

Legislative  
Assembly  
of Ontario



Assemblée  
législative  
de l'Ontario

# SELECT COMMITTEE ON FINANCIAL TRANSPARENCY

## FINAL REPORT

1<sup>st</sup> Session, 42<sup>nd</sup> Parliament  
68 Elizabeth II

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The Honourable Ted Arnott, MPP  
Speaker of the Legislative Assembly

Sir,

Your Select Committee on Financial Transparency has the honour to present its Final Report and commends it to the House.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke that curves upwards at the end.

Prabmeet Singh Sarkaria, MPP  
Chair of the Committee

Queen's Park  
March 2019



SELECT COMMITTEE ON FINANCIAL TRANSPARENCY  
MEMBERSHIP LIST

1<sup>st</sup> Session, 42<sup>nd</sup> Parliament

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Clerk of the Committee

IAN MORRIS  
Research Officer

NICK RUDERMAN  
Research Officer



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## **INTRODUCTION**

- [1] The Select Committee on Financial Transparency (Committee) began its work in October 2018 pursuant to a motion passed by the House. Over the weeks and months that followed, the Committee heard from 27 witnesses at 11 public hearings. The Committee's interim report was tabled in the Legislative Assembly on November 1, 2018. The Committee is now pleased to present its final report. See Appendix 1 for a list of abbreviations used in this report.
- [2] The Committee wishes to thank all witnesses who appeared before it. They also wish to acknowledge and recognize the assistance provided by the Clerk of the Committee and the staff in the Legislative Research Service.

## **MANDATE OF COMMITTEE**

- [3] On October 2, 2018, the Legislative Assembly of Ontario passed a motion to appoint the Committee to consider and report to the House its observations and recommendations with respect to the report submitted by the Independent Financial Commission of Inquiry (Commission), and to investigate and report on the accounting practices, decision making and policy objectives of the previous government or any other aspect of the report that the Select Committee deems relevant. The public has a right to know the true state of the Province's finances and demand accountability from government. See Appendix 2 for the complete Committee mandate.

## **EXECUTIVE SUMMARY**

- [4] After examining documents, correspondence and other materials and hearing from witnesses, the Committee made several unequivocal findings.
- [5] The former government entered into numerous unnecessary electricity contracts stretching over several decades. Since Ontario had surplus electricity, the contracts were unnecessary.
- [6] The Committee heard evidence that over the last several years, the energy contracts, and many other government energy policies, were responsible for a substantial increase in electricity prices charged to Ontario's ratepayers.
- [7] Through polling, the former government discovered that over 80% of Ontarians felt that the cost of electricity was unreasonably high. Testimony by public servants, political staff, the former Premier and former Minister of Energy made it clear that the former government became concerned that the high cost of electricity was quickly becoming an issue for the 2018 general election.
- [8] This concern gave rise to and shaped the former government's policy decision to devise a mechanism that would temporarily reduce the high and rising costs of electricity.

- [9] The Committee heard evidence which stated that while the former government sought to temporarily mitigate the rise in electricity prices, it also sought to keep a political promise made to Ontarians, to balance the budget before the next election.
- [10] In spring 2017, the former government introduced the *Ontario Fair Hydro Plan Act* (OFHPA) which was the legislation necessary to implement their Fair Hydro Plan (FHP), a complex, risky and opaque accounting structure that was not permitted by the applicable accounting rules. The former government proceeded with the FHP against the advice of the Cabinet Secretary, the Ontario Financing Authority (OFA), the Auditor General (Auditor), the Financial Accountability Office (FAO), Ontario Power Generation (OPG), the former Premier's business advisor Ed Clark and the Deputy Ministers involved.
- [11] To preserve the appearance of a balanced budget in fiscal year 2017-2018 and smaller deficits in 2018-2019 and onwards, the former government did not show the cost of the FHP on its books, and borrowed through a special purpose vehicle created by OPG.
- [12] The Cabinet of the former government approved the FHP without knowing the total cost of the plan and despite identified fiscal, accounting and legal risks, including the risk that the FHP may be unconstitutional.
- [13] Since OPG and its subsidiaries borrow at a higher interest rate than the Province, the decision to borrow the cost of the FHP through OPG as opposed to the Ontario Electricity Financial Corporation (OEFC) has been estimated by the FAO to cost ratepayers an additional and unnecessary \$4 billion. The former government borrowed "off-book" against the advice of key private and public sector advisors.
- [14] In the Auditor's October 2017 Special Report, *The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money*, the Auditor highlighted a number of accounting and other concerns. See Appendix 3 for the full report and analysis of those concerns (with the exception of its appendices). The Auditor indicated to the former government that if it proceeded with the planned FHP, that the Auditor would be forced to provide a qualified opinion on the government's books and provided a number of recommendations for the government's consideration. Nonetheless, the former government proceeded with the FHP, despite the objections of the Auditor, thereby rendering the Province's financial statements subject to a qualified opinion for the first time ever in 2016-17 and 2017-18.
- [15] According to the FAO, the total cost of the FHP over its designed 30-year span will exceed \$45 billion dollars. This cost will be borne by future generations and may rise to as much as \$69 billion to \$93 billion over its lifetime.
- [16] Included in this report is a list of recommendations compiled and devised by the Committee. The Committee hopes that the current government will adopt the recommendations and commit to ensuring and maintaining transparency within the government's finances.

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## INDEPENDENT FINANCIAL COMMISSION OF INQUIRY

- [17] On July 17, 2018, the Premier, Minister of Finance, and President of the Treasury Board jointly announced that the government would create the Independent Financial Commission of Inquiry to examine Ontario's past spending and accounting practices.<sup>1</sup> The Commission, established through Order in Council 1005/2018 issued under the *Public Inquiries Act, 2009*, was led by Gordon Campbell (Chair) and Commissioners Michael Horgan and Dr. Al Rosen.<sup>2</sup> The Commission concluded its mandate and delivered its report to the Attorney General and the Minister of Finance on August 30, 2018.<sup>3</sup>
- [18] The Commission's intention was to establish a budgetary baseline for the new government. Among other things, the Commission assessed whether the government's past accounting practices provided an accurate picture of the Province's finances.<sup>4</sup>
- [19] Noting that "unresolved disputes between the former government and the Auditor General over accounting practices can erode people's faith in their public institutions," the report provided fourteen recommendations with the intention of "informing the finalization of the *Public Accounts of Ontario, 2017-2018* and future fiscal planning."<sup>5</sup> Two aspects of the government's past accounting practices received particular attention: the treatment of specified net pension assets, and the treatment of a major component of the FHP, referred to as global adjustment (GA) refinancing.
- [20] In the process of producing the *Public Accounts of Ontario, 2015-2016*, a disagreement arose between the government and the Auditor regarding the accounting treatment of net pension assets of two jointly-sponsored pension plans: the Ontario Teachers' Pension Plan (OTPP) and the Ontario Public Sector Employees' Union (OPSEU) Pension Plan.<sup>6</sup> This led, in part, to the Auditor issuing a qualified audit opinion on the Province's 2016-2017 consolidated financial statements. The Commission recommended that the government engage with the Auditor to reach agreement on the issue, while also stating that the government should accept the Auditor's recommended accounting treatment of the plans' net pension assets on a provisional basis.<sup>7</sup>
- [21] The FHP was discussed in separate reports issued by the FAO and the Auditor. The Commission noted the Auditor's conclusion that the proposed accounting treatment of the FHP was intended to avoid showing deficits or increases in provincial net debt, and that the approach was not cost-effective.<sup>8</sup> The Commission recommended that the government adopt the

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<sup>1</sup> Office of the Premier, "Ontario Government Restoring Trust in Public Finances Through Commission of Inquiry and Line-by-Line Audit of Spending," News Release, July 17, 2018.

<sup>2</sup> Order in Council 1005/2018.

<sup>3</sup> Gordon M. Campbell, Michael Horgan and L.S. (Al) Rosen, *Report of the Independent Financial Commission of Inquiry*, 2018 [Commission's Report].

<sup>4</sup> *Ibid.*, pp. 1, 3.

<sup>5</sup> *Ibid.*, p. 3.

<sup>6</sup> Treasury Board Secretariat, "Ontario Releases 2015-16 Public Accounts," Archived News Release, October 6, 2016.

<sup>7</sup> Commission's Report, p. 14.

<sup>8</sup> *Ibid.*, p. 17.

Auditor's recommended accounting treatment, and encouraged the government "to determine whether it is in the public interest to retain the current design of the Fair Hydro Plan . . ."<sup>9</sup>

[22] With respect to the Province's overall budgetary position, the Commission recommended a modest downward revision of revenue projections for 2018-2019 accounting for such factors as U.S. tax reforms and the introduction of federal mortgage rules for the housing market.<sup>10</sup> The Commission's report also proposes three changes to the Province's expense outlook that, relative to the *2018 Budget*, would collectively increase expenses by \$6.4 billion:

- provisionally accepting the Auditor's accounting treatment of the OTPP and OPSEU pension plan net pension assets;
- accepting the Auditor's accounting treatment of the GA refinancing component of the OFHPA; and
- reversing projected savings attributed to program reviews and year-end savings targets for which specific measures had not been identified.<sup>11</sup>

[23] When combined with a recommended increase to the Province's reserve, the Commission's proposed changes would result in a revised budgetary baseline deficit figure of \$15 billion for 2018-2019, without adjusting for any changes to the initiatives announced in the *2018 Budget*.<sup>12</sup>

## **COMMITTEE'S KEY FINDINGS AND SUPPORTING EVIDENCE**

### **Lead-Up to the Fair Hydro Plan**

[24] Electricity policy under the former government resulted in increased costs and massive locked-in oversupply, due in part to a reliance on contracted power rather than market mechanisms.<sup>13</sup> The long-term green energy contracts signed by the past government provide limited flexibility in introducing system improvements or efficiencies to mitigate unexpected changes in the power system. The contracts also provided certain cost guarantees for suppliers.<sup>14</sup>

[25] There were several key factors driving up hydro rates in Ontario during the fifteen years of the former government. Excessive capacity had been put in place in Ontario.<sup>15</sup> However, due in part to the 2008-09 recession, total demand had fallen significantly and never fully recovered.<sup>16</sup> Also, a large amount of supply put in place in the mid to late 2000s had been contracted.

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<sup>9</sup> Ibid., p. 20.

<sup>10</sup> Ibid., p. 24.

<sup>11</sup> Ibid., p. 26.

<sup>12</sup> Ibid.

<sup>13</sup> Select Committee on Financial Transparency (SCFT), *Hansard*, 1st Sess., 42nd Parl. (November 20, 2018), p. 245; and SCFT, *Hansard*, November 12, 2018, pp. 180-81.

<sup>14</sup> SCFT, *Hansard*, November 12, 2018, p. 149.

<sup>15</sup> SCFT, *Hansard*, November 20, 2018, p. 245.

<sup>16</sup> Ibid.

This led to fixed costs that were being covered by a much smaller overall demand in the electricity system.<sup>17</sup> That was a challenge for electricity pricing as the cost in the system was contracted for with the expectation that demand would increase.<sup>18</sup> Finally, the Ontario Power Authority (OPA) and the Independent Electricity System Operator (IESO) began offering long-term contracts for supply. This created fixed costs in the system that required payment regardless of demand.<sup>19</sup>

[26] Former Premier Kathleen Wynne and the former Minister of Energy Glenn Thibeault acknowledged that their government had made mistakes on the energy file. First, it was acknowledged that communities were not consulted enough.<sup>20</sup> Second, it was acknowledged that high electricity prices were caused in part by the *Green Energy Act, 2009*.<sup>21</sup> Finally, the former Minister of Energy also pointed out that “how” electricity was contracted, specifically the government choosing preferred sources of supply and choosing to utilize sole-source contracts, also contributed to the problems.<sup>22</sup>

[27] The former Premier’s business advisor, Ed Clark, noted that the issue of high rates presented her with a challenge, saying:

I think there was a conundrum. I think, having made the decisions that were made, you had locked in higher energy prices for the next 20 years and you were trying to deal with that conundrum.<sup>23</sup>

[28] On February 26, 2016, David Herle, the former Liberal campaign manager, presented polling he conducted for the Liberal government. His polling showed that:

- 80% of Ontarians agreed that the cost of electricity was unreasonably high;
- 69% of Ontarians believed that the cost of electricity hurt the Ontario economy and jobs; and
- 61% of Ontarians agreed that the cost of electricity was a real financial hardship.<sup>24</sup>

[29] Throughout the summer and fall of 2016, many Members of Provincial Parliament were receiving complaints about electricity prices from their constituents.<sup>25</sup>

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<sup>17</sup> Ibid., pp. 245-46.

<sup>18</sup> Ibid., p. 246.

<sup>19</sup> Ibid.

<sup>20</sup> SCFT, *Hansard*, December 3, 2018, p. 318.

<sup>21</sup> Ibid., p. 297; and SCFT, *Hansard*, December 4, 2018, p. 329.

<sup>22</sup> SCFT, *Hansard*, December 4, 2018, pp. 326, 329.

<sup>23</sup> SCFT, *Hansard*, November 26, 2018, p. 286 (William Edmund (Ed) Clark). Note: The names of speakers are indicated in parentheses when there is a direct quotation.

<sup>24</sup> SCFT, *Hansard*, December 3, 2018, pp. 298-99; and Appendix 7: Gandalf Group Polling – Electricity Rates in Ontario (2016).

<sup>25</sup> SCFT, *Hansard*, November 19, 2018, p. 211.

- [30] In the summer of 2016, around the time that Glenn Thibeault was appointed as Minister of Energy, the drastic increases that resulted in high and unaffordable electricity prices were increasingly becoming a priority for the former Liberal government as a political issue.<sup>26</sup>
- [31] On September 12, 2016, in the Throne Speech, the former government announced an electricity rebate of 8%, effectively removing the provincial portion of the HST from electricity bills beginning January 1, 2017.<sup>27</sup>
- [32] In November 2016, in a speech at the Ontario Liberal Party Annual General Meeting, former Premier Wynne publicly recognized that high electricity prices were the fault of decisions made by her and her government. She also recognized that this was polling as an important issue for electricity ratepayers, and pledged to “fix it.”<sup>28</sup>
- [33] The former Minister of Energy Glenn Thibeault appeared before the Committee and said that from the moment he was asked by Premier Wynne to join her Cabinet as Minister of Energy, he was advised that reducing electricity prices for consumers was his principal mandate.<sup>29</sup>
- [34] The former government wanted to move forward with additional mitigation. After November 19, 2016, the Minister of Energy asked staff to develop rate mitigation options. The Ministry of Energy put forward ten options which could mitigate rates, none of which included GA refinancing at the time. At the same time, the Premier was meeting with agencies of the Ministry—the IESO, the Ontario Energy Board (OEB), and OPG, and other key stakeholders to get their ideas about how they could mitigate prices further than 8%.
- [35] Mr. Thibeault also told the Committee that there were a number of options that were considered to achieve energy savings but none were able to make a significant enough impact and therefore the concept of GA refinancing was raised.
- [36] Shortly thereafter, the Minister’s Chief of Staff, Andrew Teliszewsky, asked the Ministry to look at GA refinancing and the notion of shifting costs, from ratepayers of the day to future ratepayers; a request that left the public servants “shocked.”<sup>30</sup> The shock was partly due to the fact that Ontario had just finished paying off the stranded debt after 10-plus years, and this seemed like a reintroduction of it.<sup>31</sup>
- [37] The former Premier and her staff, particularly her Chief of Staff Andrew Bevan, were directing this major policy initiative, while the Ministry of Energy

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<sup>26</sup> SCFT, *Hansard*, December 4, 2018, pp. 324, 328; SCFT, *Hansard*, November 19, 2018, p. 210; and SCFT, *Hansard*, December 3, 2018, p. 316.

<sup>27</sup> SCFT, *Hansard*, December 3, 2018, p. 299; and SCFT, *Hansard*, October 16, 2018, p. 55.

<sup>28</sup> SCFT, *Hansard*, November 19, 2018, p. 210; and SCFT, *Hansard*, October 16, 2018, p. 56.

<sup>29</sup> SCFT, *Hansard*, December 4, 2018, p. 324.

<sup>30</sup> SCFT, *Hansard*, October 16, 2018, pp. 55, 59.

<sup>31</sup> *Ibid.*, p. 58; and email from Andrew Bevan to Andrew Teliszewsky, “Re: Updated Draft,” February 12, 2017.

had primary carriage of the file.<sup>32</sup> According to Andrew Bevan, a win would be defined as “neutralizing as an electoral issue electricity prices, prices, prices” so that the former Premier and her government “are recognized as having fixed prices.”<sup>33</sup>

[38] In late December 2016, the Ministry of Energy started to hold meetings with the OFA and others about ideas to achieve “rate mitigation,” specifically, GA refinancing.<sup>34</sup>

[39] On or about January 18, 2017, the Ministry of Energy pulled together a working group consisting of Ministry of Energy staff; the Deputy Minister of Energy; representatives of the Ministry of Finance and the Treasury Board Secretariat; the OFA; and representatives of OPG and IESO, including the IESO’s accounting advisor, Michel Picard of KPMG. The working group was tasked with developing a solution to deal with rate mitigation.<sup>35</sup> Many suggestions for rate mitigation were presented to the former Wynne government.

### **GA Refinancing and Development of the FHP**

[40] The former government had two main objectives in developing the FHP:

- solve electricity prices as an issue by reducing them substantially; and
- not impact the balanced budget promise for 2017-18, the last budget before the June 7, 2018 election.<sup>36</sup>

[41] The ultimate guiding principle was that electricity prices were too high and needed to be lowered. Additionally, the government was, at that point in time, in the sixth year of a seven-year plan to get back to balance. In early 2017 the previous government remained committed to finding a path to balance. Therefore, the initial objective was to mitigate rates in a manner which would have the minimum impact on the fiscal plan.<sup>37</sup>

[42] The OFA stated that the government wanted to create a structure that would not affect the deficit right from the beginning. The instructions were to work with the Ministry of Energy, Treasury Board, and other government officials to fulfil both objectives.<sup>38</sup>

[43] They also stated that the government had already come up with a number of options in January and February 2017, including the GA refinancing, which would materially affect the bottom line and be more impactful. They first brought up the option of the OEFC, but once the OFA explained that the

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<sup>32</sup> SCFT, *Hansard*, December 4, 2018, p. 340; SCFT, *Hansard*, November 19, 2018, p. 211; and SCFT, *Hansard*, November 26, 2018, p. 273.

<sup>33</sup> Email from Andrew Bevan to Andrew Teliszewsky, “Re: Updated Draft,” February 12, 2017 and SCFT, *Hansard*, November 19, 2018, p. 213.

<sup>34</sup> SCFT, *Hansard*, October 16, 2018, p. 55.

<sup>35</sup> SCFT, *Hansard*, November 12, 2018, pp. 149, 152, 155 and 156.

<sup>36</sup> SCFT, *Hansard*, November 20, 2018, pp. 249, 255.

<sup>37</sup> *Ibid.*, p. 249.

<sup>38</sup> *Ibid.*, p. 255.

OEFC is accounted for in the public accounts on a line-by-line basis, the government began looking for other options.<sup>39</sup>

[44] In addition, representatives from OPG Mr. Jeff Lyash and Mr. Ken Hartwick testified before the Committee. They confirmed to the Committee that the former government made the decision to finance the FHP through future rates that were to be paid by the ratepayer, and that they at OPG were tasked with constructing the financing plan to fulfil that objective.<sup>40</sup>

[45] The simplest way to bring down rates would have been for the government to borrow the needed capital, thereby recording it as an expense on the tax base, and transferring the money to the IESO.<sup>41</sup>

[46] If the government had proceeded that way, OPG would not have had to be involved at all.<sup>42</sup>

[47] However, other financing means available would have been reflected in the Province's deficit figure, impacting the government's promise to balance the budget.<sup>43</sup>

The challenge with the OEFC financing is that it did not fit within the accounting structure of having this not affect the deficit and the Province's debt . . . even though it was cheaper.<sup>44</sup>

[48] As early as January 16, 2017, the former Premier's business advisor Ed Clark advised the Cabinet Office and other senior civil servants<sup>45</sup> that he did not agree with the plan. He said that any structure the government was trying to create with, what he called, "fancy accounting"<sup>46</sup> would be too complicated and would be treated with mistrust by the public.<sup>47</sup> Mr. Clark told the former Premier that any subsidy should have been through the tax system, and included in the deficit, not through the hydro system, and on the backs of future ratepayers.<sup>48</sup> He told the Committee:

So when you say, "I'd like to have lower hydro rates, and I want to subsidize them, and I can just do it magically because my grandkids will pay for it and I don't have to pay for it" . . . That's a free good; I don't believe in that . . . But I have very strong views about doing the right

<sup>39</sup> Ibid., p. 255.

<sup>40</sup> SCFT, *Hansard*, November 12, 2018, pp. 175-176.

<sup>41</sup> SCFT, *Hansard*, November 12, 2018, p. 178; and SCFT, *Hansard*, November 13, 2018, p. 195.

<sup>42</sup> SCFT, *Hansard*, November 13, 2018, p. 195.

<sup>43</sup> SCFT, *Hansard*, November 26, 2018, p. 287; and SCFT, *Hansard*, December 4, 2018, p. 332.

<sup>44</sup> SCFT, *Hansard*, November 20, 2018, p. 247 (Gadi Mayman, OFA).

<sup>45</sup> SCFT, *Hansard*, November 26, 2018, p. 272.

<sup>46</sup> Ibid., p. 282 (William Edmund (Ed) Clark).

<sup>47</sup> SCFT, *Hansard*, November 20, 2018, p. 249.

<sup>48</sup> SCFT, *Hansard*, November 26, 2018, pp. 271-72.



thing. So it just doesn't accord with those views and she [the former Premier] knew that.<sup>49</sup>

[49] When asked why he used the word magical to describe the FHP, Mr. Clark responded "Because the exact effect that you had is that you were able to lower rates with no immediate impact on either the taxpayer or the ratepayer. That's pretty magical."<sup>50</sup>

[50] Political decision making leading into the 2018 general election appears to have played a role in the development of the FHP. The goal of balancing the budget led the government to adopt GA refinancing in order to provide rate relief without impacting the Province's bottom line. Mr. Clark recognized that the former Premier and her government would not take his advice on the plan:

It fairly quickly became obvious that I had a certain bias that was not the bias of the people on the project.<sup>51</sup>

[51] Several witnesses testified before the Committee indicating that it was possible to both borrow cheaper through the Province and have the cost of the plan still be borne by the ratepayer. When asked if the desire to keep the cost of the FHP off-book was to keep the promise of a balanced budget in 2017-2018, Ms. Wynne acknowledged that maintaining a balanced budget was indeed one of the objectives.<sup>52</sup>

[52] They made a clear decision to keep it off balance sheet rather than on balance sheet.

[53] Instead, the former government designed a complicated system using OPG and a special purpose vehicle (SPV) called the "OPG Trust" to keep the borrowing needed to fund the FHP off the government's books.<sup>53</sup> This was outlined in a "White Paper" attached to a letter dated February 27, 2017, from Ken Hartwick of OPG to then Deputy Minister of Energy, Serge Imbrogno.

[54] The net effect was that people would not see the impact of the FHP policy decision on the government's books.<sup>54</sup>

### **Former Government's Decision to Go Off-Book**

[55] Given that the original 8% HST rebate resulted in a lost revenue cost of more than \$2 billion, the government was looking for a mechanism that would keep the costs of the refinancing off of the books in order to minimize the impact on the fiscal plan.<sup>55</sup>

<sup>49</sup> Ibid., pp. 280-81 (William Edmund (Ed) Clark).

<sup>50</sup> Ibid., p. 290 (William Edmund (Ed) Clark).

<sup>51</sup> Ibid., p. 272 (William Edmund (Ed) Clark).

<sup>52</sup> SCFT, *Hansard*, December 3, 2018, p. 305.

<sup>53</sup> SCFT, *Hansard*, November 12, 2018, pp. 177-78.

<sup>54</sup> SCFT, *Hansard*, October 15, 2018, p. 21.

<sup>55</sup> SCFT, *Hansard*, November 20, 2018, pp. 254-55.

[56] The previous government found that the additional rate reduction they sought would cost between \$2 billion to \$2.5 billion per year for the number of years they wanted to see the reduction for consumers. As a result, the former administration was looking for a mechanism that would keep the cost of rate reduction completely off the Province's books and applied to the rate base, not the tax base. In a document, the Chief of Staff to the Minister of Energy, Andrew Teliszewsky, captured the need to keep the debt "off-book"<sup>56</sup> in this way:

Make sure that we are creating a structure . . .  
to ensure that the debt that is incurred doesn't  
represent a risk to a balanced budget.<sup>57</sup>

[57] The OFA's CEO, Gadi Mayman told the Committee that the OFA was given instructions to devise a plan to keep the GA refinancing costs off-book and that those instructions came from the Secretary of Cabinet. He further indicated that it was pretty clear that these instructions were coming from the Premier's Office.<sup>58</sup>

[58] When asked when Mr. Mayman was "made to understand that the government wanted to devise a structure that would not affect the deficit" he told the Committee "that was right from the beginning." Mr. Mayman went on to describe the "instructions" he received.<sup>59</sup>

I suppose I heard it indirectly, because it was the secretary of cabinet who was relaying what needed to be done. Maybe "instructions" was—well, I was going to say maybe it's too strong a word, but I don't think it is, because we were asked to do this. We were asked to be able to come up with options that could achieve both of those objectives. But I do think, going back to my earlier testimony, that it was pretty clear that this was coming from the Premier's office, because this was clearly one of the government's highest priorities. It had been stated as such in the throne speech in the previous fall.<sup>60</sup>

[59] Andrew Teliszewsky, Chief of Staff to the former Minister of Energy, sent an email which the Committee reviewed with him (see Appendix 6), which clearly demonstrates his understanding of the desire for the FHP to be "off-book" and the need to utilize IESO and OEB to create the FHP accounting scheme.

Meeting held today with KPMG to provide  
options on how to ensure the most appropriate  
accounting treatment (off-book); much work

<sup>56</sup> SCFT, *Hansard*, November 19, 2018, p. 230.

<sup>57</sup> SCFT, *Hansard*, November 20, 2018, p. 257.

<sup>58</sup> SCFT, *Hansard*, November 20, 2018, p. 255.

<sup>59</sup> *Ibid.*, p. 255.

<sup>60</sup> *Ibid.*, p. 255 (Gadi Mayman, OFA).

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remains but KPMG not fussed . . . Bottom line: Let's presume we decide to do this . . . Then next step is finding the most appropriate financial vehicle. Might be different than my original idea. Might require some navigating IESO and OEB, but dialogue becomes about path of least accounting risk/resistance instead of a brick wall.<sup>61</sup>

[60] When a Committee member asked “who in the former Liberal government made it clear that the cost of the plan be kept off of the Province’s books?” Mr. Andrew Teliszewsky answered clearly “Cabinet.”<sup>62</sup>

[61] Commission member Dr. Al Rosen told the Committee that although he had no clear evidence, he suspected that the purpose of the FHP and the decision to keep the cost of it off-book was political in nature.<sup>63</sup>

[62] The Auditor General stated the following:

After reviewing the information available to us, it is clear to us that the government’s intention in creating the accounting/financing design to handle the costs of the electricity rate reduction was to avoid affecting its fiscal plan. That is, the intention was to avoid showing a deficit in the Province’s budgets and consolidated financial statements for 2017-18 to 2019-20, and to likewise show no increase in the provincial net debt.<sup>64</sup>

[63] The former government decided to transfer costs to future ratepayers, but despite significant opposition, significant risk, significant additional cost and complete uncertainty that the plan would even work and without any idea of the final cost, kept the debt off-book.<sup>65</sup>

[64] The method in which they did this was through the passing of the OFHPA. The OFHPA created the vehicle for the government to use new accounting rules, never before used in Canada, which mirrored the private-sector standards in the United States. This accounting was referred to by the Auditor General as “legislated accounting.”<sup>66</sup> The legislated accounting created in the OFHPA was necessary for the former government to be able to implement their FHP.

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<sup>61</sup> Appendix 6: Email from Andrew Teliszewsky (January 18, 2017).

<sup>62</sup> SCFT, *Hansard*, November 19, 2018, p. 238.

<sup>63</sup> SCFT, *Hansard*, October 22, 2018, p. 93.

<sup>64</sup> Appendix 3: Excerpt from the Auditor General’s Special Report, *The Fair Hydro Plan: Concerns about Fiscal Transparency, Accountability and Value for Money* (October 2017), p. 6.

<sup>65</sup> SCFT, *Hansard*, November 12, 2018, p. 156.

<sup>66</sup> SCFT, *Hansard*, October 15, 2018, p. 38.

## Challenges with the Former Government's Approach

- [65] Many senior civil servants, including Steve Orsini, the head of the public service, Scott Thompson, the Deputy Minister of Finance, Karen Hughes, Assistant Deputy Minister to the Treasury Board and Serge Imbrogno, the Deputy Minister of Energy, advised the Committee that they had significant and substantial concerns about the concept of GA refinancing.<sup>67</sup> They raised these concerns throughout the development of the FHP and proposed alternatives to the former Premier and her government. Mr. Orsini said the public service would not have recommended or supported the GA refinancing plan<sup>68</sup> and Mr. Imbrogno thought it was a "bad idea."<sup>69</sup> Treasury Board gave a "board judgement" of "do not approve" given the risks.<sup>70</sup>
- [66] Due to the serious nature of the concerns that they had, senior civil servants sought out the advice of a retired Justice of the Supreme Court of Canada, Ian Binnie.<sup>71</sup>
- [67] The concerns with the GA refinancing were summarized in a Cabinet Briefing document dated March 1, 2017, as follows:
- unquantifiable costs including interest rate risks; and
  - accounting risks, with respect to both the proposed role for IESO and OPG, and including the risk of not having the Auditor's approval; and
  - legal risks such as the possibility that the FHP may not have been constitutional; and
  - fiscal risk in that the plan might not work and end up on the Province's balance sheet despite the efforts; and
  - even if the plan were effective, it would cause rates to escalate in the future;<sup>72</sup> and
  - the overall costs of financing it.<sup>73</sup>
- [68] The IESO,<sup>74</sup> OPG,<sup>75</sup> the Premier's business advisor Ed Clark,<sup>76</sup> the Auditor, the FAO, and the OFA shared some or all of these concerns, and raised several to all of those concerns with the former government and advised against proceeding with the FHP.<sup>77</sup>

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<sup>67</sup> SCFT, *Hansard*, October 16, 2018, p. 63.

<sup>68</sup> *Ibid.*, p. 64.

<sup>69</sup> *Ibid.*, p. 63.

<sup>70</sup> *Ibid.*, p. 65.

<sup>71</sup> *Ibid.*, p. 69.

<sup>72</sup> *Ibid.*, p. 75; and Appendix 5: Cabinet Briefing Note (March 1, 2017), p. 2.

<sup>73</sup> SCFT, *Hansard*, November 20, 2018, pp. 261-62.

<sup>74</sup> SCFT, *Hansard*, November 12, 2018, p. 157.

<sup>75</sup> SCFT, *Hansard*, November 13, 2018, p. 196.

<sup>76</sup> SCFT, *Hansard*, November 26, 2018, p. 272.

<sup>77</sup> SCFT, *Hansard*, November 13, 2018, pp. 184, 198-99; and SCFT, *Hansard*, November 20, 2018, p. 263.

- [69] Despite these objections and strong suggestions by the Auditor that the FHP may cause the deficit to increase by \$2.5 billion per year, the former government never returned to the public service to explore other, more cost-effective structures.<sup>78</sup>
- [70] In addition, the Committee was advised by the panel of senior civil servants that at the time of the announcement of the FHP on March 2, 2017, the former government had “no clue” as to the ultimate cost that taxpayers or ratepayers may bear at the end of the FHP.<sup>79</sup>
- [71] The FAO told the Committee that the total cost of the FHP was estimated to be \$45 billion over 30 years. That cost would further increase if the Province did not balance its budget. Given that the Province has not yet balanced its budget, the re-estimated total cost, all else being equal, would by now be higher than \$45 billion and growing. If the Province maintains deficit spending, the total projected cost of the FHP will increase to between \$69 billion and \$93 billion.<sup>80</sup>
- [72] Former Minister of Energy, Glenn Thibeault was asked by the Committee if he still would have proceeded with the FHP had he known that the cost of the plan would skyrocket to \$70 to \$90 billion. Mr. Thibeault responded that “they” would be able to find ways to take costs out of the system, but could not offer any information as to how this could be done.<sup>81</sup>
- [73] Ms. Wynne acknowledged that Mr. Orsini, Secretary of Cabinet, expressed serious concerns with her about the FHP right up until the day before it was announced and noted specifically that there were no guarantees that even if they could mitigate all of the many risks referenced in the March 1 cabinet document, that the FHP would actually work. Furthermore, even if it could, there were still various other risks that could not be avoided. For instance, if electricity demand went down or if interest rates increased, so too would the cost, which would likely become unmanageable. Ms. Wynne decided to proceed with the announcement of the FHP the very next day.<sup>82</sup>

### **The Additional Cost of the Off-Book Approach**

- [74] In addition to adding complexity and imperilling transparency, there is no question that financing the FHP “off-book” would cost the ratepayers of Ontario more money than if the FHP relief had been financed through the Province.
- [75] Using OPG as a financing entity, according to FAO estimates, resulted in financing costs that would be \$4 billion higher than would have been otherwise available had the FHP been financed on the Province’s books, through other available means, such as directly through the OEFC.<sup>83</sup>

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<sup>78</sup> SCFT, *Hansard*, October 16, 2018, p. 74.

<sup>79</sup> *Ibid.*, p. 75.

<sup>80</sup> SCFT, *Hansard*, October 23, 2018, p. 131.

<sup>81</sup> SCFT, *Hansard*, December 4, 2018, p. 336.

<sup>82</sup> SCFT, *Hansard*, December 3, 2018, p. 306.

<sup>83</sup> SCFT, *Hansard*, November 13, 2018, p. 201; and SCFT, *Hansard*, November 20, 2018, p. 255.

- [76] Several witnesses advised against proceeding with the FHP “off-book” in this way.
- [77] OPG’s President and CEO testified that he would not recommend proceeding with the FHP because while it is not inconsistent with the way costs have been securitized in other private businesses in the sector, the FHP is several steps more complicated than most transactions.
- [78] It is also more expensive, carrying an additional debt financing cost of between \$2 billion to \$4 billion more than if the money had been borrowed through the Province.<sup>84</sup>
- [79] The Auditor agreed with the FAO that the former government’s creative accounting added an additional, unnecessary, \$4 billion in projected expenses over the life of the FHP since the government borrowed through an entity (OPG Trust), which is subject to higher interest rates than the Province (through the OFA or the OEFC). The Auditor confirmed that this mistake would cost Ontario four times the cost of the \$1 billion gas plant scandal.<sup>85</sup>
- [80] The Committee also heard from the Commission members Mr. Gordon Campbell, Dr. Al Rosen and Mr. Michael Horgan, who confirmed that the FHP will cost up to \$4 billion more than if the Province had borrowed the money directly, since OPG and OPG Trust borrow at higher rates than the Province.<sup>86</sup>
- [81] The OFA advised that the former government was aware that financing through OPG would result in a higher interest expense and therefore a higher cost than borrowing through the OFA.<sup>87</sup>
- [82] During former Minister of Energy Glenn Thibeault’s testimony, he acknowledged that he understood that the FHP accounting scheme would cost the Province approximately \$4 billion more than if the money had simply been borrowed through the OFA.
- [83] Even the former Premier acknowledged that her government was aware that there was a “premium;” an added cost, for proceeding with the FHP in this way.<sup>88</sup>
- [84] The Commission advised the Committee that even though the FHP takes the expense off the Province’s books; that was of no real benefit because the markets and credit [rating] agencies would still treat the debt as Ontario debt due to how guarantees work.<sup>89</sup>
- [85] The OPG white paper of February 27, 2017, confirms the evidence of the Commission in this regard given that it specifically identified a risk that credit

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<sup>84</sup> SCFT, *Hansard*, November 13, 2018, p. 202.

<sup>85</sup> SCFT, *Hansard*, October 15, 2018, p. 33.

<sup>86</sup> SCFT, *Hansard*, October 22, 2018, p. 93.

<sup>87</sup> SCFT, *Hansard*, November 20, 2018, p. 255.

<sup>88</sup> SCFT, *Hansard*, December 3, 2018, p. 311.

<sup>89</sup> SCFT, *Hansard*, October 22, 2018, p. 93.

rating agencies would view the debt associated with the GA deferral as provincial debt in spite of the complicated structure and that this could:

- impact the Province’s credit rating; and
- cause the deferral debt to be consolidated into the provincial books thereby not meeting the government’s objective of keeping this debt from impacting the deficit and debt off its books.<sup>90</sup>

[86] The Auditor General was critical of how the former government accounted for the shortfall that resulted from the FHP.

The Fair Hydro Plan legislation . . . basically creates a regulatory asset. It calls the difference between what generators are paid and what’s collected from ratepayers—the difference there, because it’s a shortfall, is called a “regulatory asset” by virtue of the legislation, not because it is, but by virtue of the legislation.<sup>91</sup>

. . .

[They created], in a government agency, what are called “regulatory assets” and represented it as rate-regulated accounting to favourably alter its bottom line and net debt by deferring the current costs of its policy decision to future generations.<sup>92</sup>

[87] The Auditor went on to say that:

We called that, even when I went to the justice committee, “legislated accounting,” not accounting that would be in line with the public sector standards.<sup>93</sup>

[88] The former government’s pursuit of the FHP also required it to change the “objects” or purpose of the IESO.<sup>94</sup>

[89] During the evidence of the IESO panel, the Committee was told that in mid-January 2017, the former government’s Provincial Controller “asked” or essentially “ordered” the IESO to evaluate their current accounting standards with respect to market accounts.<sup>95</sup>

<sup>90</sup> SCFT, *Hansard*, November 13, 2018, p. 202; and letter from Ken Hartwick, OPG to Deputy Minister of Energy, Serge Imbrogno, February 27, 2017, p. 7.

<sup>91</sup> SCFT, *Hansard*, October 15, 2018, p. 38 (Bonnie Lysyk, Auditor General of Ontario).

<sup>92</sup> *Ibid.*, p. 14 (Bonnie Lysyk, Auditor General of Ontario).

<sup>93</sup> *Ibid.*, p. 38 (Bonnie Lysyk, Auditor General of Ontario).

<sup>94</sup> SCFT, *Hansard*, November 12, 2018, p. 150.

<sup>95</sup> *Ibid.*, p. 174.

## The Need for Indemnities

- [90] As a result of entering into the FHP, the IESO and OPG requested and received indemnities from the provincial government, providing protection for their involvement in the plan, the rate deferral process, and future risks associated with the system.<sup>96</sup>
- [91] OPG executives specifically sought an indemnity from the Province in connection with any liability it may owe to the capital markets or bondholders as a result of their part in the creation and execution of this accounting scheme. It also sought a similar waiver from its shareholder, the provincial government, not to pursue any claims against OPG.<sup>97</sup>
- [92] OPG told the Committee that it felt its involvement in the FHP created an intangible reputational risk to the company. The reputational risk was disclosed in a 2017 OPG report to investors. OPG would not have gone into this business if it were not for the former government.<sup>98</sup>
- [93] IESO provided testimony to the Committee that it settles an average of \$1.2 billion or \$1.3 billion worth of electricity per month. IESO executives nonetheless felt that the FHP would increase exposure by deviating from the “ordinary course of business” and therefore sought personal guarantees.<sup>99</sup>

To indemnify, defend and save harmless the Corporation, and its directors, officers, and employees or a member of a committee or panel established by the directors of the Corporation (collectively the “Protected Persons” and individually, a “Protected Person”) from and against all losses, costs, damages, charges, expenses, demands, liabilities, fines, penalties, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by any Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, “Losses”), as a result of any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or

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<sup>96</sup> Ontario Power Generation, “2017 Third Quarter Results,” p. 29; SCFT, *Hansard*, November 12, 2018, pp. 158-60, 165; and SCFT, *Hansard*, November 13, 2018, pp. 188-89.

<sup>97</sup> SCFT, *Hansard*, November 13, 2018, p. 203. See Appendix 4: OPG and IESO Indemnity Agreements.

<sup>98</sup> *Ibid.*, pp. 203-204.

<sup>99</sup> SCFT, *Hansard*, November 12, 2018, p. 174.



informal), hearing and/or other proceeding of any nature or kind whatsoever (any of the foregoing being a “Claim”) arising, directly or indirectly, as a result of the Protected Person’s activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan.<sup>100</sup>

- [94] With respect to the indemnity agreements, the IESO panel testified that in order to obtain an opinion that rate-regulated accounting was permitted, a KPMG consultant demanded and subsequently received a similar indemnity from the IESO.<sup>101</sup>
- [95] As most participants in the FHP sought the advice and assistance of outside consultants, especially accountants and lawyers, significant extra costs were incurred by the government and government agencies.

### **Auditor General’s Concerns**

- [96] Under the *Auditor General Act* of Ontario, the Auditor is to examine and render an audit opinion on whether the annual consolidated financial statements for the Province are prepared and presented fairly in accordance with Public Sector Accounting Standards (PSAS). The issuance of a clean audit opinion accompanying these statements signals that the members of the Legislative Assembly and the citizens of Ontario can depend on the government’s reported financial results to be reliable.<sup>102</sup>
- [97] The Auditor did not agree with the former government’s position that it had balanced the budget in 2017-2018 and felt they were understating the deficit.<sup>103</sup>
- [98] The Auditor was unable to issue an unqualified audit opinion for the Province’s books under the previous government for its final two years. Therefore, the citizens of Ontario could not be sure that they could rely on the government’s reported financial results.<sup>104</sup>
- [99] The Auditor had two areas of concern which prevented her from issuing a clean audit opinion of the former government’s books in March 2017 and 2018 – the treatment of pension expenses and accounting for the FHP.<sup>105</sup>
- [100] The Auditor’s concern with the FHP was that the planned accounting for the rate reduction in the government’s budgets and in the Province’s consolidated financial statements was not in accordance with PSAS.<sup>106</sup>
- [101] According to the Auditor, the former government determined that it would have to borrow to pay for most of the rate reduction and legislated accounting

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<sup>100</sup> Appendix 4: OPG and IESO Indemnity Agreements, s. 1.

<sup>101</sup> SCFT, *Hansard*, November 12, 2018, p. 177.

<sup>102</sup> SCFT, *Hansard*, October 15, 2018, p. 13.

<sup>103</sup> *Ibid.*, p. 34.

<sup>104</sup> *Ibid.*, p. 13.

<sup>105</sup> *Ibid.*, p. 13.

<sup>106</sup> *Ibid.*, p. 14.

methods to defer the costs to later years by recording the costs as an asset. This avoided recording any costs in its bottom line. The borrowings were structured in a complex design at a significantly higher cost to Ontarians, in an attempt to get their desired political results.<sup>107</sup>

[102] The Auditor had a great deal of difficulty getting information on what the government was proposing to do with respect to the reduction of electricity rates and how it would account for that reduction and she felt like the government failed to produce documents and cooperate with the Auditor's investigation, which resulted in her efforts being actively frustrated on this issue.<sup>108</sup>

[103] She testified as to how surprised she was when she was given a box of productions from the former government and found the IESO's indemnity agreement, referred to above, in the bottom of the box.

When my attest team here finished the audit of IESO, we acquired some board minutes from IESO. They were given a box of papers, and it [the indemnity] was at the bottom of the box of papers.<sup>109</sup>

[104] In October 2017, the Auditor published a special report, *The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money*. The report examined how the FHP was developed to offer a rate reduction without impacting the Province's bottom line. In her report, the Auditor General noted that "sound fiscal transparency and accountability require that the costs of any government policy decision be fairly reported to the Legislature and the people of Ontario. Value for money requires that the government consider the optimal use of resources to implement its policy decisions."<sup>110</sup>

[105] Representatives of the former government, including the former Premier and several Cabinet ministers, disagreed with the Auditor, characterizing the situation as an "accounting dispute."<sup>111</sup> However, the Auditor General said:

Oh, no. This is not just an accounting—the word "dispute," I think, has been used—perhaps that's the way it has been portrayed. What I view is, there is a controller's group and Treasury Board that prepare the government statements, and they do it in accordance with their interpretation. Here we come, and we're the auditors, and we're saying, "There is a significant issue. There are errors in the

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<sup>107</sup> Ibid.

<sup>108</sup> Ibid., p. 27.

<sup>109</sup> Ibid., p. 26.

<sup>110</sup> Appendix 3: Excerpt from the Auditor General's Special Report, *The Fair Hydro Plan: Concerns about Fiscal Transparency, Accountability and Value for Money* (October 2017), p. 5.

<sup>111</sup> SCFT, *Hansard*, October 15, 2018, p. 28.

financial statements. This is the opinion, and this is how much the errors are.” So, it’s not like an accountant to an accountant. There is an accounting being done, and the auditors are saying it’s wrong. Again, I go back to: If we were private sector auditors in this situation, we would leave our client. But unfortunately, we couldn’t leave our client, so we issued qualifications— . . . How significant was the Fair Hydro Plan in terms of taking the impact of the decision off the bottom line and net debt? I would say it was very significant. I would say it is up there, close to a 10.<sup>112</sup>

- [106] The indemnity agreement KPMG requested and received was a prerequisite to an opinion that permitted the use of this “rate regulated” accounting.<sup>113</sup> It should be noted that it was on this basis that the government then characterized the concerns raised by the Auditor as simply an “accounting dispute.”
- [107] On March 28, 2018, the former government released its *2018 Pre-Election Report on Ontario’s Finances*, as required by the *Fiscal Transparency and Accountability Act, 2004* and Ontario Regulation 41/18. This same Act also requires the Auditor General’s office to review the pre-election report to determine whether the underlying assumptions about the future and the resulting forecasts are reasonable, and to provide a report outlining the results of their findings. The Auditor concluded that the pre-election report was not a reasonable presentation of Ontario’s finances insofar as its expense estimates, and thus its deficits, were understated as a result of the improper accounting for pensions and the FHP.<sup>114</sup>
- [108] The former Premier’s business advisor, Ed Clark, acknowledged that “it is not a good event . . . [when] the Auditor General is not agreeing with the government” and that he would likely not invest in a company whose auditor refused to sign off on its books.<sup>115</sup>

## CONCLUSION

- [109] The approval and announcement of the FHP occurred in spite of the fact that:
- concerns were being raised by civil servants and Cabinet members;<sup>116</sup>
  - and

<sup>112</sup> Ibid., p. 28 (Bonnie Lysyk, Auditor General of Ontario).

<sup>113</sup> SCFT, *Hansard*, November 12, 2018, pp. 175-176.

<sup>114</sup> SCFT, *Hansard*, October 15, 2018, p. 15.

<sup>115</sup> SCFT, *Hansard*, November 26, 2018, pp. 282, 287 (William Edmund (Ed) Clark).

<sup>116</sup> SCFT, *Hansard*, December 4, 2018, p. 340; and Appendix 5: Cabinet Briefing Note (March 1, 2017).

- the former government at that time did not know the cost of the FHP;<sup>117</sup> and
- the former government knew that borrowing money to defer GA costs for ratepayers would lower costs in the short term but result in substantial debt and higher electricity prices in the near future;<sup>118</sup> and
- there were identified fiscal, accounting and legal risks, including the risk that the plan was unconstitutional, according to a former Supreme Court Justice whom the government had consulted with.<sup>119</sup>

[110] Despite all of the above opposition, risks and including the fact that the FAO issued a report on May 24, 2017, finding that the GA refinancing plan would cost Ontarians at least \$45 billion, and as much as \$93 billion, the former government enacted the OFHPA on June 1, 2017, and proceeded with the plan.<sup>120</sup>

[111] In his testimony, former Minister of Energy Glenn Thibeault told the Committee that he presented the FHP to Cabinet on 10 to 20 occasions as it was being developed. His Cabinet colleagues raised concerns about the approach such as “Why are we doing it this way?” and asked to look at other approaches.<sup>121</sup>

[112] During his testimony to the Committee, Mr. Teliszewsky was shown a number of documents and emails from the Committee. One document in particular stated:

None of the lawyers, accountants or bond dealers can be described as “happy” and also, none of them can be said to be terribly “upset.” Everyone has had to put a bit of water in their wine . . . To be able to meet the Government House Leaders’ deadlines, we put “pens down” on the Legislation this past weekend.<sup>122</sup>

[113] Additionally, Mr. Teliszewsky was shown an email he wrote on April 29, 2017, to Andrew Bevan the then Chief of Staff to former Premier Kathleen Wynne which clearly demonstrates the very intricate, and fragile nature of the FHP which reads in part as follows:

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<sup>117</sup> Appendix 5: Cabinet Briefing Note (March 1, 2017), p. 6.

<sup>118</sup> SCFT, *Hansard*, October 15, 2018, p. 18.

<sup>119</sup> SCFT, *Hansard*, October 15, 2018, p. 8.

<sup>120</sup> SCFT, *Hansard*, November 13, 2018, p. 184; FAO, *Fair Hydro Plan: An Assessment of the Fiscal Impact of the Province’s Fair Hydro Plan*, Spring 2017; and Archived News Release, “Ontario Passes Legislation to Lower Electricity Bills by 25 Per Cent,” May 31, 2017.

<sup>121</sup> SCFT, *Hansard*, December 4, 2018, p. 340.

<sup>122</sup> SCFT, *Hansard*, November 20, 2018, p. 256.

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As a result, the final legislative product is a fine knit sweater = please do not pull on any threads, as the entire product might yet unravel!<sup>123</sup>

- [114] Despite the objections and concerns that were raised throughout the planning and implementation of the FHP, including: the cost of borrowing, the legal risk of a constitutional challenge and the liability exposure of participants, the market risks and feasibility of the plan, the former government proceeded with the FHP. The former government bears the brunt of responsibility for out of control electricity prices and failed to address them with the FHP.
- [115] Former Minister Thibeault agreed in his testimony to the Committee that the decision was made to proceed with the FHP, despite all the objections and concerns that were raised; despite the tremendously higher cost of borrowing; despite the incredibly complex and fragile nature of the plan; despite the fact that even if the former government was able to mitigate the risks to the point of avoiding legal liability, that the accounting scheme may not even work at all; and furthermore was subject to other market risks that no government would ever be able to control, namely that if demand for electricity reduced, the plan would fail; and/or if the rates of interest escalated, so too would the Province's borrowing costs which would only serve to increase electricity costs even more substantially than they had already grown to.
- [116] When asked to comment on the state of Ontario's finances today, Commission Chair, Gordon Campbell offered the following information:

We weren't trying to make choices about that. We were just trying to say: Reflect what's really taking place with the pensions, reflect what's really taking place with hydro, and look at what your economy is really doing today and where you can generate additional investment. You've got to really think of those things. That's going to be very, very difficult. There's an old expression: You can't get out of a hole until you stop digging. They used a backhoe in 2017-18.<sup>124</sup>

- [117] Commission member, Mr. Horgan was asked a similar question. He told the Committee that the former government has left our Province in a worse financial position today than we were leading into the 2008 recession.<sup>125</sup>

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<sup>123</sup> SCFT, *Hansard*, November 19, 2018, p. 226; and email from Andrew Teliszewsky, "Ontario Fair Hydro Plan Act – Briefing Presentation\_Clean.pptx," April 29, 2017.

<sup>124</sup> SCFT, *Hansard*, October 22, 2018, p. 104 (Gordon Campbell, Commission).

<sup>125</sup> *Ibid.*, p. 103.

## RECOMMENDATIONS

The Select Committee recommends that:

- 1) The Government of Ontario accept all of the recommendations made by the Independent Financial Commission of Inquiry, including:
  - a) Establish transparency for the taxpayer and general public as the top priority in preparing the Budget, Public Accounts, and other financial reports.
  - b) Ensure that accounting practices of the government are in accordance with the letter and spirit of Canadian Public Sector Accounting Standards.
  - c) Take an active role in the standards-setting process led by the Public Sector Accounting Board to identify and address accounting matters of particular importance to the Province.
  - d) Restore a constructive, professional relationship between the government and the Auditor General in a manner that respects the Auditor General's legislated independence.
  - e) Require that the Auditor General is given advance notification and is asked for comment when a ministry or an agency consolidated in the financial statements of the Province proposes to engage a private-sector firm for accounting advice.
  - f) Require that the Province approve, after consultation with the Auditor General, the retention of the same private-sector firm for both accounting and auditing services.
  - g) Engage the Auditor General in an effort to reach agreement on the accounting treatment of any net pension assets of the Ontario Teachers' Pension Plan (OTPP) and the Ontario Public Service Employees' Union (OPSEU) Pension Plan.
  - h) Adopt the Auditor General's proposed accounting treatment for any net pension assets of the OTPP and OPSEU Pension Plan on a provisional basis, until an agreement is reached between the government and the Auditor General.
  - i) Review the methodology for establishing fair market values for plan assets and the management assumptions used to determine long-term liabilities for the OTPP and OPSEU Pension Plan.
  - j) Adopt the Auditor General's proposed accounting treatment for global adjustment refinancing, which is a major component of the Fair Hydro Plan.
  - k) Revise the budget plan for 2018–19 to reflect the Commission's proposed accounting adjustments, adjust revenue and expense projections based

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on the latest available information, and restore the reserve to at least the historical level of \$1 billion.

- l) Establish a fiscal plan that includes near- and medium-term deficit targets and clearly describes how the government will achieve and report on these targets.
  - m) Undertake a review of the *Fiscal Transparency and Accountability Act, 2004* to improve its effectiveness in guiding government fiscal planning and reporting.
  - n) Conduct analysis to determine and set an appropriate target and timeline to reduce the Province's ratio of net debt to GDP.
  - o) Set a long-term goal of restoring the Province's AAA credit rating.
  - p) Expand Ontario's Long-Term Report on the Economy, published two years into each mandate, to include additional analysis on fiscal sustainability and set out the fiscal implications of current trends and future risks.
- 2) The Government of Ontario undertake a review of the *Fiscal Transparency and Accountability Act, 2004* (FTAA) to improve its effectiveness in guiding government fiscal planning and reporting.
  - 3) FTAA be updated to focus on the principles of financial sustainability, to ensure future governments' fiscal decisions are made transparently and responsibly.
  - 4) FTAA be improved to include a compliance mechanism by which future governments can be held accountable for their decisions when they stray from the guidelines and principles of FTAA.
  - 5) FTAA be strengthened to require recovery plans for government spending reduction, to ensure a transparent plan exists for governments to find promised efficiencies in spending before accounting for savings in fiscal plans.
  - 6) The Government of Ontario amend or introduce legislation to require that borrowing done by the government or government agencies be completed in the best interests of the Province/taxpayer.
  - 7) The Government of Ontario take immediate action to enhance the transparency of borrowing undertaken by independent agencies.
  - 8) As suggested by the Auditor General, legislate through the *Financial Administration Act* that the Province's consolidated financial statements are to be prepared in accordance with Canadian Public Sector Accounting Standards.
  - 9) The Government of Ontario work with the Office of the Provincial Controller to restore respectful dialogue between the Controller and the Office of the Auditor General.

## LIST OF WITNESSES

The Select Committee on Financial Transparency held public hearings between October 15 and December 4, 2018. Below is a listing of witnesses and dates of testimony.

<b>Witness No.</b>	<b>Date of Testimony</b>	<b>Day No.</b>	<b>Witness</b>
1	October 15, 2018	1	Bonnie Lysyk, Auditor General of Ontario
2	October 15, 2018	1	Tim Beauchamp, former Director of the Public Sector Accounting Board
3	October 16, 2018	2	Steve Orsini, Secretary of the Cabinet
4	October 16, 2018	2	Scott Thompson, Deputy Minister of Transportation
5	October 16, 2018	2	Serge Imbrogno, Deputy Minister of Environment, Conservation and Parks
6	October 16, 2018	2	Karen Hughes, Associate Deputy Minister of Treasury Board Secretariat
7	October 22, 2018	3	Gordon Campbell, Commissioner and Chair of the Independent Financial Commission of Inquiry
8	October 22, 2018	3	Dr. Al Rosen, Commissioner of the Independent Financial Commission of Inquiry
9	October 22, 2018	3	Michael Horgan, Commissioner of the Independent Financial Commission of Inquiry
10	October 23, 2018	4	Peter Weltman, Financial Accountability Officer
11	October 23, 2018	4	Matt Gurnham, Director (FAO)
12	October 23, 2018	4	Matthew Stephenson, Senior Financial Analyst (FAO)
13	October 23, 2018	4	Jeffrey Novak, Chief Financial Analyst (FAO)
14	October 23, 2018	4	Peter Harrison, former Chief Financial Analyst (FAO)
15	October 23, 2018	4	David West, Chief Economist (FAO)



<b>Witness No.</b>	<b>Date of Testimony</b>	<b>Day No.</b>	<b>Witness</b>
16	November 12, 2018	5	Peter Gregg, President and Chief Executive Officer (IESO)
17	November 12, 2018	5	Terry Young, Vice-President, Policy, Engagement and Innovation (IESO)
18	November 12, 2018	5	Bruce Campbell, former President and Chief Executive Officer (IESO)
19	November 12, 2018	5	Kimberly Marshall, former Chief Financial Officer (IESO)
20	November 13, 2018	6	Jeffrey Lyash, President and Chief Executive Officer (OPG)
21	November 13, 2018	6	Ken Hartwick, Chief Financial Officer and Senior Vice President (OPG)
22	November 19, 2018	7	Andrew Teliszewsky, former Chief of Staff to the Minister of Energy
23	November 20, 2018	8	Gadi Mayman, Chief Executive Officer (OFA)
24	November 20, 2018	8	Ronald Kwan, Assistant Deputy Minister, Corporate and Electricity Finance Division (OFA)
25	November 26, 2018	9	William Edmund (Ed) Clark, former advisor to Kathleen Wynne
26	December 3, 2018	10	Kathleen O. Wynne, MPP and former Premier
27	December 4, 2018	11	Glenn Thibeault, former Minister of Energy



**APPENDIX 1:  
LIST OF ABBREVIATIONS**



<b>Auditor</b>	Office of the Auditor General of Ontario
<b>Commission</b>	Independent Financial Commission of Inquiry
<b>FAO</b>	Financial Accountability Office of Ontario
<b>FHP</b>	Fair Hydro Plan
<b>FTAA</b>	<i>Fiscal Transparency and Accountability Act, 2004</i>
<b>GA</b>	Global Adjustment
<b>IESO</b>	Independent Electricity System Operator
<b>OEFC</b>	Ontario Electricity Financing Corporation
<b>OFA</b>	Ontario Financing Authority
<b>OFHPA</b>	<i>Ontario Fair Hydro Plan Act, 2017</i>
<b>OPG</b>	Ontario Power Generation
<b>OPS</b>	Ontario Public Service
<b>OPSEU</b>	Ontario Public Service Employees' Union
<b>OTPP</b>	Ontario Teachers' Pension Plan
<b>PSAS</b>	Public Sector Accounting Standards



**APPENDIX 2:**  
**MANDATE OF THE SELECT COMMITTEE ON FINANCIAL**  
**TRANSPARENCY**





That a Select Committee on Financial Transparency be appointed to consider and report to the House its observations and recommendations with respect to the report submitted by the Independent Financial Commission of Inquiry; and

That the Committee investigate and report on the accounting practices, decision making and policy objectives of the previous government or any other aspect of the report that the Committee deems relevant; and

That the Committee have the power to send for persons, papers and things; and

That the Committee be composed of six members of the party forming the government, three members of the Official Opposition, and that the Chair and Vice-Chair shall be members of the party forming the government; and

That the Committee be authorized to meet at the call of the Chair; and

That the Committee be given priority to use the Amethyst Room for its meetings; and

That the Committee shall present, or if the House is not meeting, release by depositing with the Clerk of the Assembly, its interim report by November 1, 2018 and its final report by December 13, 2018 or on a date to be determined by the Committee.



**APPENDIX 3:**

**EXCERPT FROM THE AUDITOR GENERAL'S SPECIAL REPORT, THE  
FAIR HYDRO PLAN: CONCERNS ABOUT FISCAL TRANSPARENCY,  
ACCOUNTABILITY AND VALUE FOR MONEY  
(OCTOBER 2017)**





Office of the Auditor General of Ontario

# The Fair Hydro Plan:

Concerns About  
Fiscal Transparency,  
Accountability and  
Value For Money



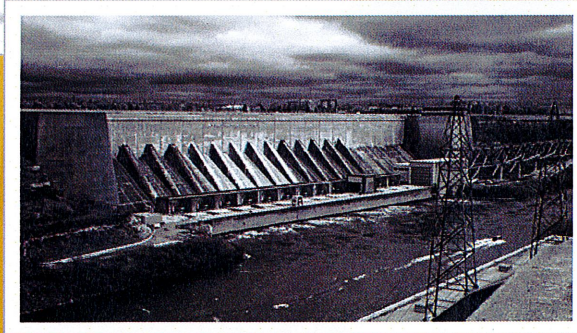
Ontario

## Ontario Fair Hydro Plan, 2017

S.O. 2017, Chapter 16  
Schedule 1

Consolidated Period: From June 1, 2017 to the present  
currency: \$Bn.

Not Audited



## Special Report

*October 2017*





Office of the Auditor General of Ontario

To the Honourable Speaker  
of the Legislative Assembly

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

A handwritten signature in black ink, appearing to read 'Bonnie Lysyk', written in a cursive style.

Bonnie Lysyk  
Auditor General

October 2017  
Toronto, Ontario

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*Ce document est également disponible en français.*

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## Special Report

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

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

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

**The Office of the Auditor General recommends that the government:**

- a) record the true financial impact of the Fair Hydro Plan's electricity rate reduction on the Province's budgets and consolidated financial statements; and
- b) use a financing structure to fund the rate reduction that is least costly for Ontarians.

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

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

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

### Why We Are Issuing This Special Report

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

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

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

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

## Summary of Concerns

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

Our Office does not question the government's Policy Decision to reduce Ontarians' electricity bills, as such policy decisions are a government's prerogative. Our concerns are that the planned accounting for the government's budgets and con-

solidated financial statements is incorrect, and that it was known that the planned financing structure could result in significant unnecessary costs for Ontarians.

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

This Special Report highlights the following key concerns:

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

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

## GOVERNMENT RESPONSE TO RECOMMENDATIONS

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

<sup>1</sup> Financial Accountability Office of Ontario. *Fair Hydro Plan: An Assessment of the Fiscal Impact of the Province’s Fair Hydro Plan* (Toronto, ON: Queen’s Printer for Ontario, 2017), 12, [www.fao-on.org](http://www.fao-on.org)

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

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

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

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

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

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

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

<sup>2</sup> Financial Accountability Office of Ontario, 2.

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

## 1.2 The Process Followed to Meet the Mandate

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 1.3.1 Proper Accounting Focuses On the Substance of the Policy Decision

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

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

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

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

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

### 1.3.2 Improper Accounting Focuses on the Form of the Policy Decision

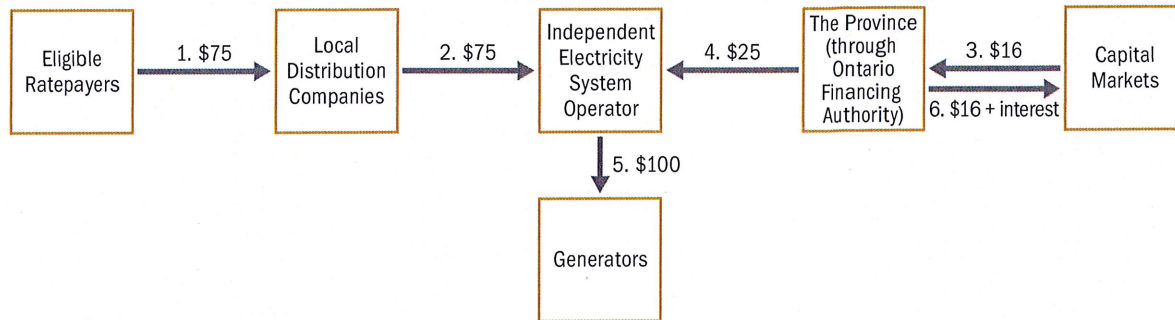
The improper results of the complex accounting/finance structure (**Figure 2**) would be:

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

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

**Figure 1: The Substance of the Accounting/Financing Transactions**

Prepared by the Office of the Auditor General of Ontario



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

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

It was also recognized that investors may require some form of a Provincial performance guarantee to give them comfort that OPG Trust can repay the borrowings. A further requirement was that the

legislation be written to avoid the possibility of money already borrowed not being paid back if the structure was revoked or changed. This is needed to ensure OPG and its debt holders would have their capital guaranteed and repaid if, for example, OPG Trust was closed down.

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

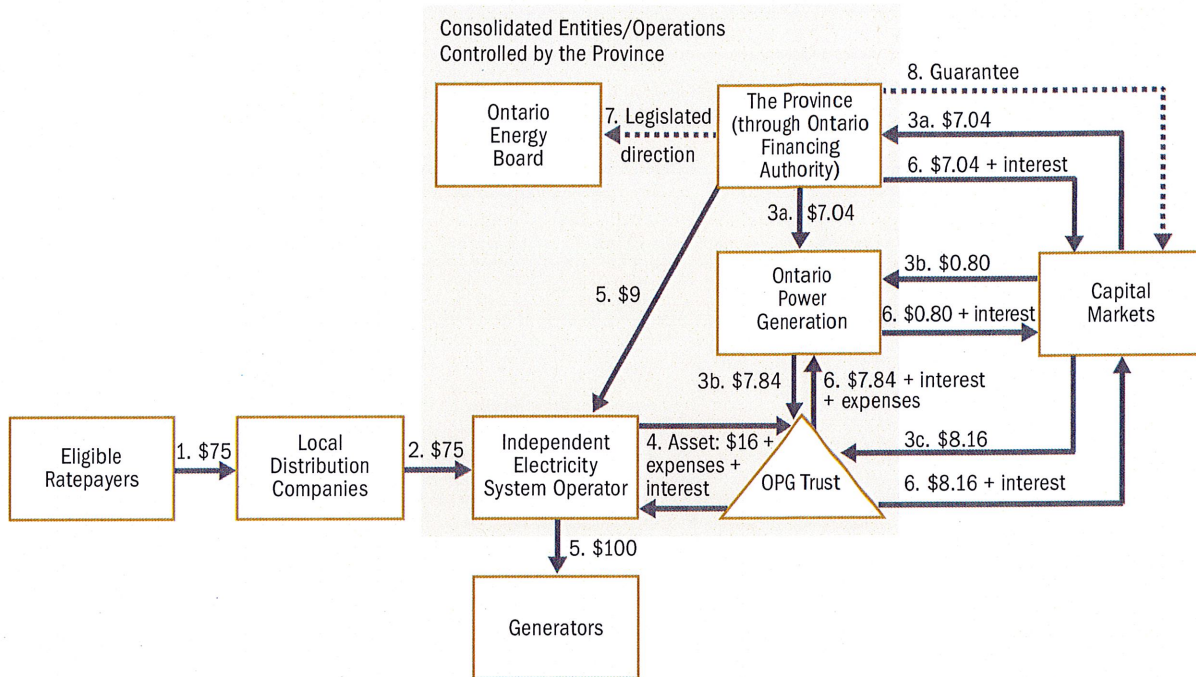
Key to achieving this result is calling the 16% revenue shortfall or net expense a “regulatory asset” in the IESO (4 in **Figure 2**). There are at least two ways in which the government has conceptualized the asset in order to justify its existence (see **Section 4.3** for the nonexistence of this asset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

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



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

Prepared by the Office of the Auditor General of Ontario



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

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

**Figure 3: Cumulative Accounting Results of the Fair Hydro Plan's Transactions (\$ billion)**

Source of data: Financial Accountability Office of Ontario

	Phase 1: 2017-21 <sup>1</sup>	Phase 2: 2021-28 <sup>2</sup>	Phase 3: 2028-45 <sup>3</sup>	Total
<b>Change in cumulative annual deficits from:</b>				
Borrowing to cover rate reduction	10.6	7.8	–	18.4
Clean energy adjustment <sup>3</sup> (repayment)	–	–	(39.4)	(39.4)
Interest costs	1.4	6.4	13.2	21.0
<b>Total change in net debt</b>	<b>12.0</b>	<b>14.2</b>	<b>(26.2)</b>	<b>–</b>

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

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

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

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

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

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

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

## 2.0 The Additional Cost to Ontarians

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

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

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

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

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

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

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

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

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

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

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

<sup>5</sup> Financial Accountability Office of Ontario, 1.

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

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

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

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

## 4.1 Overview of Canadian Public Sector Accounting Standards

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

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

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

## 4.2 The Complex Accounting Design Fails the Canadian PSAS Substance Test

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

Following this principle of “substance over form”:

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

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

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

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

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

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

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

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

### 4.4 Proper Accounting for the Policy Decision As Designed

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

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

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

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

#### 4.5 IESO Integral to Inappropriate Accounting at the Provincial Level

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

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

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

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

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

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

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

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

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

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

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

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

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

### 5.0 Government Anticipated and Accepted Risk of Audit Qualification

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

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

The Province’s consolidated financial statements have received “clean” audit opinions for 22 years—that is, since 1993/94, when it first adopted Canadian Public Sector Accounting Standards. The Province’s consolidated financial statements did not receive clean opinions in 2015/16 and 2016/17. 2016/17 was the first year since 1993/94 that our audit opinion was qualified on the basis that the government’s annual deficit was not reported in accordance with Canadian Public Sector Accounting Standards.

- **Qualified opinion:** The statements contain one or more material misstatements or omissions resulting from the misapplication of Canadian Public Sector Accounting Standards.
- **Adverse opinion:** The statements do not fairly present the financial position, results of operations and changes in financial position in accordance with Canadian Public Sector Accounting Standards.
- **Disclaimer of opinion:** It is not possible to give an opinion on the financial statements and notes because, for example, key records of the Province are destroyed and unavailable for examination.

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

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

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

The Province’s private-sector accounting advisers focused on setting up the desired accounting as it pertains to the individual financial statements of the entities involved in the accounting/financing design, particularly the IESO. Although we disagree with the appropriateness of the IESO’s accounting in its financial statements for the year

ended December 31, 2016, our main responsibility is ensuring the accuracy of the Province’s consolidated financial statements. The Province’s external private-sector accounting advisers confirmed in our discussions with them that their opinions regarding the financial reporting of individual entities such as the IESO, OPG and OPG Trust do not extend to the Province’s consolidated financial statements.

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

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



**APPENDIX 4:  
OPG AND IESO INDEMNITY AGREEMENTS**





7<sup>th</sup> Floor, Frost Building South  
7 Queen's Park Crescent  
Toronto ON M7A 1Y7  
Telephone: 416-325-0400  
Facsimile: 416-327-0374

7<sup>e</sup> étage, Édifice Frost Sud  
7 Queen's Park Crescent  
Toronto ON M7A 1Y7  
Téléphone: 416-325-0400  
Télécopieur: 416-327-0374

JUN 29 2017

The Honourable Glenn Thibeault  
Minister of Energy  
900 Bay Street, 4th Floor  
Toronto ON M7A 2E1

Dear Minister Thibeault,

Thank you for your letter requesting approval under section 28 of the Financial Administration Act of the Indemnity Agreements in favour of the IESO, its directors, officers, and employees, and in favour of OPG, OPG's subsidiaries (other than any financing entities as defined in the *Ontario Fair Hydro Plan Act, 2017*) and their respective directors, officers, and employees.

In response to your request, I am attaching the approval, under section 28 of the Financial Administration Act, of the Indemnity Agreements for OPG and the IESO in order to allow them to comprehensively participate in the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

Thank you again for writing.

Sincerely,

A handwritten signature in blue ink, appearing to read "Charles Sousa".

Charles Sousa  
Minister

c: Scott Thompson, Deputy Minister, Ministry of Finance  
Gadi Mayman, Chief Executive Officer, Ontario Financing Authority  
Ronald Kwan, ADM, Corporate and Electricity Finance Division, OFA  
Serge Imbrogno, Deputy Minister, Ministry of Energy





7<sup>th</sup> Floor, Frost Building South  
7 Queen's Park Crescent  
Toronto ON M7A 1Y7  
Telephone: 416-325-0400  
Facsimile: 416-325-0374

7<sup>e</sup> étage, Édifice Frost Sud  
7 Queen's Park Crescent  
Toronto ON M7A 1Y7  
Téléphone: 416-325-0400  
Télécopieur: 416-325-0374

June 29, 2017

**TO: Minister of Energy**

**Approval pursuant to section 28 of the  
*Financial Administration Act***

For the purpose of section 28 of the *Financial Administration Act*, I hereby approve the giving of an indemnity by Her Majesty the Queen in right of Ontario, as represented by the Minister of Energy, to Ontario Power Generation Inc., certain of Ontario Power Generation Inc.'s subsidiaries (as set out in the attached form of Indemnity Agreement) and each of their respective directors, officers and employees, substantially in the form set out in the attached Schedule.

A handwritten signature in blue ink, appearing to read "Charles Sousa".

Charles Sousa  
Minister of Finance

Attachment



## EXECUTION VERSION

### INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT effective as of this 1<sup>st</sup> day of June, 2017.

**BETWEEN:**            **Ontario Power Generation Inc.**  
(hereinafter the “Corporation”)

#### OF THE FIRST PART,

**Her Majesty the Queen in Right of the Province of Ontario as Represented  
by the Minister of Energy**

(hereinafter called the “Province”)

#### OF THE SECOND PART

**WHEREAS** the Corporation and/or one or more of its subsidiaries may or, in certain circumstances is or will be required to, carry out certain activities with respect to (i) the *Ontario Fair Hydro Plan Act, 2017* (the “Act”), (ii) the regulations made pursuant to the Act, and/or (iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party (the Act, such regulations and agreements, collectively the “Fair Hydro Plan”);

**AND WHEREAS** the Corporation, its subsidiaries and each of their respective directors, officers and employees may face risk of liability arising as a result of their respective activities, acts and/or omissions in the implementation of, or relating to, the Fair Hydro Plan.

**NOW THEREFORE**, in consideration of the sum of \$1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. To indemnify, defend and save harmless the Corporation, each of the Corporation’s subsidiaries (except for any such subsidiary that is a financing entity as defined in the Act) and each of their respective directors, officers, and employees (collectively the “Protected Persons” and individually, a “Protected Person”) from and against all losses, costs, damages, charges, expenses, demands, liabilities, fines, penalties, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by any Protected Person, including, without limitation, any direct, special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, “Losses”), as a result of any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or

## EXECUTION VERSION

informal), hearing and/or other proceeding of any nature or kind whatsoever (any of the foregoing being a “Claim”) arising, directly or indirectly, as a result of each Protected Person’s activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

2. For greater clarity, “Corporation’s subsidiaries” as used in this indemnity agreement do not include any financing entities (as defined in the Act), whether such financing entities are actually a subsidiary of the Corporation or not; and the terms “Protected Persons” or “Protected Persons” under this indemnity agreement do not include any financing entities (as defined in the Act), being a subsidiary of the Corporation or otherwise, provided that, for clarity, any such financing entities’ respective directors, officers, trustees, and/or employees shall be considered “Protected Persons” if he or she is also a director, officer or employee of the Corporation or any of the Corporation’s subsidiaries.
3. A Protected Person shall not be entitled to be indemnified in respect of Losses:
  - (a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected Person is actually paid under such insurance policy or claims fund; or
  - (b) for which other indemnities are already provided to such Protected Person to the extent that such Protected Person is actually so indemnified for those Losses by such indemnities; or
  - (c) if and to the extent that a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from such Protected Person’s dishonesty, gross negligence or willful misconduct; for greater clarity the Province acknowledges and agrees that any finding that such Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall not in and of itself constitute “gross negligence” or “willful misconduct” for purposes of this Section 3(c) or otherwise disentitle such Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person’s gross negligence or willful misconduct; or



## EXECUTION VERSION

- (d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, to the extent such action or proceeding arises from circumstances in which such Protected Person did not have reasonable grounds for believing that such Protected Person's conduct was lawful.

#### 4. Each Protected Person shall:

- (a) Upon becoming aware of a Claim(s) for which such Protected Person may seek indemnification hereunder, as soon as practicable, deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim(s);
- (b) upon written request of the Province, furnish to the Province copies of any document, or provide to the Province any information, that relates to the Claim(s) that is in the possession or under the control of the Protected Person (except to the extent that provision of same would cause the Protected Person or another Protected Person to lose its entitlement to claim privilege with respect to the same);
- (c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim(s); and
- (d) promptly take all reasonable steps to obtain indemnification or coverage, to the fullest extent possible, under insurance policies and/or under indemnities provided by the Corporation, as referred to in subsections 3(a) and (b) above.

A failure on the part of a Protected Person to take any of the actions provided in this section 4 shall not affect the rights of such Protected Person hereunder except to the extent that, as a result of such failure, the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 4 shall not affect the rights of any other Protected Person.

- 5. The Province shall have the right to participate in or, where the Province has confirmed in writing to the applicable Protected Person(s) that all Losses in respect of a Claim will be indemnified under this indemnity agreement, assume control of the negotiation, settlement or defence of the Claim and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim without the prior written consent of the Province, such consent not to be unreasonably withheld or delayed. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim, the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the applicable Protected Person(s). Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the

## EXECUTION VERSION

Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be Losses to which this indemnity extends.

6. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.
7. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall apply only to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee of the Corporation and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation; and with respect to directors, officers and employees of the Corporation's subsidiaries, this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of a subsidiary of the Corporation is actually a director, officer or employee of that subsidiary of the Corporation, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director, officer, employee of that particular subsidiary of the Corporation or after he or she ceases to be a director, officer, employee of that subsidiary of the Corporation
8. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with any Claim, including, without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within ninety (90) days of any request in writing by a Protected Person to the Province for such reimbursement or advance, accompanied by reasonable details and supporting documentation with respect to the Losses in respect of which such reimbursement or advance is requested, so long as the Protected Person is carrying out its obligations under section 4 of this agreement. A Protected Person shall promptly repay to the Province any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.
9. The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person, who is an individual, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person who is an individual is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation), provided that this waiver shall not apply to any claims of dishonesty, gross negligence or willful misconduct against a Protected Person who is an individual.

## EXECUTION VERSION

10. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with this indemnity agreement:
- (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;
  - (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) (including approval of the Minister of Finance pursuant to Section 28 of the *Financial Administration Act* (Ontario)) and under the Act required for it to enter into this indemnity agreement;
  - (c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), subject to the application of equitable principles and that equitable remedies may be granted only in the discretion of a court of competent jurisdiction, section 11.3 of the *Financial Administration Act* (Ontario) and section 43 of the *Financial Administration Act* (Ontario).
11. It is the intention of the Province to constitute the Corporation as trustee for the Protected Persons that are not party to this indemnity agreement of the covenants, waivers, representations, warranties and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants, representations, warranties and obligations on behalf of such Protected Persons.
12. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
13. The provisions of this indemnity agreement and the benefit of all covenants, waivers, representations, warranties and other obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

*[Signature Page Follows]*

**EXECUTION VERSION**

**NOW THEREFORE**, the parties have executed this indemnity agreement effective as of the day and year first written above.

**ONTARIO POWER GENERATION INC.**

By: \_\_\_\_\_

**HER MAJESTY THE QUEEN IN RIGHT OF THE  
PROVINCE OF ONTARIO, AS REPRESENTED  
BY THE MINISTER OF ENERGY**

By: \_\_\_\_\_

Glenn Thibeault  
Minister of Energy



---

7<sup>th</sup> Floor, Frost Building South  
7 Queen's Park Crescent  
Toronto ON M7A 1Y7  
Telephone: 416-325-0400  
Facsimile: 416-325-0374

7<sup>e</sup> étage, Édifice Frost Sud  
7 Queen's Park Crescent  
Toronto ON M7A 1Y7  
Téléphone: 416-325-0400  
Télécopieur: 416-325-0374

June 29, 2017

**TO: Minister of Energy**

**Approval pursuant to section 28 of the  
*Financial Administration Act***

---

For the purpose of section 28 of the *Financial Administration Act*, I hereby approve the giving of an indemnity by Her Majesty the Queen in right of Ontario, as represented by the Minister of Energy, to the Independent Electricity System Operator and each of its respective directors, officers and employees, substantially in the form set out in the attached Schedule.

A handwritten signature in blue ink, appearing to read "Charles Sousa".

---

Charles Sousa  
Minister of Finance

Attachment



EXECUTION VERSION

**INDEMNITY**

**THIS INDEMNITY** effective as of this 1<sup>st</sup> day of June, 2017.

**BETWEEN:**                    **The Independent Electricity System Operator**  
(hereinafter the “**Corporation**”)

**OF THE FIRST PART,**

**Her Majesty the Queen in Right of the Province of Ontario as Represented  
by the Minister of Energy**

(hereinafter called the “**Province**”),

**OF THE SECOND PART**

**WHEREAS** the Corporation, and its directors, officers and/or employees, may, or in certain circumstances are or will be required to carry out certain activities with respect to (i) the implementation of *the Ontario Fair Hydro Plan Act, 2017* (the “**Act**”), (ii) the regulations made pursuant to the Act; and/or (iii) any agreements relating to the implementation of the Act or regulations, including with any financing entity (as defined in the Act), (the Act, such regulations and agreements, collectively referred to as the “**Fair Hydro Plan**”);

**AND WHEREAS** the Corporation, and its directors, officers and/or employees may face risk of liability arising as a result of their respective activities, acts and/or omissions in the implementation of, or relating to, the Fair Hydro Plan;

**NOW THEREFORE**, in consideration of the sum of \$1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. to indemnify, defend, and save harmless the Corporation and its directors, officers, and employees or a member of a committee or panel established by the directors of the Corporation (collectively the “**Protected Persons**” and individually, a “**Protected Person**”) from and against all losses, costs, damages, charges, expenses, demands, liabilities, fines, penalties, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by any Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, “**Losses**”), as a result of any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation

## EXECUTION VERSION

(formal or informal), hearing and/or other proceeding of any nature or kind whatsoever (any of the foregoing being a "Claim") arising, directly or indirectly, as a result of the Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan.

2. A Protected Person shall not be entitled to be indemnified in respect of such Protected Person's Losses, or a portion thereof:
  - (a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected Person is actually paid under such insurance policy or claims fund; or
  - (b) for which other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or
  - (c) that are a result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person; for greater clarity the Province acknowledges and agrees that any finding that a Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws, or any information provided to a financing entity in relation thereto, contained no misrepresentation shall not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; or
  - (d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in which a Protected Person did not have reasonable grounds for believing, and/or was reckless as to their belief, that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

3. Each Protected Person shall:



## EXECUTION VERSION

- (a) upon becoming aware of a Claim for which such Protected Person may seek indemnification hereunder, as soon as practicable deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim(s);
- (b) upon written request of the Province, acting reasonably, furnish to the Province copies of any document, or provide to the Province any information that relates to the Claim(s) that is in the possession or under the control of the Protected Person (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to the same);
- (c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim; and
- (d) promptly take all reasonable steps to obtain indemnification or coverage to the fullest extent possible under insurance policies or claims funds, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of such Protected Person except to the extent that, as a result of such failure, the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of any other Protected Person.

4. The Province shall have the right to participate in or assume control of the negotiation, settlement or defence of the Claim(s) and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim(s) without the prior written consent of the Province, such consent not to be unreasonably withheld or delayed. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim(s), the applicable Protected Person(s) shall cooperate fully with the Province in connection with the same, and each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be Losses to which this indemnity extends.
5. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has indemnified

## EXECUTION VERSION

the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.

6. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.
7. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with a Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within ninety (90) days of the Protected Person completing all steps outlined in paragraph 3 of this indemnity agreement. The Protected Person shall promptly repay forthwith to the Province any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.
8. The Province hereby waives any claim it could otherwise make against a Protected Person who is an individual, whether now or in the future, relating in any way to the Corporation's and/or any such Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person who is an individual is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation), provided that this waiver shall not apply to claims of gross negligence, dishonesty, or willful misconduct against a Protected Person who is an individual.
9. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with this indemnity agreement:
  - (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;
  - (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) required for it to enter into this indemnity agreement;
  - (c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), to the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction; section 11.3 of the *Financial*

## EXECUTION VERSION

*Administration Act* (Ontario); and section 43 of the *Financial Administration Act* (Ontario).

10. It is the intention of the Province to constitute the Corporation as trustee for the Protected Persons that are not party to this indemnity agreement of the covenants and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants and obligations on behalf of such Protected Persons.
11. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
12. The provisions of this indemnity agreement and the benefit of all covenants and obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

*[Signature Page Follows]*

EXECUTION VERSION

NOW THEREFORE, the parties have executed this indemnity agreement effective as of the day and year first above written.

**THE INDEPENDENT ELECTRICITY  
SYSTEM OPERATOR**

By: \_\_\_\_\_

**HER MAJESTY THE QUEEN IN RIGHT OF THE  
PROVINCE OF ONTARIO, AS REPRESENTED  
BY THE MINISTER OF ENERGY**

By: \_\_\_\_\_

Glenn Thibeault  
Minister of Energy

**APPENDIX 5:  
CABINET BRIEFING NOTE  
(MARCH 1, 2017)**



**Electricity Price Mitigation**

Cabinet (info) Feb 15, 2017	TB/MBC Mar 1, 2017	Cabinet Mar 1, 2017	Announcement Mar 2017	LRC / Cabinet Spring 2017	Introduction Spring 2017	Effective Date July 1, 2017
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<b>This government's commitment</b>	<p>“We’re going to come out with what we can do [on hydro bills] before the budget,”</p> <p style="text-align: right;">– Premier Wynne, Jan 18, 2017</p> <p>“And that's why ... I've committed to finding more ways to lower rates, to reduce the burden on consumers, and we're going to be working on that in the weeks and the months ahead. And, in fact, that work is well underway. I'm listening to the people of the province. I'm listening to the people who run our system. And I am going to make changes because it's the right thing to do.”</p> <p style="text-align: right;">– Premier Wynne, speech at Economic Club of Canada, Jan 19, 2017</p>
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**SUMMARY OF PROPOSAL**

The Ministry of Energy is seeking approval to implement electricity price mitigation initiatives that would provide additional rate relief to Ontario electricity ratepayers. While the actual benefits would be variable based on consumer class and consumption, the proposal is projected to provide about 25% in rate relief (including the 8% announced in 2016) for a typical residential consumer (i.e., based on a Toronto Hydro customer consuming 750kWh per month in 2017).

The proposal aims to smooth the impacts of the Global Adjustment (GA), help the most vulnerable Ontarians through enhancements to electricity support programs through tax-base funding and work to bend the future cost curve of electricity. Initiatives for approval include:

1. Subject to legal, accounting and financial risk assessments, financing a portion of the GA costs in order to reduce costs for ratepayers in the near term and spread the impacts of the GA across ratepayers over a longer period of time, specifically by:

- subsidizing rates in the short term, i.e. by reducing projected after-tax electricity costs for a typical customer consuming 750kWh per month in 2017 by up to \$26/month
  - bill increases will be kept in line with the Consumer Price Index (CPI) until the end of 2021
  - from 2022 onwards, bills will increase at a rate that ensures recovery of the accumulated debt, interest costs and administrative costs by 2048 without exceeding around 10% of total electricity costs.
2. Subject to legal, accounting and financial risk assessment, expanding the powers of Ontario Power Generation (OPG), the Ontario Energy Board (OEB), and the Independent Electricity System Operator (IESO), and using other mechanisms, including putting in place appropriate payment, settlement and cost-recovery authorities for and through the IESO (including accommodating payments to and from any appropriate entity) to manage the deferred GA costs.
  3. Lowering the Industrial Conservation Initiative (ICI) threshold to provide additional rate mitigation targeted at specific Class B electricity consumers groups (e.g. manufacturing), in particular manufacturing companies, with additional flexibility to encourage take-up, and explore additional rate mitigation residential tenants that are not sub-metered and report back to Cabinet and TB/MBC with options in winter 2017.
  4. Enhancing electricity support and conservation programs and shifting the costs of those programs from rate payer funded to government funded:
    - Broadening the Rural or Remote Electricity Rate Protection (RRRP), including harmonizing distribution cost for customers with the highest distribution rates;
    - Expanding the Ontario Electricity Support Program (OESP);
    - Establishing a new one-time Affordability Fund in 2016/17; and
    - Eliminating the delivery charge for First Nations customers on reserve.
  5. Ongoing activities to bend the future cost curve of electricity:
    - Ontario Energy Board (OEB) – Identify opportunities for OEB red-tape reduction and future LDC efficiencies and rates.
    - Independent Electricity System Operator (IESO) – Modernize Ontario’s electricity market through electricity Market Renewal initiatives.
    - Explore additional cost savings to future electricity rates as part of the 2017 Long-Term Energy Plan to help offset the impact of GA recoveries.

The proposal will require a number of legislative, regulatory and policy changes, while working to maintain existing public policy objectives such as: maintaining a reliable electricity system, Ontario’s commitment to reducing the impacts of climate change and commitment to achieve greenhouse gas (GHG) reduction targets.



The GA refinancing proposal includes policy approval to amend the legislated authority of OPG and IESO to enable appropriate cost recovery and settlement mechanisms, and of the OEB to ensure appropriate regulatory oversight.

In order to avoid the cost of GA refinancing impacting the province's fiscal plan, the proposed mechanism to partially defer the GA costs must meet legal, accounting, and financing requirements. This analysis will not be completed until the proposed legislation is finalized. If these requirements cannot be met, the cost of the GA refinancing would come onto the province's fiscal plan, creating a fiscal exposure of about \$2.5 billion in 2017/18 and increasing in subsequent years (see table on p. 4). If GA refinancing is included in an announcement prior to confirmation of these requirements, the government would not be able to comment on the impact on the fiscal plan. Rather, the government could explain its intention to draft legislation to ensure legal, accounting and financial requirements are met so not to have a fiscal impact.

### Terms you need to know

- **Global Adjustment (GA)** – Amount that accounts for differences between the market price of electricity and rates paid to regulated and contracted generators and for conservation programs. The GA is collected from all electricity ratepayers in Ontario.
- **Local Distribution Companies (LDCs)** – Local electricity utilities, responsible for distributing power from transmission lines to people's homes (e.g., Hydro Ottawa, Toronto Hydro, etc.)
- **Delivery charge** – The costs of getting electricity from generating stations to homes and businesses. Appears as one line on electricity bills, includes three components:
  - Transmission: The costs of moving electricity across high voltage lines from generating stations to the distribution system. This cost is recovered through a variable charge that is approved by the OEB.
  - Distribution: The costs of moving electricity from the transmission system to homes and businesses. Depending on the LDC, distribution costs makes up about 60% to 80% of the Delivery line. This cost is currently recovered through both a variable charge and fixed charge, approved by the OEB. Distribution rates are moving to a fully-fixed charge over next 5 years.
  - Line Loss: The costs to recover electricity that is lost as heat when it is delivered over a power line.
- **Regulated Price Plan (RPP)** – Since April 2005, the Ontario Energy Board (OEB) has administered an electricity price plan that provides stable and predictable electricity pricing, encourages conservation and ensures the price consumers pay for electricity better reflects the price paid to generators. This pricing plan is known as the Regulated Price Plan (RPP). About 5 million residential consumers, small businesses and farms are eligible for the RPP.
- **Customer classification for Hydro One** – Customer service types are determined by the kind of electricity service as well as by density – how many customers there are in the area and the number of customers per kilometre of line. The more customers there

are in the area, the lower the cost to serve. R1 customers are considered 'medium density' customers and R2 are considered 'low density customers'.

- **Ontario Power Generation (OPG)** – A business corporation owned by the province that owns and operates generation assets, including nuclear and hydro, and generates almost half of Ontario's electricity.
- **Ontario Energy Board (OEB)** – A Crown Agency that independently regulates Ontario's electricity and natural gas sectors in the public interest. Implements an open and transparent process to allow for stakeholders to comment on various items.
- **Independent Electricity System Operator (IESO)** – An independent corporation and agency of the Ministry of Energy that operates the electricity market in Ontario. Balances the supply of and demand for electricity in Ontario and then directs its flow across the province's transmission lines, including interties with other jurisdictions.
- **Class A Consumer** – Large commercial and large industrial consumers with average peak load size above 3 MW, subject to eligibility. Class A consumers pay GA based on their electricity consumption during the five highest peak demand hours during the year. On January 1, 2017 the threshold for Class A was lowered to 1MW for all consumer types.
- **Non-RPP Class B Consumer** – Commercial, institutional and small industrial consumers, typically with load size under 3 MW. Class B consumers pay GA as a volumetric rate applied to all electricity consumption. Class B consumers include those that choose not to become Class A.

**What is the expected cost to government<sup>1</sup>?**

The total cost of the proposal is \$2.7B in 2017/18, \$665M funded through the fiscal plan and \$2.5B to be funded through the electricity rate base subject to confirmation legal, accounting and financial requirements.

Cost Impact (\$M)	2016-17	2017-18	2018-19	2019-20	2020-21
Moving Social Programs to Government-Funded (details provided in the chart below)	200	665	753	829	892
GA Financing <sup>2</sup>		2,534	2,668	2,942	3,420
Cumulative total - Bills Lowered by 25%, RPP-Eligible Only*		3,199	3,421	3,771	4,312

For the social programs, the current estimate for the proposal is \$200M in 2016/17 for the Affordability Fund (a one-time cost). The current estimate for the combined impact of the non-Global Adjustment initiatives that would begin in 2017/18 is expected to be \$738M in 2017/18, growing to \$828M in 2018/19 and rising. This represents an additional pressure

<sup>1</sup> Assumes the required legal, accounting and financial requirements can be met to avoid a fiscal cost to the government.

<sup>2</sup> Assumes the necessary legal, accounting and financial requirements are not met.

on the plan. These estimates are based on variable inputs such as future energy consumption of various consumer groups.

<b>Fiscal Impact (\$M)</b>	<b>16-17</b>	<b>17-18</b>	<b>18-19</b>	<b>19-20</b>	<b>20-21</b>
RRRP Enhancements*	-	459	472	484	497
Ontario Electricity Support Program, including the 50% Enhancement & New Matrix Categories	-	186	261	325	375
On-Reserve First Nation Delivery Credit	-	20	20	20	20
Affordability Fund**	200	-	-	-	-
<b>Total</b>	<b>200</b>	<b>665</b>	<b>753</b>	<b>829</b>	<b>892</b>

**\*Note:** Current regulatory framework calls for RRRP to increase by average distribution rate increase. Forecast assumes 2.6% annually though is subject to OEB proceedings. Fiscal projection is subject to consumer consumption patterns that may change due to extreme weather or other factors. Does not include Algoma Power or Hydro One Remotes, which would continue to be on the rate base.

The impact of moving program funding from rate payer funded to government funded would result in approximately \$2 savings/month for a typical residential consumer.

If the proposed legal and accounting treatment of the GA refinancing proposal is not implemented, there would be an immediate, negative impact on the province's fiscal plan. In this case, the ministry is directed to report back with options for achieving a comparable level of electricity rate mitigation in the most cost effective way in order to minimize the impact on the province's fiscal plan. The table below shows the projected fiscal impact based on bills being lowered, in combination with the existing 8% Ontario Rebate for Electricity Consumers and shifting existing OESP and RRRP costs to the government, by an estimated 25% for a typical, average household consuming 750 kWh per month.

The exact impact of refinancing the GA is unknown at this time. The intent is to establish a structure in which the GA cost recovery deferral is recorded as a regulatory asset by the IESO (which is sold to the OPG Trust), supported at its foundation by the fact that the legislation to defer the GA cost recovery is not a reduction in the GA, but rather a deferral of the GA to be collected at a future time. OPG Trust would ultimately take on the risk and responsibility of financing the deferral through debt financed from OPG and external sources. OPG's debt would be funded through a combination of an equity investment by the Province and external financing. Such a structure would result in increased gross debt of the Province (to finance the equity injection in OPG), increased interest on debt related to that Provincial debt, increased net investment in OPG (to offset the Provincial borrowing for no net debt impact), and increased earnings of OPG. Until the structure has been fully developed, which includes development of the legislation and assessing its fiscal impact which is dependent on the accounting analyses, it cannot be confirmed that the amounts deferred would not increase the government's annual deficit (or reduce its surplus) and/or net debt. It should be noted that one of the requirements of the structure is that the

government would backstop the financing if a future government were to ever revoke or change the legislation. In other words, the OPG and its debt holders would have their capital guaranteed and paid for directly by the Province if such a situation were to happen. The potential cost to government associated with providing this type of guarantee and the cost of borrowing from private lenders is unknown at this time and could increase the risk to the fiscal plan. However, it is likely that external borrowing by the OPG Trust would be at a higher interest cost than Provincial borrowing costs, which would affect the carrying costs that would need to be recovered from ratepayers in the future. Based on the current stage of analysis of the accounting, legal and financing risks, there is a high risk that the GA financing will have a fiscal impact on the Province.

There is inherent risk in the financial estimates because the calculations are highly dependent on forecasts of the total consumption and bills of customers eligible for the RPP, the cost of borrowing, electricity demand and electricity market conditions and accounting assumptions. In addition, under the proposal, electricity prices would increase around 10% above forecast residential monthly bills from 2028 to 2047. The public may expect that the government is committed to reducing or holding constant the absolute cost of electricity for consumers in the longer term. Under the proposal, the government would not have the ability to direct further changes to the rate of repayment for GA refinancing, which would limit the government's ability to address electricity rate concerns in the future.

#### **How will the changes be communicated?**

On March 2, 2017, the Premier is scheduled make a high profile announcement of additional relief to reduce electricity costs for Ontarians. To coincide with this event, there will be a news release with backgrounders, a technical briefing of the media, a public education campaign to raise awareness of the rebates and initiatives in place to reduce electricity bills, and an Ontario website that includes all the programs and initiatives that the government is undertaking to reduce electricity costs.

Given the continued high risk that the GA financing may have a fiscal impact, the communication will need to be clear that the government's intent is to draft legislation to ensure legal, accounting and financial requirements are met so not to have a fiscal impact.

#### **CABINET OFFICE ANALYSIS**

The proposal aims to provide further rate relief to Ontario electricity ratepayers. The proposal builds on earlier electricity rate mitigation initiatives, including the ending of the Debt Retirement Charge (DRC) for residential consumers, the 8% rebate on all RPP-eligible electricity bills, the enhancement of RRRP and the expansion of ICI for industrial consumers (all announced in September 2016). The proposal is projected to provide about 25% in rate relief in aggregate (including the 8% announced in 2016) for a typical residential consumer (i.e., based on a Toronto Hydro customer consuming 750kWh per month in 2017).

Since 2010, electricity prices have risen considerably in Ontario, particularly for families and small businesses. Ontario's electricity prices are among the highest of any Canadian jurisdictions, but are comparable to many neighbouring US jurisdictions. Primary contributors to the price increase in Ontario are new investments in generation, transmission and distribution. Addressing the price of electricity is among the highest priorities for Ontarians. Prices are forecast to continue to increase as additional renewable energy generation is brought online and nuclear units are refurbished. Ontario currently provides rate mitigation to various electricity consumers through a combination of tax-based and rate-based programs. Rate-based programs are funded by shifting costs from one electricity consumer group to another. However, smaller manufacturing firms in Class B do not benefit from the current ICI program or financial relief to Households.

Electricity bills contain several line items. The electricity consumption line for consumers on the Regulated Price Plan breaks down usage into the different periods by price (off peak, peak, mid peak). The delivery line covers the cost of getting electricity from generating stations to homes and businesses. There are three components to the delivery line: transmission (i.e., moving electricity from generating stations to the distribution system), distribution (i.e., moving electricity from the transmission system to homes and businesses) and line loss (i.e., costs to recover electricity that is lost as heat when it is delivered over a power line). The distribution charge is currently the largest component (60% to 80%) and is recovered through both a variable charge and fixed charge, approved by the OEB. Distribution rates are moving to a fully-fixed charge over the next 5 years (8 years for Hydro One). The efficiency and performance of individual LDCs also impact the delivery costs for consumers.

Ontario produces and publishes a Long-Term Energy Plan (LTEP) every three to four years, with the next LTEP scheduled for release in the spring of 2017. LTEP principles that will guide decision-making are affordability, reliability, clean energy, community and Indigenous engagement and conservation and demand management. Through extensive consultation with the public, stakeholders and Indigenous partners through the fall of 2016, the Ministry has identified key priorities, and this submission combined with new policy or program announcements in the LTEP will provide the comprehensive future planning perspective for Ontario's energy sector.

Under the proposal, all electricity consumers would benefit from one or more of the proposed electricity price mitigation initiatives by July 1, 2017. Additional supports for Class B consumers would be provided under an expanded ICI program and consideration will be given to providing support to residential tenants that currently don't benefit directly from rate mitigation measures.

## **1. Refinancing Global Adjustment in order to defer ratepayer costs**

The GA accounts for the difference between generation costs (contracted and rate-regulated) and the wholesale market price, helping to recover fixed costs, including capital costs, of putting in place and operating Ontario's generation fleet, fixed generation costs, such as nuclear contracts, as well as the cost of conservation programs. The GA is

instrumental in maintaining a reliable electricity system by ensuring that sufficient generating capacity is available. The GA has risen over the past decade as the province has invested in greenhouse gas (GHG) emissions-free renewable and nuclear generation facilities, and wholesale market prices have been low due to low demand and natural gas prices.

Many of the contracted generation assets are expected to have useful lives that extend beyond the term of their current financial contracts (typically 20 years). Similarly, conservation costs are recovered through the GA on an annual basis while conservation initiatives can provide benefits to the electricity system over many years.

The proposal defers some of the current costs to ratepayers by recognizing the longer term benefit of these assets to the electricity system (similar to extending and re-financing a mortgage). The proposal is based on the assumption that some generation assets are expected to continue to provide benefit to future ratepayers beyond the term of current contracts, and that future ratepayers are expected to be able to utilize these assets and reduce the need to finance the development of new generation assets in the future.

According to a legal opinion by former Supreme Court Justice Binnie, the amount that could be financed would need to reflect the true value of the underlying assets being amortized over a longer period of time. Shifting too much of the current GA costs to future generations could jeopardize the nature of this being a regulatory charge and it being deemed a tax.

The result of the 25% reduction proposal is that costs for typical residential consumers would be lowered by \$26/month with total bill increases kept in line with inflation for approximately 4 years, by borrowing money. Costs would increase to above the true cost of GA until the borrowed money, interest accumulated on the debt and the cost of administering the program is repaid fully in 2048 (see chart on page 19).

The projected residential impacts are based on a forecast for a household connected to Toronto Hydro that consumes 750 kWh per month. Actual ratepayer savings would vary due to differences in consumption patterns and LDCs.

Accounting, financial and legal analyses are ongoing and will inform an assessment of the feasibility of this proposal. If these analyses do not support the use of the non-fiscal model described in this submission, and the government proceeds to make the announcement later this week, the government is at risk that the proposed mechanism would impact the provincial deficit by up to \$2.5 billion a year. Should this be the case, the ministry will report back to Cabinet with options for achieving a comparable level of electricity rate mitigation in the most cost effective way in order to minimize the impact on the province's fiscal plan.

Those ineligible to receive the GA rate relief can benefit from one or more of the other initiatives under this proposal (e.g., OESP, RRRP proposals).

## **2. Mechanism to Defer GA costs**

The intent is to establish a structure in which the GA deferral is recorded as a regulatory asset by the IESO, supported at its foundation by the fact that the legislation to defer the GA is not a reduction in the GA, but rather a deferral of the GA to be collected at a future time. OPG would ultimately take on the risk and responsibility of financing the deferral by purchasing monthly regulatory assets from the IESO. The OPG would finance these purchases through a combination of an equity investment by the Province and external private sector financing. Such a structure would result in increased gross debt of the

Province (to finance the equity injection in OPG), increased interest on debt related to that external debt, increased net investment in OPG, and increased earnings of OPG. If structured properly, the underlying regulatory asset would offset the additional debt to not impact the province's net debt.

Until the structure has been fully developed, which includes development of the legislation and assessing its impact on the accounting analyses, it cannot be confirmed that the amounts deferred for ratepayers would not increase the government's annual deficit. It should be noted that one of the requirements of the structure is that the legislation be written to avoid the possibility of being revoked with wording to ensure OPG and its debt holders would have their capital guaranteed and paid for directly by the Province if such a situation were to happen. The potential cost to government associated with providing this type of guarantee and the cost of borrowing from private lenders is unknown at this time. Based on the current stage of analysis of the accounting, legal and financing risks, there is a high risk that the GA financing will have a fiscal impact on the Province.

OPG is currently exploring creating a Special Purpose Vehicle (SPV) or Trust ("OPG Trust") to finance the GA. The SPV/Trust will be consolidated by OPG, giving OPG the appropriate powers to impact its exposure to variability of the income in the trust. The variability will likely largely result from the financing of the Trust, and therefore OPG will have the ability to direct the financing of the Trust and both benefit from its financing strategy and be at risk as a result of it.

Assuming that all legal, accounting and financial requirements can be met, the proposed structure is expected to result in: (1) increase in provincial gross debt offset by an equivalent in regulatory assets resulting in no change in net debt, and (2) an increase in interest on debt paid by the province offset by higher earnings from OPG resulting in no impact on annual deficit of the province.

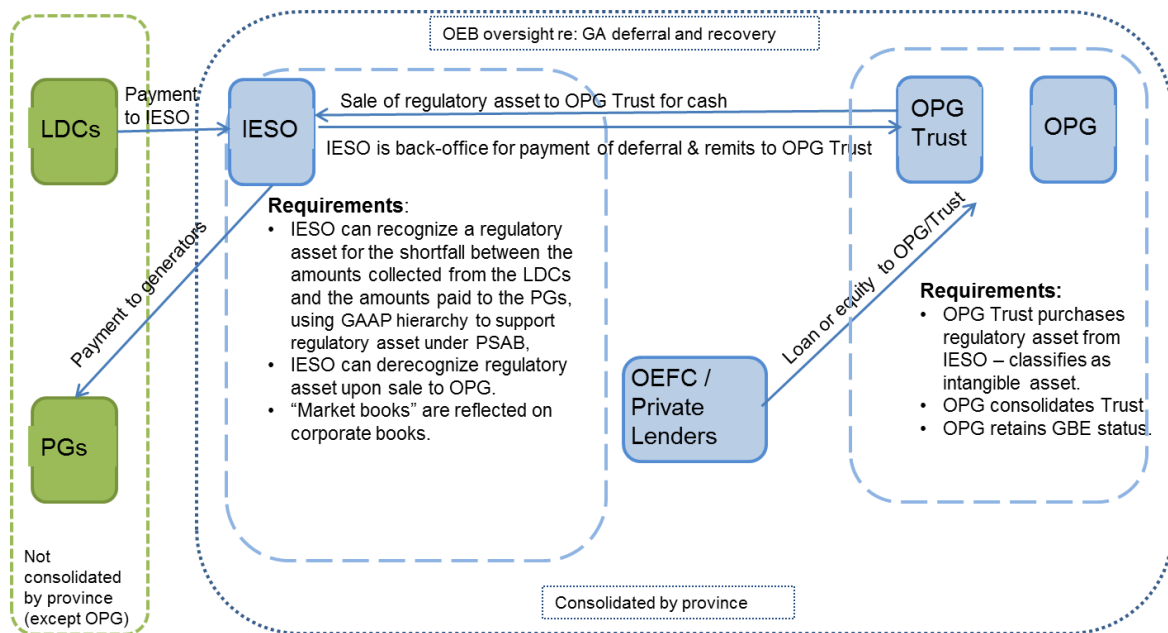
The analysis of the structure with respect to accounting, legal and financial risk is not complete; several key requirements remain outstanding:

- Complexity of the structure and length of deferral/recovery increase risk and decrease transparency
- IESO requirements – IESO Finance, KPMG (Energy advisor and IESO auditor), OPCD and EY (OPCD advisor) are evaluating accounting risks:
  - IESO can recognize a regulatory asset for the shortfall between the amounts collected from the LDCs and the amounts paid to the PGs using GAAP hierarchy to support regulatory asset under PSAB
  - IESO can derecognize regulatory asset upon sale to OPG; and
  - "Market books" are reflected on corporate books.
  - In addition to these requirements, it will also be necessary to establish who will act as the regulator as in order to have a regulatory asset, a regulator is required. The ministry is working with the OEB about their potential regulatory role.

- OPG requirements – OPG Finance, EY (OPG auditor), PwC (OPG Advisor), and OPCD are evaluating accounting risks:
  - OPG Trust purchases regulatory asset from IESO – classifies as intangible asset;
  - OPG consolidates Trust; and
  - OPG retains GBE status.

If a mechanism can be structured that satisfies these requirements, there remain some fundamental risks that the province would need to accept:

- Government would have no ability to control electricity prices resulting from these changes;
- Government would not know the price of private borrowing that would be required for the OPG Trust to work; and
- Private lenders would likely require a guarantee, break fee or other backstop because government cannot commit to the legislation being irrevocable.



**Note:** Proposed structure is subject to legal and accounting confirmation, absent that confirmation, there would be a fiscal impact to the province.

The ministry continues to work with TBS, MOF, the IESO, the OPG and their external auditors for IESO and OPG on an appropriate structure and will report back to Cabinet with the proposed structure for approval in winter 2017.

### 3. Support for Class B electricity consumers and Residential Tenants



Class B electricity consumers comprise about 50,000 customers, including many mid-size manufacturers, large commercial buildings and broader public sector facilities. There are several energy efficiency programs for Class B consumers; however, these consumers are too large for the RPP and so do not qualify for the 8% rebate or too small for other support programs such as the Industrial Conservation Initiative (ICI).

The Ministry of Energy is proposing to expand the eligibility threshold for ICI that will provide Class B consumers the opportunity for electricity costs savings. The expanded ICI would include:

- Extending eligibility to larger Class B consumers with average monthly peak demand over 500 kilowatts;
- Targeting eligibility to energy intensive industries with the North American Industry Classification System (NAICS) codes 31 - 33 (i.e., Manufacturing); and
- Providing small manufacturers with greater flexibility in meeting ICI requirements.

Under the expanded ICI, larger Class B consumers whose electricity demand is currently too low to qualify for ICI, would now be eligible for the expanded ICI if they wish to participate. In addition, the Ministry will assist Class B participation in ICI through a targeted outreach campaign.

Currently, residential tenants generally either pay for their own electricity use through suite meters (i.e., sub-meters or direct arrangements with hydro providers) or pay for electricity indirectly as a service included in their rent. Tenants who pay for their own electricity will receive electricity costs savings directly through their bills. Low-income tenants who pay their own electricity bills can access existing energy support programs, such as the Ontario Electricity Support Program, administered by the Ontario Energy Board. The Ministry of Housing has identified that it may have limited tools to address rate mitigation for all tenants who are not suite metered. The ministry will explore options for providing energy rebates directly to tenants who are not sub-metered and whose rent includes electricity.

#### **4. Enhancing electricity support and conservation programs and shifting cost from rate payer funded to government funded:**

##### RRRP Enhancement (Delivery Charge Relief):

Currently, RRRP is a \$241.9M program paid for by the ratepayers. For an average residential customer, the cost of supporting RRRP is roughly \$1.58 per month. For other customers, the cost to support the RRRP can range from \$65 for a greenhouse to \$8,000 for a medium industrial. RRRP helps to offset the higher costs to distribute electricity to Ontario residents who live in rural or remote locations all across the Province, including Hydro One R2 customers. The delivery charge includes a distribution cost, which can vary across LDCs, and distribution costs are highest for Hydro One R2 and R1 (medium density) customers.

There are also some LDCs with relatively high distribution costs that, when coupled with high consumption patterns, can result in very high bills for consumers (Northern Ontario Wires, Lakeland Parry Sound, Chapleau, Sioux Lookout, InnPower, Atikokan and Algoma).

In 2016 the OEB made a ruling that all LDCs need to move to fixed distribution charges. The OEB found that fixed distribution charges would establish a fairer way to recover the costs of providing distribution service, and provides greater revenue stability for distributors, which will position them for technological change in the sector, remove any disincentive to promote conservation, and help with their investment planning. The ministry proposes to provide support on the delivery portion to those most in-need by:

- Moving the RRRP from rate payer funded to a government funded program; and
- Harmonizing the fixed distribution rates to the lowest distribution cost of the LDCs mentioned above at \$38/month (which is the forecast rate for Northern Ontario Wires). If the costs of another LDC moved above these in the future, a regulation change would be required to for that LDC to receive RRRP.
- These enhancements are expected to benefit approximately 800,000 customers in Ontario.

For this portion of the proposal, targeted RRRP consumers would see additional savings on their monthly bill that would vary based on their consumption level and cost to fiscal plan would be \$459M in 2017/18, \$243M of which is a transfer of existing programs to the tax base.

#### Ontario Electricity Support Program (OESP) Expansion:

The OESP is an income-tested, application based program that lowers electricity costs of the most vulnerable consumers by providing a rebate directly on electricity bills. The program was launched in January 2016 and has had roughly 30% enrolment. There are two benefit scales; the basic program credits by income and household size (credits range from \$30/month to \$50/month); the enhanced benefit credits for Indigenous, electric heat consumers and certain medical devices (credit ranges from \$45/month to \$75/month).

The ministry is proposing to:

- Move the OESP from rate payer funded to government funded; and
- Increase the existing benefit scales by 50% and provide additional credits to more households.

For this portion of the proposal, the basic OESP benefit scale would increase from \$30-\$50 to \$45-\$75 a month and the enhanced OESP benefit scale would increase from \$45-\$75 to \$68-\$113 a month for eligible consumers and the cost to fiscal plan would be \$186M in 2017/18.

#### New Affordability Fund

The existing Home Assistance Program provides eligible low-income customers with energy efficiency upgrades (such as new energy efficient appliances, energy-saving light bulbs (LEDs), power bars, and other energy efficiency measures) and education, at no cost, to help improve the energy efficiency and comfort of their homes. Program eligibility

is aligned with other low-income support programs such as the OESP and the program is delivered by LDCs.

The low income household definition is derived from Statistics Canada's income measures. The most commonly used measure is the after tax Low Income Measure (LIM), which takes into account household size. Some electricity customers who struggle to pay their electricity bills do not meet the definition of a low-income household and therefore are not eligible for the Home Assistance Program.

The ministry is proposing to:

- Establish an Affordability Fund in 2016/17 that would help struggling customers who do not qualify for low income conservation programs and cannot undertake energy efficiency measures without financial assistance. The Fund would be paid for by the government with a one-year fiscal impact of \$200M in 2016/17 and be administered by an independent trust.
- Over time the Fund could help targeted customers, based on standardized eligibility criteria get back on track with their bills and also avoid disconnection costs by assisting them to lower their bills through energy conservation.

Measures available in the Home Assistance Program could include:

- Energy-saving light bulbs (LEDs); power bars; energy efficient window ACs, refrigerators, freezers, dehumidifiers; low-flow showerheads, hot water blankets, pipe wrap and faucet aerators (in homes with electric water heating);
- Programmable thermostats, weather stripping, insulation (in homes with electric heating); and
- Cold climate air source heat pumps would also be an eligible measure under the Affordability Fund. Heat pumps can range in cost from \$7,000 to \$13,000.

The government has created a new climate change agency as committed through the Climate Change Action Plan, which will serve as a one-window for the delivery of climate change-related programs (e.g., conservation programs), including those delivered by LDCs. ENERGY and MOECC will work together to avoid consumer confusion with respect to the support this Fund will provide alongside the newly established Climate Change agency.

#### On-reserve First Nations Delivery Credit

First Nation and Political-Territorial Organization leaders have advocated for the need for electricity rate relief for on-reserve customers and the review of delivery charges associated with transmission and distribution within the context of historical grievances. In this instance, historic grievances relate to lands affected by energy developments (e.g. transmission infrastructure built on reserve lands where the First Nation may not have been consulted, or in some cases transmission infrastructure may cut reserve lands in half, thereby limiting the use of the land base).

A Grievance Table process was established at the request of the Chiefs of Ontario as a part of the process of broadening the ownership of Hydro One. The cost of electricity and delivery charges were identified as the main priority at this table. At the request of the Minister of Energy, the OEB worked with the Chiefs of Ontario to develop options to address these issues. The ministry is proposing to implement the recommendations of the OEB's report.

The ministry is proposing to:

- Eliminate the delivery charge for all on-reserve First Nations residential customers and eliminate the monthly service charge for customers of licensed distributors which charge a bundled rate.
- Automatically qualify on-reserve First Nations residential customers (~21,500 customers)
- Enable greater information sharing between distributors and band councils to identify all on-reserve First Nations customers in 2017.

This proposal would be funded by the government (\$20M annually) and provide on-reserve First Nation customers an average monthly benefit of \$85.

## **5. Ongoing activities to bend the future cost curve of electricity:**

### OEB – opportunities for OEB red-tape reduction and future LDC efficiencies

The OEB has a mandate to regulate the electricity distribution sector in the public interest, ensuring the financial viability of the sector while promoting reliable service to customers at just and reasonable rates. The OEB has been working to move the distribution sector towards a performance/outcomes-based regulatory framework.

Encouraging shared partnerships on services between utilities will help reduce costs in the back end and encourage further innovation for small to medium sized utilities. In 2012, the government asked the Ontario Distribution Sector Review Panel to make recommendations about how the distribution sector could become more efficient. The Panel concluded that a \$1.2 billion net present value in savings could be achieved by consolidating LDCs into 8-12 regional entities over the first ten years after consolidation.

Opportunities:

- ENERGY could ask the OEB to look at opportunities to further drive LDC efficiencies and productivity. This may indirectly incent LDC consolidation.
- The OEB could be instructed to review business cases behind its own regulatory requirements to reduce “red tape” and eliminate costs that LDCs indicate are creating pressures on operating expenses.

This could be done through the Minister's letter, the LTEP Implementation Directive, s. 35 of the Ontario Energy Board Act, 1998, and/or the 2017 Mandate Letter and other agency business planning processes.

## IESO – Modernize Ontario’s electricity market through electricity Market Renewal initiatives

Current IESO Market Renewal initiatives include:

- Moving to “technology-agnostic” procurements will provide new opportunities for innovation and modernization and ensure ratepayers receive the best prices possible.
- Market Renewal encompasses projects such as a single-schedule system (from the current two-schedule system), more frequent intertie scheduling to better align with other jurisdictions and a day-ahead market. There will be up front capital costs to enable the initiative. IESO is currently assessing these costs.

Changes related to IESO’s Market Renewal initiatives, reflected in the wholesale electricity price and uplifts, are estimated to save at least \$200 million per year, starting in 2021.

### Expected Impacts of the Proposal on Electricity bills:

The projected impact of this proposal to an average residential customer bill in July 2017 is up to a 25% decrease, followed by an increase in price over time. This includes the 8% rebate that came into effect on January 1, 2017.

Residential (750 kWh/month)	Actual 2016	2017	2018	2019	2020	2021
<b>Total Bill (includes HST)</b>	<b>158</b>	<b>164</b>	<b>167</b>	<b>170</b>	<b>181</b>	<b>178</b>
Total Bill (excludes HST)	140	145	148	150	160	158
Impact of GA Financing		-26	-26	-26	-32	-28
Impact of Tax-Basing Social Programs		-2	-2	-2	-3	-3
Subtotal		117	120	122	125	127
8% rebate		-9	-10	-10	-10	-10
HST		15	16	16	16	17
<b>Revised Bill (includes HST)</b>	<b>158</b>	<b>123</b>	<b>126</b>	<b>128</b>	<b>131</b>	<b>133</b>
Year-over-Year Change		-22%	2%	2%	2%	2%
<b>Change from Forecast</b>		<b>-25%</b>	<b>-25%</b>	<b>-25%</b>	<b>-28%</b>	<b>-25%</b>

Commercial & Small Industrial (\$/MWh)	Actual 2016	2017	2018	2019	2020	2021
<b>Class B Total (excludes HST)</b>	<b>160</b>	<b>165</b>	<b>160</b>	<b>162</b>	<b>173</b>	<b>169</b>
<b>Class B Revised Total (excludes HST)</b>	<b>160</b>	<b>162</b>	<b>157</b>	<b>159</b>	<b>170</b>	<b>166</b>
Year-over-Year Change		1%	-3%	1%	7%	-2%
Change from Forecast		-2%	-2%	-2%	-2%	-2%

Large Industrial (\$/MWh)	Actual 2016	2017	2018	2019	2020	2021
<b>Class A Total (excludes HST)</b>	<b>90</b>	<b>91</b>	<b>93</b>	<b>88</b>	<b>95</b>	<b>96</b>
<b>Class A Revised Total (excludes HST)</b>	<b>90</b>	<b>88</b>	<b>90</b>	<b>84</b>	<b>92</b>	<b>93</b>
Year-over-Year Change		-2%	2%	-6%	9%	1%
Change from Forecast		-4%	-4%	-4%	-4%	-4%

**Notes:** Based on IESO’s revised OPO forecast as of February 2017. Includes the cancellation of LRP II and EFW, expansion of ICI. Does not include smoothed OPG rates. Above residential bill is based on a 750 kWh per month Toronto Hydro customer. Above Class B estimate based on a 1 MW customer connected to Toronto Hydro, assumes delivery charge escalates as per residential forecast. “Social programs” refers to

existing RRRP and OESP. While initiatives would take several months to implement, the above estimate for 2017 reflects a full-year impact. The 8% rebate above represents savings compared to status quo due to the reduction in the sub-total from GA financing.

### **Stakeholder Considerations:**

General public (including residential and small businesses) – Likely support a proposal that is projected to provide up to 25% in rate relief (including the 8% announced in 2016) for a typical residential consumer to, but likely to question the longer term implications. Ability of the public to understand current and recent changes will heavily depend on government communications.

Large Industrial and Commercial Consumers – Will continue to be concerned with the impact of cap and trade on electricity prices and the commitment in the Climate Change Action Plan to use GGRA funds to “keep electricity rate affordable”.

The impact of cap and trade has been added to electricity bills as of January 2017. Class B consumers have raised concerns about the cost of electricity and its impact on their business competitiveness. Although Class A electricity consumers have access to ICI, they are also concerned about the impact of cap and trade on their electricity costs. They are expecting that GGRA funds will be used to mitigate their costs. There is an expectation government is going to take specific action to mitigate their increases due to Cap & Trade, and given the initiatives proposed in this submission, there is no plan to provide further relief through the Greenhouse Gas Reduction Account. **Note:** Funding electricity support programs through the tax-base rather than the rate base will provide some saving to both Class A and B consumers.

Tenants – Likely to support any future price mitigation measures that directly benefit them; likely to react negatively if no mitigation measures target them.

Northern communities – Likely to support the targeted RRRP delivery relief.

Indigenous communities – First Nation members who live on reserves are likely to support the proposal because of the targeted delivery relief. Other Indigenous communities (i.e., Metis, non-status, First Nations without land bases) are likely to react negatively at being excluded from the delivery charge relief.

eNGOs – Likely to support any targeted conservation efforts, may react negatively towards any price relief that is not directly tied to energy conservation.

LDCs – Have expressed the need for an additional tool to provide assistance to their customers who are having difficulty with their electricity bills.

### **Delivery:**

The initiatives in this proposal would be announced in March 2017, with price mitigation measures beginning to take effect July 1, 2017. The 2017 LTEP will be released to the public in May 2017 and would reinforce/integrate with this proposal.

## **1. Refinancing Global Adjustment assets in order to defer ratepayer costs / Mechanism to defer GA costs**

The ministry will report back to Cabinet and TB/MBC in March 2017 on the recommended implementation approach and mechanism for refinancing Global Adjustment assets in order to defer ratepayer costs and for Class B supports.

This initiative is expected to take three to six months to implement following the introduction of enabling legislation.

## **2. Enhancing Social and Conservation Programs**

### RRRP Enhancement

New legislation and regulations would be required to establish this program. OEB estimates that the implementation would take at least six months after finalizing regulations. A mechanism will need to be created to ensure that all parties are aligned in the yearly forecasting and costing of the program.

### OESP Enhancements

New OESP program details would require TB/MBC approval.

Changes to legislation/regulation will be required to establish and define the parameters for the proposed changes. The financial flow-through mechanism would likely be modeled after processes used for the OREC (8% rebate).

The proposed changes will take time to implement as they would require changes to the central system and the LDCs' billing systems. The OEB and their central service provider will need to work with LDCs, MOF, and the CRA on the proposed changes to this program (delivery mechanism, funding source, application system, eligibility).

### New Affordability Fund

This is a new program that would require TB/MBC approval.

ENERGY proposes to work with Hydro One to set up an independent Trust to serve as the Fund Administrator. The Fund Administrator would manage the flow of funds to LDCs based on principles set by the province in consultation with other LDCs and key stakeholders. The Fund Administrator will also be responsible for establishing processes, administration, and criteria for funding applications, thereby ensuring the program would be managed on a consistent basis across the province.

LDCs would apply for funding to the Fund administrator, to offer energy efficiency measures to those customers in their service territories that meet the targeted eligibility criteria.

LDCs have over 10 years of experience in delivering conservation programs, including experience specific to contracting for programs that target low-income customers. Individual LDCs would then be best positioned to identify and target their customers who are most in need.

#### On-Reserve First Nations Delivery Credit

Legislation and regulations would be required to implement this program. The OEB would need to work with the LDCs to identify the on-reserve consumers. A communications plan could include public release of the OEB report and a commitment to working with the LDCs on implementation details.

The rebate would appear on customer's electricity bills as a reduction in their delivery line.

There is a risk that either non-status Indigenous communities without reserves or Metis could challenge the program on the grounds that it discriminates against them contrary to section 15 of the Charter. This risk is mitigated by the ameliorative purpose of the program and because targeting First Nations communities for a reserve-based program corresponds to the distinct circumstances of reserve-based communities, relative to other Indigenous communities. A genuinely ameliorative program that targets some people but excludes others is shielded from a section 15 challenge if it serves or advances the ameliorative goal.

### **5. Ongoing Efforts to bend the cost curve of electricity**

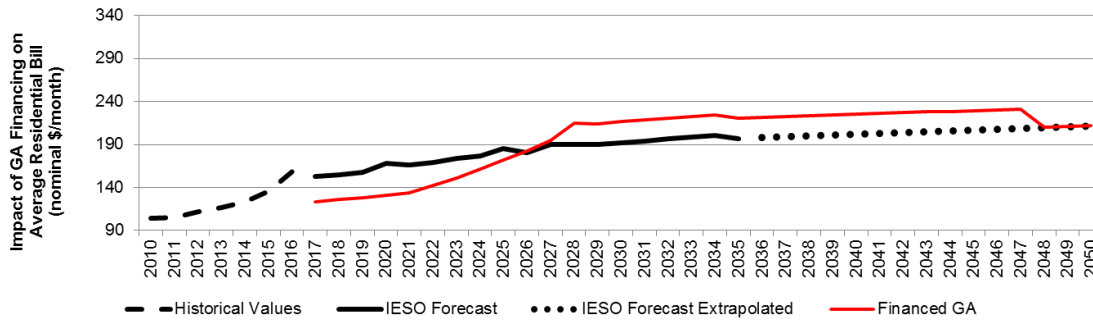
These initiatives could be directed through the Minister's letter, the LTEP Implementation Directive, s. 35 of the Ontario Energy Board Act, 1998, and/or the 2017 Mandate Letter and other agency business planning processes.

#### **Risks and Considerations:**

##### Future Impacts to Electricity Rates

Borrowing money to defer GA costs for ratepayers would lower costs in the short term but result in substantial debt and higher electricity prices in the future. Based on this portion of the proposal, electricity prices would increase to about 10% above the actual cost of electricity over the recovery period (peaking at 13%). The proposal may create the expectation that the government is committed to reducing or holding constant the absolute cost of electricity for consumers. Under the proposal, the government would not have the ability to control this portion of electricity rates in the future.





**Notes:** Assumes 30 year financing period and a nominal interest rate of 5% (compounded monthly). Ratepayer GA payments increase annually beyond 2021 such that the average monthly residential electricity bill increases by 6.5% per year with a limit of \$2.2 billion above the true cost of GA in any given year to cap repayment charges at a maximum of 13% of total bill. IESO forecast is based on IESO's revised OPO forecast as of February 2017. Includes the cancellation of LRP II and EFW, expansion of ICI. Does not include smoothed OPG rates. Above residential bill is based on a 750 kWh per month Toronto Hydro customer.

The government may be criticized for creating a new debt structure which could be compared to the previous debt retirement charge (DRC). The previous debt retirement charge was removed from residential bills in January 2016 and is scheduled to be removed for remaining customers in April 2018.

Future repayment cost estimates are based on a static interest rate of 5%, and forecast electricity market conditions and demand levels. Declining demand levels due to conservation, technology adoption, and self-generation would increase the costs borne by remaining customers to decrease the debt associated with GA financing. This would increase the risk that the province would have to absorb some of the debt in the future.

Not all generating assets will continue operations at the end of their contract, in that case, future rate payers will be paying the cost for assets that are no longer in use. High capital costs, equipment obsolescence or surplus capacity / low demand conditions mean that some generators will shut down at the end of their contract. Future ratepayers would be paying for these assets that no longer produce power in paying down the deferred GA and accumulated interest costs.

### Accounting and Provincial Credit Rating and Borrowing

The significant amount of additional provincial borrowing needed to refinance the GA and associated risks and fiscal costs (interest rates, repayment timelines) could put pressure on the Province's credit rating and overall borrowing capacity.

The complexity of the structure and length of deferral (i.e., recovery of debt) increase the overall risk of the proposal and decrease transparency to the public. If all requirements can be met, an accounting analysis is expected to support: (1) increase in provincial borrowing (2) no increase in net debt, and (3) no impact on annual surplus/deficit. However, depending on funding to OPG/ OPG Trust from the Province, an increase in interest on debt and an increase on income from OPG will result.

Rating agencies and investors in the Province's debt may view all of the borrowing (whether by the Province directly or the OPG Trust) as an obligation of the Province. Depending on the magnitude of the debt incurred, the Province's borrowing cost may be impacted.

To date, the Ontario Auditor General (OAG) opinion on the proposal has not been sought. While the auditors of OPG and IESO are providing their preliminary assessments and the Office of the Provincial Controller Division (OPCD) has been engaged, the OAG has historically raised concern with “rate regulated accounting” and may take this into account when the provincial books are audited (i.e., it may impact whether the OAG qualifies the provincial books).

Based on early assessments, only a maximum of 18% rate relief can be justified by amortizing contracts over the useful life of the underlying assets. Reducing electricity rates up to or beyond this amount is dependent on increased borrowing. All of the deferral is dependent on increased borrowing. The 18% referenced here is the limit based on review of the contracts and a Eurig assessment and also includes the 8% reduction that was already provided.

The current GA amount paid by consumers is a regulatory charge. One of the requirements of a valid regulatory charge (as opposed to a tax) is that the person paying the charge either benefits from the regulatory scheme or causes the need for regulation. In principle, refinancing the GA to spread the costs of generation and conservation assets over the useful life of the assets presents only a low risk of being a tax, as each cohort of consumers pays for a proportion of the GA cost roughly equal to the proportion of the benefit they receive from the useful life of the assets.

However, a proposal for refinancing the GA that appears to cross-subsidize near-term consumers at the expense of long-term consumers by back-loading costs more than if costs were spread equally over the estimated lifespan of generation and conservation assets presents a moderately high risk (more likely than not) of constituting a tax. Were the charge characterized as a tax, in the event of a challenge, it would be struck down by a court as unconstitutional and consumers would be entitled to recover their payments. This risk could be eliminated, either up front or retroactively, by the imposition of a valid tax.

Retired Supreme Court of Canada Judge Ian Binnie has provided further legal analysis of this proposal, stating that the amount that could be financed would need to reflect the true value of the underlying assets being amortized over a longer period of time. Shifting too much of the current GA costs to future generations could jeopardize the nature of this being a regulatory charge.

### Fiscal Pressure

This proposal does not align with the 2016 Budget fiscal plan and there are no proposed offsets identified. The proposal does not include a scheduled review period or an end date, resulting in an ongoing fiscal pressure, which may increase in the out years, and could only be removed by a legislative amendment.

The cost projections in this proposal are highly sensitive to interest rates and other assumptions:

- The proposal assumes GA refinancing does not have a fiscal impact because the associated legal authority and accounting treatment requirements are met. If the costs of GA refinancing were accounted for as an expense to the fiscal plan, the fiscal impact would be significant.

- The term and timing of the GA refinancing are highly dependent on the IESO's forecast of GA costs and actual interest rates.

The extent of fiscal pressures is also dependent on other factors (i.e., OAG could qualify Ontario's books or issue an adverse opinion). Due to the complexity and size of the proposal, the government (i.e., OPC) and agencies of the government (OPG and IESO) have various external advisors providing preliminary assessments and recommendations on a model that would support the desired outcome.

There may be some criticism that additional fiscal pressure and risk is being taken to benefit some customers that are not in as much need of rate relief as others (i.e., those that own second homes or cottages).

### Legislative Officers

The Ontario Auditor General (OAG) has expressed views on rate regulated accounting, which will likely be raised again upon the announcement of this suite of initiatives. The OAG has not been consulted on this proposal and will have opportunities to publicly state her views through the Public Accounts committee in the summer of 2018 and in her pre-election report.

The Financial Accountability Officer (FAO) has not been consulted on this proposal and is expected to have an opinion on how this proposal may impact the state of the province's finances.

### Mechanism or Plan for OPG

- Accountability
  - Need to balance independence of the OPG trust with regulatory oversight and the market's need for certainty in recovering the GA financing that it provides.
  - Accountability to the government or the public, amount of government control of the entity, including future rate increases.
- New structure
  - Structure is complex, involving:
    - IESO as originator of the regulated asset and responsible for flow of funds;
    - OEB as regulator of the new mechanism;
    - OPG responsible for financing and managing the mechanism; and
    - The Province providing ongoing equity capital infusions to OPG.
  - Addition of financial agency to current operational obligations of OPG – not the current expertise of OPG. However, OPG has experience managing large financial assets and liabilities through the jointly managed Ontario Nuclear Funds as well as its own pension fund. In addition, could possibly dilute

- OPG's focus on current high priority responsibilities (i.e., electricity generation and nuclear refurbishment).
- This financing structure would be unique to Canada – uniqueness reduces likelihood of all risks being known/mitigated. Highly specialized expertise would be required.
- Connection to BPS compensation framework/lack of national comparator.
- Unknown transaction, admin, consultant costs.
- Debt
  - Opportunity for significant shifting of the Ontario's electricity sector over the lifespan of the repayment (30 years). Through sector/policy/government position shifting, possibility of new entity/structure abandoning debt and Ontario having to take a write down.
  - Risk transfer / portion of debt that Ontario would be responsible for would be the higher risk portion.
  - Repayment plan and impact on rate payers highly dependent on interest rates
- Public perception/reaction (could be seen as similar to the process preparing Hydro One for IPO).

#### Legal Risk – constitutionality of financing the GA

Former Supreme Court Justice Ian Binnie has provided a legal opinion which concludes that the current proposal is at a moderately high risk of being a tax. The degree of constitutional risk is in direct proportion to the extent the government is not able to show a proper match between the cost of providing facilities for electricity generation and the group of consumers who benefit year to year from electricity generated by those facilities.

If the government fails to establish that the relevant electricity generating assets will continue to perform economically over the 30 year period, or if the GA charge is in the opinion of the Court disproportionately back-end loaded, the GA will not qualify as a regulatory charge (and would be characterized as a tax).

By shifting costs to the 20-30 year customers, the government may in reality be disproportionately back-end loading the GA with the effect that the 20-30 year consumers will be subsidizing the 1-20 year consumers. In short, the bigger the reduction in charges to current consumers, the greater the constitutional risk.

The risk identified by Mr. Binnie could be eliminated, either up front or retroactively, by the imposition of a valid tax.

#### Program Design and Implementation

The proposal relies heavily on LDCs as a partner for implementation. Many of these changes will need to take place simultaneously and amongst the 70 LDCs in Ontario there is variety in size, efficiency and ability to implement change.

- Program design will require an evaluation of whether the existing programs are effective and achieving their outcomes (e.g. the OESP has a current uptake of 30% and program changes are proposed in advance of an increased effort to reach 100% uptake, also it is unclear whether the existing HAP program could be expanded – or modified before creating a new LDC Affordability program)
- Implementation of new Affordability Fund - it is expected that Hydro One would be one of the participating LDCs involved in setting up the Trust to administer the Fund. As such, the ministry is working to ensure that funding flows before year-end 2016/17 to the Trust as any monies that are sitting in Hydro One at year-end would be consolidated with the province and a corresponding fiscal pressure in the following years when the funds are flowed from Hydro One (H1) to ratepayers. Details about the establishment of the Trust are still being determined by the ministry, in consultation with the OPCD and Hydro One.
- The OESP matrix would no longer follow the Low Income Measure (LIM) which would flag inconsistencies between how programs are applied or put pressure other provincial programs to increase funding amounts

### Benefits for all Consumer Classes

The proposal includes some benefits for all consumer classes as well as targeted benefits to those with the greatest need. It is likely that the government will be criticized for providing benefits to those who may not be in need (e.g., wealthy cottage communities, etc.).

### **Alternative Options Considered:**

- 1) Status quo – in the absence of this proposal electricity rates are forecasted to increase by 10% from 2017 to 2020. To date, the province has implemented an 8% rebate on all residential bills, in addition to expanding RRRP and broadening of ICI. Could include additional public communications about existing electricity price mitigation initiatives (e.g., the DRC will be removed from industrial consumers in 2018).
- 2) Provide up to 25% rate relief across all consumer classes (residential, small business, commercial and industrial funded from the fiscal plan). The projected cost would be \$4B/year above the existing cost of the 8% rebate.
- 3) Provide a total of 20% or 18% rate relief (versus 25%) through a combination of deferral of GA costs, social programs and the existing 8% rebate.
- 4) Capping the amount an LDC can bill consumers for distribution service at a specific cost, with distribution costs that exceed this cap covered by the support from the fiscal plan. This would have been temporary until the completion of the OEB-mandated move to completely fixed distribution costs (scheduled for 2019, 2020-2022 for Hydro One), or having LDCs take on some of the GA deferral cost with long term repayment terms.
- 5) Achieving lower GA costs through renegotiating the existing contracts with the power generators.

- 6) Investing in targeted social programs that could be application based in the short term, providing a more targeted benefit to those in greatest need.
- 7) Procuring additional hydroelectricity from Quebec, would require upgrades to transmission infrastructure and would be more costly than domestic alternatives.
- 8) Using IESO and/or creating a new special purpose entity, independent from the Province that would be dedicated to GA refinancing.
- 9) Capping electricity rates at 1.7% for 3-to-4years and capping the salaries of electricity sector executives.
- 10) Expanding access to natural gas for home heating by increasing funding to the natural gas expansion program by \$100 million. This could also include additional support to address conversion costs (i.e., switching away from electric heating to natural gas).

### **Linkages:**

Long-Term Energy Plan (LTEP) – Ontario is preparing to release a new LTEP in April 2017. These plans identify needs for investments over the shorter term, while broadly mapping out the direction of the sector over a 20 year timeframe. The LTEP will balance the principles of affordability, reliability, clean energy, community and Indigenous engagement, as well as conservation and demand management.

Electricity Rate Mitigation Initiatives – The Ontario Rebate for Electricity for Electricity Consumers Act, 2016, (ORECA) put in place an 8% rebate for residential, small business customers and farms beginning January 1, 2017.

The Ontario Clean Energy Benefit (OCEB) was a five-year legislated program put in place as a broad-based, transitional measure to a cleaner electricity system. OCEB was also put in place following the implementation of the Harmonised Sales Tax (HST). Unlike the previous provincial Retail Sales Tax (RST), the HST (and GST) included electricity in the taxable base. OCEB expired on December 31, 2015.

Debt Retirement Charge – The government also recently ended the electricity Debt Retirement Charge (DRC) on residential users earlier than planned, as of January 1, 2016, and put in place the low-income targeted Ontario Electricity Support Program (OESP), effective 2016. For all other consumers the DRC is scheduled to be removed by April 2018.

Ontario's Climate Change Action Plan (CCAP) – The CCAP, released in summer 2016, reiterated the 2016 Budget commitment and stated that Ontario intends to invest in initiatives that both reduce greenhouse gas (GHG) emissions and ensure that the net impact of cap and trade would not result in an overall increase in electricity costs for commercial and industrial consumers, and that there would be a modest benefit of up to \$2 per month, on average, to residential consumers. This commitment to residential consumers was met by the January 2017 8% rebate.

The commitment to mitigate the cap and trade impact on electricity costs for commercial and industrial consumers (i.e., Class A and B) has not been addressed. **Note:** Funding electricity

support programs through the tax-base rather than the rate base will provide saving to Class A and B consumers.

The CCAP committed to a new Climate Change agency that would act as one window for the delivery of climate change-related programs (e.g., energy management programs).

The CCAP committed to “consider options for legislation/regulation change that lessen the impact on residential tenants of increased energy costs from cap and trade”. As part of the review of the Residential Tenancies Act, the Ministry of Housing is working on a proposal that will address that commitment. The proposal is expected to come to Cabinet in spring 2017.

**PROPOSED CABINET MINUTE**

See separate document



## APPENDIX A: Multi-Year Action Plan

Below is an extract taken from the MYAP which demonstrates the overall strategic plan for the initiative that this policy submission supports. This excerpt represents the approved plan to date, and may not reflect the specific policy and delivery timeliness identified in the Cabinet Minute above.

**Milestones Legend:**  
 → Ongoing Activity  
 ▲ Policy Approval  
 ▲ Delivery Milestone  
**Key Activity Status Legend:**  
 ■ Heightened Management Attention Required  
 ■ Management Attention Required  
 ■ Monitoring  
 ■ Satisfactory

### MYAP Slice 2017-02-17

KEY ACTIVITIES	YEAR 1 (2014-2015)	YEAR 2 (2015-2016)	YEAR 3 (2016-2017)	YEAR 4 (2017-2018)	YEAR 5 (2018-2019)	GOVERNANCE AND RISKS
	A M J J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M	A M J J A S O N D J F M A M J J A S O N D J F M	A M J J A S O N D J F M A M J J A S O N D J F M	A M J J A S O N D J F M A M J J A S O N D J F M	A M J J A S O N D J F M A M J J A S O N D J F M	
15.21   Electricity Rate Mitigation Pillar: Managing Ontario's Energy Resources		COOP Update	Additional Price Mitigation 8% Price Mitig Lag Introduced 8% Price Mitigation	Adopt Price Mitig Lag Introd ABET Price Mitig Implemented		Lead: ENERGY Risk Categories: Last updated: 24-10-16 24-10-16



**APPENDIX 6:  
EMAIL FROM ANDREW TELISZEWSKY  
(JANUARY 18, 2017)**



# Deck for Major Projects

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**From:** "Teliszewsky, Andrew (ENERGY)" </o=govon/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=teliszewsky, andrew (energy)4fe">  
**To:** "Bevan, Andrew (OPO)" <andrew.bevan@ontario.ca>, "McEachern, Gillian (OPO)" <gillian.mceachern@ontario.ca>, "Rowe, Mary (OPO)" <mary.rowe@ontario.ca>, "Donelson, Philip (OPO)" <philip.donelson@ontario.ca>, "McIntyre, Moira (OPO)" <moira.mcintyre3@ontario.ca>, "Killorn, Bill (OPO)" <bill.killorn@ontario.ca>, "Ghiassi, Ali (MOF)" <ali.ghiassi@ontario.ca>, "Jancik, Mike (TBS)" <mike.jancik@ontario.ca>  
**Cc:** "Matt Whittington (Matt.Whittington@ontario.ca)" <matt.whittington@ontario.ca>, "Moulton, Dan (ENERGY)" <dan.moulton@ontario.ca>, "Marangoni, Emily (OPO)" <emily.marangoni@ontario.ca>  
**Date:** Wed, 18 Jan 2017 20:14:38 -0500  
**Attachments:** Rate Mitigation Plan Options 20170118 v2 \_MP.PPTX (1.66 MB)

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Hi.

Deck for major projects.

Ministry found a way to take my three slides from last weekend and turn it into 50. Attempting to incorporate all of CO requested additions over the course of the last 36 hours; ideally capturing everything.

If you're looking tonight, suggest you focus on the following slides:

Slide 6 – we recommend doing Options #1, 2, 3 but not #4.

Slide 12 – reduction held constant for next 4 years.

Slide 17 – Meeting held today with KPMG to provide options on how to ensure the most appropriate accounting treatment (off-book); much work remains but KPMG was not fussed. Requires OPCD + KMPG discussions but we have reason for significant hope. Bottom line: Lets presume we decide to do this. Then next step is finding the most appropriate financial vehicle. Might be different than my original idea. Might require some navigating IESO and OEB, but dialogue becomes about path of least accounting risk / resistance instead of a brick wall. For today, that's a significant victory.

Slide 20 – RRRP enhancement. "Orange box" option vs. enhanced "blue box" option. We shall discuss how far you want to go / costing fiscal plan incremental contribution.

Andrew Teliszewsky

Chief of Staff | Office of Hon. Glenn Thibeault  
Ministry of Energy  
[andrew.teliszewsky@ontario.ca](mailto:andrew.teliszewsky@ontario.ca)  
416-327-3550 (o)  
416-436-6370 (m)



**APPENDIX 7:  
GANDALF GROUP POLLING – ELECTRICITY RATES IN ONTARIO  
(2016)**





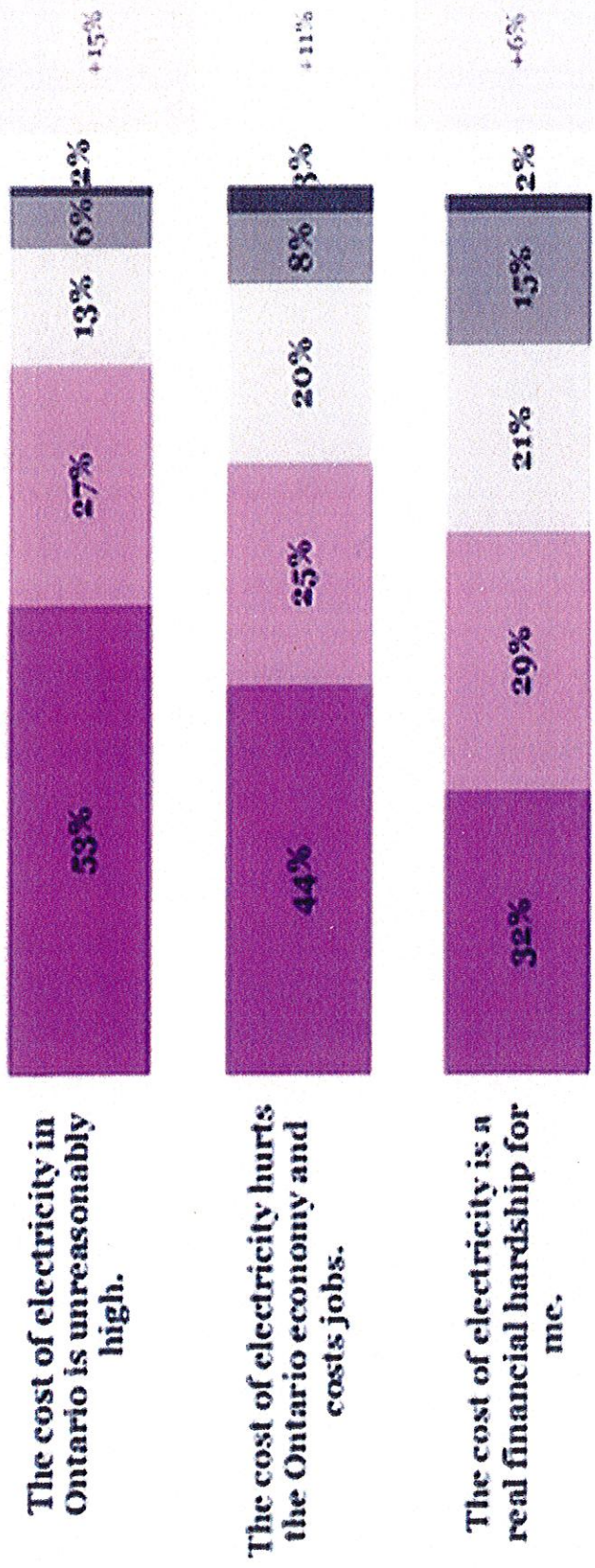


the gandalf group

# Electricity Rates in Ontario

I'm going to read some statements people might make about electricity in Ontario and ask if you strongly or somewhat agree or strongly or somewhat disagree with each.

Change in str. agree since 2014



- Strongly agree
- Somewhat agree
- Strongly disagree
- Slightly disagree
- Don't know



**APPENDIX 8:  
DISSENTING OPINION FROM THE NEW DEMOCRATIC PARTY MEMBERS  
OF THE COMMITTEE**



## Dissenting Report of the NDP Caucus Members of the Select Committee on Financial Transparency

For three months, members of the committee met to review actions of the past government and promote financial transparency. We heard from witnesses throughout the public service, elected Members, former Cabinet Ministers and government advisors. Many questions were answered, but many more were not: key witnesses were routinely blocked from appearing and serious concerns about fiscal transparency remain.

At the conclusion of this process, New Democrats find the following:

1. New Democrats concur with the Committee conclusion that in their accounting treatment of pension assets, in designing the “Fair Hydro Plan” and in privatizing Hydro One the Liberal government put partisan self-preservation ahead of the public interest but feel recommendations for future action must go further to ensure that such mistakes are not repeated by future (or current) governments.
2. The committee missed opportunities to call witnesses who could have spoken to key issues of accountability, transparency and government decision-making and the final report is silent on problems that witnesses addressed.
3. The Committee Report notes that conclusions were reached after “examining documents, correspondence and other materials” but the report fails to note serious concerns raised in the process of obtaining those materials that put Ontario’s fiscal credibility at risk.

**1) New Democrats concur with the Committee conclusion that in their accounting treatment of pension assets, in designing the “Fair Hydro Plan” and in privatizing Hydro One the Liberal government put partisan self-preservation ahead of the public interest but feel recommendations for future action must go further to ensure that such mistakes are not repeated by future (or current) governments.**

As multiple witnesses confirmed, the Liberal Cabinet received numerous warnings and repeated advice cautioning against the sale of Hydro One, the adoption of the Fair Hydro Plan and treatment of pension assets. These changes allowed the Liberal government to claim they had eliminated Ontario’s deficit in the immediate term, but at a tremendous long-term cost. By borrowing through the OPG Trust as opposed to traditional government borrowing, the Liberals “Fair Hydro Plan” added \$4 billion in additional costs.<sup>1</sup> By refusing to adopt the Auditor’s recommendations on accounting for surpluses in pension plans the Liberal government would be able to report a balanced budget while borrowing to cover shortfalls in operations.<sup>2</sup>

In her appearance before the committee, the Auditor General noted that her concerns about pension accounting were not only ignored, they were not even acknowledged:

*I don’t think in my career I’ve ever seen a situation like the ones we’ve encountered in the last couple of years, in meetings and that, where we go in and we’re trying to discuss the accounting and our points aren’t even acknowledged as being reality—or, the reality we’re hearing from them isn’t reality.<sup>3</sup>*

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<sup>1</sup> Financial Accountability Office appearance before committee, October 23

<sup>2</sup> Auditor General appearance before committee, October 15

<sup>3</sup> Ibid

Regarding the “Fair Hydro Plan”, Steve Orsini, the Secretary of Cabinet told the committee, “I can say categorically that we did—I did and others have done—express serious concerns about this approach.”<sup>4</sup> Ed Clark, the Premier’s Business Advisor, was even more blunt:

*My view to the Premier was, “If you want to subsidize hydro, subsidize it using the tax system to pay for it, not the hydro system.” That would have been a better route, and she knew that.*<sup>5</sup>

It’s clear that the Liberal Government, worried about the political implications of a deficit, willfully ignored warnings about significant cost increases and an overall lack of transparency.

However, a Select Committee was not needed to reach this conclusion. The substance of these warnings was public knowledge long before the committee was struck. The Auditor General detailed concerns in her Special Report on the Fair Hydro Plan;<sup>6</sup> her refusal to offer an unqualified endorsement of the provinces books in her 2016<sup>7</sup> and 2017 Annual Reports<sup>8</sup>; and in her Review of the 2018 Pre-Election Report on Ontario’s Finances.<sup>9</sup> The Financial Accountability Office laid out similar concerns in their 2017 report on the “Fair Hydro Plan”<sup>10</sup> and their 2018 Budget Outlook.<sup>11</sup>

The New Democrats on Committee feel that the Final Committee Report has little to offer with regards to how future governments can avoid such lapses in transparency. This dissenting report offers some specific recommendations to address these issues.

## **2) The committee missed opportunities to call witnesses who could have spoken to key issues of accountability, transparency and government decision-making and the final report is silent on problems that witnesses addressed.**

The mandate of the committee was to “investigate and report on the accounting practices, decision making and policy objectives of the previous government”. Within that broad mandate, the committee missed opportunities to call witnesses who could have spoken to key issues of accountability, transparency and government decision-making and the final report is silent on problems that witnesses addressed.

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<sup>4</sup> [Appearance before Committee, October 16](#)

<sup>5</sup> [Appearance before Committee, November 26](#)

<sup>6</sup> [Office of the Auditor General of Ontario, “The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value For Money”, October 2017](#)

<sup>7</sup> [Office of the Auditor General of Ontario, Annual Report 2016, “Chapter 2: Public Accounts of the Province”](#)

<sup>8</sup> [Office of the Auditor General of Ontario, Annual Report 2017, “Chapter 2: Public Accounts of the Province”](#)

<sup>9</sup> [Office of the Auditor General of Ontario, “2018 Pre-Election Report on Ontario’s Finances,” April 2018](#)

<sup>10</sup> [Financial Accountability Office of Ontario, “An Assessment of the Fiscal Impact of the Province’s Fair Hydro Plan”, May 24, 2017](#)

<sup>11</sup> [Financial Accountability Office of Ontario, “Economic and Budget Outlook, Spring 2018”, May 2, 2018](#)

For example:

- Conservatives Members on the committee opposed efforts to bring former Hydro One CEO Mayo Schmidt and Acting Hydro One CEO Paul Dobson before the committee. The sale of Hydro One, and the consequent governance challenges, were clearly within the mandate of the committee. However, Conservative Members blocked efforts to hear from Hydro One executives.<sup>12</sup>
- Conservative Members also opposed efforts to bring Cindy Veinot, the former Provincial Controller of the Province of Ontario, before the committee.<sup>13</sup> In spite of her repeated requests to appear and her obvious firsthand knowledge of the issues being discussed at committee, Conservative Members did not support a motion allowing her to appear. In a subsequent submission,<sup>14</sup> Veinot noted that she did not sign the Statement of Responsibility for the March 31, 2018 consolidated financial statements, nor did any accountant. She also noted that she was forced to limit her comments because she was not granted the protection of committee to depute freely and fully. It was clear that Veinot had much more to say. Yet Conservative Members of the Committee insisted that she was not a relevant witness.<sup>15</sup>
- Al Rosen, the forensic accountant selected by the government as one of the three Commissioners for the Independent Financial Commission of Inquiry, raised serious concerns about the auditing profession generally, and the independence of audit and accounting firms routinely contracted by government.<sup>16</sup> Conservative Members on the committee echoed these concerns.<sup>17</sup> Yet when New Democrat Members proposed calling partners from the firm Ernst and Young Canada, the Conservative Members blocked their appearance.<sup>18</sup>
- A key recommendation of the Report of the Independent Fiscal Commission of Inquiry was that government should “Take an active role in the standards-setting process led by the Public Sector Accounting Board to identify and address accounting matters of particular importance to the Province”. In a 2014 report, the Auditor General raised serious concerns that public-private partnerships have cost Ontario nearly \$8-billion more on infrastructure over the past nine years than if the government had successfully built the projects itself.<sup>19</sup> This raises serious questions about the accounting practices and decision-making of the previous government. Public Sector Accounting Standards regarding this type of infrastructure financing are currently under review,<sup>20</sup> a fact that the Auditor noted at committee. Yet the final report of the Committee makes no note of this.

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<sup>12</sup> [Committee Meeting, October 30](#)

<sup>13</sup> [Committee Meeting, November 26, 2018](#)

<sup>14</sup> “Submission to the Select Committee on Financial Transparency, Province of Ontario,” Cindy Veinot, Former Provincial Controller, Province of Ontario, December 4, 2018

<sup>15</sup> [Committee Meeting, December 3, 2018](#)

<sup>16</sup> [Al Rosen at Committee Hearings, October 26](#)

<sup>17</sup> [Ross Romano, MPP for Sault Ste Marie, noted at October 26 hearings, “So they \[the Liberal government\] brought in these auditors, they brought in KPMG, they brought in Deloitte, they brought in Ernst and Young, and they hired legal counsel to tell them what they wanted to hear”](#)

<sup>18</sup> [Committee Meeting, November 26](#)

<sup>19</sup> [Auditor General’s Annual Report 2014, Chapter 3.05](#)

<sup>20</sup> See the [Public Sector Accounting Board website](#)

**3) The Committee Report notes that conclusions were reached after “examining documents, correspondence and other materials” but the report fails to note serious concerns raised in the process of obtaining those materials that put Ontario’s fiscal credibility at risk.**

As noted, the Conservatives on committee actively blocked key witnesses who could have spoken to crucial questions regarding fiscal transparency and government accountability. Yet at other points, Conservative Members on the committee showed reckless disregard for Ontario’s fiscal credibility.

The Committee Report notes that conclusions were reached after “examining documents, correspondence and other materials” but the report fails to note serious concerns raised in the process of obtaining those materials.

For example, on October 29, despite serious concerns raised by the Independent Electricity System Operator (IESO) and Ontario Power Generation (OPG), the Conservative majority on committee opted to make thousands of documents provided to the committee publicly available.

OPG and the IESO had raised serious concerns about potentially sensitive commercial information being released widely. It had potential impacts on Ontario’s electricity market and those who contract within it. They had implored the committee to carefully consider their actions in making documents – which the committee had every right to request – available to the public. The Conservatives on committee ignored these concerns at the time. They were forced to concede, a day later, that these concerns were legitimate and asked that the documents no longer be publicly available. At that point, however, as New Democrats on committee noted, “the damage was done.”<sup>21</sup>

New Democrats had hoped that this committee process could inform future government action. However, beyond scoring political points against the previous government, it is not clear if any lessons were learned.

Recommendations:

- The Legislature should strike a select committee or empower existing standing committees to explore the transparency issues this committee was unwilling or unable to explore. Namely: ongoing governance issues at Hydro One, the impact of public-private partnerships and the real costs of outsourcing and privatization.
- The government should immediately provide clear answers on how they plan to implement recommendations flowing from this committee and the Commission report. Specifically:
  - if the government accepts the Auditor’s recommended accounting treatment of pension assets on a “provisional basis” they should be clear as to how long the “provisional” period will last and what process will be used to resolve it;
  - if the government is adopting the Auditor General’s proposed accounting treatment for global adjustment refinancing they should detail how or if they will finance hydro rate relief, and for how long;
  - if the government is making transparency for the taxpayer and general public a top priority they should explain how that will apply at privatized institutions like

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<sup>21</sup> See Committee Transcripts October 29 and 30



Hydro One's where governance remains a contentious issue which the current government has failed to deal with openly or transparently

- The Government review their use of outside accounting firms as per the recommendations of Al Rosen. Since the election, the new government has made use of the same firms the Liberals used to validate their accounting measures, most notably Ernst and Young Canada – contracted by the Ford Government to conduct the “Line-by-line Review of Ontario Government Expenditures 2002/03 - 2017/18”
- The Financial Accountability Office should conduct a full cost-benefit analysis of any government plan for privatization, public-private partnerships or outsourcing and that such analysis be tabled in the Assembly and made publicly available before any such plans are implemented.
- The Government should demonstrate commitment to transparent budgeting in all Budget documents by including long-term fiscal plans, deficit projections and accurate information about reductions in services or investment.
- The Information and Privacy Commissioner should conduct a review of the committee's decision to release potentially sensitive commercial documents and other private information.
- Any review of the Fiscal Transparency Act be informed, first and foremost, by advice from Independent Officers of the Legislative Assembly to improve transparency and accountability – and not a narrow partisan agenda of the government of the day.