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# Bill 87

## **An Act to amend various statutes related to energy**

**The Hon. G. Rickford**

Minister of Energy, Northern Development and Mines

### **Government Bill**

1st Reading      March 21, 2019

2nd Reading      April 11, 2019

3rd Reading

Royal Assent

*(Reprinted as amended by the Standing Committee on General Government  
and as reported to the Legislative Assembly April 30, 2019)*

*(The provisions in this Bill will be renumbered after 3rd Reading)*





This reprint of the Bill is marked to indicate the changes that were made in Committee. The changes are indicated by underlines for new text and a ~~strikethrough~~ for deleted text.

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## EXPLANATORY NOTE

The Bill amends various Acts. The major elements of the Bill are described below.

### **SCHEDULE 1 ELECTRICITY ACT, 1998 AND ONTARIO ENERGY BOARD ACT, 1998 (PROCUREMENT CONTRACTS)**

The Schedule amends the *Electricity Act, 1998* with respect to the funding of amounts payable by the IESO to entities under procurement contracts. Some or all such amounts as may be prescribed by regulation that are payable under such procurement contracts as may be prescribed by regulation that are entered into by the IESO under clause 25.32 (2) (a), (b) or (c) of the Act (respecting electricity supply, capacity or storage; changes in electricity demand; measures related to the conservation of electricity or the management of electricity demand) may, under subsection 25.34 (2), be paid for out of money appropriated for the purpose by the Legislature instead of being recoverable under section 25.33 through billings. The amendments providing for this method of funding may be repealed on proclamation of the Lieutenant Governor.

In addition, the Schedule amends section 25.33 of the Act to provide that amounts payable under procurement contracts entered into under clause 25.32 (2) (d) of the Act (respecting transmission systems) are not to be recovered under section 25.33 through billings. Instead, section 78 of the *Ontario Energy Board Act, 1998* is amended to provide that the Ontario Energy Board shall provide for the recovery of those amounts when approving or fixing rates for the transmitting of electricity. Section 97.3 is added to the *Ontario Energy Board Act, 1998* to provide that those amounts and other specified matters shall not be the subject of review by the Board on an application for leave under section 92.

Finally, the Schedule provides that Wataynikaneyap Power GP Inc. is exempted from certain provisions of the *Crown Forest Sustainability Act, 1994* in respect the Wataynikaneyap Power Transmission Project.

### **SCHEDULE 2 ONTARIO ENERGY BOARD ACT, 1998 (GOVERNANCE)**

The Schedule amends the *Ontario Energy Board Act, 1998* to change the Board's corporate governance structure. Subsection 4 (5) of the Act provides for the members of the Board to be a board of directors, a chief executive officer, commissioners (including a chief commissioner) and any other person or class of persons prescribed by the regulations. Sections 4.1 to 4.3 of the Act are re-enacted to provide for the appointment of the members of the Board, and complementary amendments are made throughout the Act to reflect the restructuring. The amendments to the Act made by the Schedule provide that, generally speaking, the board of directors exercises the powers of the Board with respect to its administrative functions, and panels of commissioners assigned by the chief commissioner for the purpose exercise the powers of the Board with respect to its adjudicative and regulatory functions. The chief executive officer is granted specific powers, including the power to make rules under section 44 of the Act and the power to issue codes under section 70.1 of the Act. Various transition provisions are included to address the transition from the current governance structure to the one provided for by the Schedule, including the addition of a regulation-making authority to address transition matters (subsection 127 (6) of the Act).

Consequential amendments are made to the *Energy Consumer Protection Act, 2010*.

### **SCHEDULE 3 ONTARIO FAIR HYDRO PLAN ACT, 2017**

The Schedule amends the *Ontario Fair Hydro Plan Act, 2017*.

The Act currently establishes a framework under which the costs and benefits associated with specified Government of Ontario policies are allocated among present and future consumers of electricity. The Schedule replaces that framework with one under which the Crown and Ontario Power Generation Inc. are instead required to pay specified amounts to the Fair Hydro Trust. The following are some of the features of the new framework:

1. Ontario Power Generation Inc. is required to continue to act as the Financial Services Manager.
2. The Schedule provides that Fair Hydro Trust is the only financing entity and that no other financing entities may be established under the Act.
3. The Financial Services Manager and the Fair Hydro Trust are prohibited from incurring further funding obligations.
4. The Financial Services Manager must perform specified duties, including administering the investment asset on behalf of the Fair Hydro Trust. The Financial Services Manager must amend the Financing Plan, having regard to specified principles.

5. Section 25 of the current Act creates a regulatory asset; section 26 of the current Act authorizes the IESO to transfer a specified portion of the regulatory asset to a financing entity. The Schedule provides that a transfer under the current Act constituted a valid and enforceable absolute assignment, conveyance and sale of the corresponding ownership interest in the investment asset to the Fair Hydro Trust.
6. Provisions are included to provide protection from liability for various parties, including specified consumers and electricity vendors.

The *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998* are also amended to address consequential matters.

**SCHEDULE 4**  
**ONTARIO REBATE FOR ELECTRICITY CONSUMERS ACT, 2016**

The Schedule amends the *Ontario Rebate for Electricity Consumers Act, 2016* in order to provide that the financial assistance to be paid or credited under the Act, and the determination of which consumers are entitled to that financial assistance, are to be set out by regulations made under the Act by the Lieutenant Governor in Council. In addition, amendments are made to section 4 of the Act, and to the regulation-making authority of the Minister of Energy, Northern Development and Mines in relation to section 4, with respect to invoicing requirements related to the financial assistance paid or credited under the Act. Finally, references to the Minister of Energy are updated.

**An Act to amend various statutes related to energy**

1.	Contents of this Act
2.	Commencement
3.	Short title
Schedule 1	Electricity Act, 1998 and Ontario Energy Board Act, 1998 (Procurement Contracts)
Schedule 2	Ontario Energy Board Act, 1998 (Governance)
Schedule 3	Ontario Fair Hydro Plan Act, 2017
Schedule 4	Ontario Rebate for Electricity Consumers Act, 2016

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

**Contents of this Act**

**1 This Act consists of this section, sections 2 and 3 and the Schedules to this Act.**

**Commencement**

**2 (1) Subject to subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.**

**(2) The Schedules to this Act come into force as provided in each Schedule.**

**(3) If a Schedule to this Act provides that any provisions are to come into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.**

**Short title**

**3 The short title of this Act is the *Fixing the Hydro Mess Act, 2019*.**

**SCHEDULE 1**  
**ELECTRICITY ACT, 1998 AND ONTARIO ENERGY BOARD ACT, 1998 (PROCUREMENT CONTRACTS)**

**ELECTRICITY ACT, 1998**

**1 The definition of “procurement contract” in subsection 2 (1) of the *Electricity Act, 1998* is repealed and the following substituted:**

“procurement contract” means a contract entered into by the IESO under section 25.32; (“contrat d’acquisition”)

**2 Subsection 25.32 (2) of the Act is amended by striking out the portion before clause (a) and substituting the following:**

**Entering into contracts**

(2) The IESO shall, if required to do so under an implementation plan, a directive issued under subsection (5) or a direction continued under subsection (9) or (10), as amended, and may, if an implementation plan provides the authority to do so, enter into contracts for the procurement of,

. . . . .

**3 (1) Clause 25.33 (1) (b) of the Act is amended by striking out “amounts funded under section 25.34” and substituting “amounts listed under subsection (2.1)”.**

**(2) Clause 25.33 (2) (b) of the Act is amended by striking out “amounts funded under section 25.34” and substituting “amounts listed under subsection (2.1)”.**

**(3) Section 25.33 of the Act is amended by adding the following subsection:**

**Excluded amounts**

(2.1) The following amounts are excluded from clauses (1) (b) and (2) (b):

1. Amounts funded under section 25.34.
2. Amounts paid under procurement contracts entered into under clause 25.32 (2) (d).

**4 (1) Subsection 25.34 (2) of the Act is repealed and the following substituted:**

**Same**

(2) Subsection (1) applies with respect to the following amounts:

1. Subject to the regulations, amounts required to be paid by the IESO to an entity as a result of the termination, in accordance with Order in Council 1003/2018 made on July 5, 2018, of a procurement contract to which the entity was a party.
2. The amounts prescribed by the regulations that are paid by the IESO to entities under such procurement contracts entered into under clause 25.32 (2) (a), (b) or (c) as may be prescribed by the regulations.

**(2) Paragraph 2 of subsection 25.34 (2) of the Act, as enacted by subsection (1), is repealed.**

**5 (1) Clause 114 (1.3) (h) of the Act is repealed and the following substituted:**

(h) for the purposes of subsection 25.34 (2),

- (i) providing that certain amounts or portions of amounts are not included in the amounts referred to in paragraph 1 of that subsection, and specifying those excluded amounts or portions of amounts or methods for determining them,
- (ii) setting out amounts and procurement contracts for the purposes of paragraph 2 of that subsection.

**(2) Clause 114 (1.3) (h) of the Act, as re-enacted by subsection (1), is repealed and the following substituted:**

(h) providing that certain amounts or portions of amounts are not included in the amounts referred to in paragraph 1 of subsection 25.34 (2), and specifying those excluded amounts or portions of amounts or methods for determining them.

**ONTARIO ENERGY BOARD ACT, 1998**

**6 Section 78 of the *Ontario Energy Board Act, 1998* is amended by adding the following subsections:**

**Same, amounts payable to transmitters under procurement contracts**

(5.3) In approving or fixing just and reasonable rates for the transmitting of electricity for a transmitter who is a party to a procurement contract entered into under clause 25.32 (2) (d) of the *Electricity Act, 1998*, the Board shall apply a method that provides for the recovery of amounts paid or to be paid to the transmitter under the procurement contract.

**Same, transmission procurement contract costs**

(5.4) In approving or fixing just and reasonable rates for the transmitting of electricity for a period, the Board shall include the amounts referred to in subsection (5.3) that apply with respect to that period.

**Information**

(5.5) The IESO shall, for the purposes of subsections (5.3) and (5.4), provide to the Board such information respecting amounts paid or to be paid to transmitters who are a party to a procurement contract entered into under clause 25.32 (2) (d) of the *Electricity Act, 1998* as the Board may require.

**7 The Act is amended by adding the following section:**

**Procurement contracts re transmission systems**

**97.3** (1) In an application under section 92, the Board shall accept as valid and not inquire into the basis of,

- (a) amounts payable under a procurement contract entered into under clause 25.32 (2) (d) of the *Electricity Act, 1998*, including the prices and costs provided for by the procurement contract, and any costs associated with the procurement contract; or
- (b) any procurement process relating to a procurement contract referred to in clause (a).

**Same**

(2) For greater certainty, subsection (1) does not otherwise affect the making of a determination by the Board under section 96 with respect to the application.

**CROWN FOREST SUSTAINABILITY ACT, 1994**

**7.1 The Crown Forest Sustainability Act, 1994 is amended by adding the following section:**

**Exemption**

**68.1** (1) The following provisions of this Act do not apply to Wataynikaneyap Power GP Inc. in its capacity as general partner of Wataynikaneyap Power LP in respect of its harvesting of Crown forest resources in connection with the Wataynikaneyap Power Transmission Project that was approved by the Ontario Energy Board on April 2, 2019:

- 1. Section 42.
- 2. Section 43.
- 3. Clauses 58 (1) (a) and (d) and clause 58 (1) (e) as it relates to any contravention of section 43.
- 4. Clause 64 (1) (a), clause 64 (1) (c) as it relates to any contravention of subsection 42 (1) or section 43 and clause 64 (1) (h).

**Repeal**

(2) This section is repealed on a day to be named by proclamation of the Lieutenant Governor.

**COMMENCEMENT**

**Commencement**

**8** (1) Subject to subsection (2), this Schedule comes into force on the day the *Fixing the Hydro Mess Act, 2019* receives Royal Assent.

(2) Subsections 4 (2) and 5 (2) come into force on a day to be named by proclamation of the Lieutenant Governor.

**SCHEDULE 2**  
**ONTARIO ENERGY BOARD ACT, 1998 (GOVERNANCE)**

**1 Paragraphs 1 and 1.1 of subsection 1 (1) of the *Ontario Energy Board Act, 1998* are repealed and the following substituted:**

1. To inform consumers and protect their interests with respect to prices and the adequacy, reliability and quality of electricity service.

**2 (1) Paragraph 2 of section 2 of the Act is repealed and the following substituted:**

2. To inform consumers and protect their interests with respect to prices and the reliability and quality of gas service.

**(2) Paragraph 6 of section 2 of the Act is amended by striking out “and the education of consumers” at the end.**

**3 (1) Section 3 of the Act is amended by adding the following definitions:**

“board of directors” means the board of directors of the Board set out under section 4.1; (“conseil d’administration”)

“chief commissioner” means the commissioner who is chief commissioner under section 4.3; (“commissaire en chef”)

“chief executive officer” means the chief executive officer under section 4.2; (“chef de la direction”)

“commissioner” means a commissioner under section 4.3; (“commissaire”)

**(2) Clause (g) of the definition of “enforceable provision” in section 3 of the Act is amended by striking out “by the Board”.**

**(3) Section 3 of the Act is amended by adding the following definition:**

“members of the Board” means the individuals who compose the Board under subsection 4 (5); (“membres de la Commission”)

**4 Section 4 of the Act is amended by adding the following subsection:**

**Composition of the Board**

(5) The Board shall be composed of,

- (a) a board of directors;
- (b) a chief executive officer;
- (c) commissioners, including a chief commissioner; and
- (d) any other person or class of persons prescribed by the regulations, appointed in accordance with the regulations.

**5 Sections 4.1, 4.2 and 4.3 of the Act are repealed and the following substituted:**

**Board of directors**

**4.1 (1)** The board of directors shall manage and supervise the management of the Board’s business and affairs, and perform such other duties as are assigned to the board of directors under this or any other Act.

**Composition**

(2) The board of directors shall be composed of at least five and no more than 10 members appointed by the Lieutenant Governor in Council.

**Restriction on appointment**

(3) A person who is in a class of persons prescribed by the regulations is not eligible to be appointed as a director.

**Term of initial appointment**

(4) The first term of office of a person who is appointed to the board of directors shall not exceed two years.

**Reappointment**

(5) A person appointed to the board of directors may be reappointed for one or more terms of up to three years each.

**Directors to be independent**

(6) Each director shall hold office as an independent director and not as a representative of any class of persons.

**Director’s duties**

(7) Every director shall, in exercising his or her powers and performing his or her duties as a director,

- (a) act honestly and in good faith in the best interests of the Board; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.



**Chair, vice-chair**

(8) The Lieutenant Governor in Council shall appoint a chair, and may appoint a vice-chair, from among the members of the board of directors.

**Duties of chair**

(9) The chair shall,

- (a) oversee the efficient administration of the business of the board of directors;
- (b) preside over meetings of the board of directors;
- (c) be accountable to the Minister for the effective delivery of the Board's objectives;
- (d) be accountable to the Minister for the independence of persons and entities hearing and determining matters within the Board's jurisdiction in their decision-making;
- (e) perform such other duties as are assigned to the chair under this or any other Act.

**Term, chair and vice-chair**

(10) The chair and vice-chair hold office for the term specified by the Lieutenant Governor in Council, which shall not exceed his or her term as a member of the board of directors.

**Chair may delegate to vice-chair**

(11) The chair may in writing delegate any of his or her powers or duties as chair to the vice-chair, subject to any conditions or restrictions specified in the delegation.

**Acting chair**

(12) The vice-chair may exercise the powers and perform the duties of the chair if the chair is absent or unable to act.

**Same**

(13) If the chair is absent or unable to act and no vice-chair is available, the members present shall appoint an acting chair from among themselves.

**Quorum**

(14) Subject to by-laws made under clause 4.10 (2) (f), a majority of the board of directors constitute a quorum.

**Committees**

(15) The board of directors shall, in accordance with the by-laws made under section 4.10, establish an adjudication committee of the board of directors, and may, in accordance with those by-laws, establish any other committees of the board of directors.

**Adjudication committee**

(16) The adjudication committee may require the chief commissioner to provide to it such information it specifies, in the time and manner it specifies, respecting the efficiency, timeliness and dependability of the hearing and determination of matters over which the Board has jurisdiction, and shall report the information to the board of directors.

**Exercise of Board powers, duties**

(17) Except where this Act provides otherwise and subject to the regulations, the powers and duties of the Board, other than with respect to the hearing and determination of matters over which the Board has jurisdiction, may be exercised and shall be performed by the board of directors.

**No interference**

(18) For greater certainty, no power given to the board of directors or a director under this or any other Act permits the board of directors or a director to interfere with or influence the hearing or determination of a matter over which the Board has jurisdiction.

**Delegation**

(19) The board of directors may, subject to any conditions or restrictions the board of directors specifies and in accordance with the by-laws made under section 4.10,

- (a) delegate any of its powers or duties to a committee of the board of directors or to one or more directors; and
- (b) delegate any of its powers to manage the Board's business and affairs to one or more officers employed by the Board.

**Same, exception**

(20) Despite subsection (19), the board of directors shall not delegate any of its powers or duties under sections 4.8 to 4.10 and any other provision prescribed by the regulations.

**Same, limitation**

(21) Despite subsection (19), the board of directors may only delegate its powers or duties under subsection 26 (1) or section 26.1 to the chief executive officer.

**Transition, number of appointments**

(22) Until the second anniversary of the day section 5 of Schedule 2 to the *Fixing the Hydro Mess Act, 2019* comes into force, the board of directors may be composed of as few as three members appointed by the Lieutenant Governor in Council, despite subsection (2).

**Chief executive officer**

**4.2** (1) The board of directors shall appoint a person to the position of chief executive officer of the Board.

**Duties of chief executive officer**

(2) The chief executive officer shall be responsible for the efficient and effective management of the operations of the Board, and shall perform such other duties as are assigned to the chief executive officer under this or any other Act.

**Restriction on appointment**

(3) A person who is in a class of persons prescribed by the regulations is not eligible to be appointed as chief executive officer.

**Not a director**

(4) The chief executive officer is an officer of the Board and not a member of its board of directors.

**Participation**

(5) The chief executive officer may attend and participate at any meeting of the board of directors, but shall not have a vote with respect to any matter to be decided at the meeting.

**Exception**

(6) Despite subsection (5), the board of directors may exclude the chief executive officer from attending any meeting if a matter to be discussed at the meeting involves the position, performance or functions and duties of the chief executive officer.

**No interference**

(7) For greater certainty, no power given to the chief executive officer under this or any other Act permits the chief executive officer to interfere with or influence the hearing or determination of a matter over which the Board has jurisdiction.

**Transition, appointment**

(8) Until the second anniversary of the day section 5 of Schedule 2 to the *Fixing the Hydro Mess Act, 2019* comes into force, the appointment and any reappointment of a chief executive officer shall be by the Lieutenant Governor in Council, despite subsection (1).

**Same**

(9) The term of a person who becomes chief executive officer under subsection (8) shall end no later than the second anniversary of the day section 5 of Schedule 2 to the *Fixing the Hydro Mess Act, 2019* comes into force.

**Commissioners and panels****Commissioners**

**4.3** (1) The board of directors shall, on the recommendation of the chief executive officer, appoint at least five and no more than 10 commissioners for the hearing and determination of matters over which the Board has jurisdiction in accordance with this section.

**Restriction on appointment**

(2) No person is eligible to be appointed as a commissioner if he or she has any material interest in a market participant or is a director, officer, employee or agent of,

- (a) a market participant;
- (b) a generator, distributor, transmitter or retailer;
- (c) a person who sells electricity or ancillary services through the IESO-administered markets or directly to another person who is not a consumer;
- (d) an industry association that represents a person referred to in clause (a), (b) or (c);
- (e) the IESO; or
- (f) an affiliate of a person listed in clause (a), (b), (c) or (e).

**Chief commissioner**

(3) The board of directors shall, on the recommendation of the chief executive officer, appoint a commissioner to the position of chief commissioner.

**Fixed terms**

(4) The appointment of a person to the position of commissioner under subsection (1) or chief commissioner under subsection (3) shall be for a fixed term, and may not be revoked without cause.

**Term of initial appointment**

(5) The first term of office of a person who is appointed to the position of commissioner under subsection (1) or chief commissioner under subsection (3) shall not exceed two years.

**Reappointment**

(6) A person appointed to the position of commissioner under subsection (1) or chief commissioner under subsection (3) may be reappointed for one or more terms of up to five years each.

**Panels**

(7) The chief commissioner may assign one or more commissioners to a panel.

**Exercise of Board jurisdiction over matters**

(8) Except where this Act provides otherwise and subject to the regulations, the powers and duties of the Board with respect to the hearing and determination of matters over which it has jurisdiction may be exercised and shall be performed by panels of commissioners assigned for the purpose by the chief commissioner under subsection (7).

**Same**

(9) For the purposes of subsection (8), a panel has all the jurisdiction of the Board.

**Same**

(10) A commissioner assigned to a panel under subsection (8) shall not exercise any power or perform any duty of the Board except as a member of a panel to which he or she has been assigned.

**Duties of chief commissioner**

(11) The chief commissioner shall,

- (a) ensure the efficiency, timeliness and dependability of the hearing and determination of matters over which the Board has jurisdiction, including by directing and supervising commissioners with respect to efficiency, timeliness and dependability;
- (b) report to the chief executive officer with respect to the efficiency, timeliness and dependability of the hearing and determination of matters over which the Board has jurisdiction;
- (c) be responsible for the training of commissioners;
- (d) perform such other duties as are assigned to the chief commissioner under this or any other Act.

**Deputy chief commissioner**

(12) The chief commissioner may designate another commissioner as deputy chief commissioner, and the deputy chief commissioner may exercise the powers and perform the duties of the chief commissioner if the chief commissioner is absent or unable to act.

**Rules of practice and procedure**

(13) The Board's authority to make rules under section 25.1 of the *Statutory Powers Procedure Act* governing practice and procedure respecting the hearing and determination of matters over which the Board has jurisdiction shall be exercised by the chief commissioner on behalf of the Board.

**Transition, existing members of the Board**

(14) Despite subsection (1), any person who was a member of the Board immediately before the day section 5 of Schedule 2 to the *Fixing the Hydro Mess Act, 2019* came into force, other than the chair, becomes a commissioner on that day, and may continue to hold that position for the remainder of his or her term.

**Same**

(15) A person who holds the position of commissioner under subsection (14) is entitled to the same remuneration to which he or she was entitled as a member of the Board immediately before the day referred to in that subsection.

**Transition, appointments**

(16) Until the second anniversary of the day referred to in subsection (14), the appointment and any reappointment of the chief commissioner and of any commissioners shall be by the Lieutenant Governor in Council, despite subsections (1) and (3).

**Same**

(17) For the purposes of subsection (16), the Lieutenant Governor in Council may appoint as chief commissioner a commissioner appointed under that subsection or a commissioner who holds the position under subsection (14).

**Same**

(18) The term of a person appointed or reappointed as a commissioner or chief commissioner under subsection (16) shall end no later than the second anniversary of the day section 5 of Schedule 2 to the *Fixing the Hydro Mess Act, 2019* comes into force.

**6 (1) Subsection 4.6 (1) of the Act is repealed and the following substituted:****Memorandum of understanding**

(1) Every three years beginning with the Board's fiscal year in which subsection 7 (1) of Schedule 2 to the *Fixing the Hydro Mess Act, 2019* came into force, the chair of the board of directors, on behalf of the Board, and the Minister shall, in accordance with such directives as may be issued by the Management Board of Cabinet, enter into a memorandum of understanding setting out,

- (a) the respective roles and responsibilities of the Minister, the chair and the board of directors;
- (b) the accountability relationships between the chair, the board of directors and the Minister;
- (c) limitations on the Board's powers to borrow and invest;
- (d) the responsibility of the chair and the board of directors to provide the Minister with business plans, operational budgets and plans for proposed significant changes in the operations or activities of the Board;
- (e) details of any obligations that require the board of directors to establish performance standards for the Board;
- (f) any other matter required by a directive issued by the Management Board of Cabinet; and
- (g) any other matter the parties consider necessary or appropriate.

**(2) Subsection 4.6 (3) of the Act is amended by striking out "management committee" and substituting "board of directors".****7 (1) Subsection 4.8 (1) of the Act is repealed and the following substituted:****Financial statements**

(1) The board of directors shall cause annual financial statements to be prepared for the Board in accordance with generally accepted accounting principles.

**(2) Subsection 4.8 (3) of the Act is amended by striking out "management committee" and substituting "board of directors".****8 Subsection 4.9 (3) of the Act is repealed and the following substituted:****Same**

(3) In addition to any content specified under clause (2) (a), the annual report shall include,

- (a) details of steps taken by the board of directors to simplify or streamline practices and procedures in relation to the Board's regulatory functions; and
- (b) any other content the Minister requires.

**9 Section 4.10 of the Act is repealed and the following substituted:****By-laws**

**4.10** (1) The board of directors may make by-laws regulating the business and affairs of the Board.

**Governance and structure by-laws**

(2) Without limiting the generality of subsection (1), the board of directors shall ensure that the by-laws deal with matters of corporate governance and structure, including,

- (a) the powers, duties and functions of the members of the Board and of the officers employed by the Board, including specifying the accountability relationship of the chief commissioner to the chief executive officer and other accountability relationships;

- (b) the remuneration and benefits for the positions of commissioner and chief commissioner appointed by the board of directors;
- (c) the circumstances in which a member of the Board ceases to hold office;
- (d) procedures for the appointment and reappointment of the chief executive officer, the chief commissioner and other commissioners;
- (e) the delegation of the board of directors' powers and duties under subsection 4.1 (19) and of the Board's powers and duties under section 6;
- (f) the emergency circumstances in which the quorum of the board of directors is one member;
- (g) the appointment of an auditor;
- (h) the establishment, composition and functions of the adjudication committee and other committees of the board of directors;
- (i) the establishment, composition and functions of panels of commissioners;
- (j) the composition and functions of the Market Surveillance Panel and the appointment, removal and remuneration of members of the Market Surveillance Panel; and
- (k) any other matter prescribed by the regulations.

**Requirements re commissioner remuneration, benefits**

(3) The board of directors shall ensure that the remuneration and benefits set for the positions of commissioner and chief commissioner by by-law under clause (2) (b) are consistent with the remuneration and benefits set by directive of the Management Board of Cabinet with respect to individuals appointed to comparable positions in adjudicative tribunals and regulatory agencies.

**Notice to Minister**

(4) The board of directors shall deliver to the Minister a copy of every by-law passed by it.

**Minister's review of remuneration and benefits by-laws**

(5) Within 60 days after delivery of a by-law made under clause (2) (b) respecting remuneration or benefits for the position of commissioner or chief commissioner, the Minister may,

- (a) approve the by-law; or
- (b) if the Minister determines that the requirements of subsection (3) have not been met, amend the by-law to provide for remuneration or benefits that meet those requirements.

**Effect of approval**

(6) A by-law made under clause (2) (b) that is approved by the Minister becomes effective on the date of the approval or on such later date as the by-law may provide.

**Effect of amendment**

(7) A by-law made under clause (2) (b) that is amended by the Minister becomes effective, as amended, on the date of the amendment or on such later date as the by-law may provide.

**Minister's review of appointment by-laws**

(8) Within 60 days after delivery of a by-law made under clause (2) (d), the Minister may approve, reject or return it to the board of directors for further consideration.

**Effect of approval**

(9) A by-law made under clause (2) (d) that is approved by the Minister becomes effective on the date of the approval or on such later date as the by-law may provide.

**Effect of rejection**

(10) A by-law made under clause (2) (d) that is rejected by the Minister does not become effective.

**Effect of return for further consideration**

(11) A by-law made under clause (2) (d) that is returned to the board of directors for further consideration does not become effective until the board of directors returns it to the Minister and the Minister approves it.

**Expiry of review period**

(12) If, within the 60-day period referred to in subsection (5) or (8), the Minister does not take a step under this section, the by-law becomes effective on the 75<sup>th</sup> day after it is delivered to the Minister or on such later date as the by-law may provide.

## Publication

(13) The board of directors shall publish every by-law made under subsection (2) on the Board's website as soon as practicable after the by-law becomes effective.

## Legislation Act, 2006, Part III

(14) Part III (Regulations) of the *Legislation Act, 2006* does not apply to by-laws made under subsection (2).

**10 (1) Subsection 4.16 (2) of the Act is repealed and the following substituted:**

### Not employees

(2) The members of the board of directors are not its employees, and shall not hold any other office in the Board or be employed by it in any other capacity.

**(2) Subsection 4.16 (3) of the Act is amended by adding "and, for the purposes of section 136 of that Act, commissioners including the chief commissioner are deemed to be a director or officer of the Board" at the end.**

**11 Section 5 of the Act is repealed and the following substituted:**

### Registrar

**5** The chief executive officer shall appoint a registrar of the Board from among the Board's employees.

**12 (1) Subsections 6 (1) and (2) of the Act are repealed and the following substituted:**

### Delegation of Board's powers and duties

(1) Subject to the by-laws made under section 4.10 and to the approval of the chief executive officer, the chief commissioner may in writing delegate any power or duty of the Board that may be exercised or shall be performed under subsection 4.3 (8) to an employee of the Board who is not a member of the Board.

### Exceptions

(2) Subsection (1) does not apply to the following powers and duties:

1. Hearing and determining an appeal under section 7 or a review under section 8.
2. The power to make an order against a person under section 112.3, 112.4 or 112.5, if the person gives notice requiring the Board to hold a hearing under section 112.2.
3. A power or duty prescribed by the regulations.

**(2) Subsection 6 (3) of the Act is amended by striking out "management committee" and substituting "chief commissioner".**

**(3) Subsection 6 (5) of the Act is amended by striking out "members of the Board" and substituting "a panel of commissioners".**

**(4) Subsection 6 (7) of the Act is amended by striking out "management committee" and substituting "chief commissioner".**

**13 Subsection 8 (1) of the Act is amended by striking out "The Board's management committee may, on its own motion" at the beginning and substituting "The chief commissioner may, on his or her own motion".**

**14 (1) Subsection 12.1 (1) of the Act is repealed and the following substituted:**

### Fees

(1) The chief executive officer may set and charge fees for copies of Board orders, decisions, reasons, reports, recordings or other documents or things, including documents certified by a commissioner or the registrar of the Board.

**(2) Subsections 12.1 (2), (3) and (4) of the Act are amended by striking out "management committee" wherever it appears and substituting in each case "board of directors".**

**15 Section 13 of the Act is amended by striking out "The Board's management committee" at the beginning and substituting "The chief executive officer".**

**16 (1) Subsection 15 (1) of the Act is amended by striking out "the chair, a vice-chair or the secretary" at the end and substituting "a commissioner or the registrar of the Board".**

**(2) Subsection 15 (4) of the Act is repealed.**

**17 (1) Subsection 22 (1) of the Act is amended by striking out "members of the Board" and substituting "commissioners".**

**(2) Subsection 22 (2) of the Act is repealed and the following substituted:**

### **Where term of member ends**

(2) If a joint board commences to hold a hearing under the *Consolidated Hearings Act* and the term of office on the Board of a commissioner sitting for the joint hearing expires or is terminated before the proceeding is disposed of, the commissioner shall remain a member of the joint board for the purpose of completing the disposition of the proceeding in the same manner as if his or her term of office had not expired or been terminated.

**18 (1) Subsection 44 (1) of the Act is amended by striking out “The Board” at the beginning and substituting “The chief executive officer”.**

**(2) Subclause 44 (1) (b.2) (iv) of the Act is amended by striking out “Board” and substituting “chief executive officer”.**

**(3) Clause 44 (1) (b.3) of the Act is repealed and the following substituted:**

(b.3) relating to any matter in respect of invoices issued in respect of gas to consumers, including meeting such requirements as may be provided for by the chief executive officer or being in a form approved by the chief executive officer;

**(4) Subsection 44 (1.1) of the Act is repealed.**

**(5) Subsection 44 (4.1) of the Act is amended by striking out “rule of the Board” wherever it appears and substituting in each case “rule”.**

**(6) Subsection 44 (7) of the Act is amended by striking out “by the Board” at the end and substituting “under this section”.**

**(7) Subsection 44 (7) of the Act, as amended by subsection (6), is repealed.**

**19 (1) Subsections 45 (1), (3), (5), (7) and (8) of the Act are repealed and the following substituted:**

### **Proposed rules, notice and content**

(1) The chief executive officer shall ensure that notice of every rule he or she proposes to make under section 44 is given in the manner and to the persons that the chief executive officer considers appropriate.

. . . . .

### **Opportunity for comment**

(3) On giving notice under subsection (1), the chief executive officer shall give a reasonable opportunity to interested persons to make written representations with respect to the proposed rule within such reasonable period as the chief executive officer considers appropriate.

. . . . .

### **Notice of changes**

(5) If, after considering the submissions, the chief executive officer proposes material changes to the proposed rule, the chief executive officer shall ensure notice of the proposed changes is given in such manner and to such persons as the chief executive officer may determine.

. . . . .

### **Representations re changes**

(7) On giving notice of changes, the chief executive officer shall give a reasonable opportunity to interested persons to make written representations with respect to the changes within such reasonable period as the chief executive officer considers appropriate.

### **Making the rule**

(8) If notice under this section is required, the chief executive officer may make the rule only at the end of this process and after considering all representations made as a result of that process.

**(2) Subsection 45 (9) of the Act is amended by striking out “The Board” at the beginning and substituting “The chief executive officer”.**

**(3) Subsection 45 (10) of the Act is repealed and the following substituted:**

### **Consultation**

(10) If the chief executive officer proposes to make a rule under clause 44 (1) (a), notice shall not be given under subsection (1) until after the chief executive officer has consulted with gas transmitters, gas distributors or storage companies, as appropriate.

**20 (1) Subsection 70.1 (1) of the Act is amended by striking out “The Board” at the beginning and substituting “The chief executive officer”.**

**(2) Subsection 70.1 (2) of the Act is repealed.**

**(3) Subsection 70.1 (6) of the Act is repealed.**

**(4) Subsection 70.1 (7) of the Act is amended by striking out “the Board may change” and substituting “the chief executive officer may change”.**

**21 (1) Subsection 70.2 (1) of the Act is repealed and the following substituted:**

**Proposed codes, notice and content**

(1) The chief executive officer shall ensure that notice of every code he or she proposes to issue under section 70.1 is given in the manner and to the persons that the chief executive officer considers appropriate.

**(2) Subsections 70.2 (3), (5), (7) and (8) of the Act are repealed and the following substituted:**

**Opportunity for comment**

(3) On giving notice under subsection (1), the chief executive officer shall give a reasonable opportunity to interested persons to make written representations with respect to the proposed code within such reasonable period as the chief executive officer considers appropriate.

**Notice of changes**

(5) If, after considering the submissions, the chief executive officer proposes material changes to the proposed code, the chief executive officer shall ensure notice of the proposed changes is given in such manner and to such persons as the chief executive officer may determine.

**Representations re changes**

(7) On giving notice of changes, the chief executive officer shall give a reasonable opportunity to interested persons to make written representations with respect to the changes within such reasonable period as the chief executive officer considers appropriate.

**Issuing the code**

(8) If notice under this section is required, the chief executive officer may issue the code only at the end of this process and after considering all representations made as a result of that process.

**(3) Subsection 70.2 (9) of the Act is amended by striking out “The Board” at the beginning and substituting “The chief executive officer”.**

**22 (1) Subsection 106 (1) of the Act is amended by striking out “The Board’s management committee” at the beginning and substituting “The chief executive officer”.**

**(2) Subsection 106 (2) of the Act is amended by striking out “a member of the Board” and substituting “the chief executive officer”.**

**23 (1) Subsection 112.0.1 (1) of the Act is amended by striking out “The chair” at the beginning and substituting “The chief executive officer”.**

**(2) Subsection 112.0.1 (2) of the Act is repealed and the following substituted:**

**Certificate of appointment**

(2) The chief executive officer shall issue to every investigator a certificate of appointment bearing the chief executive officer’s signature or a facsimile of his or her signature.

**24 (1) Clause 127 (1) (g.1) of the Act is repealed.**

**(2) Subsection 127 (1) of the Act is amended by adding the following clauses:**

(j.8) providing for the appointment of prescribed individuals as members of the Board for the purposes of clause 4 (5) (d), and setting out their powers, duties and functions;

(j.9) specifying matters that, for greater certainty, are not matters that may be heard or determined by a panel of commissioners under subsection 4.3 (8);

(j.10) for the purposes of subsections 4.1 (17) and 4.3 (8), providing for and governing the exercise or performance of a power or duty of the Board by another person or entity;

**(3) Clauses 127 (1) (j.12) and (j.14) of the Act are repealed.**

**(4) Clause 127 (1) (k) of the Act is repealed and the following substituted:**



(k) respecting anything that, in this Act, may or must be prescribed or done by regulation;

**(5) Section 127 of the Act is amended by adding the following subsections:**

**Transition, *Fixing the Hydro Mess Act, 2019***

(6) The Lieutenant Governor in Council may make regulations governing transitional matters that, in the opinion of the Lieutenant Governor in Council, are necessary or desirable to facilitate the implementation of amendments to this Act by Schedule 2 to the *Fixing the Hydro Mess Act, 2019*.

**Same**

(7) In the event of a conflict between this Act and a regulation made under subsection (6), the regulation prevails.

**25 Subsection 128.1 (1) of the Act is repealed and the following substituted:**

**Reports on Board effectiveness**

(1) The Board shall, on the request of the Minister, prepare and submit a report to the Minister on the Board's effectiveness in meeting the objectives set out in sections 1 and 2.

**26 Section 130 of the Act is amended by,**

(a) striking out “of the Board”; and

(b) striking out “the Board may change” and substituting “the chief executive officer may change”.

**27 Section 133 of the Act is repealed and the following substituted:**

**No cause of action, *Fixing the Hydro Mess Act, 2019***

**133** (1) No cause of action arises against the Crown, any current or former member of the Executive Council, any current or former employee or agent of or adviser to the Crown, the Board, or any current or former member, employee or agent of the Board, as a direct or indirect result of,

(a) the enactment, operation or administration of any amendment to this Act by Schedule 2 to the *Fixing the Hydro Mess Act, 2019*;

(b) anything done or not done under the amendments to this Act by Schedule 2 to the *Fixing the Hydro Mess Act, 2019*; or

(c) anything related in any way to the involvement of the Government of Ontario in compensation matters, or other aspects of corporate governance, of the Board.

**Proceedings barred**

(2) No proceeding, including but not limited to any proceeding for a remedy in contract, constructive dismissal, restitution, tort, misfeasance, bad faith, trust or fiduciary obligation, and any remedy under applicable securities laws or any other statute, that is directly or indirectly based on or related to anything referred to in subsection (1) may be brought or maintained against the Crown or against any person referred to in that subsection.

**Application**

(3) Subsection (2) applies to any action or other proceeding claiming any remedy or relief, including specific performance, injunction, declaratory relief, any form of compensation or damages, or any other remedy or relief, and includes a proceeding to enforce a judgment or order made by a court outside of Canada.

**Retrospective effect**

(4) Subsections (2) and (3) apply regardless of whether the cause of action on which the proceeding is purportedly based arose before, on or after the day section 28 of Schedule 2 to the *Fixing the Hydro Mess Act, 2019* came into force.

**Proceedings set aside**

(5) Any proceeding referred to in subsection (2) or (3) commenced before the day referred to in subsection (4) is deemed to have been dismissed, without costs, on that day.

**28 (1) The following provisions of the Act are amended by striking out “Board’s management committee” wherever it appears and substituting in each case “board of directors”:**

1. Subsection 4.3.1 (2).

2. Subsection 4.7 (1).

3. The English version of subsection 4.13 (1).

4. Subsection 26 (1).

5. Section 121, in the portion before clause (a).

6. Section 122.

**7. The English version of subsection 132 (3).**

**(2) The French version of the following provisions of the Act are amended by striking out “son comité de gestion” wherever it appears and substituting in each case “son conseil d’administration”:**

- 1. Subsection 4.13 (1).**
- 2. Subsection 132 (3).**

**29 The following provisions of the Act are amended by striking out “secretary” wherever it appears and substituting in each case “registrar”:**

- 1. Section 9.**
- 2. Section 24.**
- 3. Section 126.1.**

**CONSEQUENTIAL AMENDMENTS**

***Energy Consumer Protection Act, 2010***

**30 (1) Clause 9 (2) (b) of the *Energy Consumer Protection Act, 2010* is amended by striking out “by the Board”.**

**(2) Clause 12 (1) (c) of the Act is amended by striking out “by the Board” wherever it appears.**

**(3) Subclause 35 (3) (j) (iii) of the Act is amended by striking out “by the Board” wherever it appears.**

**COMMENCEMENT**

**Commencement**

**31 This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.**

**SCHEDULE 3  
ONTARIO FAIR HYDRO PLAN ACT, 2017**

**1 The Preamble to the *Ontario Fair Hydro Plan Act, 2017* is repealed.**

**2 Section 1 of the Act is repealed and the following substituted:**

**Interpretation**

**1 (1)** In this Act,

“capital account” means an account established by or on behalf of the Fair Hydro Trust under the governing documents for an existing funding obligation for the purpose of accumulating funds to be used to make repayments in respect of the existing funding obligation; (“compte capital”)

“existing funding obligation” means a funding obligation that existed on the final plan date; (“obligation de financement existante”)

“fair allocation amount” means, when used in respect of a reference period, the amount calculated by the Minister in respect of the reference period under section 20 of this Act as it read immediately before the final plan date and provided by the Minister to the Financial Services Manager before the final plan date; (“montant de répartition équitable”)

“Fair Hydro Trust” means the trust established by the Financial Services Manager under subsection 22 (2) of this Act as it read immediately before the final plan date and includes the trustee of the trust when acting as trustee; (“Fair Hydro Trust”)

“FHT acceleration” means, when used in respect of an existing funding obligation, the event arising under the governing documents in which a portion of the principal owing in respect of the existing funding obligation becomes due and payable by the Fair Hydro Trust before the scheduled payment date, maturity date or redemption date; (“déchéance du terme contre Fair Hydro Trust”)

“FHT expenses” means all fees, expenses, costs, expenditures and liabilities incurred by or on behalf of the Fair Hydro Trust, including costs and expenditures payable by or on behalf of the Fair Hydro Trust in respect of a matter set out in subsection (2), including any taxes payable on those amounts, and excluding amounts mentioned in subsection (3); (“dépenses de Fair Hydro Trust”)

“final plan date” means November 1, 2019; (“date du plan définitif”)

“finance reserve account” means an account established by or on behalf of the Fair Hydro Trust under the governing documents for an existing funding obligation for the purposes of pre-funding, collateralizing, over-collateralizing or establishing reserves for the payment of existing funding obligations, FHT expenses or for related contingencies; (“compte de réserve financière”)

“Financial Services Manager” means Ontario Power Generation Inc.; (“gestionnaire des services financiers”)

“funding cost” means interest, commitment fees or other similar costs payable by or on behalf of the Fair Hydro Trust in respect of existing funding obligations; (“coût de financement”)

“funding obligation” means a payment obligation incurred by or on behalf of the Fair Hydro Trust,

- (a) to fund its ownership of the investment asset, including principal, interest, fees and other amounts owing in respect thereof, or
- (b) in respect of an amount raised for the purposes of the Fair Hydro Trust acquiring and financing the investment asset that was or would have been recoverable as a finance amount under this Act as it read immediately before the final plan date; (“obligation de financement”)

“General Regulation” means Ontario Regulation 206/17 (General) made under this Act; (“règlement général”)

“governing documents” means, when used in respect of a funding obligation, the documents governing the terms of the funding obligation or other matters relating to the funding obligation; (“documents directeurs”)

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

“investment asset” means the investment asset created under this Act before the final plan date, comprised of,

- (a) before the final plan date, the rights and interests described in subsection 29 (1) of this Act as it read immediately before the final plan date, and
- (b) on and after the final plan date, the rights and interests as described in subsection 17 (1) of this Act; (“actif d’investissement”)

“maturity date” means, in respect of an existing funding obligation, the date set out in the governing documents for the existing funding obligation on which all outstanding principal, interest and other amounts outstanding are due and payable; (“date d’échéance”)

“Minister” means the Minister of Energy, Northern Development and Mines 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.”)

“payment date” means,

- (a) a date on which the Fair Hydro Trust is obligated under the governing documents for an existing funding obligation, including in accordance with the requirements and priorities set out in the governing documents, to pay an amount that is due and payable in respect of an existing funding obligation, an FHT expense or a tax, or
- (b) if a different date has been prescribed by a regulation made under subsection 6 (3), the prescribed date; (“date de paiement”)

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

“Protection Agreement” means the agreement entered into by Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance, and Computershare Trust Company of Canada as Trustee of Fair Hydro Trust, and Ontario Power Generation Inc. as Financial Services Manager and Manager of Fair Hydro Trust, and BNY Trust Company of Canada as Indenture Trustee, entitled “Change of Law Protection Agreement”, dated as of December 21, 2017; (“accord de protection”)

“recovery amount” means the aggregate of all amounts received by or on behalf of the Fair Hydro Trust in respect of funding obligations; (“montant de recouvrement”)

“redemption amount” means the amount payable by or on behalf of the Fair Hydro Trust to redeem, prepay or repurchase an existing funding obligation, including any premium, make-whole or other amount payable to give effect to the prepayment, redemption or repurchase; (“montant de rachat”)

“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 April 30, 2047, every six-month period following the period mentioned in clause (a); (“période de référence”)

“regulation” means a regulation made under this Act; (“règlement”)

“repayment” means the payment by or on behalf of the Fair Hydro Trust or the provision by or on behalf of the Fair Hydro Trust for the payment of all or a portion of the principal amount advanced to the Fair Hydro Trust under an existing funding obligation; (“remboursement”)

“tax” means a tax, duty, fee, premium, excise, assessment, impost, levy or other charge payable by the Fair Hydro Trust to Her Majesty in right of Ontario, Her Majesty in right of Canada or the government of any other country, province, state, municipality or other political territory and imposed or authorized to be imposed by any law of Ontario, Canada, or any other country, province, state, municipality or other political territory and includes,

- (a) a tax, duty, fee, premium, excise, assessment, impost, levy or other charge,
  - (i) levied on, measured by or described with respect to income, earnings, gross receipts, profits, capital, capital gains, sales or use, or
  - (ii) referred to as branch tax, net worth tax, alternative tax, minimum tax, goods and services tax, harmonized sales tax, value-added tax, excise tax, *ad valorem* tax, franchise tax, transfer tax, withholding tax, property tax, surtax, payroll tax, employment tax or employer health tax,
- (b) government pension plan premiums or contributions, social security premiums, workers’ compensation premiums and employment or unemployment insurance or compensation premiums and contributions,
- (c) an amount or charge under Part VI of the *Electricity Act, 1998*,
- (d) an instalment in respect of an amount mentioned in clauses (a) to (c), and
- (e) interest, penalties, fines, additions to tax or other amounts imposed on or in respect of an amount mentioned in clauses (a) to (c); (“impôt”)

“tax refund” means all amounts received by or on behalf of the Fair Hydro Trust as a refund of tax and to which the Fair Hydro Trust is entitled as a result of any activity, undertaking, transaction or event authorized or permitted under this Act. (“remboursement d’impôt”)

### **FHT expenses**

(2) For the purposes of the definition of “FHT expenses” in subsection (1), the matters include the following:

1. Maintaining the Fair Hydro Trust in good standing.
2. Administering, managing and operating the Fair Hydro Trust, including to enable compliance with its obligations under the governing documents for each existing funding obligation and the other contracts and instruments to which the Fair Hydro Trust is or becomes a party.
3. Fulfilling and complying with the Fair Hydro Trust's obligations and undertakings under this Act and the governing documents for each existing funding obligation and the other contracts and instruments to which the Fair Hydro Trust is or becomes a party, including all charges, costs, indemnities, reimbursements and other amounts, together with any taxes on such charges, costs, indemnities, reimbursements and other amounts, incurred or committed to by or on behalf of the Fair Hydro Trust as a result of,
  - i. an activity authorized or permitted under the governing documents for each existing funding obligation and the other contracts and instruments to which the Fair Hydro Trust is or becomes a party,
  - ii. an agreement, undertaking or commitment made by or on behalf of the Fair Hydro Trust under this Act as it read immediately before the final plan date or under the General Regulation as it read immediately before the final plan date, or
  - iii. an activity authorized or permitted under this Act or the governing documents for each existing funding obligation and the other contracts and instruments to which the Fair Hydro Trust is or becomes a party on or after the final plan date.
4. Paying the underwriters, selling agents, valuation experts or other capital markets professionals in respect of existing funding obligations.
5. Paying the banking fees, including but not limited to structuring fees or work fees in respect of existing funding obligations.
6. Paying the fees of issuing and paying agents in respect of existing funding obligations.
7. Paying the fees of trustees.
8. Paying the fees incurred in the preparation of financial statements, financial reports, compliance certificates and tax returns.
9. Paying the fees of legal counsel.
10. Paying the rating agency fees.
11. Paying the filing or registration fees.
12. Paying the direct costs of the Financial Services Manager for employees whose work for the Financial Services Manager consists of the provision of services to the Fair Hydro Trust.
13. Paying the costs and expenditures incurred on behalf of the Fair Hydro Trust in connection with the Financial Services Manager's duties under this Act.
14. Paying the costs and expenditures incurred in relation to any management agreement between the Financial Services Manager and the Fair Hydro Trust where the agreement provides for the reimbursement of the costs and expenditures.

**Same, exclusions**

(3) For the purposes of the definition of "FHT expenses" in subsection (1), FHT expenses do not include amounts arising under existing funding obligations or any taxes other than those taxes mentioned in the definition of "FHT expenses" in subsection (1).

**References to terms in contract, instrument**

**1.1** (1) Subject to subsection (2), if a contract or other instrument to which the Fair Hydro Trust is a party includes a reference to a term that was defined in this Act as it read immediately before the final plan date or in the General Regulation as it read immediately before the final plan date, the definition as it read immediately before the final plan date continues to apply for the purposes of interpreting the contract or other instrument.

**Exceptions**

- (2) In any contract or other instrument entered into before the final plan date in respect of an existing funding obligation,
- (a) a reference to an investment interest is deemed to be a reference to the investment asset;
  - (b) a reference to an investment interest owner is deemed to be a reference to the investment asset owner; and
  - (c) a reference to a term specified in the regulations is deemed to be a reference to such other term as may be prescribed.

### **Waiver of subrogation rights under Protection Agreement**

**1.2** To the extent that any amount is deposited by the Crown in the account established for the beneficiaries under the Protection Agreement, the Crown shall be deemed to waive any attendant rights of subrogation and repayment arising under the Protection Agreement and under the governing documents for the existing funding obligations, in each case in respect of the obligations that are satisfied by applying the amount in accordance with the governing documents.

### **Protection against liability of specified consumers**

**1.3** (1) Nothing in this Act or in any contract or instrument shall be interpreted so as to create, continue or impose liability on any specified consumer in favour of any person for or in respect of any amount determined to be, or to form part of, a clean energy adjustment under this Act as it read immediately before the final plan date, including for or in respect of paying such an amount.

### **Extinguishment of obligation to pay, etc.**

(2) For greater certainty, any obligation of specified consumers to pay or repay any amounts that form all or any part of a clean energy adjustment referred to in subsection (1) is extinguished, whether such obligation arose or existed before or after the final plan date, and such obligation is superseded and replaced by the payment obligations of the Crown under section 6 and the payment obligations of Ontario Power Generation under section 8.

### **Specified consumer**

(3) For the purposes of subsections (1) and (2), the term “specified consumer” has the meaning assigned to it in this Act as it read immediately before the final plan date.

### **Protection against liability of electricity vendors and unit sub-meter providers**

**1.4** (1) Nothing in this Act or in any contract or instrument shall be interpreted so as to create, continue or impose liability on any electricity vendor or any unit sub-meter provider in favour of any person for or in respect of any amount determined to be, or to form part of, a clean energy adjustment under this Act as it read immediately before the final plan date, including for or in respect of,

- (a) collecting, receiving, holding, applying, depositing or remitting such an amount;
- (b) reporting on such an amount; or
- (c) enforcing any collections or remittances of such an amount.

### **Electricity vendor, unit sub-meter provider**

(2) For the purposes of subsection (1), the terms “electricity vendor” and “unit sub-meter provider” have the meanings assigned to them in this Act as it read immediately before the final plan date.

### **Protection against liability of IESO**

**1.5** (1) Nothing in this Act or in any contract or instrument shall be interpreted so as to create, continue or impose liability on the IESO in favour of any person for or in respect of any amount determined to be, or to form part of, a clean energy adjustment under this Act as it read immediately before the final plan date, including for or in respect of,

- (a) collecting, receiving, holding, applying, depositing or remitting such an amount;
- (b) reporting on such an amount; or
- (c) servicing, administering or enforcing any collections or remittances of such an amount.

### **IESO not required to comply**

(2) The IESO is not required to comply with any requirement under any contract or instrument that provides for the administration or servicing of the investment asset on behalf of the Fair Hydro Trust, including any requirement to,

- (a) collect, receive, hold, apply, deposit or remit a clean energy adjustment under this Act as it read immediately before the final plan date;
- (b) report on or provide notice on a clean energy adjustment under this Act as it read immediately before the final plan date;
- (c) service, administer or enforce,
  - (i) a clean energy adjustment under this Act as it read immediately before the final plan date, or
  - (ii) any collections or remittances of a clean energy adjustment under this Act as it read immediately before the final plan date; or
- (d) develop and implement an implementation plan in respect of obligations that would arise in the future under this Act as it read immediately before the final plan date.

**Validity of transfer, investment asset**

(3) This section does not affect the validity of any transfer of the investment asset to the Fair Hydro Trust or the application of each of the following in accordance with the terms of each of the following, in relation to such a transfer:

1. Any representation or certification made by the IESO to the Fair Hydro Trust or to or in favour of any beneficiary or any secured party.
2. Any warranty, acknowledgment or indemnity given by the IESO to the Fair Hydro Trust or to or in favour of any beneficiary or any secured party.
3. Any restrictive covenant agreed to by the IESO to the Fair Hydro Trust or to or in favour of any beneficiary or any secured party.

**Carrying costs**

(4) Nothing in this Act or in any contract or instrument shall be interpreted so as to create, continue or impose liability on the IESO to pay the Fair Hydro Trust the carrying costs determined under section 9.1 of the General Regulation as it read immediately before the final plan date.

**Enforcement remedies of secured parties unaffected**

**1.6** Nothing in this Act shall be read as limiting the rights and remedies of any secured party or its trustees or representatives to enforce its rights and interests as a secured party under any governing document for any existing funding obligation at any time after its security interest has become enforceable in accordance with the governing document.

**Computation of amounts under funding obligations, etc.**

**1.7** Nothing in this Act shall be read as changing any of the following as set out in the governing documents for an existing funding obligation:

1. The method of computing the amount of principal of or interest on an existing funding obligation.
2. The date of payment of an amount of principal of or interest on an existing funding obligation.
3. The rights, entitlements or obligations of the payees under an existing funding obligation.

**Protection against liability of Ontario Power Generation Inc. or Crown as principal**

**1.8** Without limiting the obligations of the Crown under section 6 and of Ontario Power Generation Inc. under section 8, nothing in this Act shall impose upon Ontario Power Generation Inc. or the Crown any obligation as a principal to pay any existing funding obligation, FHT expense or tax owing and payable by the Fair Hydro Trust.

**3 Section 3 of the Act is repealed.**

**4 Section 5 of the Act is repealed and the following substituted:**

**Protection**

**5** (1) No action or omission by the Minister, the Minister of Finance or the Crown shall be effective to reduce, impair, postpone or terminate the obligation of the Crown to pay amounts in respect of payments under the Protection Agreement or amounts under section 6 or the obligation of Ontario Power Generation Inc. to pay amounts under section 8.

**Agreements**

(2) Subject to subsection (1), the Minister and the Minister of Finance may together, with the approval of the Lieutenant Governor in Council, enter into any agreements on behalf of the Province of Ontario with any person in respect of this Act.

**Guarantee, indemnification re previous agreements**

(3) Subject to subsection (1), the Lieutenant Governor in Council may by order,

- (a) authorize the Minister and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with the investment asset and to determine terms and conditions 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.

**5 Parts II, III, IV, V and VI of the Act are repealed and the following substituted:**

**PART II**  
**PAYMENTS BY THE CROWN AND BY ONTARIO POWER GENERATION INC.**

**Payments by Crown**

6 (1) The Crown shall, in accordance with this section and the regulations, pay to the Fair Hydro Trust the amounts calculated in accordance with section 7.

**Timing of payments**

(2) Subject to subsection (3), the payments by the Crown under subsection (1) shall be paid following the final plan date on each applicable payment date.

**Same, regulations**

(3) In order to align the timing of payments to the Fair Hydro Trust by the Crown with the payment obligations of the Fair Hydro Trust with respect to existing funding obligations, FHT expenses or taxes, the Lieutenant Governor in Council may make regulations regarding the timing of payments or prescribing different dates on which the Crown is required to pay to the Fair Hydro Trust an amount calculated in accordance with section 7.

**Consolidated Revenue Fund**

(4) The amounts referred to in subsection (1) are a charge on and are payable out of the Consolidated Revenue Fund.

**Indebtedness of Crown**

(5) An unpaid amount that was required to be paid under this section constitutes indebtedness of the Crown to the Fair Hydro Trust.

**Calculation of amounts payable by Crown**

7 (1) The payment to be made on a payment date by the Crown under section 6 shall be the amount calculated by taking the following steps:

1. After eliminating any duplication in the following amounts, calculate the sum of the following:
  - i. Amounts that would be due and payable by the Fair Hydro Trust in respect of each existing funding obligation on the payment date, determined as the sum of the following, in each case assuming that no FHT acceleration has occurred in respect of any existing funding obligation at any time on or before the payment date:
    - A. Amounts due and payable in respect of repayments.
    - B. Amounts due and payable in respect of funding costs.
    - C. Amounts due and payable in respect of redemption amounts.
    - D. Amounts required under the governing documents for the existing funding obligation to be deposited into capital accounts or finance reserve accounts.
  - ii. Amounts due and payable in respect of FHT expenses on the payment date.
  - iii. Any taxes due and payable by the Fair Hydro Trust on the payment date.
2. If the payment date is the last payment date occurring during a reference period during or after which an FHT acceleration has occurred in respect of any existing funding obligation, calculate the following amounts:
  - i. After eliminating any duplication in the amounts, the sum of the amounts that would have been determined under paragraph 1 in respect of a payment date occurring during the reference period, had the amounts been calculated in subparagraph 1 i for the payment date having regard to whether or not an FHT acceleration in respect of an existing funding obligation had occurred as of the payment date.
  - ii. The lesser of the following:
    - A. The amount determined under subparagraph i.
    - B. The fair allocation amount for the reference period in which the payment date occurs.
3. Determine the amount, if any, by which the amount calculated under subparagraph 2 ii exceeds the amount determined under paragraph 1.
4. After eliminating any duplication in amounts from all other sources of money that are or will be available to the Fair Hydro Trust on the payment date in order to pay the amounts that are due and payable by the Fair Hydro Trust on the payment date, calculate the sum of those amounts, excluding any amounts that would, if applied by the Fair Hydro Trust, directly or indirectly cause a default under any existing funding obligations, and including the following amounts:



- i. Amounts withdrawn or required to be withdrawn, as required under the governing documents for the existing funding obligations, from any collection account, capital account or finance reserve account.
  - ii. Recovery amounts received by the Fair Hydro Trust.
  - iii. Tax refunds received by the Fair Hydro Trust.
  - iv. Amounts paid by Ontario Power Generation Inc. to the Fair Hydro Trust under section 8.
  - v. Amounts deposited by the Crown into the account established for the beneficiaries under the Protection Agreement.
5. Calculate the sum of the amount calculated under paragraph 1 and any amount calculated under paragraph 3.
  6. Subtract the sum of the amounts calculated under paragraph 4 from the amount calculated under paragraph 5.
  7. Calculate the payment amount by adding any positive amount determined under paragraph 6 to any additional prescribed amounts that are determined in accordance with the regulations.

#### **Rules**

(2) The following rules apply with respect to the determination of the amounts payable by the Crown to the Fair Hydro Trust under this section:

1. The determination shall be made by applying a cash basis accounting method.
2. The determination shall reflect cash amounts actually paid, deposited, received, applied, withdrawn or made available at a specified time.

#### **Financial Services Manager to notify Ministers**

(3) The Financial Services Manager shall, in accordance with the regulations, notify the Minister and the Minister of Finance of each amount determined under this section and such other information as may be prescribed related to the determination of the amount.

#### **Payments by Ontario Power Generation Inc.**

**8** (1) Subject to subsection (3), Ontario Power Generation Inc. shall pay to the Fair Hydro Trust all amounts of or in respect of FHT expenses that become due and payable on or after January 1, 2019.

#### **Reimbursement to the Crown**

(2) If an amount in respect of FHT expenses described under subsection (1) has been paid to the Fair Hydro Trust by the Crown under the Protection Agreement or under section 6, Ontario Power Generation Inc. shall promptly reimburse the Crown for the amount paid.

#### **Same**

(3) Ontario Power Generation Inc. shall not be required to pay to the Fair Hydro Trust amounts in respect of FHT expenses that have been paid to the Fair Hydro Trust by the Crown as described in subsection (2).

#### **Timing of payments**

(4) The amount payable to the Fair Hydro Trust by Ontario Power Generation Inc. in respect of an FHT expense shall be made not later than one day before the day that the FHT expense becomes due and payable.

#### **Rules**

(5) The following rules apply with respect to the determination of the amounts payable to the Fair Hydro Trust by Ontario Power Generation Inc. under subsection (1):

1. The determination shall be made by applying a cash basis accounting method.
2. The determination shall reflect cash amounts actually paid, deposited, received, applied, withdrawn or made available at a specified time.

#### **Application of amounts by the Fair Hydro Trust**

**9** (1) On each payment date, the Fair Hydro Trust shall, subject to and in compliance with the terms of the governing documents for the existing funding obligations and the terms of each of its other applicable payment obligations, carry out the following steps in the order in which they appear:

1. Apply all sources of money that are or will be available to the Fair Hydro Trust on the payment date, including sources included in the calculation in paragraph 4 of subsection 7 (1), excluding any amounts that would, if applied by the Fair Hydro Trust, directly or indirectly cause a default under any existing funding obligations and excluding amounts paid to it by the Crown under section 6 on the payment date, to pay the amounts that are due and payable by the Fair Hydro Trust on the payment date in respect of existing funding obligations, FHT expenses or any tax.

2. Deposit the amounts paid to it by the Crown under section 6 on the payment date into the applicable collection account contemplated under the governing documents for existing funding obligations and apply the deposited amounts to pay the amounts specified in the governing documents to be due and payable by the Fair Hydro Trust on the payment date in respect of any existing funding obligations, FHT expenses or any tax.
3. If, after applying the amounts under paragraphs 1 and 2, it is determined by the Financial Services Manager that all or a portion of the amount paid on the payment date to the Fair Hydro Trust by the Crown under section 6 was not required by the Fair Hydro Trust on the payment date to pay the amounts due and payable in respect of existing funding obligations, FHT expenses or any tax on the payment date, pay the amount in excess to the Crown.

**Same, receipts in respect of clean energy adjustments**

(2) The Fair Hydro Trust shall apply the following amounts under the terms of the governing documents for the existing funding obligations, in each case on a payment date, on the same basis as if such amounts were received by the IESO and remitted to the Fair Hydro Trust as receipts in respect of clean energy adjustments in accordance with the agreements and instruments under which the investment asset was transferred to the Fair Hydro Trust:

1. The amounts paid to it by the Crown under section 6.
2. The amounts paid to it by Ontario Power Generation Inc. under section 8.

**Payment instructions**

(3) The Financial Services Manager shall modify, adjust and supplement the reports, notices, payment instructions and certificates contemplated to be delivered in connection with payments to be made by the Fair Hydro Trust in accordance with the governing documents for the existing funding obligations in order to reflect the payments, deposits and applications contemplated under this section.

**Deemed compliance with delivery requirements**

(4) The delivery of modified, adjusted or supplemented reports, notices, payment instructions and certificates mentioned in subsection (3) shall be deemed to be in compliance with the corresponding delivery requirements arising under the governing documents for the existing funding obligations.

**Contract references, finance amount**

**10** (1) This section applies to any contract to which the Fair Hydro Trust is a party for the purposes of determining the finance amount or the estimated finance amount as those amounts were defined or determined under this Act as it read immediately before the final plan date.

**Minimum amount**

(2) If a contract mentioned in subsection (1) includes a reference to the estimated finance amount to be determined in respect of a reference period under subsection 15 (1) of this Act as it read immediately before the final plan date and section 6.1 of the General Regulation as it read immediately before the final plan date, that amount shall be adjusted, if necessary, so that it is at a minimum the amount calculated as follows:

1. Calculate the sum of all amounts in respect of the reference period, each of which is an amount determined under paragraph 1 of subsection 7 (1) in respect of a payment date occurring during the reference period.
2. After eliminating any duplication, calculate the sum of the sources of money described in subparagraphs 4 i to iii of subsection 7 (1) that were applied by the Fair Hydro Trust to pay amounts that were due and payable by the Fair Hydro Trust on the payment dates occurring during the reference period.
3. Calculate the amount determined under paragraph 3 of subsection 7 (1) for the last payment date occurring during the reference period.
4. Calculate any positive amount that results from subtracting the sum calculated under paragraph 2 from the sum of the following amounts:
  - i. The amount calculated under paragraph 1.
  - ii. The amount calculated under paragraph 3.
  - iii. Any additional prescribed amounts that are determined in accordance with the regulations.

**Payment obligation**

(3) Any reference in a contract mentioned in subsection (1) to a payment obligation of the Fair Hydro Trust that would yield, for a period of time, a finance amount or an estimated finance amount as such amount would have been determined under the General Regulation as it read immediately before the final plan date shall be read as including any obligation to pay an existing funding obligation, any FHT expense and any tax, in each case that becomes due and payable during the period of time.

**PART III  
FINANCIAL SERVICES MANAGER**

**Ontario Power Generation Inc. to continue as Financial Services Manager**

**11** (1) Ontario Power Generation Inc. shall continue to act as the Financial Services Manager and shall fulfil its obligations in that capacity under this Act.

**No compensation**

(2) Except as may be provided for in any contract to which Ontario Power Generation Inc. is a party as of the final plan date, the Financial Services Manager shall not be entitled to be compensated for acting as the Financial Services Manager under this Act.

**Duties of Financial Services Manager**

**12** (1) The Financial Services Manager shall do the following until all existing funding obligations and any other obligations and liabilities of the Fair Hydro Trust have been satisfied or otherwise extinguished:

1. Perform the duties assigned to it under this Act.
2. Administer the investment asset on behalf of the Fair Hydro Trust.
3. Take all necessary steps within its power to,
  - i. maintain the Fair Hydro Trust's legal existence,
  - ii. cause the Fair Hydro Trust to comply with all of its obligations and undertakings under the governing documents for the existing funding obligations, under all other contracts to which it is a party and under this Act, and
  - iii. otherwise maintain and observe reasonable and prudent practices in connection with the Fair Hydro Trust's operations.

**Administration of the investment asset**

(2) The administration of the investment asset may include providing information to the Minister or the Minister of Finance in respect of obligations under this Act and such other activities as may be prescribed.

**Limitation**

(3) Despite subparagraph 3 iii of subsection (1), the Financial Services Manager is not responsible or liable for obligations or undertakings of the Fair Hydro Trust as a principal.

**No further funding obligations to be incurred**

**13** Neither the Financial Services Manager nor the Fair Hydro Trust shall provide for further funding obligations to be incurred by or on behalf of the Fair Hydro Trust on or after the final plan date.

**No further financing entities to be established**

**14** (1) The Fair Hydro Trust is the only financing entity established under this Act and, for greater certainty, no other financing entity shall be established under this Act.

**Financing entity**

(2) For the purposes of this section, the term "financing entity" has the meaning assigned to it in this Act as it read immediately before the final plan date.

**Amendment to Financing Plan**

**15** The Financial Services Manager shall, as soon as practicable on or after the final plan date, amend the Financing Plan that was prepared under this Act, having regard to the following principles:

1. The payment of existing funding obligations, FHT expenses and taxes payable by the Fair Hydro Trust should be made promptly as they become due and payable in accordance with their terms.
2. No further funding obligations may be incurred by or on behalf of the Fair Hydro Trust on or after the final plan date.
3. The Fair Hydro Trust should maintain its legal existence and remain in good standing until all existing funding obligations and any other obligations and liabilities of the Fair Hydro Trust have been satisfied or otherwise extinguished.
4. The Fair Hydro Trust should comply with all of its obligations and undertakings under the governing documents for the existing funding obligations, under all other contracts to which it is a party and under this Act and otherwise maintain and observe reasonable and prudent practices in connection with its operations.
5. The Financial Services Manager and the Manager of the Fair Hydro Trust should act as any reasonably prudent manager would act in similar circumstances and deal with related parties on arm's length terms, and otherwise

maintain and observe reasonable and prudent practices and standards in connection with the performance of its duties and obligations.

6. The Financial Services Manager and the Manager of the Fair Hydro Trust should together prepare and disseminate such disclosures and reports as are reasonably required in order to inform and update the creditors of the Fair Hydro Trust from time to time, including to reflect the enactment of Schedule 3 to the *Fixing the Hydro Mess Act, 2019*.
7. Such other principles as may be prescribed.

#### **PART IV THE INVESTMENT ASSET**

##### **Validity of transfer**

**16** (1) A transfer under section 26 of this Act as it read immediately before the final plan date constituted a valid and enforceable absolute assignment, conveyance and sale of the corresponding ownership interest in the investment asset to the Fair Hydro Trust.

##### **Effect of transfer**

(2) The Fair Hydro Trust shall have a valid and enforceable ownership interest in the investment asset as it is comprised on and after the final plan date.

##### **Deemed perfection, etc.**

(3) At the time a transfer occurred under section 26 of this Act as it read immediately before the final plan date, the transfer of the investment asset to the Fair Hydro Trust 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.

##### **Same**

(4) A transfer described in subsection (3) shall be deemed to have been and shall be a continuously perfected, vested, valid and binding ownership interest in the investment asset as it is comprised on and after the final plan date, despite the change to the composition of the investment asset that became effective on the final plan date.

##### **Same**

(5) For greater certainty, upon a transfer to the Fair Hydro Trust under section 26 of this Act as it read immediately before the final plan date, the investment asset that resulted from the transfer was immediately vested in the Fair Hydro Trust, free and clear of any adverse claim other than of any person having a security interest created under or in accordance with the governing documents for existing funding obligations and no adverse claim shall arise as a consequence of the change to the composition of the investment asset that became effective on the final plan date.

##### **Priority of transfer**

(6) Subsections (3) and (5) apply regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the Fair Hydro Trust shall have priority over any liens in favour of those persons.

##### **Investment asset**

**17** (1) On and after the final plan date, the investment asset constitutes and shall be comprised of a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of the investment asset owner and which constitute a substitution and continuation of the investment asset that existed before the final plan date:

1. The right and interest to receive and recover amounts required to be paid by the Crown under section 6 from the Crown and the right to determine those amounts in accordance with this Act and the regulations.
2. The right and interest to receive and recover amounts required to be paid by Ontario Power Generation Inc. under section 8 from Ontario Power Generation Inc. and the right to determine those amounts in accordance with this Act and the regulations.
3. All rights and entitlements with respect to,
  - i. any account, regardless of the name in which the account is opened, if amounts paid by the Crown under section 6 or by Ontario Power Generation Inc. under section 8 are deposited into it,
  - ii. any accounts opened in the name of or on behalf of the Fair Hydro Trust by the Financial Services Manager or by the Manager of the Fair Hydro Trust, or
  - iii. such other accounts as may be prescribed, including all amounts on deposit in such accounts.
4. All rights of any kind related to any of the other property rights or interests that comprise the investment asset, including any continuing rights arising under the agreement and instruments under which the investment asset was transferred to the Fair Hydro Trust.

5. All revenue, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 4, regardless of whether it is maintained together with or commingled with other revenue, payments, money and proceeds.

**Not affected by failure**

- (2) An ownership interest in the investment asset is not affected by any failure to enforce, collect or accrue amounts in respect of the amounts payable under section 6 or 8.

**No set off, etc.**

- (3) Subject to subsection (4), the Fair Hydro Trust's rights and interests under the investment asset shall not be reduced as a consequence of any set off or purported set off or exercise of any remedy by the Crown or Ontario Power Generation Inc., by any affiliate or successor of Ontario Power Generation Inc. or by any person in connection with any default of the Crown or Ontario Power Generation Inc.

**Exercise of rights**

- (4) Subsection (3) does not apply in respect of any exclusion provided for under paragraph 4 of subsection 7 (1).

**Investment asset owner may grant security interest**

- 18** (1) The security interest over the investment asset granted to secure the existing funding obligations and other obligations under or contemplated by the governing documents for the existing funding obligations continues to be valid and enforceable in accordance with its terms.

**Same**

- (2) The investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment asset to or in favour of any person to secure an existing funding obligation.

**Validity**

- (3) A security interest granted under this Act, including a security interest granted under this Act as it read immediately before the final plan date, shall be valid and enforceable in accordance with its terms.

**Perfection and priority of security interests**

- (4) All provisions of the *Personal Property Security Act* shall apply to the investment asset and any portion of the investment asset on the basis that the investment asset and any portion of the investment asset is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment asset owner to secure an existing funding obligation shall, subject to the terms of the existing 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**

- (5) All proceeds of any portion of the investment asset that are subject to the security interest referred to in subsection (1) or (2) and that are received by the investment asset 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**

- (6) 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 same portion of the investment asset subject to the security interest, unless the person to whom the security interest has been granted consents otherwise.

**Same**

- (7) 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 person who may have commingled such revenues or other proceeds with other funds.

**Notice required**

- (8) The secured party shall be entitled to exercise the rights of the investment asset owner only after the secured party has given notice of the enforcement of its security interest to the Fair Hydro Trust.

**Interpretation**

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

**6 Sections 33 to 36 of the Act are repealed and the following substituted:**

**Sequestration**

**33** (1) A court in the Province of Ontario may, upon application by the investment asset owner or a secured party, order the sequestration and payment of amounts in respect of amounts payable under section 6 by the Crown or amounts payable under section 8 by Ontario Power Generation Inc., in each case for the benefit of the investment asset owner or secured party.

**Same**

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

**Choice of law**

**34** The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to a transfer under this Act, a security interest in the investment asset, the amounts payable under sections 6 and 8 and any undertaking of the Crown under section 5 shall be the laws of the Province of Ontario.

**7 Section 37 of the Act is amended by adding the following subsection:*****Proceedings Against the Crown Act***

(2) For greater certainty, this Act prevails over sections 19 and 21 of the *Proceedings Against the Crown Act*.

**8 Section 38 of the Act is amended by striking out “or in relation to the determination of the fair allocation amount” at the end.**

**9 Sections 40 and 41 of the Act are repealed and the following substituted:****Compliance and restraining orders****Application to court**

**40** (1) On the application of the investment asset owner, the Superior Court of Justice may make an order described in subsection (2) if it is satisfied that the Financial Services Manager has failed to comply with or has contravened this Act or the regulations or that the Financial Services Manager 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 Financial Services Manager to comply with this Act or the regulations;
  - (b) restrain the Financial Services Manager from contravening this Act or the regulations; or
  - (c) require compensation to be provided by the Financial Services Manager to the investment asset owner.

**Same**

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

**10 (1) Paragraphs 3 to 7 of subsection 42 (1) of the Act are repealed and the following substituted:**

3. Governing transitional matters relating to the enactment of Schedule 3 to the *Fixing the Hydro Mess Act, 2019*.

**(2) Subsection 42 (2) of the Act is repealed and the following substituted:****Limitation**

- (2) Despite subsection (1) or any other Act, no regulation under this Act shall have the effect of reducing, impairing, postponing or terminating,
- (a) the obligations of the Crown to pay amounts under section 6 or impairing or postponing the recovery of the amounts under section 6; or
  - (b) the obligations of Ontario Power Generation Inc. to pay amounts under section 8 or impairing or postponing the recovery of the amounts under section 8.

**AMENDMENTS TO OTHER ACTS*****Electricity Act, 1998*****11 (1) Subclause 6 (1) (q.1) (iii) of the *Electricity Act, 1998* is repealed.**

**(2) Subsection 25.33 (1) of the Act is amended by adding “and” at the end of clause (a), by striking out “and” at the end of clause (b) and by striking out clause (c).**

**(3) Subsection 25.33 (2) of the Act is amended by adding “and” at the end of clause (a), by striking out “and” at the end of clause (b) and by striking out clause (c).**

**(4) Clause 25.33 (4) (b) of the Act is amended by striking out “Ontario Fair Hydro Plan Act, 2017” at the end and substituting “Ontario Energy Board Act, 1998”.**

**(5) Subsection 25.33 (5) of the Act is amended by striking out “Ontario Fair Hydro Plan Act, 2017” at the end and substituting “Ontario Energy Board Act, 1998”.**

**(6) Subsection 53.1 (1.1) of the Act is repealed and the following substituted:**

**Same, *Ontario Fair Hydro Plan Act, 2017***

(1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of the Fair Hydro Trust and performing other services on behalf of the Fair Hydro Trust.

**(7) Subsections 53.1 (1.3) to (1.5) of the Act are repealed and the following substituted:**

**Deemed assets, non-subsidiary**

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act, and subject to section 8 of the *Ontario Fair Hydro Plan Act, 2017*, if the Fair Hydro Trust is not a subsidiary of Ontario Power Generation Inc.,

- (a) the assets and liabilities of the Fair Hydro Trust shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and
- (b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of the Fair Hydro Trust.

**Deemed assets, subsidiary**

(1.4) Despite any other provision of this Act, the *Business Corporations Act* or any other Act, and subject to section 8 of the *Ontario Fair Hydro Plan Act, 2017*, if the Fair Hydro Trust is a subsidiary of Ontario Power Generation Inc.,

- (a) the assets and liabilities of the Fair Hydro Trust shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its other subsidiaries; and
- (b) the assets and liabilities of Ontario Power Generation Inc. or any of its other subsidiaries shall not form part of the assets and liabilities of the Fair Hydro Trust.

**Definition**

(1.5) For the purposes of this section,

“Fair Hydro Trust” has the same meaning as in the *Ontario Fair Hydro Plan Act, 2017*.

***Ontario Energy Board Act, 1998***

**12 (1) Paragraph 4 of subsection 70 (2.1) of the *Ontario Energy Board Act, 1998* is repealed.**

**(2) Subsection 70 (2.4) of the Act is repealed.**

**(3) Paragraph 4 of subsection 78.1 (3.1) of the Act is repealed and the following substituted:**

- 4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of the Fair Hydro Trust within the meaning of the *Ontario Fair Hydro Plan Act, 2017*.

**COMMENCEMENT**

**Commencement**

**13 This Schedule comes into force on November 1, 2019.**

**SCHEDULE 4**  
**ONTARIO REBATE FOR ELECTRICITY CONSUMERS ACT, 2016**

**1 The definition of “eligible account” in subsection 1 (1) of the *Ontario Rebate for Electricity Consumers Act, 2016* is repealed and the following substituted:**

“eligible account” means, in respect of a consumer, an account with an electricity vendor, or with a person prescribed by the regulations, for the provision of electricity in Ontario, if the consumer and the account satisfy the conditions prescribed by the regulations; (“compte admissible”)

**2 Section 2 of the Act is repealed.**

**3 Subsection 3 (1) of the Act is repealed and the following substituted:**

**Financial assistance**

(1) A consumer who has an eligible account during a billing period is entitled to receive the financial assistance that is prescribed by the regulations in respect of the cost of electricity during the billing period in relation to the eligible account.

**4 (1) Subsection 4 (1) of the Act is repealed and the following substituted:**

**Invoices**

(1) Unless otherwise prescribed by the regulations, every electricity vendor who issues an invoice for a billing period to a consumer in respect of an eligible account shall ensure that the invoice meets the following requirements:

1. The invoice must clearly show, in the manner specified by the regulations if any,
  - i. a credit equal to the amount of the financial assistance provided to the consumer for the billing period, and
  - ii. the net amount of the invoice after the credit.
2. The invoice must be accompanied by the information required by the regulations.

**(2) Subsection 4 (3) of the Act is repealed and the following substituted:**

**No effect on entitlement**

(3) The entitlement of a consumer to financial assistance under this Act is not affected by any failure of an electricity vendor or person referred to in subsection (2) to comply with an invoicing requirement set out under this Act.

**5 (1) Clause 15 (1) (a) of the Act is amended by striking out “the Minister of Energy’s powers” and substituting “the powers of the Minister of Energy, Northern Development and Mines”.**

**(2) Clause 15 (1) (e) of the Act is repealed and the following substituted:**

- (e) governing the determination of the financial assistance to which a consumer is entitled under this Act, including,
- (i) setting out the amount of financial assistance or methods for determining it,
  - (ii) respecting the calculation of the cost of electricity during a billing period,
  - (iii) setting out limits or maximums on the amount of financial assistance that may be paid, or methods for determining any such limits or maximums, including limits on the number of kilowatt hours of electricity used, as determined in accordance with the regulations, with respect to which financial assistance may be paid,
  - (iv) limiting the application of any limits or maximums referred to in subclause (iii) to a specified period;

**(3) Subsection 15 (2) of the Act is amended by striking out the portion before clause (a) and substituting the following:**

**Regulations, Minister**

(2) The Minister of Energy, Northern Development and Mines may make regulations,

. . . . .

**(4) Subsection 15 (2) of the Act is amended by adding the following clauses:**

- (b.1) providing for extensions of time for compliance with an invoicing requirement set out under this Act, including,
- (i) providing for and specifying circumstances in which the Minister may by notice in writing provide such an extension to an electricity vendor or person referred to in subsection 4 (2),
  - (ii) requiring electricity vendors and persons referred to in subsection 4 (2) to comply with the invoicing requirement within the extended time, and



- (iii) subject to the regulations made under clause (1) (f), respecting the method by which financial assistance that was not paid or credited to a consumer as a result of a delay in compliance with an invoicing requirement shall be paid or credited;
- (b.2) providing for exemptions from and alternatives to an invoicing requirement set out under this Act, including,
  - (i) providing for and specifying circumstances in which the Minister may by notice in writing,
    - (A) exempt an electricity vendor or person referred to in subsection 4 (2) from complying with an invoicing requirement set out under this Act, and
    - (B) specify an alternative invoicing requirement or requirements with which to comply instead, and
  - (ii) requiring electricity vendors and persons referred to in subsection 4 (2) to comply with alternative invoicing requirements;
- (5) Subsection 15 (4) of the Act is amended by,**
  - (a) striking out “Minister of Energy” and substituting “Minister of Energy, Northern Development and Mines”; and**
  - (b) adding “other than under clause (1) (e)” at the end.**

**6 The following provisions of the Act are amended by striking out “Minister of Energy” wherever it appears and substituting in each case “Minister of Energy, Northern Development and Mines”:**

- 1. Subsection 5 (2).**
- 2. Subsection 10 (9).**
- 3. Clauses 11 (1) (a) and (2) (a).**

**Commencement**

**7 This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.**