
"I agree: E.E. Gillese J.A."

TAB I

1987 CarswellNat 931
Federal Court of Canada — Appeal Division

Flamborough (Town) v. National Energy Bd. (Can.)

1987 CarswellNat 931, [1987] F.C.J. No. 460, 5 A.C.W.S. (3d) 109, 81 N.R. 229

In The Matter of an appeal from the National Energy Board

In The Matter of the National Energy Board Act and the regulations made thereunder

In The Matter of Order No. XO-1-83 dated May 4, 1983, issued to Interprovincial Pipe Line Limited pursuant to s.49 of the National Energy Board Act

In The Matter of a public hearing held pursuant to subsections 17(1) and 20(3) of the National Energy Board Act held in 1985 under Order No. MH-1-83, as amended, for the purpose of reviewing that portion of the National Energy Board Order XO-1-83 approving the location of the two proposed propane loading facilities, Board File No. 1755-J1-43

In The Matter of Order No. AO-2-XO-1-83 dated December 18, 1985, and the National Energy Board reasons for decision in respect of the said Order issued January 10, 1986

Corporation of the Town of Flamborough and Regional Municipality of Hamilton-Wentworth Appellants v. National Energy Board and Interprovincial Pipe Line Limited Respondents

Flamborough (Town) v. Interprovincial Pipe Line Ltd.

Honourable Mr. Justice Heald, Honourable Mr. Justice Mahoney, Honourable Mr. Justice Marceau

Judgment: May 7, 1987
Docket: Doc. A-288-86

Counsel: *Mr. D. Estrin* for the Appellants.
Mr. L. Keough for the National Energy Board.
Mr. J.W. Brown, Q.C. Mr. N. Finkelstein for Interprovincial Pipe Line.

Subject: Natural Resources

***Mahoney, J.*:**

REASONS FOR JUDGMENT

1 This appeal, by leave granted pursuant to section 18 of the National Energy Board Act, R.S.C. 1972, c.N-6, is concerned with an order of the Respondent, National Energy Board (NEB), which approved the location of truck and rail delivery and loading facilities for propane within the Appellants' municipal boundaries. The facilities are proposed to be ancillary to a pipeline owned and operated by the Respondent, Interprovincial Pipe Line Limited (IPL). The facilities are located some distance apart: the truck facility on Ontario Highway No. 6 near Harper Corners, the rail facility on a Canadian Pacific line near Flamborough Centre. There are 20 existing residential units within one kilometer of the rail site and 165 within two. There are 45 and 170 respectively within the same distances of the truck site.

2 The NEB had initially approved the facilities without a hearing after invoking section 49 of the Act. It made an order. It

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then determined that a public hearing ought to be held. The order in issue amends the original order. Major items of concern at the hearing were public safety and the management of emergencies.

3 The NEB's hearing occupied 34 days: 30 days in which it received evidence followed by four days of argument. In presenting their evidence and cross-examining witnesses tendered by others, the Appellant municipalities had the objective of satisfying the NEB that the facilities ought not be located within their boundaries at all. While the evidence received by the NEB certainly gave a clear indication of most, if not all, of the safety and emergency management concerns, it was not directed to pertinent conditions that might be stipulated should the location approvals be confirmed.

4 In the course of argument counsel for IPL (Transcript, Vol. 31, p. 5523) observed:

> I do not propose at this point to address any question of what conditions -- or additional conditions to those that are there -- may be part of the Board's affirming order were the Board to accept our submissions. I would be prepared to do that at the Board's convenience or at a later stage.

The Appellants supported that proposal. The suggestion was disposed of by the Chairman (Vol. 33, p. 5731ff.) in the following terms:

> ...yesterday you left the impression, Mr. Brown, that you felt that should the Board's decision be in favour of IPL, you would then expect that there would be some process where there would be a discussion or some exchange of views with respect to conditions that might be attached to that decision, and I think I was trying to make it quite clear that this hearing will come to an end when argument finishes and the Board has to reach its decision.
>
> Should the decision be in favour of IPL, the Board, in its discretion, will attach whatever conditions it feels appropriate and will not seek any further views from any of the parties.

5 In the decision issued, at pages 24 and 29, the NEB dealt with the matter in the following manner:

> **6.3 Contingency Plans**
>
> It was the view of Intervenors that Interprovincial should have presented contingency plans for the proposed facilities during the hearing. As such plans were not provided, the Town/Region requested that, should the facilities be approved, it have the opportunity to comment on any emergency response plans which Interprovincial might submit.
>
> **Views of the Board**
>
> The safety of the public residing near the proposed facilities is of primary importance to the Board. The Board is well aware of the hazards associated with propane, and feels that careful contingency planning could mitigate potential damage from a serious propane incident.
>
> The Board would require Interprovincial to provide an emergency procedures manual for review and approval by the Board before leave-to-open the facilities is granted. That manual would be expected to address emergency measures to be followed on-site, in the event of a propane release. After Board approval of the manual Interprovincial would be required to provide the Town and Region with copies of the manual. If local authorities decide to develop evacuation plans for the population in the areas near the sites, Interprovincial would be expected to co-operate in formulating such plans, should it be requested to do so.
>
> **7.3.3 Operating Manuals**
>
> The Town/Region questioned Interprovincial's witnesses regarding both the availability and the intended contents of a site operating manual. Intervenors implied, through questioning, that it was difficult to fully assess the safety of the site without such manuals.
>
> Interprovincial indicated that the final site design would have to be completed and hardware ordered before manuals could be written. Interprovincial stated that it had obtained a manual in use at a propane depot in Alberta, to provide

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reference material in producing its own. Questioning by Intervenors revealed that the manual was for a manned site and would not be directly applicable to an unmanned truck terminal.

Views of the Board

The Board would require Interprovincial to file the site operating manuals for Board approval. Interprovincial should take care to ensure that the operating manuals comply fully with the requirements of the Pipeline Regulations and detail the procedures for items such as on-site security, loading and routine maintenance. The Board also would require that Interprovincial file copies of the approved operating manuals with the Town and Region.

Under section 26 of the Act, IPL will require the leave of the NEB to open the facilities. In the order in issue the NEB stipulated a number of conditions. No. 12 required that an operations manual covering a lengthy list of items be submitted for approval before leave to open would be granted. No. 13 required submission of an emergency response manual including, but not limited to, a lengthy list of items. No. 14 required submission for approval of a staff training program and No. 15 a noise monitoring program. This Court's order, granting leave to appeal, is expressed in the following terms:

This application is granted and the applicants are accordingly granted leave to appeal from the Order of the National Energy Board No. AO-2-XO-1-83 dated December 18, 1985, and the Reasons given by the Board in respect of that Order on the following questions:

Did the Board breach the principles of natural justice, procedural fairness or fundamental justice in imposing the conditions contained in paragraphs 12, 13, 14 and 15 of its Order

a) Without providing the applicants with an opportunity to lead evidence or make submissions as to the precise content of such conditions prior to the making of the order, and

b) Without providing the applicants with an opportunity to lead evidence and make submissions as to whether such conditions have been complied with prior to leave to open being granted.

6 In my opinion, the hearing undertaken by the NEB was inherently a two-stage process entailing, firstly, the determination of whether the earlier approval of the locations should be confirmed and, secondly, a determination of the conditions under which the facilities ought to be permitted to be operated on those locations. The Appellants had the same right to be heard on the second stage as on the first.

7 Given the expertise available to the NEB, one may well question the value of the Appellants' input into the preparation of the operations manual and the staff training program. The Appellants' counsel conceded that the noise monitoring program, while important to them, was not something they felt strongly required their input. That is all beside the point. As was said by LeDain, J., in *Cardinal et al. v Kent Institution*, [1985] 2 S.C.R. 643 at 661:

...I find it necessary to affirm that the denial of a right to a fair hearing must always render a decision invalid, whether or not it may appear to a reviewing court that the hearing would likely have resulted in a different decision. The right to a fair hearing must be regarded as an independent, unqualified right which finds its essential justification in the sense of procedural justice which any person affected by an administrative decision is entitled to have. It is not for a court to deny that right and sense of justice on the basis of speculation as to what the result might have been had there been a hearing.

In any event, it is foreseeable that some emergencies arising in connection with the facilities could have effects requiring management outside their boundaries. The value of the Appellants' input as well as their right to have input in this area is obvious. That the presence of the facilities may impose a financial burden on the municipalities for the provision of emergency services is, likewise, not to be ignored.

8 I would allow this appeal, set aside paragraphs 12, 13, 14 and 15 of Order No. AO-2-XO-1-83 and refer the matter back to the NEB for reconsideration on a basis not inconsistant with these reasons. In referring the matter back I would make clear

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that the Appellants and IPL are entitled to be heard as to what, within the contemplation of those paragraphs, IPL is to be required to deal with as a precondition of leave to open and also to be heard on those subjects before that material is approved. That said, the NEB is master of its own procedures. It may determine how it will afford the parties a fair hearing. This judgment is not to be construed as necessarily requiring a resumption of the public hearing.

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