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December 17, 2019

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, ON M4P 1E4

Attention: Christine Long
Registrar and Board Secretary

Dear Ms. Long:

EB-2018-0270 – Hydro One / Orillia Distribution Inc.

In my argument in the oral hearing I specified three arguments that any one of the three would result in an over-throw of the sale from Orillia Distribution Corporation to Hydro One.

The main thrust is that Hydro One is not in a financial position to give a case without the disadvantaging Orillia electrical consumers both now and in the ten year projections. When you look at the debt alone of Hydro One and its associated companies for the supporting evidence dealing in this regard I must depend in part on the publication and notes of the provincial auditor Bonnie Lysyk updated in March 22, 2018 and her report on concerns about fiscal transparency, accountability and value for money related to The Fair Hydro Plan 2017 Special Report dated October 2017 and The Fair Hydro Plan concerns about fiscal transparency, accountability and value for money dated October 2017 Special Report. As the reports are somewhat lengthy and contain other related material related to the alleged sale. I apologize for her material as it is somewhat lengthy with only a small portion relating to the overall debt of Hydro One. You will recognize that there has been a great change from when it was included as a segment of debt on the Province. The changes now are that the legislature puts this debt totally on the Hydro One reporting. I will however endeavor to make a concerted effort to send the material by email. The provincial auditors reports are also listed in her web page. The change in reporting is for the purpose of lowering the figure of the massive provincial debt mostly before the change in government. The provincial debt at that time thanks to poor debt control related to over-spending. The debt was published in the Financial Post by Jasmine Pickel, interim Ontario Director of the Canadian Taxpayers Federation and was published in the National Post Newspaper September 5, 2019. From that article it shows that each Ontarian already owes more than $24,000.00 related to government over-spending. Ontario's debt grows by $523.00 each second. Ontarians pay 1.5 million dollars every hour on interest alone. With this showing the government now removes the Hydro debt shown on their reporting and transfers the debt of Hydro One to its own reporting to be paid by the electrical consumers. This is a big change and requires the public to monitor this debt on a regular basis.

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It is the appellant's well-informed view that Hydro One, even in the best of circumstances, could never financially compete with the Orillia Power Distribution Corporation. Hydro One with its massive debt, will certainly require significant future rate increases. When the former Ontario Hydro broke up and the legislature passed the Energy Competition Act of 1998, Ontario Hydro, that had just over 35,000 employees, broke up the organization into multiple companies, later to become corporations that operate paying massive corporation dividends to the province. The corporations that were formed were called Ontario Power Generation (OPG), Ontario Hydro Services Company, now renamed Hydro One, and the Independent Electricity Market Operator (later named the Independent Electricity System Operator), the Electricity Safety Authority, and the Electricity Financial Corporation. Some of these corporations formed additional corporations. For example, Hydro One Inc. incorporated Hydro One Networks Inc., Hydro One Remote Communities Inc., and Hydro One B2M Holdings Inc. Hydro One B2M Holdings Inc. further incorporated Hydro One B2M LP Inc. and B2M GP Inc. which formed the B2M Limited Partnership. So, one can see that it is next to impossible to obtain exact debt figures from all of these corporations, so one must conclude **$39.4 Billion** as a minimum figure.

Argument #1

Quoting from page 9 of the October 2017 Auditor General's Report the Provincial Auditor gives an accounting of the situation up to 2045 shown on my page 16.

The substance of the transactions needed to implement the Policy Decision (Figure 1) would have the cumulative accounting results shown in Figure 3. Over the years 2017 to 2027 (i.e., through Phases 1 and 2, during which cash is borrowed to cover the rate reduction), the cumulative accounting results would be:

- an increase in the accumulated deficit of approximately $18.4 billion ($10.6 billion in Phase 1 and $7.8 billion in Phase 2) from the shortfall between the cash collected from rate-payers and the cash paid to generators; and
- an increase in the accumulated deficit of approximately $7.8 billion from interest expense ($1.4 billion in Phase 1 and $6.4 billion in Phase 2).

This would result in a total increase of **$26.2 billion** in **net** debt.

Thus, as of 2028, ratepayers' electricity bills are expected to have risen back up (with the exception of the 9% reduction from the HST rebate and other programs) and then increase even further to pay back all of the borrowings. These borrowings and accumulated interest are expected to total **$39.4 billion**: $18.4 billion covering the rate reduction, $7.8 billion in interest accumulated over Phases 1 and 2, plus additional interest of $13.2 billion incurred during Phase 3. These amounts are planned to be fully repaid by 2045.

Following Canadian PSAS, the consolidated financial statements of the Province would show this $39.4 billion increase in the amount collected from ratepayers between 2028 and 2045 as revenue. The current government has communicated its intent to use this revenue to pay off the total borrowings. If a future government decides electricity ratepayers should not be charged the rate required to repay borrowings, it could charge the amount needed to taxpayers instead."

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The author Frank Kehoe is implicit that the $39.4 billion ($39.4 Thousand Million Dollars) allocated to Hydro One consumers would certainly by itself make the sale completely uncompetitive to Orillia electrical consumers.

Argument #2

The vast majority of Orillia electrical consumers are categorically opposed to this sale. This is the same situation as the presentation made by Guy Hanchet related to the Peterborough sale. At my request at the time of his presentation I requested the Board to parrot his presentation and where the name Peterborough shows substitute the name Orillia as we were both in agreement that the sale should not take place without a vote of the electors to approve any alleged sale.

Argument #3

The letter forwarded to the Attorney General dated June 10, 2019 covers the main topics that the Province erred on inserting Section 67(1) as an insertion in the Public Utilities Act so as to give the belief that it over-rode two legally called referendums and the removal of the electrical utility from any and all control from City Council with the outcome so as to completely disregard the people's vote. It is the writer's opinion that the vote of electors represents a law that cannot be changed without a second referendum approving or denying any amendment or change. Section 67(1) contravenes federal laws in particular the Constitution, Bill of Rights, Section 11(1) of the Town of Orillia Act and Electoral Act that the Board of Directors (Commissioners) were elected by and other legislation as well as Ontario Regulation 373/07 the Oaths of Affirmation regarding Public Service of Ontario Act which reads:

> "I swear (or solemnly affirm) that I will faithfully discharge my duties as a public servant and will observe and comply with the laws of Canada and Ontario and, except as I may be legally authorized or required, I will not disclose or give to any person any information or document that comes to my knowledge or possession by reason of my being a public servant. So help me God. (Omit this phrase in an affirmation.)"

The writer has been given by an employee of the Orillia Water Light & Power Commission a copy of alleged minutes of a Board of Directors meeting that took place September 12, 2000 that wrongly included items in the minutes that never took place. Hence the Board of Directors Commissioners prepared and swore an Affidavit to the appropriate topics in the related Commission meeting that never took place and it is possibly an alleged fraud. The elected Board of Directors (Commissioners) were the only authority to make a transfer to the new corporations that included Orillia Electrical Distribution Corporation. Hence there was not a legal transfer made. The writer for the last three years has endeavoured to find out how the transfer was made with the exclusion of the Board of Directors (Commissioners). My many requests have remained unanswered together with other requests related to the Energy Board files.

It is unfortunate and disturbing that no member of the Commission has any access to the minutes of the formal meetings during their tenure. This includes where the independent electricity operator chose to over-rule a signed contract between OWLP and the former Ontario Hydro that had a huge disadvantage on Orillia electric consumers. The Commission were approached by senior executive of Ontario Hydro to see if they could gain

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access to a portion of the Commissions transmission lines. They were explicit that Ontario Hydro had a problem in servicing the growth that had taken place in Gravenhurst, Bracebridge and Huntsville and that Orillia's transmission lines crossed the 44 KVA line from Waubaushene to Gravenhurst. The Orillia transmission lines to the Swift Generating Plant crossed the Ontario Hydro lines close to the Orillia's Swift Generation Plant. The Ontario Hydro transformer station had two 125 KVA transformer station on their 230 KVA line which at peak times only used roughly 65% of one transformer. Ontario Hydro asked if they could use the Orillia transmission lines to transfer energy into Waubaushene Gravenhurst line. The Commission members agreed that they would try to assist Ontario Hydro as best they could as Orillia had constructed two lines running from Orillia to the Swift Generation Plant. Ontario Hydro proposed that the Swift Generation Plant energy be hooked into the Waubuashene to Gravenhurst line and that energy would supplement the required energy to Gravenhurst, Bracebridge and Huntsville. Ontario Hydro suggested that the electrical energy be metered at the Swift Generation Plant and Orillia could take credit in a normal manner the same as they had operated the plants for many years. This meant that in times of low water the plant could be operated during peak times. There was no change in the wholesale rates or the method that the plant could be used.

The plant arrangement worked perfectly for both parties with Orillia metering their energy at the plant and taking credit at the Orillia Transmission Station. This operated for a couple of years and Ontario Hydro again approached the Commission to use a portion of the Minden line to direct its power from the Minden Transformer Station to Lindsay and area. They promised the same arrangement that the power could be metered at Orillia's Generation Plant and take credit at the Ontario Hydro Transformer Station in the same manner as the Swift Generation Plant. The purchase of the lines were a separate topic as there was only a short portion of the line required to move the electrical energy the hydro need in the Lindsay and rural area.

Now comes a situation that possibly Ontario Hydro knew was coming up and decided to now purchase the lines. As the Orillia Water Light & Power Commission by contract had agreed that the arrangement was satisfactory to both parties that Ontario Hydro could purchase the Swift line and the portion of the Minden line that had no affect on Orillia taking credit at the Orillia Transmission Station in the same manner as was in existence. **Now comes a change.** The process offered by Ontario Hydro was thrown out the window because the new corporation called the Independent Electricity System Operator says there was no way that they would honour the contract made by Ontario Hydro. They used as their argument that anyone taking energy from Ontario Hydro lines would pay a much higher price. This latter decision had a great impact as the Orillia consumer was required to pay a much higher price and the energy flowing from the Swift Generating Plant and the Minden Plant would be credited at a much lower rate. All of this took place after the Board of Directors (Commissioners) were told verbally that they were no longer required. For three years the writer has endeavoured to have access to the contracts and the distribution line files for the Swift and Minden but in each case was denied access.

The change to corporations both for the Ontario Hydro companies as well as former Boards of Directors (Commissioners) are denied any access. There is no more freedom of information and the organizations are required to work in complete secrecy. **Democracy or freedom of information is non-existent.**

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For two days I sat in the open hearing to listen with disgust to Hydro One using untrue statements related to the high cost to put the Orillia Power Distribution up to Hydro One standards. This of course is not true as it is the Hydro One not Orillia that is I believe not up to standard and requires billions of dollars in replacement and repairs to their system. The Auditor General Bonnie Lysyk in paragraph two of page two states "What's more, Hydro One is in rough shape, with ever-increasing numbers of power outages and aging equipment "at very high risk of failing" that needs $4.472 billion worth of repairs – even as the province is selling 60 per cent of the company to the private sector."

With the aforementioned material it must of course be recognized that the Orillia City Council is now showing itself to be the only shareholder of record based of course on the insertion of Section 67(1) inserted into The Public Utilities Act. Hence the management of Orillia Power Distribution are required to tow the line with City Council leaving the writer, an 86 year old intervener, as the main person with loyalty to the Orillia electrical consumer that has elected him many times to represent their best interests. Hence this fight now is to prevent the sale of what they consider their utility until such time as they are given an opportunity to defend their interests by a newly called referendum.

Yours truly,

Frank Kehoe
Intervener

THE GLOBE AND MAIL

TOP STORIES

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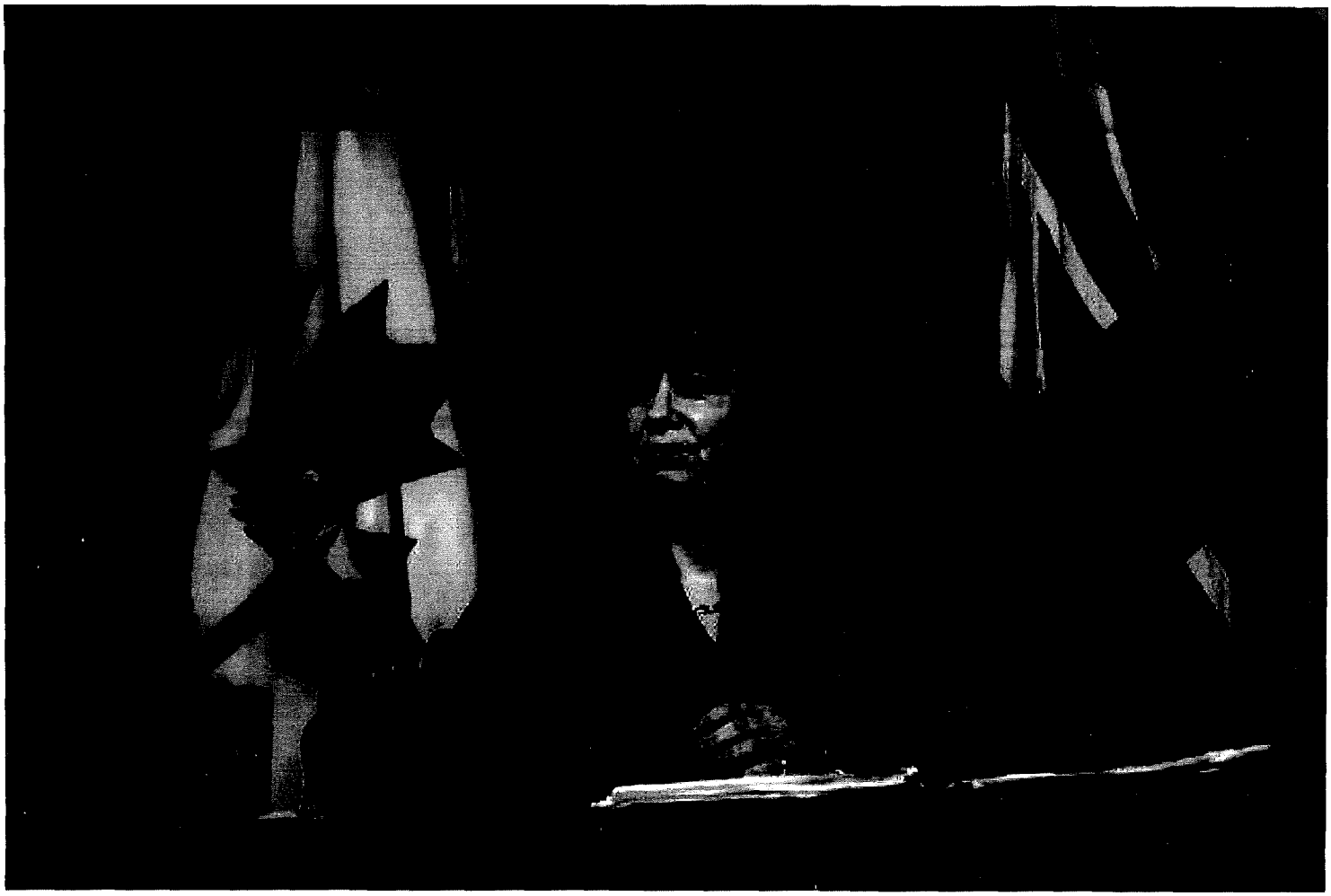
NOVEMBER 29

Ontarians paid $37-billion above market for electricity over eight years, Auditor-General's report says



'We found that the electricity power planning process had essentially broken down over the past decade,' said Ontario Auditor-General Bonnie Lysyk.

MOE DOIRON/THE GLOBE AND MAIL

ADRIAN MORROW › U.S. CORRESPONDENT

PUBLISHED DECEMBER 2, 2015
UPDATED MARCH 22, 2018

PUBLISHED DECEMBER 2, 2015

Ontarians have paid $37-billion more than market price for electricity over eight years and will pay another $133-billion extra by 2032 as a result of haphazard planning and political meddling, a report from the Auditor-General says. The Liberal government has repeatedly overruled expert advice – and even tore up two long-term plans from the Ontario Power Authority for the electricity system – in favour of political decisions that drove up power costs for consumers, the report says.

What's more, Hydro One is in rough shape, with ever-increasing numbers of power outages and aging equipment "at very high risk of failing" that needs $4.472-billion worth of repairs – even as the province is selling 60 per cent of the company to the private sector.

The revelations about Ontario's expensive and aging electricity system were in Auditor-General Bonnie Lysyk's annual report released on Wednesday.

"We found that the electricity power planning process had essentially broken down over the past decade," Ms. Lysyk said at a Queen's Park news conference. "The [energy] ministry has made a number of decisions about power generation that went against the OPA's technical advice. In addition, these decisions did not fully consider the state of the electricity market or the cost impact on consumers."

Ms. Lysyk's report put 14 different government policy areas under the microscope. Among other things, she reported that the province has doled out piles of corporate welfare behind closed doors, gone $90-million overbudget on a flawed computer system for managing social assistance benefits that has resulted in $140-million worth of miscalculated payments, has $500-billion worth of infrastructure that must be fixed and failed to make sure home-care providers look after their patients properly.

But it all paled compared to her criticisms of the government's management of the electricity system.

By law, the Ontario Power Authority (OPA), which has now merged into the Independent Electricity System Operator, was supposed to provide a long-term plan for electricity that independent regulators would vet. But Ms. Lysyk found that in 2007 and 2011, OPA produced

such a plan only to have the Liberals overrule it and make ad-hoc decisions on the system by fiat.

As a result, electricity prices for consumers and small businesses jumped by 70 per cent – from 5.32 cents per kilowatt hour to 9.06 cents – between 2006 and 2014, she found. The largest part of the reason for that is an increase to Global Adjustment Fees, which for the past decade have paid power-generating companies more than market price for their power as an incentive to set up in Ontario. Those fees amounted to $37-billion between 2006 and 2014, and are projected to add $133-billion from 2015 to 2032.

Energy Minister Bob Chiarelli defended the above-market prices as necessary. Before the Global Adjustment, he said, the government had trouble persuading private-sector generating companies to come to the province. "Wholesale market prices were not sufficient to attract much-needed investment in Ontario's electricity generation sector. In other words, there wasn't enough revenue coming to the generators, so they weren't building generating capacity," Mr. Chiarelli told reporters.

He said the draft long-term plans that the OPA created and the province killed were too "cumbersome" and did not include enough consultation. When he became minister in 2013, Mr. Chiarelli said, he changed the planning process and created a new type of plan that will manage the system in the future.

"When I arrived as a minister, there was a consensus that [the OPA's plan] was cumbersome," he said. "We worked aggressively, consulted aggressively and we introduced legislation that provides a good framework for consultation."

Mr. Chiarelli also contended that some of the higher electricity prices were a cost of weaning the province off coal-fired power and onto cleaner sources.

But Ms. Lysyk said Ontario pays more for green power than other jurisdictions. Compared to U.S. prices, the cost of wind power in Ontario is double and solar power is more than triple. The 2010 Green Energy Act, Ms. Lysyk said, failed to take advantage of low electricity prices and instead mandated higher prices for wind and solar power companies than they had received previously. This added up to $9.2-billion more in renewables costs.

In another case, when the government closed a coal-fired power plant in Thunder Bay in 2013, it decided to convert the plant to biomass to keep it going. Energy experts at the OPA told the government the conversion was not cost-effective, but the government went ahead anyway.

Power from the plant now costs $1,600/megawatts per hour, which is 25 times the cost at other Ontario biomass plants, Ms. Lysyk found. Some of the biomass burned at the plant is imported from Europe, which undercuts part of the rationale for keeping it going, which was to help Ontario's forestry industry.

In a third situation, in January, 2010, the OPA warned the province that the Lower Mattagami hydroelectric project was $1-billion over budget, but the government allowed it to proceed. As a result, power from that plant costs $135/megawatts per hour, compared to an average cost of $46/megawatts per hour for two other recent hydro projects, Ms. Lysyk found.

The province also produces enough extra electricity to power the province of Manitoba, an excess that costs consumers, Ms. Lysyk found. For instance, the province paid $3.1-billion to power generators between 2009 and 2014 for power that was not needed, plus another $339-million not to produce power. The province also paid $32.6-million to exporters to distribute the excess power to other jurisdictions.

Mr. Chiarelli said the government opted for the Thunder Bay biomass plant because of "tremendous economic lobbying" from the mayor and the local mining industry, which wanted a source of power nearby. He said the government is also hoping to create a biomass industry in the area.

"We made a decision to proceed with this particular contract, knowing that it had economic development potential, knowing that it was a reliability issue and a very, very strong comfort level to the mining industry," he said.

Mr. Chiarelli said the government has made numerous improvements to cut costs out of the electricity system, including a new and more competitive process for handing out green energy contracts. Future projects, he said, would be less expensive than previous ones.

Ms. Lysyk's criticisms come at a crucial time for the government, as it seeks to privatize Hydro One. The province sold 15 per cent of the company on the stock market last month and is planning to sell 60 per cent in total over the next few years.

Progressive Conservative energy critic John Yakabuski said the government must use a lighter touch with the electricity sector.

"The Wynne Liberals often went against the advice of experts, ignoring the long-term impact of Ontario's electricity system on its ratepayers for its own short-term political gain," he said.

"Ontario's energy sector should involve limited intervention by government. It should primarily be left to experts in the sector to ensure a cost-efficient, effective electricity system."

NDP Leader Andrea Horwath said: "This government has made a mess of our electricity system and a sell-off to the private sector will only make it worse."

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EDITORIAL

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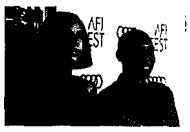
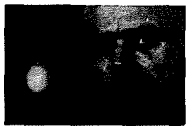


Maltese Prime Minister Joseph Muscat to resign amid crisis over journalist's murder, local media report



Chapter 2

The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money

Follow-Up on *October 2017 Special Report*

RECOMMENDATION STATUS OVERVIEW

	# of Actions Recommended	Status of Actions Recommended: Fully Implemented	In the Process of Being Implemented	Little or No Progress	Will Not Be Implemented	No Longer Applicable
Recommendation 1	2	2				
Total	**2**	**2**	**0**	**0**	**0**	**0**
%	**100**	**100**	**0**	**0**	**0**	**0**

Overall Conclusion

As of June 10, 2019, the government had fully implemented both of the actions we recommended in our *2017 Special Report*. Since our audit, the province has recorded the full financial impact on the province's consolidated financial statements of the reduction in Ontarians' electricity rates mandated by the *Ontario Fair Hydro Plan Act, 2017*. This change was required to enable the Office of the Auditor General of Ontario to issue a "clean," or unqualified, opinion on the consolidated financial statements for the 2017/18 fiscal year—the first such unqualified opinion in three years.

On May 9, 2019, Bill 87, *Fixing the Hydro Mess Act, 2019*, received royal assent. The Act effectively winds down the financing structure established under the Fair Hydro Plan by preventing any further issuance of debt through the original Fair Hydro Plan structure after November 1, 2019. The Act also shifts the responsibility for Fair Hydro Plan debt servicing and repayment from the ratepayer base (though the Independent Electricity System

Operator) to the taxpayer base (through the Consolidated Revenue Fund).

The status of actions taken on each of our recommendations is described in the following sections.

Background

In the summer of 2016, the Ontario government of the day commissioned a series of opinion polls that included questions about hydro rates. The polls overwhelmingly indicated that Ontarians wanted the government to control electricity prices. In response, the government announced on September 12, 2016, that residential and small-business electricity bills would be lowered by 8% as of January 1, 2017. The 8% reduction would appear on hydro bills as a rebate equal to the provincial portion of the Harmonized Sales Tax.

On March 2, 2017, the government announced a policy decision to further reduce electricity rates for all residential and some small-business ratepayers by 25% on average, including the 8% announced in March. This reduction was effective July 1, 2017, for a period of four years. The government also announced an additional reduction for other programs that would now be paid for by taxpayers rather than hydro ratepayers. Electricity rate increases for eligible ratepayers were to be held to the rate of inflation over the four-year period.

On May 11, 2017, the government introduced Bill 132, *The Fair Hydro Act, 2017*, to legislate the details of the Fair Hydro Plan. The Legislature passed the *Ontario Fair Hydro Plan Act, 2017* on June 1, 2017.

In spring 2017, the Financial Accountability Office (FAO) issued a report entitled *Fair Hydro Plan: An Assessment of the Fiscal Impact of the Province's Fair Hydro Plan*. The FAO estimated that the Fair Hydro Plan would cost the province $45 billion over 29 years ($5.6 billion for the provincial HST rebate and $39.4 billion for the electricity cost refinancing and changes to electricity relief programs). It also estimated the Fair Hydro Plan would provide overall savings to eligible electricity ratepayers of $24 billion, resulting in a net cost to Ontarians of $21 billion. At the time, the FAO also estimated that Ontarians may pay up to $4 billion more in interest expense by financing the electricity-rate borrowings through the Fair Hydro Plan structure instead of the usual method of issuing provincial debt through the Ontario Financing Authority.

When the Auditor General became aware of Bill 132, she appeared before the Standing Committee on Justice Policy during its three days of public hearings on the Bill in May 2017. In the following months, we performed additional work to further understand the rationale behind the accounting and financing design of the *Ontario Fair Hydro Plan Act, 2017* and how plans evolved. What we learned made it necessary to issue the Special Report on *The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money*.

As an independent, non-partisan Office of the Legislative Assembly, the Office of the Auditor General is committed to protecting the public interest. Under the *Auditor General Act*, the Legislature has given the Office of the Auditor General the statutory right and responsibility to speak out when the financial information of the government is not, or will not be, presented fairly and transparently to both the Legislature and Ontarians. In issuing the Special Report, we were fulfilling our responsibility under Section 12(1) of the *Auditor General Act*.

We made one recommendation, consisting of two actions.

Status of Actions Taken on Recommendations

We conducted assurance follow-up work between April 1, 2019, and June 10, 2019, and obtained written representation from the Treasury Board Secretariat effective November 7, 2019, that it had

provided us with a complete update of the status of the recommendations we made in the Special Report on *The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money*.

Key Issue: Sound Fiscal Transparency, Accountability and Value for Money

Recommendation 1

The Office of the Auditor General recommends that the government:

- *record the true financial impact of the Fair Hydro Plan's electricity rate reduction on the Province's budgets and consolidated financial statements;*
  Status: Fully implemented.

Details

Under the Fair Hydro Plan, the government of the day created a complicated structure in which the difference between the amounts owed to energy generators and the amounts actually collected from electricity users by local distribution companies would be funded by debt raised by a trust established under Ontario Power Generation. This structure was put in place by the government of the day to keep debt off the province's consolidated financial statements.

In July 2018, the newly elected government announced the creation of an Independent Financial Commission of Inquiry (Commission) under the *Public Inquiries Act, 2009*. The mandate of the Commission included a requirement to "perform a retrospective assessment of government accounting practices, including pensions, electricity refinancing and any other matters deemed relevant to inform the finalization of the 2017/18 Consolidated Financial Statements of the Province." The Commission reported to the Minister of Finance and the Attorney General on August 30, 2018.

In September 2018, the government accepted the Commission's recommendations.

As a result, in the province's consolidated financial statements for the year ended March 31, 2018, the government correctly recorded the financial impact of the Fair Hydro Plan on the province's debt and deficit. As such, the Auditor General of Ontario was able to issue a "clean" or unqualified opinion on the consolidated financial statements of the province of Ontario for the 2017/18 fiscal year.

Other actions recommended by the Commission included:

- providing the Auditor General of Ontario with advance notification and the ability to provide comment when a ministry or agency proposes to engage a private-sector firm to provide accounting advice;
- adopting the Auditor General's accounting treatment for any net pension assets of the Ontario Teachers' Pension Plan and Ontario Public Service Employees' Union Pension Plan; and
- undertaking a review of the *Fiscal Transparency and Accountability Act, 2004* to improve its effectiveness in guiding government fiscal planning and reporting.

In order to address the recommendation made by the Commission with respect to engagement of private-sector firms, the Auditor General of Ontario has communicated independence requirements to firms that audit the entities included in the consolidated financial statements of the province. In addition, the Auditor General of Ontario is developing protocol documents with the Office of the Provincial Controller Division (OPCD), the ministries, and agencies to improve the timely flow of accounting information between parties. For example, the protocol documents will establish a process whereby the Office of the Auditor General will receive notification when a ministry or agency is issuing a request for proposal for external accounting advice. In addition, the Auditor General and OPCD would both receive draft financial statements of the entities that report into the consolidated financial statements prior to approval by the entity's own governing body (i.e., board, committee, etc.).

- *use a financing structure to fund the rate reduction that is least costly for Ontarians.*
  Status: Fully implemented.

Details

According to our findings in the Special Report, the FAO estimated that the Fair Hydro Plan would have cost the province up to $4 billion more in interest costs than if the province had borrowed the funds directly through the Ontario Financing Authority.

On the recommendation of the Commission, the government tabled Bill 87, *Fixing the Hydro Mess Act, 2019* (Act). The Act, which received royal assent on May 9, 2019, winds down the financing structure established under the Fair Hydro Plan by preventing any further issuance of debt through the Fair Hydro Plan structure after November 1, 2019. As a result, debt will be able to be raised at a lower cost by the Ontario Financing Authority.

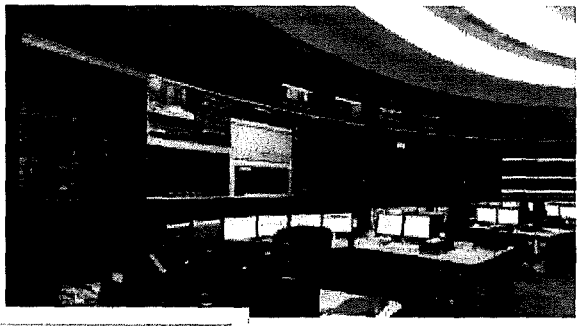
Office of the Auditor General of Ontario

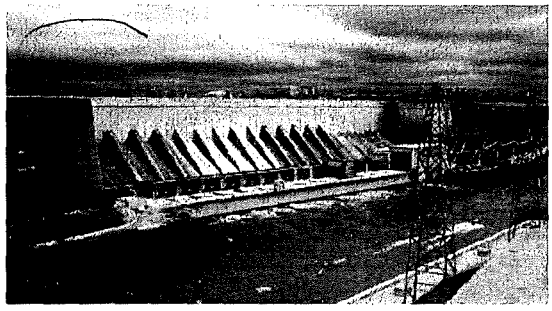
The Fair Hydro Plan

Concerns About Fiscal Transparency, Accountability and Value for Money

Ontario

Ontario Fair Hydro Plan, 2017





October 2017

Office of the Auditor General of Ontario

To the Honourable Speaker
of the Legislative Assembly

I am pleased to transmit my Special Report on The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value For Money under Section 12(1) of the *Auditor General Act*.

Bonnie Lysyk
Auditor General

October 2017
Toronto, Ontario

Special Report

The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value For Money

Key Issue: Sound Fiscal Transparency, Accountability and Value for Money

Sound fiscal transparency and accountability require that the costs of any government policy decision be fairly reported to the Legislature and the people of Ontario. Value for money requires that the government consider the optimal use of resources to implement its policy decisions.

The Office of the Auditor General recommends that the government:

a) record the true financial impact of the Fair Hydro Plan's electricity rate reduction on the Province's budgets and consolidated financial statements; and

b) use a financing structure to fund the rate reduction that is least costly for Ontarians.

When governments pass legislation to make their own accounting rules that serve to obfuscate the impact of their financial decisions, their financial statements become unreliable. This is particularly concerning when a government states that it follows Canadian Public Sector Accounting Standards (PSAS) when in fact, the accounting rules being applied are actually not in accordance with Canadian PSAS. When organizational structures and transactions are designed to remove transparency and accountability, and unnecessarily cost Ontarians billions of dollars, the responsibility of an Auditor General is to apprise the Legislature and the public in accordance with the Auditor General's mandate.

The situation just described will come to pass if the complex accounting/financing design of the *Ontario Fair Hydro Act, 2017* (Fair Hydro Act) is implemented.

Appendix 1 provides background information on the government's policy decision to reduce electricity rates under the Fair Hydro Act (referred to as the Policy Decision throughout this Special Report). **Appendix 2** contains the Act itself.

Why We Are Issuing This Special Report

As an independent, non-partisan Office of the Legislative Assembly, we are committed to protecting the public interest. Under law (the *Auditor General Act*), the Legislature has given the Office of the Auditor General the right and responsibility to speak out when the financial information of the government is not, or will not be, presented fairly and transparently to both the Legislature and Ontarians. In

issuing this Special Report to the Legislature, we are fulfilling our responsibility under Section 12(1) of the *Auditor General Act*.

When the Auditor General became aware of Bill 132 (the legislation for the Fair Hydro Plan, under which electricity bills of all residential and some small-business ratepayers would be lowered by 25% on average), she appeared before the Standing Committee on Justice Policy during its three days of public hearings on the Bill. **Appendix 3** provides the text of the Auditor General's remarks to the Committee, and **Appendix 4** has our Office's written submission to it. Since then, we have performed more work to further understand the accounting/financing design of the Fair Hydro Act and how it evolved. What we learned made the issuance of this Special Report necessary.

Our work included interviews and a review of documentation, including emails. We received all information we requested with one exception. The Ministry of Energy signed a contract, with a retainer of $500,000, to receive help from a law firm to provide search services and to compile emails before providing them to us. At the time we completed this Special Report, the Ministry had still not provided us with all of its emails, which we requested on May 31, 2017.

Summary of Concerns

After reviewing the information available to us, it is clear to us that the government's intention in creating the accounting/financing design to handle the costs of the electricity rate reduction was to avoid affecting its fiscal plan. That is, the intention was to avoid showing a deficit in the Province's budgets and consolidated financial statements for 2017/18 to 2019/20, and to likewise show no increase in the Provincial net debt.

Our Office does not question the government's Policy Decision to reduce Ontarians' electricity bills, as such policy decisions are a government's prerogative. Our concerns are that the planned accounting for the government's budgets and consolidated financial statements is incorrect, and that it was known that the planned financing structure could result in significant unnecessary costs for Ontarians.

The substance of the issue is straightforward. Ratepayers' hydro bills will be lower than the cost of the electricity used as a result of the electricity rate reduction. However, power generators will still be owed the full cost of the electricity they supply, so the government needs to borrow cash to cover the shortfall to pay them. The effects of the additional debt required to fund the generators need to be accounted for as part of the annual deficit and net debt of the Province. However, the government did not properly account for this debt impact from the electricity rate reduction in its 2017/18 budget and is not planning to account for it properly in its future consolidated financial statements. In essence, the government is making up its own accounting rules.

This Special Report highlights the following key concerns:

- Through the Fair Hydro Act, the government created a needlessly complex accounting/financing structure for the electricity rate reduction in order to avoid showing a deficit or an increase in net debt in its budgets and in the Province's consolidated financial statements (**Section 1.0**).
- According to the government's current plan, the only electricity rate reduction lasting beyond 2027 will be a 9% reduction mainly from the HST rebate and other taxpayer-funded programs. From 2028 on, ratepayers will be charged more than the actual cost of the electricity being produced in order to pay back the borrowings. The total borrowings to be repaid will be an estimated $39.4 billion, made up of $18.4 billion borrowed to cover the current rate reduction shortfall and $21 billion in accumulated interest over the term of the borrowings (**Section 1.0 and Appendix 1, Section 4.0**).

- Applying the government's complex accounting/financing structure could result in Ontarians incurring extra interest costs over 30 years that could total up to $4 billion[1] more than necessary (**Section 2.0**).
- The government applied a correct accounting treatment for the electricity sector's stranded debt in 1999/2000, and there is no good reason for it not to apply the same accounting treatment to the debt that will accumulate as a result of the Fair Hydro Act's electricity rate reduction (**Section 3.0**).
- The creation of a regulatory asset legislated in the Fair Hydro Act violates the government's own accounting policies, developed in accordance with Canadian Public Sector Accounting Standards (**Section 4.0**).
- The government knew there was a high risk that it would receive a "qualified" audit opinion on the Province's consolidated financial statements as a result of using legislation to create a regulatory asset, but it accepted this risk in order to avoid showing a deficit and an increase in net debt in its budgets and consolidated financial statements. Accordingly, the 2017/18 budget does not, but should, include the impact for 16% of the costs of the Policy Decision to reduce electricity rates by 25%. The 16% reduction is estimated to cost an average of $2.5 billion per year (over 10.5 years) through to 2027 (**Section 5.0**).

GOVERNMENT RESPONSE TO RECOMMENDATIONS

A direct response was not received to the two recommendations in this Special Report. However, the government provided an overall response, contained in **Appendix 5**.

1 Financial Accountability Office of Ontario. *Fair Hydro Plan: An Assessment of the Fiscal Impact of the Province's Fair Hydro Plan* (Toronto, ON: Queen's Printer for Ontario, 2017), 12, www.fao-on.org

1.0 Government Legislated an Accounting/Financing Structure to Improperly Avoid Showing a Deficit and an Increase in Net Debt

1.1 The Mandate of the Senior Officials Working on the Fair Hydro Plan

As explained in **Appendix 1**, the 25% reduction in ratepayers' electricity bills has three parts:

- a Harmonized Sales Tax (HST) rebate, effective January 1, 2017;
- a transfer of certain electricity relief programs (the Ontario Electricity Support Program and the Rural or Remote Rate Protection program) from electricity ratepayers to taxpayers, effective July 1, 2017; and
- a further 16% reduction for a period of four years, effective July 1, 2017, for which the government plans to borrow cash to pay electricity generators.

The reduction for the HST rebate was accounted for properly as an expense in the Province's 2016/17 consolidated financial statements and in its 2017/18 budget.

The 16% reduction is estimated to cost an average of $2.5 billion per year over 10.5 years through to 2027.[2] The government has indicated it will likely have to borrow this money each year.

The government made a critical decision early in the process of setting out the details of the Fair Hydro Plan: the accounting treatment for the 16% rate reduction should not "affect the fiscal plan"—that is, it should not show any deficit incurred from this required borrowing, nor should it add to the amount the government would report as Ontario's net debt. The government set this as the mandate to the senior officials and private-sector external advisers designing the accounting and financing for the rate reduction.

2 Financial Accountability Office of Ontario, 2.

In this Special Report, "legislated accounting" refers to the government creating an asset through legislation. This asset represents the difference between what electricity generators are owed and the lesser amount being collected from electricity ratepayers as a result of the electricity rate reduction.

1.2 The Process Followed to Meet the Mandate

Senior officials and staff from several departments and agencies, led by the Ministry of Energy, came together to plan an accounting/financing structure, identify risks, make decisions and take other actions to meet the mandate. The senior officials and staff were mainly from:

- Ministry of Energy;
- Ministry of Finance;
- Treasury Board Secretariat;
- Office of the Provincial Controller;
- Cabinet Office;
- Ontario Financing Authority (OFA);
- Independent Electricity System Operator (IESO); and
- Ontario Power Generation Inc. (OPG).

Regular briefings were held with the Minister of Energy and his staff, who were involved in planning the design and later co-ordinating the drafting of the Act. The advice of the Ontario Energy Board (OEB) was also sought in a limited way during the development of Bill 132.

Private-sector accountants, lawyers and bankers were engaged to develop and support the plan. Advice was also sought from broker-dealers and investment advisers.

Cabinet was regularly briefed, and it provided direction and approvals leading up to the introduction of the Act.

In the six months from December 2016 to May 2017, the accounting/financing structure was substantially developed. Details were still being worked on when we completed this Special Report.

A few design options other than the final design were considered, but they were rejected either because they would not work or because they would show an increase in the Province's deficit and/or net debt. In the emails and other documents we reviewed, senior officials and staff expressed views such as:

- The emerging design will result in higher costs for Ontarians.
- It is doubtful that Canadian Public Sector Accounting Standards (PSAS) will allow an accounting treatment that keeps the required borrowing from showing as a deficit, along with no impact on net debt. It will therefore be necessary to legislate a solution.
- The Office of the Auditor General will likely disagree with the accounting treatment and may well publicly state as part of its value-for-money mandate its concern about the additional cost being incurred.

Ultimately, Bill 132, the Fair Hydro Plan, would need to contain many legislated details to effect the accounting in the IESO, OPG and a new entity OPG would create, referred to in plans as OPG Trust.

Working through and around the recognized risks to achieve the desired accounting results took considerable time and effort on the part of senior government officials and their staff. As well, considerable funds were spent on accounting and legal advisers to put the accounting/financing structure in place. The government's ongoing spending on private-sector external advisers had exceeded $2 million when we completed this Special Report.

1.3 Comparison of the Substance and the Form of the Accounting/Financing Transactions

The accounting *substance* of the Policy Decision, shown in **Figure 1**, is straightforward and transparent when the required transactions are recorded in the budget and the Province's consolidated financial statements in accordance with Canadian Public Sector Accounting Standards (PSAS).

Figure 2 shows that the government decided on a very complex form, where the transactions are driven by the mandate to avoid recording an annual deficit and an annual increase in net debt from borrowings.

For illustration purposes, in both **Figure 1** and **Figure 2**, $100 represents the total amount owed to generators, $75 represents what ratepayers pay, and $16 represents the amount borrowed to cover the 16% rate reduction. The $9 difference results from the HST rebate and other programs, which the Province pays directly to the Independent Electricity System Operator.

Both the simpler structure (**Figure 1**) and the more complex structure (**Figure 2**) enable the following:

- Eligible Ratepayers to receive the electricity rate reduction as per the government's Policy Decision;
- Cash to be borrowed from Capital Markets to cover the difference between what is collected by Local Distribution Companies from ratepayers and remitted to the Independent Electricity System Operator, and what is needed by the Independent Electricity System Operator to pay Power Generators; and
- Power Generators to be paid in full under their power contracts regardless of any reduction to hydro ratepayers.

However, the structure in **Figure 2** is significantly more costly and less transparent than the structure in **Figure 1**.

1.3.1 Proper Accounting Focuses On the Substance of the Policy Decision

The substance of the transactions needed to implement the Policy Decision (**Figure 1**) would have the cumulative accounting results shown in **Figure 3**. Over the years 2017 to 2027 (i.e., through Phases 1 and 2, during which cash is borrowed to cover the rate reduction), the cumulative accounting results would be:

- an increase in the accumulated deficit of approximately $18.4 billion ($10.6 billion in Phase 1 and $7.8 billion in Phase 2) from the shortfall between the cash collected from ratepayers and the cash paid to generators; and
- an increase in the accumulated deficit of approximately $7.8 billion from interest expense ($1.4 billion in Phase 1 and $6.4 billion in Phase 2).

This would result in a total increase of $26.2 billion in net debt.

Thus, as of 2028, ratepayers' electricity bills are expected to have risen back up (with the exception of the 9% reduction from the HST rebate and other programs) and then increase even further to pay back all of the borrowings. These borrowings and accumulated interest are expected to total $39.4 billion: $18.4 billion covering the rate reduction, $7.8 billion in interest accumulated over Phases 1 and 2, plus additional interest of $13.2 billion incurred during Phase 3. These amounts are planned to be fully repaid by 2045.[3]

Following Canadian PSAS, the consolidated financial statements of the Province would show this $39.4 billion increase in the amount collected from ratepayers between 2028 and 2045 as revenue. The current government has communicated its intent to use this revenue to pay off the total borrowings. If a future government decides electricity ratepayers should not be charged the rate required to repay borrowings, it could charge the amount needed to taxpayers instead.

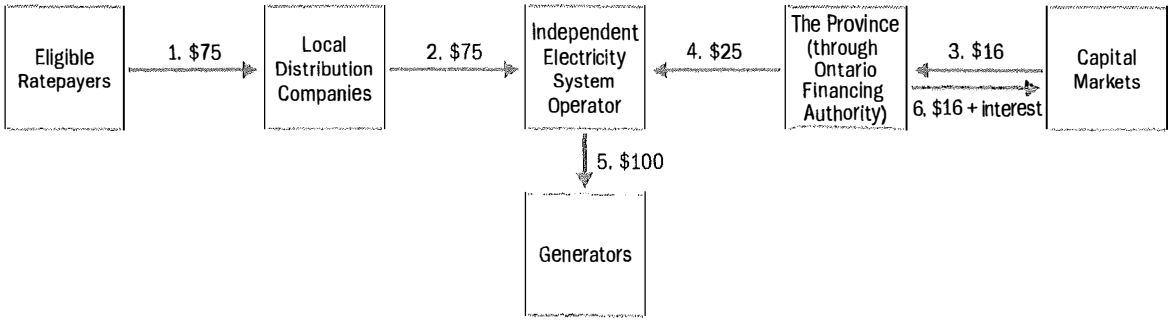
1.3.2 Improper Accounting Focuses on the Form of the Policy Decision

The improper results of the complex accounting/finance structure (**Figure 2**) would be:

- The IESO sells the revenue shortfall from Eligible Ratepayers to OPG Trust as if it were an asset and pays the Generators the full amount owed with no residual impact on its own financial statements (see **4** in **Figure 2**).

3 Period used by the Financial Accountability Office of Ontario in calculating the costs. The potential repayment period may extend to 2047 as per the Fair Hydro Act, **Part I** (see **Appendix 2**).

Figure 1: The Substance of the Accounting/Financing Transactions
Prepared by the Office of the Auditor General of Ontario



1. Eligible Ratepayers pay 25% less ($75 rather than $100) to Local Distribution Companies.
2. Local Distribution Companies remit this to the Independent Electricity System Operator.
3. To make up for 16% of the 25% shortfall ($16), the Province (through the Ontario Financing Authority (OFA), which borrows and invests on behalf of the Province) borrows the required amount from Capital Markets at the Provincial borrowing rate.
4. The Province flows funding to cover the full 25% shortfall ($25) to the Independent Electricity System Operator (16% or $16 from OFA borrowings plus 9% or $9 for the HST rebate and other programs).
5. The Independent Electricity System Operator uses the proceeds from Local Distribution Companies ($75) and the amount flowed from the Province ($25) to pay Generators 100% of the amount due to them under power contracts ($100).
6. The Province incurs interest on the 16% OFA borrowings ($16), and a future government will eventually collect money from Ontarians (ratepayers, taxpayers or both) to repay both the principal borrowed and the accumulated interest.

- The "asset" that OPG Trust purchases from the IESO would include all of OPG Trust's own interest expenses and fees. As a result, the asset balance would grow to fully offset OPG Trust's borrowings and expenses from all sources.
- The Province would show no increase in net debt because its investment in OPG would offset the amount borrowed for the Province by the Ontario Financing Authority (see **3a** in **Figure 2**).
- The Province shows no increase in net interest expense because the revenue OPG earns from charging OPG Trust interest and administration and other fees offsets the interest expense on the amount borrowed for the Province by the Ontario Financing Authority.

It was also recognized that investors may require some form of a Provincial performance guarantee to give them comfort that OPG Trust can repay the borrowings. A further requirement was that the legislation be written to avoid the possibility of money already borrowed not being paid back if the structure was revoked or changed. This is needed to ensure OPG and its debt holders would have their capital guaranteed and repaid if, for example, OPG Trust was closed down.

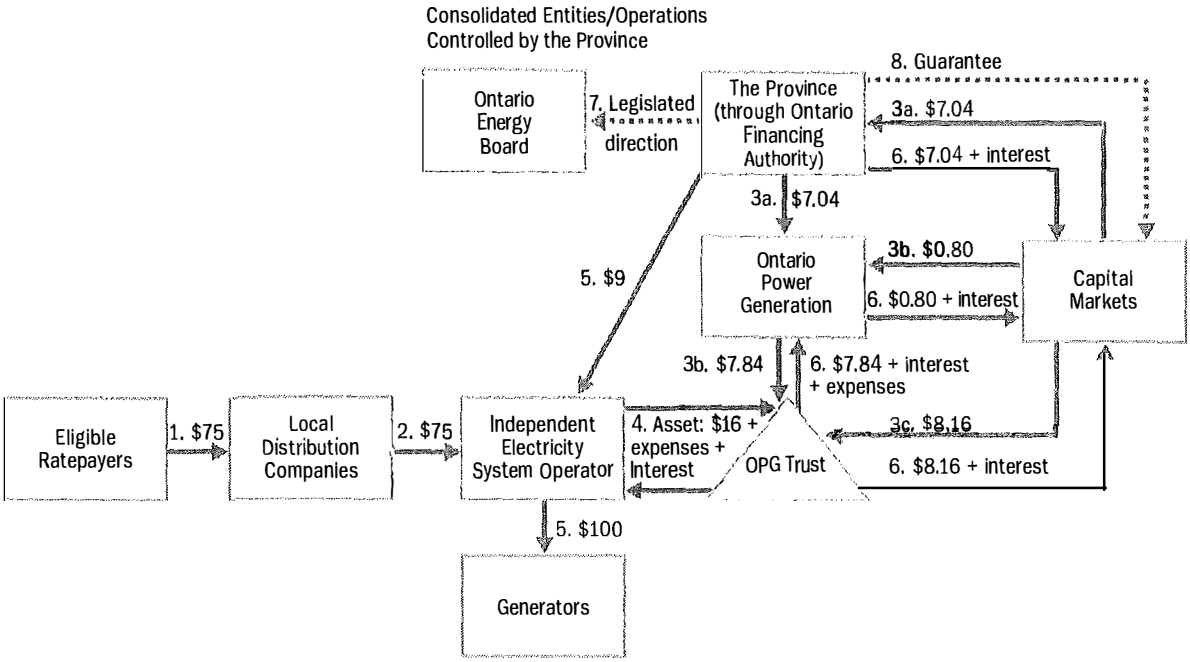
Ultimately, despite the average $2.5 billion being borrowed every year, the Province's annual deficit and net debt on its consolidated financial statements would be unaffected.

Key to achieving this result is calling the 16% revenue shortfall or net expense a "regulatory asset" in the IESO (**4** in **Figure 2**).There are at least two ways in which the government has conceptualized the asset in order to justify its existence (see **Section 4.3** for the nonexistence of this asset under Canadian Public Sector Accounting Standards).

One is that the asset represents the right of the IESO to collect revenue from future ratepayers' use of future electricity to make up for today's 16% revenue shortfall or net expense. However, despite the

Figure 2: The Form of the Planned Accounting/Financing Transactions

Prepared by the Office of the Auditor General of Ontario



1. Eligible Ratepayers pay 25% less ($75 rather than $100) to Local Distribution Companies.
2. Local Distribution Companies remit this to the Independent Electricity System Operator.
3. Of the 25% shortfall, 16% ($16) is borrowed from Capital Markets. The $16 is divided up among three borrowers: the Province (which borrows through the Ontario Financing Authority), Ontario Power Generation and OPG Trust. Each borrows different amounts at different interest rates.
   a. The Province directly borrows 44% of the shortfall amount ($7.04). The government flows this cash to Ontario Power Generation, and the Province records an increased equity investment in Ontario Power Generation.
   b. Ontario Power Generation directly borrows 5% of the shortfall amount ($0.80). This cash, plus the 44% investment from the Province ($7.04), enables OPG to lend OPG Trust 49% of the shortfall amount ($7.84). Ontario Power Generation charges OPG Trust interest plus administration and other fees ("expenses").
   c. OPG Trust directly borrows 51% of the shortfall amount ($8.16). This, plus the 49% loan from OPG ($7.84), covers the shortfall ($16).
4. Per the Fair Hydro Act, the Independent Electricity System Operator refers to its 16% shortfall as a "regulatory asset." This reference to a nonexistent "asset" is the start of a series of related transactions. As the Independent Electricity System Operator's cash shortfalls occur, it sells this "asset" to OPG Trust. OPG Trust flows its borrowed cash to the Independent Electricity System Operator as payment for buying the "asset."

   OPG Trust incurs interest expense on its borrowings, as well as fees it pays to Ontario Power Generation. OPG Trust charges ratepayers for these costs through the Independent Electricity System Operator. These charges add to the shortfall, and the increase in the shortfall is added to the "asset" that OPG Trust buys from the Independent Electricity System Operator.
5. The Independent Electricity System Operator uses the proceeds from Local Distribution Companies ($75), the cash from selling the "asset" to OPG Trust ($16) and funds from general revenues of the Province to cover the HST rebate and other programs ($9) to pay Generators (including Ontario Power Generation in its normal capacity as a Generator) the $100 due to them under power contracts.
6. The Province, Ontario Power Generation and OPG Trust incur interest on their borrowings, and a future government will eventually collect money from Ontarians to repay the principal borrowed, the accumulated interest and expenses.
7. The Province provides legislated direction to the Ontario Energy Board to approve the rate changes that are required to achieve the rate reductions and recoveries.
8. The Province provides Capital Markets with a guarantee on debt instruments issued by OPG Trust.

Figure 3: Cumulative Accounting Results of the Fair Hydro Plan's Transactions ($ billion)
Source of data: Financial Accountability Office of Ontario

	Phase 1[1] 2017–25	Phase 2[2] 2026–27	Phase 3[3] 2028–47	Total
Change in cumulative annual deficits from:				
Borrowing to cover rate reduction	10.6	7.8	–	18.4
Clean energy adjustment[3] (repayment)	–	–	(39.4)	(39.4)
Interest costs	1.4	6.4	13.2	21.0
Total change in net debt	**12.0**	**14.2**	**(26.2)**	**–**

1. In Phase 1, eligible ratepayers' hydro bills are to be reduced by 25% (9% reduction from the HST rebate and other programs, and a further 16% rate reduction). The electricity portion of bills increases only by the rate of inflation.
2. In Phase 2, eligible ratepayers' hydro bills are to be reduced by a not-yet-determined amount. It will result in bills still lower than they would be without the Fair Hydro Act.
3. In Phase 3, ratepayers' bills are to rise with the full expiration of the 16% portion of the Fair Hydro rate reduction (i.e., the borrowing to cover the rate reduction ceases). Ratepayers also pay back the principal borrowed for the rate reduction, plus interest, through a charge called the "clean energy adjustment." This is the period used by the FAO in calculating costs. The potential repayment period may extend to 2047 as per the Fair Hydro Act, Part 1 (see Appendix **2**).

government's Policy Decision to reduce electricity rates today, future ratepayers do not yet owe anything until they consume electricity in the future.

The second is that the asset represents the spreading of today's costs under 20-year power generator contracts over a 30-year period. That is, the Province is assuming that the equipment and infrastructure owned by generators that produce power today will still benefit the Province years after its contracts with the generators have expired, because the Province will be able to negotiate lower-price contracts with these generators.

However, it is not certain that the assets owned by others that have been smoothed over the 30-year period will be in use to produce power in the future. As well, any new contracts could well be at higher rates, and the older technologies may no longer be cost-effective and/or may be replaced with newer technologies. Also, the long-term power contracts are only worth what the government agrees to pay, and no more or less. If or when those contracts are renegotiated, they will be, once again, worth what the government agrees to pay for them, and no more or less.

The government's conceptualization of "asset" for the Fair Hydro Act changes in order to serve the designed accounting for the IESO and OPG Trust.

The improper accounting also inappropriately transfers long-term accountability for significantly higher electricity bills to future governments. Future governments will have to explain to ratepayers why electricity rates charged in 2028 and beyond exceed the actual cost of electricity. However, future governments, when determining how to balance their annual budgets, will not be able to record the extra amount received from ratepayers as revenue or show an improvement in net debt.

Overall, the end result of the accounting design is that the financial statements for the IESO, OPG and OPG Trust, as well as the consolidated financial statements for the Province, will not show any bottom-line impact for the costs of the government's Policy Decision.

2.0 The Additional Cost to Ontarians

Because the Province does not borrow all funds directly as shown in **Figure 2**, Ontarians may pay up to $4 billion[4] more in interest expense. This

4 On page 11 of the *Fair Hydro Plan: An Assessment of the Fiscal Impact of the Province's Fair Hydro Plan*, the Financial Accountability Office of Ontario assumes that OPG Trust debt will have an interest rate that is 90 basis points higher than Ontario's debt.

cost stems from the fact that OPG/OPG Trust must pay a higher interest rate on borrowings than the Province would if it were to borrow in the normal manner through the Ontario Financing Authority. Ultimately, a future government will decide whether ratepayers, taxpayers or a combination of both will be charged these additional interest costs. The actual interest rate spread between OPG/OPG Trust debt and Provincial debt will depend on market conditions at the time of the debt issuance. Senior officials themselves acknowledged that OPG/OPG Trust debt would carry a higher interest rate than Provincial debt. This is consistent with the assumption made by the Financial Accountability Office (FAO) of Ontario in its spring 2017 report titled *Fair Hydro Plan—An Assessment of the Fiscal Impact of the Province's Fair Hydro Plan.* Currently, ratepayers are expected to be responsible for paying these additional interest costs through their hydro bills once the temporary rate reduction financial relief under the Policy Decision ends.

One senior official commented in an email: "Hopefully they'll come to the conclusion that it can be financed by the province...rather than externally, as that would be a lot simpler and cheaper." But the much more complicated and costly route shown in **Figure 2** was chosen in order to keep deficits and an increase in net debt from showing up on the Province's books.

The government's decision to create a complex structure to avoid showing a deficit and net debt on the Province's statements was made when it was estimated that the additional interest cost could be up to $4 billion. The Ministry of Energy indicated that as of October 2017, it was projecting overall interest cost to be less than that cited in the FAO report. However, the Ministry of Energy did not provide us with a re-estimate of this figure.

3.0 Historical Ontario Precedent in Proper Accounting for Electricity Costs Not Yet Being Billed to Ratepayers

The Fair Hydro Act's electricity rate reduction is expected to last 10 years, from 2017 to 2027.[5] It is a reduction in the sense that ratepayers will be paying lower hydro bills than the current actual cost of electricity (OPG, designated as the financial services manager under the Fair Hydro Act, will determine the specific amounts payable by consumers in the future). So the Fair Hydro Plan sets up a situation where some electricity costs are not being billed to ratepayers until at least 10 years after they were incurred.

When ratepayers start paying the non-reduced electricity rates (excluding the 9% reduction from the HST rebate and other programs) in 2027, they will pay back the reductions (plus interest) through a future charge called the "clean energy adjustment" (see **Appendix 2**, the *Ontario Fair Hydro Plan Act, 2017*, Part III).

There is a precedent for Ontario electricity costs being billed to ratepayers well after they were incurred.

In 1999, the government of the day made a policy decision to restructure the Province's electricity sector. The policy decision resulted in the government becoming responsible for the former Ontario Hydro's net debt of $19.4 billion (technically referred to as "unfunded liabilities" or "stranded debt"). The costs that created the debt were incurred over a number of years before 1999, but ratepayers had not been billed for them at the time. Instead, starting in 2002, ratepayers began paying down the stranded debt through a "debt retirement charge" on their bills.

The collection of the debt retirement charge and the Fair Hydro future reduction recovery are

5 Financial Accountability Office of Ontario, 1.

similar in that both stem from government policy decisions and did not result from an independent regulatory process. As well, the payments were/will be made much later, "after the fact." However, in the 1999/2000 fiscal year, the government followed Canadian Public Sector Accounting Standards properly, and included the debt and the expenses related to it in the Province's consolidated financial statements. When the debt retirement charge was added to electricity bills, the charge to ratepayers was taken in as revenue in the Province's consolidated financial statements. This treatment allowed the government to track ratepayer costs and taxpayer costs separately, helping to ensure that only ratepayers, not taxpayers, pay for electricity services.

The same accounting should be applied to the Fair Hydro Plan rate reduction: include the debt being accumulated through the 10 years of the reduction as Provincial debt, and record interest expense on this debt as an expense in the Province's consolidated financial statements. When the clean energy adjustment is added to electricity bills, the amount charged to ratepayers can then be taken in as revenue in the consolidated financial statements, as well as be tracked separately from taxpayer expenses/revenue.

4.0 Inappropriate Legislated Accounting Not Allowed Under Canadian Public Sector Accounting Standards

This section describes how and why the government's desired accounting result of not showing a deficit or an increase in net debt from its Policy Decision is not achievable on the Province's consolidated financial statements when applying Canadian Public Sector Accounting Standards.

4.1 Overview of Canadian Public Sector Accounting Standards

The accounting profession follows generally accepted accounting principles (GAAP) in private- and public-sector accounting for several reasons, key of which is that financial statements prepared under GAAP should be fairly presented, should be reliable and should be comparable to past years.

In Canada, GAAP for the consolidated financial statements of federal, provincial and municipal governments (and for certain other government organizations) is referred to as Canadian Public Sector Accounting Standards (PSAS). While public-sector accounting standards are, for the most part, similar to private-sector standards, they do differ in several significant areas. The government of Ontario has historically chosen to follow Canadian PSAS as the basis of accounting for the preparation of the consolidated financial statements of the Province of Ontario.

Canadian PSAS can be found in the Public Sector Accounting Handbook of CPA Canada, Canada's national organization for Chartered Professional Accountants.

4.2 The Complex Accounting Design Fails the Canadian PSAS Substance Test

Canadian PSAS enshrine a no-nonsense approach to accounting that follows the principle of "substance over form." That is, an organization's financial statements must show the economic impact of its transactions, not just their legal form. No transaction should be recorded to hide its financial impact and thereby mislead the reader of the financial statements.

Following this principle of "substance over form":

- When a government spends more than it takes in, it incurs a deficit.
- When a government needs to borrow to cover that deficit, net debt increases, and it incurs interest expense.

- Interest expense adds to the annual deficit and the net debt.
- A promise or commitment to raise revenue in the future is not an asset today.

The complex accounting design of **Figure 2** fails the above substance test under Canadian PSAS. As explained in **Section 1.3**, the lowering of hydro bills is being accomplished, in substance, by the Province borrowing money. Whether the Province borrows all the money directly or directs organizations that it controls to do so on its behalf, in substance, it is still the Province requiring money to be borrowed. That borrowed money must be reflected in the net debt balance of the Province's consolidated financial statements under Canadian PSAS. Also, future revenue raised to pay off the debt should be recorded when it is earned—that is, when electricity is consumed by ratepayers.

4.3 The Complex Accounting Design Fails Because Legislation Is Used to Inappropriately Create an Asset and There is No Independent Regulator

The "asset" being legislated into existence does not meet the accounting requirements for an asset on the Province's consolidated financial statements, which are prepared following Canadian Public Sector Accounting Standards.

As introduced in **Section 1.3.2**, the asset that the Fair Hydro Act creates is referred to as a "regulatory" or "rate-regulated" asset. In reviewing emails and correspondence, we noted that senior officials and their advisers looked to U.S. accounting standards for private enterprises as a means to justify moving to regulatory accounting for Ontario's consolidated financial statements. One of the requirements for recording a regulatory asset in the U.S. is that the entity's rates for regulated services or products provided to its customers are established by or subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

The regulator of the electricity sector in Ontario is the Ontario Energy Board (OEB). However, the Province has the power, through legislation, regulations and Ministerial directions, to dictate the activities of the OEB. In fact, the OEB has been legislated in the Fair Hydro Act to follow a course of action [see **Appendix 2**, the *Ontario Fair Hydro Plan Act, 2017*, Sections 7, 9, 11 and 15(4)]. This reinforces the OEB's lack of independence over this transaction. If there is no independent regulator establishing electricity rates for consumers, neither can there be a rate-regulated asset. Moreover, the power supply contracts whose guaranteed payments are incorporated into the electricity rates that are affected by the Fair Hydro Plan have never been subject to any rate-regulatory process.

Furthermore, the Province's financial statements are "consolidated," meaning that the assets, liabilities, income, expenses and cash flows of all the entities that the Province owns or controls are presented as those of a *single economic reporting entity*: the Province of Ontario. As shown in **Figure 2**'s shaded box (titled "Consolidated Entities/ Operations Controlled by the Province"), the OEB, along with the IESO, OPG and the proposed OPG Trust, is included in the consolidation.

4.4 Proper Accounting for the Policy Decision As Designed

As stated in **Section 4.1**, the government of Ontario has historically chosen to use Canadian PSAS as the basis of accounting for its preparation of the Province's consolidated financial statements. So by legislating an accounting design contrary to Canadian PSAS, the government is also going against its own accounting policies.

As described in **Section 1.3.1**, recording the Fair Hydro Act's rate reduction in accordance with Canadian PSAS entails the following:

- All related debt, including that of OPG and OPG Trust, would become debt on the Province's financial statements.

- All interest expense would become an expense of the Province.
- The annual shortfall between the amount paid to generators and the amount collected from local distribution companies would be recorded as an expense of the Province.
- The amount collected in the future through the clean energy adjustment to pay down the accumulated principal and interest and other expenses of $39.4 billion would be recorded in the future as revenue of the Province.

4.5 IESO Integral to Inappropriate Accounting at the Provincial Level

Part of the complex accounting/financing design shown in **Figure 2** involved changing the IESO's accounting policies. The change was to deviate from Canadian Public Sector Accounting Standards (PSAS) in favour of U.S. accounting to try to satisfy the Province's objective for the Policy Decision to have no bottom-line impact on its annual results and no impact on net debt.

Net debt is a fundamental component of the Canadian PSAS framework. It is intended to measure the amount of revenues an entity/government needs to raise in the future to pay for the past services provided. Accounting that creates an asset to avoid impacting net debt is contrary to the Canadian PSAS framework.

In reviewing government emails and other documents, we found that senior officials and their advisers working on the Fair Hydro Plan decided that the IESO's December 31, 2016, financial statements needed both to show a regulatory asset and to include the IESO's market accounts as assets/liabilities (market accounts track the buy-and-sell transactions between power generators and power distributors). Changing the IESO's statements to show this would signal the IESO's adoption of rate-regulated accounting in 2016. Neither of these changes had been made when the financial statements were initially submitted to the IESO's Board for approval in February 2017.

Our review of email correspondence confirms that the approval of these financial statements of the IESO was deferred so that they could be changed. The prior five years of financial results on the IESO's December 31, 2016, financial statements were restated to include regulatory assets and market accounts. Once this change had been made, the financial statements were approved by the Board in March 2017.

Our research has confirmed that the IESO is the only "other government organization" or "non–government business enterprise" in Canada (both as defined under Canadian Public Sector Accounting Standards) that applies Canadian PSAS to have a regulatory asset on its financial statements. The IESO is not a public utility and does not maintain its own infrastructure to produce, transmit or distribute power to end-consumers. It is very different from power generators such as OPG, transmitters such as Hydro One and distributors such as Toronto Hydro, which are considered to be "government business enterprises" (GBEs).

In our review of email correspondence and discussions with the Ontario Energy Board, we noted that the Ontario Energy Board did not consider the IESO to be an electricity rate-regulated entity like OPG. Power generator contracts held by the IESO are negotiated contracts that have never been subject to an independent rate-regulatory process.

Further to this, we noted that in 2002, CPA Canada (formerly the Canadian Institute of Chartered Accountants) published a research report titled *Financial Reporting by Rate-Regulated Enterprises*. This research report was jointly commissioned by the Canadian Accounting Standards Board (AcSB) and the Public Sector Accounting Board (PSAB). The report study group consisted of representatives from the private sector and the public sector, including the then-Provincial Controller of Ontario and a representative from the Ontario Energy Board. The research report stated the following: "By inference, although it is not specifically stated in the Public Sector Accounting Handbook, except for GBEs [government businesses enterprises,

which the IESO is not], rate regulation does not apply to the public sector."

This explains why to date, regulatory assets have not been recorded in Canada in the financial statements of any "other government organization" prepared in accordance with the Canadian Public Sector Accounting Standards framework.

4.6 Inappropriate Accounting Highlighted in the Audit Opinion on the Province's 2016/17 Consolidated Financial Statements

The Auditor General indicated in her audit opinion dated August 18, 2017 (see **Appendix 5**) that the government's accounting was inappropriate when it recognized the IESO's rate-regulated assets and market accounts in the Province's 2016/17 consolidated financial statements.

Under Canadian Public Sector Accounting Standards, the IESO's accounting treatment for recording a rate-regulated asset and market accounts must be eliminated on consolidation into the Province's financial statements.

A government should not record on its own set of statements or have its statements impacted by an asset it creates under legislation. In essence, the government is making up its own accounting rules. Further, a regulatory asset cannot be recorded on financial statements prepared using the Canadian Public Sector Accounting Standards framework. We obtained extensive advice confirming these points from the current Auditors General in Canada, a former Auditor General of Saskatchewan and British Columbia and external advisers, including, but not limited to, the recently retired Director of the Canadian Public Sector Accounting Board.

5.0 Government Anticipated and Accepted Risk of Audit Qualification

After we audit the financial transactions and statements of the Province as required by the *Auditor General Act,* the Auditor General can sign one of four possible opinions:

- **Unqualified or "clean" opinion:** The financial statements and notes present fairly, in all material respects, the financial position and results of the Province in accordance with Canadian Public Sector Accounting Standards.

  The Province's consolidated financial statements have received "clean" audit opinions for 22 years—that is, since 1993/94, when it first adopted Canadian Public Sector Accounting Standards. The Province's consolidated financial statements did not receive clean opinions in 2015/16 and 2016/17. 2016/17 was the first year since 1993/94 that our audit opinion was qualified on the basis that the government's annual deficit was not reported in accordance with Canadian Public Sector Accounting Standards.
- **Qualified opinion:** The statements contain one or more material misstatements or omissions resulting from the misapplication of Canadian Public Sector Accounting Standards.
- **Adverse opinion:** The statements do not fairly present the financial position, results of operations and changes in financial position in accordance with Canadian Public Sector Accounting Standards.
- **Disclaimer of opinion:** It is not possible to give an opinion on the financial statements and notes because, for example, key records of the Province are destroyed and unavailable for examination.

Our review of government emails and other documents found that government officials were aware that the Office of the Auditor General was

likely to object to keeping the expense impact and net debt impact of the Policy Decision off the books. This meant the government was knowingly risking receiving a "qualified" audit opinion on the Province's consolidated financial statements. The government anticipated and accepted this risk rather than follow Canadian Public Sector Accounting Standards. As well, senior officials and government recognized in their written material that the Office of the Auditor General "could qualify Ontario's books or issue an adverse opinion."

The significance of intentionally accepting a potential qualified or adverse audit opinion should not be downplayed. This would be unacceptable in the private sector, and we maintain that this is also unacceptable in the public sector. If the consolidated financial statements are so unreliable that an adverse opinion is warranted, terms like "balanced budget," "deficit," "asset" and "net debt" will be meaningless. Members of the Legislature, Ontarians, lenders and credit-rating agencies will no longer be able to share a common and accurate understanding of the Province's finances.

The Province's private-sector accounting advisers focused on setting up the desired accounting as it pertains to the individual financial statements of the entities involved in the accounting/financing design, particularly the IESO. Although we disagree with the appropriateness of the IESO's accounting in its financial statements for the year ended December 31, 2016, our main responsibility is ensuring the accuracy of the Province's consolidated financial statements. The Province's external private-sector accounting advisers confirmed in our discussions with them that their opinions regarding the financial reporting of individual entities such as the IESO, OPG and OPG Trust do not extend to the Province's consolidated financial statements.

It is concerning that the government entertained the risk of a qualified audit opinion, and in doing so demonstrated a lack of commitment to transparent, fair and accurate reporting of the Province's financial performance and health to the taxpayers of Ontario.

As was expected, the Auditor General signed a qualified audit opinion in 2017. Two issues led to the qualification. In addition to recording the market account assets and liabilities of the IESO in the Province's consolidated financial statements, as described in **Sections 4.5** and **4.6**, the government did not properly record a valuation allowance as required under Canadian PSAS to reduce the net pension asset it shows on its Consolidated Statement of Financial Position. As a result, both the net debt and the accumulated deficit were understated by $12.429 billion for 2016/17 (and by $10.985 billion in 2015/16). (See **Appendix 6** for the audit opinion and **www.auditor.on.ca** for the technical position paper on this pension issue).

Appendix 1: Background to the Fair Hydro Act

1.0 Electricity Rates Have Increased With Little Independent Regulation to Protect Ratepayers

Under the *Ontario Energy Board Act, 1998*, the Ontario Energy Board (OEB) is responsible for protecting the interests of consumers with respect to prices, adequacy, reliability and the quality of electricity service. However, the Act granted the OEB only limited oversight over power generation (the Pickering and Darlington nuclear plants, along with some hydro power plants). Also, from 2004 onwards, Ontario did not have an Integrated Power System Plan in place for the OEB to approve.

Electricity rates have increased significantly since 2004 as the Ontario Power Authority (OPA) signed new power supply contracts that, as of 2014, accounted for about 65% of Ontario's total installed generating capacity. The guaranteed payments to generators that ratepayers pay under these power supply contracts have never been subject to any rate-regulatory process. (For more detail, see our *2015 Annual Report*, **Section 3.05 Electricity Power System Planning** and our *2011 Annual Report*, **Section 3.02 Electricity Sector—Regulatory Oversight** and **Section 3.03 Electricity Sector—Renewable Energy Initiatives**).

2.0 Public Opinion Polls and the Initial Electricity Rate Reduction

In the summer of 2016, the government commissioned a series of opinion polls that included questions about hydro rates. The polls overwhelmingly indicated that Ontarians wanted the government to control electricity prices.

Many ratepayers were clearly voicing concerns about the hardships of paying high hydro bills. In response, the government announced on September 12, 2016, that residential and small-business electricity bills would be lowered by 8% as of January 1, 2017. The 8% reduction would appear on hydro bills as a rebate equal to the Provincial portion of the Harmonized Sales Tax.

As noted in **Section 1.1**, the cost of this rate reduction to the government, estimated at $1 billion per year, is an expense that affects the Province's bottom line and was accounted for appropriately in the Province's 2016/17 consolidated financial statements and in the 2017/18 budget.

3.0 The Government's Policy Decision to Further Reduce Electricity Rates

The government made a policy decision to further reduce electricity rates effective July 1, 2017. This includes an additional reduction for a period of four years and a reduction for other programs that would now be paid for by taxpayers. Electricity rate increases for eligible ratepayers are to be held to the rate of inflation over the four-year period.

The government announced the further rate reduction as part of its Fair Hydro Plan on March 2, 2017. On May 11, 2017, the government introduced Bill 132, The Fair Hydro Act, 2017, to legislate the details of the Fair Hydro Plan.

The Legislature passed the *Ontario Fair Hydro Plan Act, 2017* on June 1, 2017 (see **Appendix 2**).

4.0 Financial Impact of the Fair Hydro Plan

While this Special Report discusses the structure and repayment of the rate reduction, ratepayers are expected to experience separate rate increases from 2021 onwards associated with the phasing out of the rate reduction (unless other efficiencies in the electricity sector are identified). These increases are in addition to increases associated with paying back the money borrowed to cover the rate reduction.

The Financial Accountability Office issued a report in spring 2017 (*Fair Hydro Plan: An Assessment of the Fiscal Impact of the Province's Fair Hydro Plan*) that includes a table showing this (see **Figure 3-1: FAO's Estimated Impact of the FHP on Eligible Ratepayer Electricity Costs**, page 3).

The Financial Accountability Office estimates that the Fair Hydro Plan will cost the Province $45 billion over 29 years ($5.6 billion for the Provincial HST rebate and $39.4 billion for the electricity cost refinancing and changes to electricity relief programs). It also estimates the Fair Hydro Plan will provide overall savings to eligible electricity ratepayers of $24 billion. This results in a net cost to Ontarians of $21 billion. The estimated $45-billion cost to the Province assumes that the Province is able to achieve and maintain a balanced budget over 29 years. If the Province is required to fund its Fair Hydro programs (i.e., the HST rebate and electricity relief programs) through debt, then the cost to the Province could increase to between $69 billion and $93 billion.

Ontario Fair Hydro Plan Act, 2017

S.O. 2017, CHAPTER 16
SCHEDULE 1

Consolidation Period: From June 1, 2017 to the e-Laws currency date.

No amendments.

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Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects. These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

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

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

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

PART I
GENERAL

Interpretation

Definitions

1 (1) In this Act,

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

"clean energy adjustment" means the amount determined under section 15 and payable by specified consumers; ("ajustement pour l'énergie propre")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("avantages de l'énergie propre")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts or amounts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed,

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

(c) such other costs or estimated costs as may be prescribed; ("coûts de l'énergie propre")

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

(a) eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies,

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

(c) promoting conservation, demand management and energy efficiency, and

(d) investing in energy infrastructure to ensure a clean, modern and reliable system; ("initiative pour l'énergie propre")

"electricity vendor" means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where it directly invoices a specified consumer for electricity used in Ontario, or

(d) such other person as may be prescribed; ("vendeur d'électricité")

"fair allocation amount" means an amount calculated under section 20; ("montant de répartition équitable")

"finance amount" means the finance amount determined in accordance with the regulations; ("montant de financement")

"Financial Services Manager" means the Financial Services Manager appointed under section 18; ("gestionnaire des services financiers")

"financing entity" means an entity established or caused to be established by the Financial Services Manager as described in subsection 22 (2); ("entité de financement")

"Financing Plan" means the plan prepared under section 21; ("Plan de financement")

"funding obligation" means a payment obligation incurred by or on behalf of an investment interest owner to fund its ownership of an investment interest or a payment obligation that meets such other criteria as may be prescribed; ("obligation de financement")

"funding rebate" means a payment obligation incurred by the IESO as part of the transfer of the regulatory asset; ("remboursement de financement")

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

"IESO deferral" means the amount determined under section 23; ("report de la SIERE")

"investment asset" means the rights and interests described in section 29; ("actif d'investissement")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("participation d'investissement")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("détenteur d'une participation d'investissement")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system within the meaning of that Act; ("distributeur titulaire d'un permis")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("détaillant titulaire d'un permis")

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

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

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

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

(b) during the period beginning on November 1, 2017 and ending on either April 30, 2047 or such later day as may be prescribed,

(i) every six-month period following the period mentioned in clause (a), or

(ii) any period shorter than six months, as may be prescribed; ("période de référence")

"refinancing" means, subject to the regulations, the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation; ("refinancement")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section 25; ("actif réglementaire")

"specified consumer" means,

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

(b) such other person as may be prescribed; ("consommateur déterminé")

"transfer" includes, when used in relation to an investment interest, the assignment, conveyance, disposition or sale of the investment interest; ("transfert")

"true up amount" means a true up amount determined in accordance with the regulations; ("montant d'égalisation")

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

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

"variance account" means the variance account established by the IESO under subsection 24 (1). ("compte d'écart")

Specified consumer

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

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

Transfer of regulatory asset

(3) In this Act, a reference to the transfer of a specified portion of the regulatory asset is a reference to the following, as provided for in subsection 26 (3):

1. A reduction in the balance in the variance account.
2. The adjustment of the regulatory asset.
3. The acquisition by a financing entity of the investment interest corresponding to the specified portion of the regulatory asset.

Effect of invalidity

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

Same, funding obligation

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

Purposes

3 The purposes of this Act are,

(a) to ensure that clean energy costs and clean energy benefits are fairly allocated among present and future specified consumers;

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province; and

(c) to align clean energy costs with clean energy benefits, in order to provide fairness for specified consumers over time.

Crown bound

4 This Act binds the Crown.

Protection and assurances

Prohibition

5 (1) No action or omission by the Board, the Minister or the Crown shall be effective to reduce, impair, postpone or terminate the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or to impair or postpone the invoicing, collection or remittance of the clean energy adjustment.

Agreements

(2) The Minister and the Minister of Finance may together, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of the IESO or electricity vendors under this Act or related transactions.

Guarantee, indemnification

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

(a) authorize the Minister and the Minister of Finance, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity;

(b) specify terms and conditions that must be included in any guarantee or indemnity given by the Minister and the Minister of Finance; and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT

Definition

6 In this Part,

"regulated rate consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.
2. The consumer would, if the consumer were not subject to this Act, be invoiced the rates determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*.

Regulated rate consumers, first adjustments

7 (1) Despite clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, the electricity rates payable by regulated rate consumers for the period beginning on July 1, 2017 and ending on April 30, 2018 are the rates determined by the Board under this section and in accordance with the regulations.

Determination by Board

(2) The rates mentioned in subsection (1) shall be the rates that would result in a hypothetical regulated rate consumer who meets the prescribed criteria being invoiced a total invoice amount, consisting of such types of amounts as may be prescribed,

that is 25 per cent less than a different total invoice amount, consisting of such types of amounts as may be prescribed, that the consumer would have been invoiced under the comparison rates described in subsection (3).

Comparison rates

(3) The comparison rates are the rates that would have been effective May 1, 2017 if they had been determined by the Board for the consumer mentioned in subsection (2) using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, without taking into account any forecasted impact of any other provisions of this Act.

Other specified consumers, first adjustments

8 (1) For the period beginning on July 1, 2017 and ending on April 30, 2018, the adjustments made under section 25.33 of the *Electricity Act, 1998* shall, with respect to specified consumers who are not regulated rate consumers, be further adjusted by electricity vendors in accordance with the regulations and in accordance with the determinations made by the Board in accordance with the regulations.

Regulations

(2) The regulations may specify different adjustments, or methods of determining the adjustments, to be made in respect of prescribed classes of specified consumers who are not regulated rate consumers.

Determinations by Board

9 The Board shall make the determinations mentioned in sections 7 and 8 no later than 15 business days after the day this section receives Royal Assent and, regardless of whether the Board makes the determinations before or after July 1, 2017, the determinations shall be effective as of July 1, 2017.

Implementation by electricity vendors

10 (1) As soon as possible after the Board makes determinations under section 9, each electricity vendor shall, in respect of electricity used on or after July 1, 2017, ensure that its invoices reflect the determinations of the Board.

Same

(2) The electricity vendor shall ensure that, if any of its customers who are specified consumers have been invoiced in a manner that does not reflect the determinations of the Board under section 9, the specified consumer receives the difference between the amounts shown on the invoice and the amounts reflecting the Board's determinations, provided as a lump sum credit on the first invoice issued after the electricity vendor has adapted its invoices or by such other means as may be prescribed.

Subsequent adjustments

11 (1) Despite clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998* and subject to subsection (2), the Lieutenant Governor in Council may prescribe methodologies to be applied by the Board after April 30, 2018 for the purpose of determining,

(a) electricity rates for regulated rate consumers; or

(b) further adjustments to be applied by electricity vendors, in accordance with the regulations and in accordance with the Board's determinations, to the adjustments made under section 25.33 of the *Electricity Act, 1998* in respect of specified consumers who are not regulated rate consumers.

Regulations

(2) The Lieutenant Governor in Council shall have regard to the following in making the regulations:

1. The purposes of this Act.
2. The clean energy costs borne by specified consumers over time.
3. Such other matters as may be prescribed.

Same

(3) The regulations may prescribe,

(a) different methodologies for different prescribed classes of specified consumers and in respect of different periods of time; and

(b) different adjustments to be applied in respect of prescribed classes of specified consumers who are not regulated rate consumers and in respect of different periods of time.

Sub-metering

12 (1) This section applies if a specified consumer provides to another person electricity in respect of which a determination of the Board referred to in section 9 or 11 applies.

Same

(2) If an invoice for the electricity is issued to the person by the specified consumer or a unit sub-meter provider providing unit sub-metering for the specified consumer, the amounts or rates payable for the electricity by the person who is liable to pay the invoice shall be determined in accordance with the regulations.

Same

(3) The regulations may prescribe different amounts or rates or different methods for determining amounts or rates for different prescribed classes of specified consumers.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

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

Same

(2) For greater certainty, subsection (1) applies regardless of whether any estimate, projection or other input used in calculating the clean energy adjustment was erroneous or out of date at the time of the calculation and regardless of whether any of those estimates, projections or other inputs is subsequently amended, updated or corrected.

Terms

(3) The payment shall be made in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Indebtedness of specified consumer

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

Same

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

Unit sub-metering

(6) A specified consumer who provides electricity through unit sub-metering may collect amounts in respect of the clean energy adjustment payable under this section in accordance with the regulations.

Irrevocability of amount

14 (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or bypassed.

Exception

(2) Subsection (1) does not apply to the extent that the invoice reflects a clerical, typographical or calculation-related error.

Determination of clean energy adjustment

Financial Services Manager to determine

15 (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by taking the following steps:

1. Calculate the sum of the following:
    i. The estimated finance amount in respect of the reference period.
    ii. The true up amount in respect of the reference period.
2. Divide the sum calculated under paragraph 1 by the number of months in the reference period.

Regulations re true up amount

(2) The Lieutenant Governor in Council shall, in making regulations with respect to the determination of the true up amount, have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.
2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

i. differences between the estimated and actual finance amount for the applicable reference period,

ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

iii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

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

Board to determine rates

(4) Without changing the clean energy adjustment, the Board shall, in accordance with the regulations, determine the rates at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

16 (1) The IESO shall, as agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the market rules made under section 32 of the *Electricity Act, 1998* or the regulations.

Account

(2) All of the following amounts received by the IESO shall, until remitted to or for the benefit of the investment interest owners in accordance with subsection (4), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection (1).
2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 13 (1).
3. Proceeds of amounts described in paragraphs 1 and 2.

Same, held in trust

(3) All amounts received by the IESO in respect of the clean energy adjustment shall, until remitted to or for the benefit of the investment interest owners, be held in trust by the IESO for the investment interest owners.

IESO to remit

(4) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the amounts referred to in subsection (1), to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

17 (1) Each electricity vendor shall issue an invoice to each of its customers who is a specified consumer for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 15 (4) and in accordance with the regulations.

Electricity vendor to report

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

Electricity vendor to collect

(3) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(4) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same invoice period.

Held in trust

(5) Payments received by an electricity vendor from or on behalf of specified consumers in respect of the clean energy adjustment and all proceeds of the payments shall, until remitted to the IESO for the benefit of the investment interest owners in accordance with subsection (6), be held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(6) Each electricity vendor shall remit amounts in respect of the clean energy adjustment to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

18 Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act, unless it is unable or unwilling to do so, in which case the Minister may appoint a different Financial Services Manager in accordance with the regulations.

Duties and powers

19 (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include providing information to the IESO in respect of obligations under Part III and such other activities as may be prescribed.

Fees

(3) Subject to any prescribed limitations, the Financial Services Manager may establish and charge fees in relation to such matters as may be prescribed in accordance with the regulations, which regulations may provide for the ability to recover costs and expenditures and to earn a return.

Same, Board approval

(4) Before establishing fees under subsection (3), the Financial Services Manager shall submit them to the Board for approval in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Minister to calculate fair allocation amount

20 (1) Before the first funding obligation is incurred, the Minister shall calculate a fair allocation amount in respect of each reference period as follows:

1. Determine, in accordance with the following steps and the regulations and by applying such method as the Minister considers appropriate, the estimated clean energy costs to be allocated to specified consumers in respect of the reference period:
    i. Determine the clean energy costs incurred or expected to be incurred in respect of all reference periods.
    ii. Determine the clean energy benefits in respect of,
        A. all reference periods, and
        B. the prescribed period of time that preceded the first reference period and during which clean energy costs were incurred.
    iii. Attribute the value of the clean energy benefits determined under subparagraph ii across the reference periods and the period of time described in sub-subparagraph ii B.
    iv. Allocate clean energy costs determined under subparagraph i in proportion to the relative attributions of clean energy benefits determined in subparagraph ii in respect of the reference periods.
2. Subject to subsection (2), determine, in accordance with the regulations and by applying such method as the Minister considers appropriate, the estimated financing costs, consisting of such types of costs as may be prescribed, in respect of the reference period.
3. Determine, in accordance with the regulations and by applying such method as the Minister considers appropriate, the estimated clean energy costs that would have been payable, in the absence of this Act, by specified consumers in respect of the reference period.
4. Determine the amount, if any, by which the sum of the determinations under paragraphs 1 and 2 exceeds the determination under paragraph 3.
5. Calculate the sum of the amount determined under paragraph 4 and such other amounts as may be prescribed in respect of the reference period.

Part II adjustments

(2) If the Board has made a determination under section 9 or 11 in respect of the reference period or in respect of a prior reference period and, as a result of the determination, the prescribed circumstances arise, the Minister shall take the prescribed steps to make the prescribed adjustments to the determination made under paragraph 2 of subsection (1).

Minister's considerations

(3) In calculating a fair allocation amount, the Minister shall have regard to the purposes of this Act and such other matters as may be prescribed.

Minister to inform Financial Services Manager

(4) The Minister shall provide the fair allocation amount in respect of each reference period to the Financial Services Manager.

Recalculation

(5) The calculation of a fair allocation amount under this Part may be changed by such person as may be prescribed, subject to the following requirements:

1. The prescribed person shall comply with such requirements as may be prescribed.
2. Subsections (1), (2) and (3) apply to the new calculation, with necessary modifications, as if that person were the Minister.

Same

(6) No change under subsection (5) shall affect any clean energy adjustment that arises as a result of a funding obligation that has been incurred before the change.

Information

(7) The Minister, the IESO, the Financial Services Manager, the Board and electricity vendors shall provide such information as may be prescribed in accordance with the regulations for the purposes of facilitating a change under subsection (5).

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

21 (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of a financing entity acquiring and financing an investment interest in accordance with this Act or for the purposes of a refinancing.

Plan to be provided to Minister

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

Principles

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

1. Funding obligations should be incurred such that, along with any funding obligations already incurred, the estimated finance amount that would, subject to any refinancing, become due and payable during a reference period will reasonably align with the fair allocation amount determined in respect of the reference period, in each case after reducing the fair allocation amount by the readjustment amount, if any, in respect of the reference period.
2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.
3. Reasonable assumptions should be made regarding such matters as may be prescribed.
4. Such other principles as may be prescribed.

Limitation

(4) In respect of each reference period from July 1, 2017 to April 30, 2021, no funding obligation shall be incurred that would result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) the amounts are payable in respect of a reference period in respect of which there is no readjustment amount; or

(b) if there is a readjustment amount in respect of the reference period, the amounts payable in respect of the clean energy adjustment in respect of the reference period do not exceed the fair allocation amount in respect of the reference period after subtracting the readjustment amount.

Other reports

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

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time but no such amendment shall affect any clean energy adjustment that has already been determined under section 15 or any funding obligations that have already been incurred before the amendment.

Same

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

Readjustment amount

(8) In this section,

"readjustment amount" has the meaning set out in the regulations.

Incurrence of funding obligations

22 (1) The Financial Services Manager shall ensure that funding obligations incurred for the purposes of this Act are incurred in a manner that is consistent with the applicable Financing Plan.

Financing entities

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

Prohibition

(3) Neither the Financial Services Manager nor a financing entity shall provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and to provide for the reasonable alignment of the estimated finance amount with the fair allocation amount.

Same

(5) For greater certainty, subsection (4) applies despite the failure of the Financial Services Manager to comply with subsection (1).

PART V
THE REGULATORY ASSET

IESO deferral

23 (1) The IESO deferral for each month, commencing May 1, 2017, shall be determined by the IESO in accordance with the regulations.

Same, retrospective amounts

(2) For greater certainty, the regulations may provide for the IESO deferral to include an amount that was incurred by the IESO on or after May 1, 2017 and before the day this section comes into force.

Electricity vendors to provide information

(3) Electricity vendors shall provide to the IESO such information as the IESO may reasonably request for the purposes of determining the IESO deferral under subsection (1) and such further information as may be prescribed.

Same

(4) The IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.
3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Rights of investment interest owner

(3) No change made by the IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 26, affect the rights acquired by the investment interest owner under the transfer.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Transfer of regulatory asset

26 (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.

Validity of transfer

27 (1) A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.

Same

(2) Without limiting subsection (1), any transfer agreement that states an intention of the parties for the IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of the IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.

Deemed perfection, etc.

(3) At the time a transfer of the regulatory asset is made under section 26, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

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

PART VI
THE INVESTMENT ASSET

Investment asset established

28 (1) The transfer of a specified portion of the regulatory asset under section 26 creates an investment asset or, if it is not the first transfer, adds to the investment asset.

Same

(2) Upon transfer of a specified portion of the regulatory asset under section 26 to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim.

Investment asset, irrevocable rights and interests

29 (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right and interest to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.
2. The right to receive, collect and recover the clean energy adjustment that is imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors, the IESO and other prescribed parties.
3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.
4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for the clean energy adjustment.
5. The right to enforce the duties and obligations under this Act of each electricity vendor and the IESO to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by any electricity vendor to recover payment of the clean energy adjustment.
6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest, including any rights to receive funding rebates.
7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

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

No set off, etc.

(3) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, the IESO, an agent of the investment interest owners or an owner in the Province of a distribution system within the meaning of the *Electricity Act, 1998*;

(b) in connection with any default of a person mentioned in clause (a); or

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

Exercise of rights

(4) The rights of the investment interest owners to collect the clean energy adjustment and enforce their rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(5) If one investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owners as a collective in accordance with its terms.

Transfer of investment interest

30 An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

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

Same

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

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected as described in the *Personal Property Security Act*, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

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

Investment interest owner may grant security interest

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

Validity

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

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that the investment asset and each investment interest is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by an investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by registering a financing statement under that Act on that basis.

Proceeds

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

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, unless the person to whom the security interest has been granted consents otherwise.

Same

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

Notice required

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

Interpretation

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

PART VII
MISCELLANEOUS

Appointment of agent, invoicing or collection

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

Same, not Crown agent

(2) For greater certainty, a person appointed under this section is not an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Board's authority

34 (1) Each electricity vendor, the IESO and the Financial Services Manager shall maintain such accounts and provide such information to the Board as the Board may require for the purposes of carrying out its responsibilities under this Act, in the form and manner and within the time required by the Board.

No hearing required

(2) Despite anything to the contrary in the *Ontario Energy Board Act, 1998*, the Board may exercise any of its responsibilities under this Act without a hearing.

Sequestration

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

Same

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

Choice of law

36 The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to a transfer under this Act or the creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section 5 shall be the laws of the Province.

Conflict

37 The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

38 Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required under the Financing Plan or in relation to the determination of the fair allocation amount.

Liability

39 (1) No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty.

Same

(2) Nothing in subsection (1) shall be read as limiting the effect of subsection 19 (1) of the *Electricity Act, 1998* or subsection 11 (1) of the *Ontario Energy Board Act, 1998*.

Same

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

References in marketing materials and offering documents

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

Compliance and restraining orders

Application to court

41 (1) On the application of an investment interest owner, the Superior Court of Justice may make an order described in subsection (2) if it is satisfied that an electricity vendor, the IESO or the Financial Services Manager has failed to comply with or has contravened this Act or the regulations or that one of those entities will fail to comply with or will contravene this Act or the regulations.

Order

(2) The Superior Court of Justice may, by order,

(a) direct the electricity vendor, the IESO or the Financial Services Manager to comply with this Act or the regulations;

(b) restrain the electricity vendor, the IESO or the Financial Services Manager from contravening this Act or the regulations; or

(c) require compensation to be provided by the electricity vendor, the IESO or the Financial Services Manager to the investment interest owner.

Same

(3) An application under subsection (1) may be made by an investment interest owner in addition to exercising any other right of the investment interest owner.

Regulations

42 (1) The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.
2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.
3. Governing the incurrence of debt for the purposes of the definition of "refinancing" in subsection 1 (1).
4. Governing the inclusion of information under this Act on or with invoices, which may include requiring notice to be provided by electricity vendors to specified consumers and other prescribed persons regarding the adjustments, including providing for different requirements in different circumstances and for different classes of specified consumers.
5. Governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on or with invoices issued to specified consumers, including the form that the information must take and the form of the invoices and the form of any notice to be provided to the specified consumer under this Act.
6. Governing the manner by which invoices or notices provided for under this Act are to be provided to specified consumers and other prescribed persons.
7. Providing for a right of compensation for investment interest owners affected by the failure of any person or entity to give effect to the rights and interests provided for under section 29 and the manner in which such a right may be enforced under this Act.
8. Prescribing the time within which any action required by this Act may be required to be done.
9. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

Limitation

(2) Despite subsection (1) or any other Act, no regulation under this Act shall have the effect of reducing, impairing, postponing or terminating the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or impairing or postponing the invoicing, collection, remittance or recovery of the clean energy adjustment.

PART VIII (OMITTED)

43, 44 OMITTED (AMENDS, REPEALS OR REVOKES OTHER LEGISLATION).

PART IX (OMITTED)

45 OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT).

46 OMITTED (ENACTS SHORT TITLE OF THIS ACT).

Appendix 3: Remarks by Auditor General Bonnie Lysyk to the Standing Committee on Justice Policy on Bill 132 *Ontario Fair Hydro Plan Act, 2017*

Office of the Auditor General of Ontario
Bureau de la vérificatrice générale de l'Ontario

Remarks by Auditor General Bonnie Lysyk to The Standing Committee on Justice Policy on Bill 132 *Ontario Fair Hydro Plan Act, 2017*

May 24, 2017

Good morning. I'm Bonnie Lysyk and I'm the Auditor General of Ontario. Thank you for letting me comment on Bill 132.

It is not the job of the Auditor General to comment on government policy. The government's decision to borrow money to lower hydro bills by 25% is a policy decision, and so I have no comment on it.

However, when it comes to the accounting for such a decision, it is my responsibility to make sure that it is properly recorded in the consolidated financial statements of the Province and is transparently reported to the people of Ontario. And this is why I am here today.

The accounting transaction is structured in a complex manner. In simple terms, the government plans to record as an asset the expected recovery of the 25% in electricity costs from future ratepayers that it will borrow for and pay to power producers today. In essence, it is setting up as an asset an accounts receivable that it expects to collect from future ratepayers between 2022 and 2047 that is not yet an accounts receivable because the consumer has not yet used the electricity.

A similar move to legislate accounting to defer costs was proposed with the restructuring of the Ontario electricity sector in the late 1990s. At that time, the government did not want the net impact of the stranded debt, which had already been incurred, to be reflected on the Province's financial statements. Because it anticipated that ratepayers would pay down this debt, it wanted to create an asset to reflect those future anticipated revenues from electricity ratepayers. This approach would have fully offset the total stranded debt, such that there would have been no net debt impact reflected on the Province's consolidated financial statements. The Auditor General's opinion, as stated in our Office's 2000 Annual Report, was that this [quote] "would have set an unacceptable precedent for government accounting. It would also have represented a departure from one of the central tenets of generally accepted accounting principles—that revenue not be recognized until it is earned." [end quote] The government heard these concerns and was prudent in making the decision to not create an asset for future anticipated ratepayer payments. I believe those concerns are equally applicable today.

The government of today plans to borrow about $26 billion to cover the 25% shortfall from ratepayers, but it does not want to reflect the overall impact of these borrowings on the consolidated financial statements of the Province, which includes the electricity sector. It plans to record anticipated revenue as an asset to offset borrowings in its consolidated financial statements. As a result, there will be no

impact on net debt on the Province's balance sheet. As well, this legislation is designed so that there will be no impact on the Province's calculation of the annual surplus or deficit. Today, like in 2000, we believe this sets a dangerous precedent.

Let me give you an example. Snow plowing in Ontario is performed by private-sector contractors who own equipment. The contractors' bills are properly included as a government expense each year. Now, say the government decides that taxpayers are paying too much for snow plowing and points out that there is value in the snow plowing equipment beyond the term of the contracts. It could argue that it expects to negotiate significantly lower rates in future contracts and wants to defer some current snow plowing costs into the future to "smooth" these costs over time. For obvious reasons, this is not allowed under Canadian public-sector accounting standards. As we know, accounting deals with past transactions, not future ones. So to anticipate that private-sector electricity generators will reduce their costs in the future and to use legislation to make this potential future benefit an asset is also not allowed under Canadian public-sector accounting standards.

So what's the bottom line? I would not be doing my job as Auditor General if I said that creating assets through legislation is acceptable. Under this Bill, the government's policy decision to borrow money to subsidize electricity bills will not affect the Province's net debt or annual deficit. This legislated accounting is not in accordance with Canadian public-sector accounting standards. These standards are there to ensure that the financial reporting of government policy decisions reflects common sense: borrowings are debt; unearned revenue is not an asset today; and when your expenses exceed your revenues, you incur a deficit. Such common sense and the principle of substance over form should prevail in the financial reporting of government policy decisions.

I now welcome any questions you might have.

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Appendix 4: Legislated Accounting Included in Bill 132, Including the Proposed *Ontario Fair Hydro Plan Act, 2017* (Submission to Standing Committee on Justice Policy May 25, 2017)

Office of the Auditor General of Ontario
Bureau de la vérificatrice générale de l'Ontario

Legislated Accounting Included in Bill 132, Including the Proposed *Ontario Fair Hydro Plan Act, 2017*

Submission to Standing Committee on Justice Policy

May 25, 2017

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Introduction[1]

It is not the role of the Auditor General to comment on government policy. The government's intent to borrow money to lower hydro bills by 25% is a policy decision, and therefore we have no comment on this. The purpose of this submission is to highlight our concerns about the accounting implications of the proposed Act. Through Bill 132 and its proposed *Ontario Fair Hydro Plan Act, 2017* (the proposed Act), the government is planning to provide a 25% price reduction to certain electricity consumers (ratepayers), while at the same time showing no, or minimal, effect on the annual operating results and financial position of the Province.

Legislated accounting prescribed by the proposed Act is designed to produce the following impacts on the Province's consolidated financial statements:

(1) an increase in provincial borrowings for a portion of the debt needed to fund the 25% electricity price reduction;

(2) an increase in the Province's investment in Ontario Power Generation (OPG), funded by provincial borrowings;

(3) no increase in provincial net debt as a result of the offset between (1) and (2) above;

(4) no expense impact on the Province's annual deficit; and

(5) an increase in revenues in the Province's consolidated financial statements from OPG for interest and fees that it received through OPG Trust.

The proposed Act legislates the creation of a deferred asset account in the Independent Electricity System Operator's (IESO) books. This deferral account would track the cost paid to contracted power

[1] This analysis uses information from Bill 132, the Financial Accountability Office of Ontario's Spring 2017 report titled *An Assessment of the Fiscal Impact of the Province's Fair Hydro Plan*, and applicable Canadian Public Sector Accounting Standards as at the date of this submission.

generators in excess of the amount recovered from electricity consumers (ratepayers) for electricity used. Payments to generators are currently being fully recovered from ratepayers on an ongoing basis.

The reduction of ratepayer bills by 25% results in a cash shortfall that will need to be covered by IESO. As a result of the 25% reduction in ratepayer bills, IESO will need a source of cash to pay the contracted power generators in accordance with the terms of their contracts. Potential sources of cash to finance this shortfall could be the sale of an asset, and debt. IESO has no assets to sell with respect to these contracts, as the generating equipment belongs to the third-party power generators, thereby removing the sale of assets as a source for cash. The proposed Act puts in place a debt-financing structure in order to flow cash to IESO, but the financing structure would show no increase in the Province's net debt.

In order to avoid recording an increase in net debt on the Province's consolidated financial statements, the proposed Act will create a legislated asset, representing IESO's cash shortfall. This legislated asset does not meet the definition of an asset under Canadian Public Sector Accounting Standards (PSAS). IESO does not control the future power generation of the third-party generators or the future benefit of the generating equipment past the term of the contracts. Moreover, IESO is not engaging in rate-regulated activities, and the contracts under its administration were never subject to rate regulation.

The proposed Act outlines that the legislated asset will be sold by IESO on a monthly basis to a "financing entity" (which it proposes will be OPG Trust, to be set up in accordance with subsection 22 (2) of the proposed Act) to be created by the "Financial Services Manager" (OPG, as appointed by section 18 of the proposed Act). The asset to be sold is the loss or the cash shortage that IESO will experience as a result of collecting less money from ratepayers through the local distribution companies, while still paying 100% of the amounts owed to the third-party power generators under contract. OPG Trust will purchase the legislated asset on a monthly basis, using cash sourced from a mix of provincial borrowing flowed through OPG, amounts advanced from OPG's debt, and direct borrowing from capital markets.

Proposed Legislated Transaction Structure
Prepared by the Office of the Auditor General of Ontario

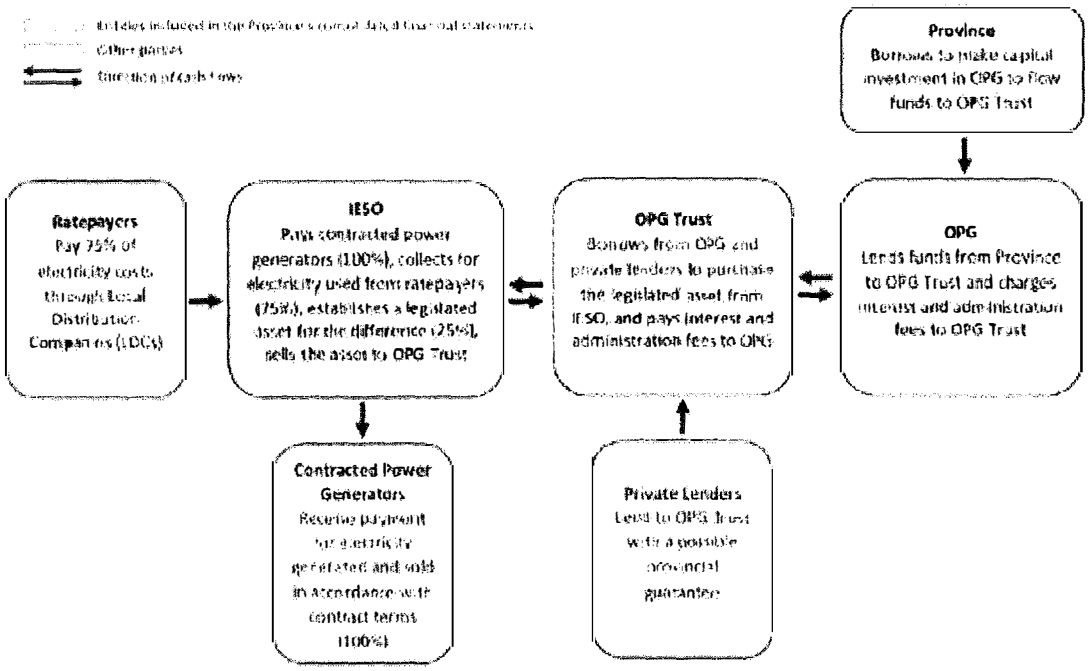

Illustration of Legislated Accounting Prescribed in the Proposed Act

The following illustrates how the proposed legislated accounting would impact the various entities that are included in the Province's consolidated financial statements.

For simplicity, we assume the following:[2]

- Ratepayer bill is $400, and the related 25% reduction is $100.
- The Province directly borrows 44%, or $44, to make an equity contribution to OPG, which OPG then loans to OPG Trust.
- OPG directly borrows 5%, or $5, and loans it to OPG Trust.
- OPG Trust directly borrows 51%, or $51, from capital markets.
- OPG controls OPG Trust for accounting purposes.

[2] These assumptions were chosen to make it easier to follow the transaction flow. Actual rates and percentages are yet to be determined.

IESO

IESO pays the contracted power generator $400 for electricity used by the ratepayer, collects $300 from the ratepayer through their local distribution company (LDC), and sets up a legislated asset of $100 for the recovery shortfall. IESO sells the legislated asset to OPG Trust for $100 to obtain cash to make up the shortfall. These amounts net to zero and therefore show no accounting impact for the recovery shortfall on IESO's bottom line once all of the transactions have been settled in cash.

OPG Trust

OPG Trust records $49 ($44 + $5) borrowed from OPG as a "Due to OPG" (loan payable) and $51 borrowed from private lenders as long-term debt. OPG Trust purchases the legislated asset from IESO for $100 and records it as an Intangible Asset. OPG Trust incurs administration fees paid to OPG and interest expense. These costs are added to the Intangible Asset balance.

OPG

OPG records $44 from the Province as an increase in equity and cash. OPG borrows $5 from its credit facilities. OPG lends $49 to OPG Trust and records a loan receivable from OPG Trust. OPG also records administration fee revenue per its agreement with OPG Trust. OPG earns administration fees and interest revenue from OPG Trust and incurs an interest expense.

OPG's Consolidated Results, Including OPG Trust

OPG's consolidated balances reflect an Intangible Asset of $100, a Loans Due to OPG/Loans Due from OPG Trust of $0 (due to intercompany elimination upon consolidation), an Equity increase of $44 from the Province, a Long Term Debt increase of $56, plus income relating to administration fees and net interest earned.

Province's Consolidated Financial Statements

There is no effect on the Province's net debt, as the Province's $44 of debt is offset by the Province's $44 increased investment in OPG. There is no annual expense effect on the Province's surplus or deficit from the consolidation of IESO due to the creation of the legislated asset. This is because the legislated asset closes the gap between the amount IESO pays to third-party power generators and the amount it collects from ratepayers. However, the Province's annual deficit is lowered by the amount of administration fees and net interest revenue earned by OPG.

Illustration Using Canadian Public Sector Accounting Standards

The following illustrates how the application of the Canadian Public Sector Accounting Standards would impact the various entities that are included in the Province's consolidated financial statements.

For simplicity, we make the same assumptions as in the previous section, that is:[3]

- Ratepayer bill is $400, and the related 25% reduction is $100.
- The Province directly borrows 44% to make an equity contribution to OPG, which OPG then loans to OPG Trust
- OPG directly borrows 5% and loans it to OPG Trust.
- OPG Trust directly borrows 51% from capital markets.
- OPG controls OPG Trust for accounting purposes.

IESO

IESO pays the contracted power generator $400 for electricity used by the ratepayer, collects $300 from the ratepayers through their local distribution company (LDC), and records $100 in expenses for the

[3] These assumptions were chosen to make it easier to follow the transaction flow. Actual rates and percentages are yet to be determined.

recovery shortfall. OPG Trust loans IESO $100 to make up the shortfall. IESO records $100 as Due to OPG Trust (loan payable) and shows an annual deficit of $100 resulting from the recovery shortfall.

OPG Trust

OPG Trust records $49 ($44 + $5) borrowed from OPG as a "Due to OPG" (loan payable) and $51 borrowed from private lenders as long-term debt. OPG Trust lends $100 to IESO and records this as a Due from IESO (loan receivable). OPG Trust incurs administration fees paid to OPG and pays an interest expense to OPG and private lenders. These amounts are expensed in OPG Trust's financial statements.

OPG

OPG records $44 from the Province as an increase in equity and cash. OPG borrows $5 from its credit facilities. OPG lends $49 to OPG Trust and records a loan receivable from OPG Trust. OPG also records administration fee revenue per its agreement with OPG Trust. OPG earns administration fees and interest revenue from OPG Trust and incurs an interest expense.

OPG's Consolidated Results, Including OPG Trust

OPG's consolidated balances reflect a "Due from IESO" of $100, a Loans Due to OPG/Loans Due from OPG Trust of $0 (due to intercompany elimination upon consolidation), an Equity increase of $44 from the Province, a Long Term Debt increase of $56, plus income related to administration fees and net interest earned.

Province's Consolidated Financial Statements

The Province's net debt and annual deficit increase by $100 as a result of the consolidation of IESO. This reflects the expenses that IESO incurs from the shortfall between what it collects from the ratepayer through their local distribution company and what it pays to the contracted power generator. It also

reflects IESO's loan payable balance for the cash borrowed by IESO from OPG Trust to fund the cash shortfall.

There is no effect on the Province's net debt from the consolidation of OPG. The $44 borrowed directly by the Province to provide equity funding to OPG is offset by a $44 increase to the Province's investment in OPG.

However, flowing provincial cash through a Government Business Enterprise (such as OPG) to lend to an Other Government Organization (such as IESO) is unusual. Under Canadian Public Sector Accounting Standards (PSAS), this flow would result in net debt being $100 higher (comprised of $144 in total debt offset by the Province's $44 investment in OPG) and total debt being $144 higher (comprised of the $100 IESO loan payable to OPG Trust, along with the $44 in provincial debt raised to fund the investment in OPG). Under PSAS, intercompany transactions between the Province and Government Business Enterprises are not eliminated upon consolidation. Therefore, the Province's $44 investment in OPG is not eliminated against the increased $44 equity balance reported in OPG's financial statements. This $44 anomaly will need to be addressed further. In addition, by flowing cash through OPG, the Province's annual deficit is lowered by the amount of administration fees and net interest revenue earned by OPG.

If the Province were to borrow directly, as is generally done, the total debt and net debt increase would be $100. As well, the Province's annual deficit would not be lowered by the amount of administration fees and net interest revenue earned by OPG.

Conclusion

Legislating the accounting treatment of a government policy does not necessarily mean that the impact of the policy decision will be fairly reflected in the Province's consolidated financial statements.

Accordingly, the Office of the Auditor General of Ontario will always provide an audit opinion to the Legislature and the citizens of Ontario based on whether the Province's consolidated financial statements fairly present Ontario's annual results and financial position in accordance with Canadian Public Sector Accounting Standards.

Appendix A: Overall Government Response

The government of Ontario does not agree with the assertions and conclusions expressed in the report by the Office of the Auditor General (OAG) on *Ontario's Fair Hydro Plan (OFHP)*.

OFHP is delivering the single-largest reduction in electricity rates in the province's history. In developing OFHP, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed. OFHP operates under a financial and accounting framework that is appropriate for the intended purpose and in accordance with Public Sector Accounting Standards (PSAS) and ensures that the fairness goals underlying the program are achieved in a cost-effective manner.

The government has been making important investments in a cleaner and more reliable energy system, but these investments have led to higher electricity bills. OFHP has introduced new measures to lower electricity bills by 25% on average for residential consumers and will hold increases to the rate of inflation for four years. As many as half a million small businesses and farms are also benefitting from a reduction.

Since 2003, nearly $70 billion has been invested in the electricity system, including more than $37 billion in electricity generation to ensure the system is clean and reliable. The majority of the province's electricity generators operate under 20-year contracts. Despite the report's assertion that it is "not at all" certain if these generating assets will be operating beyond their contract lives, third-party experts have confirmed that many of these generators will be able to continue to operate. This means that generating assets are expected to have ongoing useful life and benefit future ratepayers by reducing the need to finance the development of new generating assets.

The Global Adjustment (GA) pays for the bulk of the recent investments in the electricity system. Refinancing the GA provides significant and immediate rate relief by matching the cost of electricity investments with the expected useful life of the generation that has been built. Despite the report's assertion that the government's intention was to avoid recording a deficit in the fiscal plan, the decisions made to implement GA refinancing most effectively achieves the goals of the refinancing program and ensures that the deferred costs are borne by the rate-base, as the beneficiaries of the electricity system, and not the tax-base. The accounting for this transaction will reflect the substance of this transaction.

With respect to the Province's financial statements, they are prepared in accordance with Canadian PSAS and will follow PSAS in accounting for the transactions resulting from OFHP in 2017-18 as well as in the following years. As PSAS is set by an independent standard setting body in Canada focused specifically on the public sector, and because PSAS is used by all senior governments in Canada, presenting its financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.

The government of Ontario also disagrees with two fundamental accounting assertions in the report related to legislated accounting and rate-regulated accounting:

- Legislated Accounting—The *Ontario Fair Hydro Plan Act, 2017* and its related regulations do not create accounting rules or legislate the accounting. This is a fundamental disagreement with the report. As previously noted, the Province will prepare its consolidated financial statements in accordance with PSAS.
- Rate-Regulated Accounting—In commenting on the use of rate-regulated accounting and the role of the Ontario Energy Board (OEB), the report makes reference to a requirement under U.S. accounting standards in connection with the use of rate-regulated accounting

that "there must be an independent regulator." This reference is misleading as it does not provide the criteria in its entirety, which is as follows:

> *The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator* ***or by its own governing board empowered by statute or contract to establish rates that bind customers*** *[ASC 980-10-15-2].*

The U.S. accounting standard was developed specifically not to preclude the application of rate-regulated accounting by government utilities where the rate regulator would not necessarily be viewed as independent [FAS 71, par. 64]. In addition, the position that rate-regulated accounting is precluded because the OEB is not considered independent of the government of Ontario is contradictory to accepting the use of rate-regulated accounting by Ontario Power Generation (OPG) and Hydro One, both regulated by the OEB and whose results, using rate-regulated accounting, are and have been included in the consolidated financial statements of the Province.

The OFHP is comprised of a series of policy decisions, some of which will be borne by taxpayers where appropriate, such as sales tax relief and shifting social programs to the tax base, and some will be borne by ratepayers, such as spreading the investment costs and benefits across ratepayers more fairly. The accounting will reflect the economic substance of the transactions in accordance with PSAS and will differentiate those costs of OFHP borne by taxpayers vs. those borne by ratepayers. The report appears to suggest that all costs of OFHP should be reflected as if they will be borne by taxpayers, which is inaccurate.

OPG is beginning the process of raising funds to finance the deferred costs, and while total borrowing costs will not be known until the program is complete, accumulated interest is projected to be considerably less than the estimates in the report of the Financial Accountability Office (FAO), cited by the report. Total borrowing estimates over the thirty year life of the program have been revised down substantially by the government since the FAO released its report in May 2017 and borrowing costs are now forecast to be substantially lower than original estimates. Current government estimates forecast that the peak debt over the thirty year life of OFHP will be below $20 billion. The preliminary estimate from March 2017 was about $28 billion.

Based on the comments above, and given that implementation of OFHP is ongoing with significant accounting and financing decisions still being finalized, the government believes that this report does not reflect the technical substance of the OFHP, some of which has yet to be implemented.

Appendix 6: Independent Auditor's Report

Office of the Auditor General of Ontario
Bureau de la vérificatrice générale de l'Ontario

INDEPENDENT AUDITOR'S REPORT

To the Legislative Assembly of the Province of Ontario

I have audited the accompanying consolidated financial statements of the Province of Ontario, which comprise the consolidated statement of financial position as at March 31, 2017, and the consolidated statements of operations, change in net debt, change in accumulated deficit and cash flow for the year then ended, and a summary of significant accounting policies and other explanatory information.

Management's Responsibility for the Consolidated Financial Statements

The Government of Ontario (Government) is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with Canadian public sector accounting standards, and for such internal control as the Government determines is necessary to enable the preparation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

My responsibility is to express an opinion on these consolidated financial statements based on my audit. I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Government, as well as evaluating the overall presentation of the consolidated financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my qualified audit opinion.

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Basis for Qualified Opinion

Net Pension Asset Overstated, Annual Deficit Understated, Net Debt Understated and Accumulated Deficit Understated

As described in Note 16a to these consolidated financial statements, a net pension asset is recorded on the Consolidated Statement of Financial Position relating to the Ontario Teachers' Pension Plan and the Ontario Public Service Employees' Union Pension Plan. However, the Government does not have the unilateral legal right to use this asset because its ability to reduce future minimum contributions or withdraw any pension plan surplus is subject to agreement with the respective pension plans' joint sponsors. Canadian public sector accounting standards require the Government to record a valuation allowance against this asset.

The Government did not record a valuation allowance for this net pension asset at March 31, 2017. The Government also retroactively restated the March 31, 2016 comparative figures to exclude the valuation allowance previously included in the prior year's consolidated financial statements. This departure from Canadian public sector accounting standards has led me to express a qualified opinion on the consolidated financial statements for the year ended March 31, 2017 and on the March 31, 2016 comparative figures.

The recommendations of the Government's appointed Pension Asset Advisory Panel are not an authoritative source on the application of Canadian public sector accounting standards as implied in Note 16a to these consolidated financial statements.

Effect on Consolidated Statement of Operations

If the Government had correctly recorded the valuation allowance against the net pension asset for the Ontario Teachers' Pension Plan and the Ontario Public Service Employees' Union Pension Plan, the effect on the consolidated statement of operations for the years ended March 31, 2017 and 2016 would have been as follows:

	2017 ($ million)	2016 ($ million)
Annual deficit as presented	(991)	(3,515)
Effect of valuation allowance on:		
• Education expense	(1,364)	(1,480)
• General Government and Other expense	(80)	(351)
Annual deficit in accordance with Canadian public sector accounting standards	**(2,435)**	**(5,346)**

Effect on Consolidated Statement of Financial Position

If the Government had correctly recorded the valuation allowance against the net pension asset for the Ontario Teachers' Pension Plan and the Ontario Pubic Service Employees' Union Pension Plan, the effect on the consolidated statement of financial position as at March 31, 2017 and 2016 would have been as follows:

	2017 ($ million)	2016 ($ million)
Net pension asset as presented	11,033	9,312
Effect of valuation allowance	(12,429)	(10,985)
Net pension liability in accordance with Canadian public sector accounting standards	**(1,396)**	**(1,673)**

	2017 ($ million)	2016 ($ million)
Net debt as presented	(301,648)	(295,372)
Effect of valuation allowance	(12,429)	(10,985)
Net debt in accordance with Canadian public sector accounting standards	**(314,077)**	**(306,357)**

	2017 ($ million)	2016 ($ million)
Accumulated deficit as presented	(193,510)	(192,029)
Effect of valuation allowance	(12,429)	(10,985)
Accumulated deficit in accordance with Canadian public sector accounting standards	**(205,939)**	**(203,014)**

Inappropriate Consolidation of Independent Electricity System Operator (IESO) Market Accounts

As described in Note 16c to these consolidated financial statements, the IESO changed its accounting policy and applied it retroactively to recognize market account assets and liabilities. The market accounts track mainly buy and sell transactions between market participants (electricity power generators and power distributors). These market accounts, as recorded on the Province of Ontario's consolidated financial statements are not assets and liabilities of the Province of Ontario. The Government has no access or discretion to use the market account assets for their own benefit, nor does the Government have an obligation to settle the market account liabilities in the event of default by market participants. As a result, Other Assets and Other Liabilities are both overstated by $1.652 billion (2016 – $1.443 billion). There is no effect on the Consolidated Statement of Operations.

Qualified Opinion

In my opinion, except for the effects of the matters described in the Basis for Qualified Opinion paragraphs, the consolidated financial statements present fairly, in all material respects, the consolidated financial position of the Province of Ontario as at March 31, 2017, and the consolidated results of its operations, change in its net debt, change in its accumulated deficit and its cash flows for the year then ended in accordance with Canadian public sector accounting standards.

Other Matters

Use of Rate-regulated Accounting May Cause a Material Misstatement on the Consolidated Financial Statements of the Province of Ontario

I draw attention to Note 16c to these consolidated financial statements, which describes the Independent Electricity System Operator's retroactive adoption of rate-regulated accounting during the year. The recognition of rate regulated assets on the consolidated financial statements of the Province of Ontario is not permitted when applying Canadian public sector accounting standards. This departure does not have a material impact on the Province of Ontario's consolidated financial statements for the year ended March 31, 2017 and my opinion is not modified in respect of this matter. However, the consolidated financial statements may become materially misstated in future periods, as a result of the legislated accounting prescribed under the *Ontario Fair Hydro Plan Act, 2017* (Fair Hydro Plan) and its related regulations as it is not in accordance with Canadian public sector accounting standards.

Financial Statement Discussion and Analysis

I draw attention to the Province of Ontario's Financial Statement Discussion and Analysis that discusses the Province of Ontario's financial results without properly reflecting the valuation allowance required in respect of the net pension asset and the recognition of market accounts, as discussed in the Basis for Qualified Opinion paragraphs above.

Toronto, Ontario
August 18, 2017

Bonnie Lysyk, MBA, CPA, CA, LPA
Auditor General

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June 10, 2019

The Hon. Caroline Mulroney
Minister of Attorney General
11th Floor, 720 Bay Street
Toronto, ON
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Dear Minister:

This letter is meant to bring to your attention what I consider serious breaches of our Canadian democracy as implemented by one or more senior cabinet ministers in the years 1996 through 2001. Many of the breaches of the latter years are impacting on the situation as it exists today.

I want it made emphatically clear that the current government is not responsible in any way for matters of the past. Please recognize that I am in advanced years and my writing skills are not what they used to be hence I apologize for the length of this communication.

Canadians at large, especially our Provincial Lieutenant Governor and myself, strongly believe that no issue in government that adds to the destruction of the integrity of our Canadian democracy should be left unchecked which is why I am writing this letter.

Our Lieutenant Governor The Hon. Elizabeth Dowdeswell must take a great deal of credit for devoting three rooms of her suite at Queen's Park for the postings of "Speaking of Democracy". Close to twenty-four heads of democratic nations, former Canadian Governor Generals, Head Justices and Justices of the Supreme Court of Canada and a number of people of note stated their comments on the topic of democracy in the postings. I had the distinct pleasure of attending the presentation on May 9, 2019. I am attaching a copy of her hand out Speaking of Democracy that you may care to distribute to your staff. The exhibition can be viewed at http://arts.lgontario.ca/democracy-democratie.

Before addressing the main topics of what I and others consider a serious provincial breach of our Canadian democracy I must first give some background history: The year is 1897 nine years before the Legislature created the Hydro Electric Power Commission of Ontario (HEPC). Two industrial men of vision convinced the then Orillia town council that Orillia could become a magnet to attract industry and give their citizens access to the electricity convenience in their homes and businesses. The Council of the day were then convinced to now seek the approval of the Legislature for authority to borrow the monies required to build such a project. The legislature gave credit for this early vision but also expressed that the borrowed money as requested for a project of this nature would likely be twice the money so requested hence placed some conditions. The main condition was that the town call a plebiscite / referendum for their approval of their citizens to build a dam and

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power generation plant at Ragid Rapids on the Severn River and transport the electrical energy 18 miles to Orillia.

No municipal owned utility on the continent had ever transported electrical energy over that vast distance and it was not sure if it was possible. The peoples referendum took place in 1898 and past by a large majority. The construction started in 1899. Key industrialists agreed to back any over-run from the figures approved conditional on two things – that rates set to the electrical consumers were the only pay back against the debt incurred and that the council would leave the utility in tack and not use the utility to off-set the tax base of the town. Both of which were agreed to.

The first electrical energy flowed to Orillia in January of 1902 – 117 years ago. During the construction stage the people of Orillia banded together from all areas of the town to give much needed volunteer labour related to the clearing and grubbing on the transmission line right away as well as digging of the post holes for the transmission line and as well as supplying approximately thirty horses together with their feed. The wives of the volunteers supplied sandwiches and pies and other food to the workers. The names of the volunteers were posted in areas of the Main Street and some merchants gave price reductions on their merchandise to those community minded volunteers.

Orillia was given the distinct honour as being the first municipally owned utility to then pioneer long distance transmission of electrical energy and after that happening a dozen of the municipal entities in the province said why not us. Niagara Falls was the biggest single source of hydro electricity potential but these rights to electricity were then held in private hands.

The year is now 1911 and it was discovered that the council had been dipping into the new utility revenue by depleting some contingency and reserve funding so as to supplement the general revenue account to show that the council were doing a great job to hold the line on tax increases.

The industrialist and most of the electrical consumers were livid with this breach of promise. Key industrialists which included two members of parliament, Orillia's J.B. Tudhope and London's Adam Beck who attended at the Premiers Office at the legislature with a deputation from Orillia. The sitting Premier Sir James Whitney then gave his assurance that if the question was to go back to the Orillia electorate in a formal referendum the Province would back the outcome.

The 1912 Council election was what people referred to as the Electricity Council. The new 1912 Council composed the appropriate by-law (557) to be voted on in 1913 to now create a separate Municipal Corporation independent of Town Council to administer and manage the utility free of all council interference. The vote for this separation was carried by 62% of the eligible electors supporting it.

Months after the Orillia vote the legislature brought into law the first Public Utilities Act. The Act totally supported the rights of the electorate who decided the referendum issue. The Public Utilities Act was ascended to on the 6th of May 1913 and stayed in place with amendments for the next 87 years. Two years after the Orillia referendum the new HEPC made a large financial offer to the town council to purchase the Orillia utility so a mandatory third referendum was called and the sale was defeated by a large majority.

The year is 1915 and the Provincial Legislator passed into law the Town of Orillia Act which reads in part:

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"The legislature of the Province of Ontario passed the 1915 Town of Orillia Act and section 11(1) of the Act merely confirms the aforementioned.

"11(1) – subject to subsection 2, all the powers, rights and privileges with regard to the government of the Orillia Power Transmission plant or the generation, distribution and sale of electrical power and light heretofore or hereafter granted by any special Acts to the council or Corporation of the Town of Orillia shall, WHILE THE BYLAW APPOINTING SUCH COMMISSION REMAINS IN FORCE, BE EXERCISED BY THE ORILLIA WATER, LIGHT AND POWER COMMISSION, AND NOT BY THE COUNCIL OF THE CORPORATION."

(2) Nothing contained in this section shall divest the council of its authority with reference to providing the money required for such works, and the treasurer of the municipality shall, upon the certificate of the Commission, pay out any money so provided."

The year is now 1996 and now comes **a sad day for the integrity of democracy** with an absolute betrayal of the citizens of Orillia and other like municipalities when one or more provincial elected cabinet ministers secretly inserts a clause on a brand new 225 page document of legislation described as an act to achieve fiscal savings and promote economic prosperity through public sector restructuring, streamlining end efficiencies and to implement other aspects of the government's economic agenda (the short title of this act is the Savings and Restructuring Act 1996).

Our provincial leadership elite may still want to believe in abiding by democratic principles – they certainly profess that they do. In the case of electricity legislation, a small minority have shown themselves all too willing to violate their principles to gain or retain a certain power. So, in this new conspicuous act, certain draconian elected people secretly inserted a single clause to try to reverse the electoral power of the people of Orillia and possibly other like municipalities who democratically cast their vote in a dually called legal referendum to keep the people's municipal controlled ownership by their elected representatives free of council involvement.

This oligarchy insertion into the new Savings and Restructuring Act Schedule M, Chapter 1, Item 33, page 172 introduces the following:

33. The Public Utilities Act is amended by adding the following section:

By-law waiving the assent of the electors **67. (1) A municipal corporation may pass a by-law to eliminate the requirement to obtain the assent of the electors before the corporation exercises a power under this Act.**

Exception **(2) Subsection (1) does not apply to a municipal corporation exercising its power with respect to natural gas.**

The insertion of this clause if legal would be a certain slap in the face of our Canadian Constitution and betrayal of our Canadian Democracy and of the rights and freedoms of its citizens and represents a serious breach of other legislation in place. This single clause is a betrayal of the absolute commitment and

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promise given Orillians and the legislation that was put in place to protect their municipal utility as voted on by the Orillia electorate.

I am not a lawyer but strongly believe in Canadian democracy and the rule of law and the work of our leaders in the definition of the importance of **citizen involvement and transparency** in the making and enforcement of this principal **of our Democracy. I am extremely proud of our Ontario Lieutenant Governor The Hon. Elizabeth Dowdeswell for posting the democracy material for display in three rooms of her legislative suite open for public viewing.**

One of the displays that I think appropriate is The Honourable Rosalie Abella Justice of the Supreme Court of Canada. Her quote from the Lieutenant Governor's handbook reads as follows: (The biography of Rosalie Abella is attached for your viewing.)

> ***"For me, the components of democracy are most starkly revealed in comparison to its antonym, totalitarianism. What democratic societies promote – and repressive ones do not – are the rights of its citizens and their participation in decision-making about the rules they will be governed by. Democracy promotes choice, voice and access to rights. Totalitarianism promotes none of those."***

As previously mentioned where a draconian senior elected member of the legislature manages to insert Section 67(1) that is completely opposite to Section 45(1).

> **45.-(1) The council may, by by-law passed with the assent of the municipal electors, repeal any by-law passed under sections 38, 39 and 40.**

Section 45(1) of the Public Utilities Act remained intact until December of 2001. Certainly there was a conflict in this legislation that may or may not have been intentional. For my belief Section 67(1) did not over-rule the promises made by Sir James Whitney and the supported role of Orillia's electorate on the two previous referendums nor did it over-ride the 1915 Town of Orillia Act and is certainly **in conflict with our Canadian democracy.**

The City of Orillia senior staff jumped on the situation that 67(1) took away the legal requirement to go back to its electorate for any changes or amendments to By-law 557. **This process, if it were legal, would be the biggest slap in the face to Canadian democracy ever enacted in Ontario which took away the rights of the Orillia electorate and totally breached Canadian democracy principles.** City By-law 2000-145 is attached using Section 67(1).

The next breach of democracy in my opinion comes in what is called the Electricity Act 1998 under Section 142 and is included on the next page.

The Orillia Electricity Corporation (Commission) came into existence prior to the Public Utilities Act and operated as an independent entity for fifty years selling a portion of its power to HECP. The Orillia Power Corporation (Commission) by legislation had the legislative authority to operate in multiple townships together with the authority to operate within a 25 mile radius of Orillia. This utility had the respect of all townships it operated in. The citizens of Orillia shared the pride in its municipal ownership separate and apart from the town or city. The Electricity Act gave no recognition of this and was stacked for a separate provincial purpose.

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Section 142 of The Electricity Act 1998

Incorporation of municipal electricity businesses

142. (1) One or more municipal corporations may cause a corporation to be incorporated under the *Business Corporations Act* for the purpose of generating, transmitting, distributing or retailing electricity. 1998, c. 15, Sched. A, s. 142 (1).

Holding companies

(1.1) A corporation that one or more municipal corporations caused to be incorporated under the *Business Corporations Act* after November 6, 1998 and before May 2, 2003 to acquire, hold, dispose of and otherwise deal with shares of a corporation that was incorporated pursuant to this section shall be considered to be a corporation incorporated pursuant to this section. 2004, c. 31, Sched. 11, s. 7.

Conversion of existing electricity businesses

(2) Not later than the second anniversary of the day this section comes into force, every municipal corporation that generates, transmits, distributes or retails electricity, directly or indirectly, shall cause a corporation to be incorporated under subsection (1) for the purpose of carrying on those activities. 1998, c. 15, Sched. A, s. 142 (2).

Two or more municipal corporations

(3) Two or more municipal corporations may incorporate a single corporation for the purpose of complying with subsection (2). 1998, c. 15, Sched. A, s. 142 (3).

Ownership

(4) The municipal corporation or corporations that incorporate a corporation pursuant to this section shall subscribe for all the initial shares issued by the corporation that are voting securities. 1998, c. 15, Sched. A, s. 142 (4).

Same

(5) A municipal corporation may acquire, hold, dispose of and otherwise deal with shares of a corporation incorporated pursuant to this section that carries on business in the municipality. 2002, c. 1, Sched. A, s. 30.

Not a local board, etc.

(6) A corporation incorporated pursuant to this section shall be deemed not to be a local board, public utilities commission or hydro-electric commission for the purposes of any Act. 1998, c. 15, Sched. A, s. 142 (6).

(7) Repealed: 2004, c. 23, Sched. A, s. 57.

As a 19 year member of the elected Board of Directors a portion of which I Chaired I was aware that certain clauses existed in this legislation particularly the clauses that pertained to creating new corporations acting under the Corporations Act from the existing Corporation Orillia Water Light and Power Corporation (Commission). The elected Board of Directors had at this point never seen the written legislation or were ever told that the legislation would give the council alleged rights to sell Orillia's cherished electricity asset that had

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served Orillians for 98 years and had over periods of time the cheapest electricity rates in North America, cheapest in all of Canada and for most of its existence the cheapest rates in Ontario which of course included HEPC.

It was fourteen years later when there was a rumour coming from an Orillia Council member that the Council was considering selling the Orillia Water Light and Power Corporation. The writer then started to investigate the behind the scenes tactics and copies of legislation, by-laws, meeting minutes of council and other relevant documents that represents **in my opinion** municipal treason of its citizens and the betrayal of all the Orillia electrical consumers. **This situation is a complete breach of our Canadian Democracy**. We as the elected Board members were told that the transfer to a new corporation would require at minimum a transfer document or bill of sale signed and approved by resolution under the corporate seal of the Orillia Water Light & Power Corporation (Commission). None of these transfer documents were ever placed before the Board of Directors **(attached is a Sworn Signed Affidavit of the Commission Board of Directors).**

The legislature in this situation appears to not care about Canadian democracy and the removal of all transparency as shown in S.253(2) of the Ontario Municipal Act, Part VI attached. The move to new corporations may satisfy the lobby groups, unions and others but it now allows hydro corporations as well as municipal hydro corporations to operate in **complete secrecy** with no more newspaper articles against the workings of the provincial owned former Ontario Hydro or other utilities. **Freedom of information is no longer legally available and all transparency is a thing of the past.** The new corporations can or must now pay dividends, however no longer to the consumers but now to the alleged new owners controlled by City Council. The corporations can now create debt on the books where there was no debt (in Orillia's case there was a large surplus). The new corporations can now pay massive interest on this alleged new debt to the city coffers **without the knowledge of probably 99% or greater of all the electrical consumers**.

Orillia that has a disproportion number of poor and people on low or fixed income particularly seniors that need help to meet rent and food. Orillia has approximately 13,400 electrical metered customers. High electricity billing that includes interest on the new corporations debt together with the exceptionally high dividends paid to the city eats heavily on the income for many particularly in the winter months where they must substitute food costs for heat.

With the new corporations the City Council now is permitted to extract massive amounts of money from electrical consumers (in the private sector this could be easily called extortion or loan sharking).

In the non-electrical charges the new corporations reporting to City Council extract between 1.3 million dollars to 1.6 million dollars in what is called dividends and close to or slightly more than 1 million dollars in interest payments yearly from its electrical consumers. **The electrical consumers are barred and not permitted to pay anything against the principle of this alleged artificial debt until year 2030 at which time they will still owe the same alleged debt as they did in year 2000. The corporations pay other expenditures when requested by city officials such as paying for new roofs on city buildings and rental fees for solar panels on other city buildings and other sundry items.** ***The new corporations do not show any of the aforementioned fees on the consumer's monthly electricity bill.*** So for the roughly 2.5 million dollars that flows yearly to the city there is no figure relating to this expenditure. **However on the consumer's electricity bill the new corporations charge the electrical consumers HST.**

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For Orillians that have been electrical customers from the year 2000 to 2019 the city has extracted approximately 55 million dollars without the general people's knowledge. From the approximately 13,400 Orillia electrical consumers this money has flowed into the general revenue of the city.

The Math Excluding Electricity Kilowatts Consumed and Distribution Charges

For Orillians that have been electrical consumers from year 2000 to 2019 the City's reporting indicates a figure of 51.2 million dollars which includes roughly 6 million dollars of City contribution to the hospital and university that has flowed to the City from Orillia electrical consumers. The author questions this figure as being inaccurate or much too low. However using this figure of 51.2 million dollars and dividing this by the 13,400 metered Orillia electrical customers is equal to $3,820.90 plus **HST of $496.72** for a total of **$4,317.61** as the average all the consumers have paid to the City of Orillia over a 19 year period.

When you reflect the average figure for all consumers over a one year period the $4,317.61 is divided over 19 years. The yearly average including HST is **$227.24** per consumer.

When you take the average yearly figure of $227.24 including HST the monthly amount for the average consumer is **$18.94.**

It is fairly easy to ascertain that the people of Orillia have been grossly disadvantaged in this regard. Canadian democracy in so many cases in the aforementioned have been completely ignored and all transparency eliminated. We are in a period of deteriorating democracy and you and your Ministry are in a position to make the required changes to honour Canadian democracy and re-introduce transparency abiding by the rights and freedoms to protect the vote of the electors particularly in referendums.

I am forwarding a copy of this letter to The Hon. Elizabeth Dowdeswell, Lieutenant Governor of Ontario and the people who assisted her in assembling the display on "Speaking of Democracy" as well as the Premier of Ontario Doug Ford and our Member of Parliament Jill Dunlop.

I respectfully request a response and your help in this matter to reinforce democracy and transparency.

Respectfully Yours

Frank Kehoe

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- a draft of a by-law or a draft of a private bill (s. 6(1)(a));
- the substance of deliberations of authorized *in camera* council or board meetings, including committee meetings (s. 6(1)(b));
- advice or recommendations of an officer, employee or consultant (s. 7);*
- sensitive police data (ss. 8-8.2);
- confidential information received from other governments (s. 9);*
- trade secret or scientific, technical, commercial, financial or labour relations information received in confidence (s. 10);*
- information that would be economically damaging to the municipality or others if released (s. 11);*
- information subject to solicitor-client privilege, which would include communications between the councillors and officers on the one hand and municipal and outside lawyers on the other (s. 12);
- information whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual (s. 13);*
- personal information related to individuals other than the applicant (s. 14);*
- information already or soon to be made public (s. 15).

Note that the above exemptions marked with an asterix do not apply and disclosure is mandatory if the compelling public interest in disclosure clearly outweighs the purpose of the exemption (s. 16). The MFIPPA also sets out the procedure for making a request for information (ss. 17-23).

An investigator retained by the municipality as an independent contractor to report on the fairness of the municipality's process for tendering a particular contract was not subject to MFIPPA: *David v. Ontario (Adjudicator, Information & Privacy Commissioner)* (2006), 2006 CarswellOnt 6755 (Div. Ct.)

A company incorporated under the *Business Corporations Act* by a municipality authorized by a private act is not subject to MFIPPA: *City of Toronto Economic Development Corp. v. Ontario (Information & Privacy Commissioner)* (2006), 2006 CarswellOnt 7302 (Div. Ct.), additional reasons at (2006), 2006 CarswellOnt 8311 (Div. Ct.).

In the absence of statutory authority requiring that the Board of Commissioners of Police make information available to the public, the court has no power to so order. A police commission can best retain the confidence of the public by making available all information relating to the government and operation of a police force except that with respect to which secrecy is essential for properly carrying out the duties of such force. *Obiter:* While a news reporter, as a reporter, is not entitled to information save that which is open to any member of the public, his or her special interest in acquiring information for dissemination to the public may provide standing to prosecute proceedings to obtain information open to the public, which another member of the public might not have: *McAuliffe v. Toronto (Metropolitan) Commissioners of Police* (1975), 9 O.R. (2d) 583, 61 D.L.R. (3d) 223 (Div. Ct.).

The prohibition in the Rules of Professional Conduct against counsel for an opposing party approaching directors, officers, or persons likely involved in the decision-

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C A N A D A	)	**IN THE MATTER OF**
PROVINCE OF ONTARIO	)	
	)	ORILLIA WATER, LIGHT and POWER CORPORATION
	)	COMMISSION
	)	
	)	
	)	
	)	
	)	
	)	
TO WIT:	)	

We, GORDON A. PYE, FRANK J. KEHOE, KENNETH E. McLAUGHLIN and DANIEL K. VALLEY, all of the City of Orillia, in the County of Simcoe, **MAKE OATH AND SAY AS FOLLOWS:**

1. We the Executive and elected Board of Directors of the Municipal Corporation formally called the Orillia Water Light and Power Corporation (Commission) hereby attest that the aforementioned Municipal Corporation was established in the year 1913 by a duly called referendum vote of the eligible voting Orillia electorate.

2. The purpose of the referendum was to give complete separation from the then Town Council.

3. The election was conducted under the rules of the Election Act of the time totally conforming with Canadian democracy principles and the rights and freedoms of its voting citizens.

4. The legally established Board of Directors hereby swear that in the year 2000 key members of the Orillia Council and/or municipal staff acted in secrecy mode and improperly outside of their authority excluded the legal Board of Directors (Commission) in all matters pertaining to the formation of completely new Corporations as well as the transfer of the Municipal Corporations assets to the control of the Council of the City of Orillia.

5. We verily believe that to justify not involving the Board of Directors un-named people took it on themselves to justify their authority to exclude the standing Board of Directors.

6. We verily believe that to make this possible Commission employees took it on themselves to grossly adjust the regular meeting minutes of the Orillia Water Light & Power Commission conducted Tuesday October 10, 2000 commencing at 5 p.m.

7. We verily believe that on motion #4 moved by Kenneth E. McLaughlin, members of the OWLP staff changed the recorded vote to indicate that Frank J. Kehoe abstained which was totally untrue. The purpose of this vote was a requirement to reverse a previous vote in the meeting of September 12, 2000. It required the full Commission Executive to pass the resolution in order that the Executive could vote on the following resolution #5 "That, the Commission authorize the payment of a dividend to all of its customers as of September 30/2000. The dividend authorized is to be $1,000,000 – one million dollars distributed to existing customers based on their consumption of energy (electric) over the last 12 months. While the Commission

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recognizes the problems related to an exact calculation, the dividend shall be no less than one million dollars and not more than 1 million and fifty thousand dollars." The recorded vote passed with the exception of one Commission member opposing hence the motion was carried by four to one. The dividend however with this possible fraud did not take place even though it was duly authorized by the majority of the Executive.

8. We do verily believe that Motion #6 supposedly moved by Kenneth E. McLaughlin is a complete fraud. "Be it resolved that, the signing offices of the Orillia Water Light and Power Commission be authorized to sign and execute the "General Conveyance, Assignment and Bill of Sale" agreement attached." "Carried".

9. This motion # 6 never appeared in our meeting of October 10th, 2000 nor in any other meeting of this Commision, nor was agreed to in any way by the Board of Directors (Commissioners) and represents a monumental distortion that we as a Board consider as possible fraud.

10. We have been advised by a legal representative that under the rule of law a new corporation or corporations would require at minimum a transfer document or Bill of Sale from the existing corporation to new corporations. It is our opinion, as nobody on the Executive Board (Commission) are lawyers we fully expect that the rule of law be upheld.

SEVERALLY SWORN before me)
at the City of Orillia,)
in the County of Simcoe,)
this 21 day of May, 2019.)

Gordon A. Pye

Frank J. Kehoe

Kenneth E. McLaughlin

Daniel K. Valley

A Commissioner, etc.

70

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BY-LAW NUMBER 2000-145 OF THE CITY OF ORILLIA

A BY-LAW PURSUANT TO SECTION 67(1) OF THE PUBLIC UTILITIES ACT (ONTARIO) TO DISPENSE WITH THE ASSENT OF ELECTORS PRIOR TO DISSOLUTION OF THE ORILLIA WATER, LIGHT AND POWER COMMISSION

WHEREAS the Orillia Water, Light and Power Commission (the "Commission") was established by special legislation and is deemed to be a commission established under Part III of the Public Utilities Act (Ontario);

AND WHEREAS The Corporation of the City of Orillia (the "City") proposes to transfer the assets and undertaking under the control and management of the Commission and owned by the City to corporations incorporated pursuant to Section 142 and Section 145 of the Electricity Act, 1998 (Ontario);

AND WHEREAS upon the completion of the said transfer the Commission is no longer required.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF ORILLIA HEREBY ENACTS AS FOLLOWS:

1. THAT any requirement to obtain the assent of the electors before the City exercises its power to dissolve the Commission is hereby dispensed with and eliminated.

BY-LAW read a first, second and third time and finally passed this 16th day of October, 2000.

Maggie Buchanan
ACTING HEAD OF COUNCIL

Laura S. Lee
CLERK

MINUTES OF THE REGULAR MEETING OF THE ORILLIA WATER, LIGHT AND POWER COMMISSION HELD ON TUESDAY, OCTOBER 10TH, 2000 AT 5:00 P.M. 1038

Present: **Commission** Gord Pye - Chairman
Ken McLaughlin
Frank Kehoe
Dan Valley
Paul Spears

Staff John Mattinson - General Manager & Secretary
Pat Hurley - Treasurer
Ritchie Udell – Distribution Superintendent
Brian Burnie – Generation Superintendent
Helen Tuorila - Recording Secretary

The meeting was called to order by Chairman Pye at 5:10 p.m.

Motion #1

Moved by K. McLaughlin

"That, the minutes of the meeting of September 12th, 2000 be adopted as presented."

"Carried"

Motion #2

Moved by F. Kehoe

"That, we approve for payment, accounts for the month of September, 2000 totaling CDN $1,563,449.09."

"Carried"

Motion #3

Moved by K. McLaughlin

"That, the Commission accepts the financial statements for the month of September, 2000."

"Carried"

Motion #4

Moved by K. McLaughlin

"That, the Commission reconsider Motion #12 of September 12/2000."

Recorded Vote: Frank Kehoe – abstain
Paul Spears – "yea"
Ken McLaughlin – "yea"
Dan Valley – "yea"
Gord Pye – "yea"

"Carried"

Commission Meeting – October 10, 2000

Noted for these minutes:

At the September 12th, 2000 Commission meeting, the General Manager was asked to prepare a written report on the implications of issuing a dividend. This report was issued prior to this meeting of October 10, 2000. Prior to the passing of Motion #5, the General Manager and Treasurer of the Commission cautioned the Commissioners and did not recommend the passing of this motion for the following reasons:

- The financial model developed by the Transition Committee contemplated surplus cash being left with the new corporation to help stabilize rates into the future. Giving a rebate at this point and then phasing in gradual rate increases over the next three to five years would not seem logical. Every commissioner with the exception of one accepted the transition committee's financial model.
- Giving a rebate now could result in higher rate increases in the future.
- The budget process is not complete, do not know total expenditures for 2001.
- We have not had an opportunity to review the final version of the Rate Handbook.
- In the past, dividends have been paid as a result of excellent power production at our generating stations. A dry fall, which is entirely possible, could mean year-end production may only be average.
- Any payment of dividends is subject to OEB approval.

Motion #5

Moved by K. McLaughlin

"That, the Commission authorize the payment of a dividend to all of its customers as of September 30/2000. The dividend authorized is to be $1,000,000 – one million dollars distributed to existing customers based on their consumption of energy (electric) over the last 12 months. While the Commission recognizes the problems related to an exact calculation, the dividend shall be no less than one million dollars and not more than 1 million and fifty thousand dollars."

Recorded Vote: Frank Kehoe – "yea"
Dan Valley – "yea"
Ken McLaughlin – "yea"
Paul Spears – "nay"
Gord Pye – "yea"

"Carried"

Motion #6

Moved by K. McLaughlin

"Be it resolved that, the signing offices of the Orillia Water Light and Power Commission be authorized to sign and execute the "General Conveyance, Assignment and Bill of Sale" agreement attached."

"Carried"

A motion was put forward to adjourn at 6:25 p.m.

Confirmed

Secretary 73 Chairman

Ontario

ONTARIO REGULATION 373/07

made under the

PUBLIC SERVICE OF ONTARIO ACT, 2006

Made: June 27, 2007
Filed: July 25, 2007
Published on e-Laws: July 27, 2007
Printed in The Ontario Gazette: August 11, 2007

OATHS AND AFFIRMATIONS

Oath or affirmation of allegiance

1. (1) The following oath or affirmation of allegiance to the Crown is prescribed for the purposes of subsection 5 (1) of the Act:

"I swear (or solemnly affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second (*or the reigning sovereign for the time being*), her heirs and successors according to law. So help me God. (Omit this phrase in an affirmation.)"

(2) The public servant may make the oath or affirmation in either English or French.

Exemption, oath or affirmation of allegiance

2. A public servant who is not a citizen of Canada but is a citizen of another country is exempt from the requirement under subsection 5 (1) of the Act to swear or affirm his or her allegiance to the Crown if the public servant asserts that making the oath or affirmation could result in the loss of that citizenship.

Oath or affirmation of office

3. (1) The following oath or affirmation of office is prescribed for the purposes of section 6 of the Act:

"I swear (or solemnly affirm) that I will faithfully discharge my duties as a public servant and will observe and comply with the laws of Canada and Ontario and, except as I may be legally authorized or required, I will not disclose or give to any person any information or document that comes to my knowledge or possession by reason of my being a public servant. So help me God. (Omit this phrase in an affirmation.)"

(2) The public servant may make the oath or affirmation in either English or French.

Administration of oath or affirmation

4. (1) The persons described in Column 2 of the Table to this section are authorized to administer an oath or affirmation by a public servant who is appointed to a position described in Column 1 in the same row.

(2) In the Table to this section,

"commissioner for taking affidavits" means a person who is appointed under subsection 4 (1) of the *Commissioner for taking Affidavits Act* as a commissioner for taking affidavits;

"deputy minister's delegate" means a public servant to whom the deputy minister has delegated his or her authority under this section and who is employed under Part III of the Act to work in the same ministry as the deputy minister;

"government lawyer" means a public servant employed under Part III of the Act as a legal counsel.

TABLE

PERSONS AUTHORIZED TO ADMINISTER OATHS AND AFFIRMATIONS

Item	Column 1	Column 2
	Public servant making the oath or affirmation	Persons authorized to administer the oath or affirmation
1.	A public servant who works in a ministry, but not in a minister's office	The deputy minister of the ministry, the deputy minister's delegate, a government lawyer or any other public servant who is a commissioner for taking affidavits
2.	A public servant who works in a minister's office	A minister, a public servant employed under Part III of the Act who exercises managerial functions in the Office of the Premier, the Cabinet Office or the minister's office, a government lawyer or any other public servant who is a commissioner for taking affidavits
3.	A public servant, other than a government appointee, who works in a public body	The public servant's ethics executive as determined under subsection 62 (1) of the Act, a government lawyer or any other public servant who is a commissioner for taking affidavits
4.	A government appointee to a public body	The chair of the public body or any other public servant who is commissioner for taking affidavits
5.	The chair of a public body	A public servant employed under Part III of the Act who works in the Cabinet Office and who is a commissioner for taking affidavits

Commencement

5. This Regulation comes into force on the day subsection 5 (1) of the Act comes into force.

649 Driftwood Road
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October 1, 1991

Letter to the Editor - **ONTARIO HYDRO OUT OF CONTROL**

Dear Editor:

The Ontario Hydro organization and its associated costs are "out of Control" and operating well beyond its original mandate of supplying electric power at cost. As a member of a municipal hydro system, it is my hope that the public and the media will let Ontario Hydro know in no uncertain terms that their escalating "rate increases" to cover these and future inflated costs will no longer be tolerated.

At a recent meeting of municipal and Ontario Hydro officials, executive members of Ontario Hydro announced that there will be a double digit increase in the wholesale cost of electricity and that electricity customers can expect more double digit increases commencing as early as next year.

Ontario Hydro has announced an average rate increase of 11.8 per cent for 1992, on top of 8.6 per cent for this year. This increase is the tip of the iceberg.

The public must become aware of Ontario Hydro's present policies which put an added strain on the economy by increasing costs and which will undoubtedly encourage increased movement of industry south of the border. These policies will also force smaller companies into receivership, increase farm costs, not to mention, the effect on individuals, rural and urban residential customers living close or below the poverty line.

Ontario Hydro is grossly overstaffed in senior and middle management categories attributed in part to the empire building that took place in the 1970's and 1980's. To be efficient and in line with organizations in the real world, Ontario Hydro should have less than half the number of employees in its head office and geographic regions.

This utility appears reluctant to implement the recommendations of the CRESAP report or even consider the cost cutting recommendations of the Ontario Energy Board.

For years Ontario Hydro marketed and promoted electricity with horrendously expensive media marketing techniques so as to encourage the use of electrical energy. The reverse is now the situation, as Hydro's new plan is conservation to encourage, even financing a switch to gas from electric heat.

This new 2.7 billion dollar plan is geared to try to save power equivalent to the output of six Darlington size reactors by the year 2000.

Ontario Hydro is planning a large public relations program to try and sell this conservation as well cushion the rate increases required in part to promote it.

The first public relations program involves 100 transport truck loads of light bulbs. Ontario Hydro plans to mail through Canada Post, a package of two 52 watt light bulbs to 3.6 million Ontario households together with coupons that will subsidize the purchase of compact fluorescent and halogen bulbs from selected firms.

The people who are not in the front line who dream up these programs are obviously not experiencing the effects of the recession, or seeing the suffering and hardships of many of the electrical customers.

This type of program is an insult to the intelligence of Hydro customers whose increased rates will be used to support this obviously transparent subterfuge. Surely, an 11.8 per cent increase is in itself an incentive to save.

The goal of "power at cost" was the founding principle of this utility under the chairmanship of Sir Adam Beck in 1906. This goal is not being met in view of the following facts:

Ontario Hydro's debt as of June 30th, 1991, is 30 Billion 547 Million Dollars. (30,547,000,000.00) Compare this to the Province of Ontario's debt 9.7 Billion Dollars or Canada's National Debt of 400 Hundred Billion Dollars. (One billion dollars equals one thousand million dollars.)

Ontario Hydro has **35,846** employees on staff (end of August, 1991). Many are paid at wage levels higher than 20 per cent over the private sector. Executive salaries listed below are totally out of line in comparison to the public service and do not include the many fringe benefits, cost of limousines and chauffeurs, foreign travel etc.

. To be efficient and in line with organizations in the real world, Ontario Hydro should have less than half the number of managers and something over half of the number of employees in its head office and geographic regions.

. The wage scale excluding benefits for Senior Executives per annum are as follows:

Chairman	**$352,000.00 to $528,000.00**
President	**$257,000.00 to $386,000.00**
13 Vice Presidents each at	**$124.000.00 to $292,000.00**

. Poor financial forecasts have forced management to use and partially deplete reserves

. In business since 1906, Ontario Hydro has a debt of 84 per cent, meaning of all its assets, only 16 per cent are debt free. How is this going to be paid by an aging population?

. Ontario Hydro gave pension settlement to its employees giving them indexed pensions at a cost of $ 228 million dollars.

. Ontario Hydro (June 17th, 1991) renegotiated its uranium supply contracts with Rio Algom Ltd. at a cost of $160 million dollars. (approximately $30.00 per pound which is $20.00 per pound over uranium available from Saskatchewan.)

. Ontario Hydro agreed to provide $ 65 million to the Northern Ontario Heritage Fund to fund economic diversification to Elliot Lake and Blind River in retiring their municipal debt.

. Ontario Hydro is to spend $ 25 million on hydraulic contracts in Elliot Lake area which were low priority items in their original plans.

. Ontario Hydro has spent approximately $25 million on intervenor funding for its environmental assessment of its 25 year plan.

. The Darlington Project was estimated originally at $ 2.07 billion. The cost is now estimated at $ 13.5 billion and rising. Would this happen in the private sector?

Darlington is "probably the biggest management screw-up in the history of Canadian Industry," said utilities analyst Tom Adams of Toronto's Energy Probe Research Foundation. The current cost estimate is an increase of 4.7 per cent from the $ 12.9 billion, 1990 forecast.

Darlington has turned into a massive sinkhole for Hydro spending. Its current price tag is more than 380 per cent greater, in real dollars, than the original estimate -- and is still climbing. "The cost overrun on Darlington has been staggering, and is getting worse all the time," Adams says.

It would fill this newspaper if I were to list the waste and poor management decisions made by this utility. When challenged by the writer, the sarcastic answer received from a Hydro Vice President was "The bonds are still selling".

After I pointed out the disastrous results that this out-of-control utility was contributing to the recession and the people's ability to pay, Allan Holt, President of Hydro responded that there is no intention to privatize any part of this organization.

Prior to writing this letter, I faced the fact that either I could sit back and do nothing or attempt to protest but I knew I would be powerless to initiate major changes without the power of the media and the public.

I have no affiliation with any provincial party, nor am I affiliated with any other group such as Energy Probe, Green Peace, etc. I am acting unilaterally and personally paying all the costs related to this letter to all the media.

By way of this letter I solicit through the media, you the energy consumers, individuals, businesses, municipal councils and municipal hydro commissions to write, telephone or fax your elected representatives in the Provincial Legislature with a copy to the Premier of Ontario and the Chairman of Ontario Hydro, requesting them to bring this essential utility back to realistic control.

Without your help your Municipal Hydro Commissions are powerless to absorb any of the increase or the predicted 44 per cent increase over the next 3 years.

Yours truly,

Frank Kehoe
Commissioner
Orillia Water Light and
Power Commission