

Perun, Halyna N. (ENERGY)

From: Rehob, James (ENERGY)
Sent: September 26, 2011 1:18 PM
To: Perun, Halyna N. (ENERGY)
Cc: Calwell, Carolyn (ENERGY)
Subject: RE: mississauga plant

Yes, I'll pull something together. Thanks! James

From: Perun, Halyna N. (ENERGY)
Sent: September 26, 2011 12:32 PM
To: Rehob, James (ENERGY)
Cc: Calwell, Carolyn (ENERGY)
Subject: mississauga plant

Hi James – Ken Lung has asked for a short note on the Mississauga Plant and the Lib candidates promise to stop its construction. Please provide a very short background on the plant, what stage it's at, what would be required to stop it, and advice our branch may have provided recently on the issue of cancellation. Please aim for end of day. Thank you James

Halyna

Halyna N. Perun
A/Director
Legal Services Branch
Ministries of Energy & Infrastructure
777 Bay Street, 4th Floor, Suite 425
Toronto, ON M5G 2E5
Ph: (416) 325-6681 / Fax: (416) 325-1781
BB: (416) 671-2607
E-mail: Halyna.Perun2@ontario.ca

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Perun, Halyna N. (ENERGY)

From: Rehob, James (ENERGY)
Sent: September 26, 2011 4:29 PM
To: Perun, Halyna N. (ENERGY)
Cc: Calwell, Carolyn (ENERGY)
Subject: RE: mississauga plant
Attachments: Greenfield South BN LSB (Sept 26-11) (2A).doc

Privileged & Confidential Legal Advice / Solicitor & Client Privileged

September 26, 2011

Good day, Halyna. I have prepared the draft note for your review. I note that quick but thorough a review of my electronic files revealed no legal advice having been provided by myself on that particular contract during any recent time-frame, and discussions with other counsel involved in the relevant part of our Energy practice areas confirmed these initial findings.

Let me know if you require anything further.

Kind regards,
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Ministry of the Attorney General

Briefing Note

Legal Services Division

Legal Services Branch – ENE/MOI

ISSUE:

- Status of the Greenfield South Gas Generating Plant in light of Liberal Candidates' political promises to "cancel" construction of the plant.
- Currently there are four Liberal candidates in Etobicoke and Mississauga (Donna Cansfield, Charles Sousa (in his riding), Laurel Broten, and Dipika Damerla who have articulated positions relating to terminating the Greenfield South project.

BACKGROUND

- Greenfield South Generating Station is a 280 MW combined cycle natural gas plant located in the City of Mississauga on a 4.5 hectare property at 2315 Loreland Avenue (the "Greenfield project").
- The Greenfield project arose out of a Clean Energy Supply (CES) procurement process arising out of a 2004 Clean Energy Supply (CES) Ministerial Procurement, where such contracts were eventually passed to the OPA. One of the CES contracts was awarded to Greenfield South Power Corporation (the proponent).
- The project is important to meeting local reliability needs for the Southwest and Western GTA, and has been positioned as part of the coal closure strategy.
- The plant is 200 metres from the nearest residence, 700 metres from the nearest hospital and 1.1 km from the nearest school.

Approvals and Commercial Status

- In July, 2011, Greenfield reports proceeding with construction including laying foundations for the steam and gas turbine halls, and have placed orders for the major equipment (generators, turbines, etc.) involved.
- In June, 2011, MOE announced that it will conduct an updated review of the approval for the Greenfield South facility to assess recent developments. To date, no end-date was set for this process. In May, 2011, the proponent finalized its financing arrangements and the City of Mississauga issued Building Permits for the building housing the generation equipment.
- In March, 2011, OPA renegotiates the initial Commercial Operation Date (C.O.D.) with the proponent, Greenfield Power Corp., in recognition of the lengthy regulatory approvals and financing delays experienced by Greenfield South. The new C.O.D. is the third quarter (Q3) of 2014.

- In 2008, MOE had granted all necessary environmental approvals.
 - However, there was a lengthy period of *force majeure* (suspension of time pending resolution of regulatory and approval issues) resulting from approval delays;
 - Greenfield South experienced two years of regulatory delays before MOE rendered its final decision denying a request for elevation.
- In 2007, the Ontario Municipal Board reviewed and approved of the zoning of the project site after a lengthy and protracted process.

Legal Options for Cancelling Greenfield South Contract

- Cancellation of the project at this stage would involve the termination of the OPA contract by the parties on a commercial basis or by the OPA acting on instructions contained in a Ministerial Direction.
- Further study of the specific contract itself and the provisions sought to be utilized in any given scenario would be necessary to provide further certainty on remedies available to each party.
- Any action by the City or the Ministry, and presumably the OPA, which involved the cancellation of the Greenfield South Project carries the high risk of litigation, since the proponent may be quite prepared to bring suit to protect its financial interests.
- Note that an initial review of our records reveals that LSB had not been asked to provide advice on this particular contract during any recent timeframe.

Date: September 26, 2011

Prepared by: James P.H. Rehof, Senior Counsel, Energy LSB

Approved by: Halyna Perun, A/Director
 Legal Services Branch
 Ministry of Energy/Ministry of Infrastructure

Perun, Halyna N. (ENERGY)

From: Calwell, Carolyn (ENERGY)
Sent: September 26, 2011 4:43 PM
To: Perun, Halyna N. (ENERGY)
Subject: FW: mississauga plant
Attachments: Greenfield South BN LSB (Sept 26-11) (2A).doc

Edits for your consideration.

From: Rehob, James (ENERGY)
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Ministry of the Attorney General

Briefing Note

Legal Services Division

Legal Services Branch – ENE/MOI

ISSUE:

- ~~Status of the Greenfield South Gas Generating Plant in Mississauga in light of Liberal Candidates' political promises to "cancel" construction of the plant.~~
- ~~Currently there are four Liberal candidates in Etobicoke and Mississauga (Donna Cansfield, Charles Sousa (in his riding), Laurel Broten, and Dipika Damerla) have articulated positions relating to terminating the Greenfield South project.~~

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BACKGROUND

- Greenfield South Generating Station is a 280 MW combined cycle natural gas plant located in the City of Mississauga on a 4.5 hectare property at 2315 Loreland Avenue (the "Greenfield project").
- The Greenfield project arose out of a Clean Energy Supply (CES) procurement process arising out of in 2004, Clean Energy Supply (CES) Ministerial Procurement, where such This contract, with Greenfield South Power Corporation, s ~~was eventually passed to assumed by the OPA. One of the CES contracts was awarded to Greenfield South Power Corporation (the proponent).~~
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- The plant is 200 metres from the nearest residence, 700 metres from the nearest hospital and 1.1 km from the nearest school.
- Currently there are four Liberal candidates in Etobicoke and Mississauga, Donna Cansfield, Charles Sousa (in his riding), Laurel Broten, and Dipika Damerla, who have referred to terminating the Greenfield South project.

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Approvals and Commercial Status

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financing arrangements and the City of Mississauga issued Building Permits for the building housing the generation equipment.

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- In 2008, MOE had granted all necessary environmental approvals.
 - However, there was a lengthy period of *force majeure* (~~suspension of time pending resolution of regulatory and approval issues~~) resulting from approval delays;
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- In 2007, the Ontario Municipal Board reviewed and approved of the zoning of the project site after a lengthy and protracted process.

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Date: September 26, 2011

Prepared by: James P.H. Rebo, Senior Counsel, Energy LSB

Approved by: Halyna Perun, A/Director
Legal Services Branch
Ministry of Energy/Ministry of Infrastructure

Perun, Halyna N. (ENERGY)

From: Perun, Halyna N. (ENERGY)
Sent: September 26, 2011 5:27 PM
To: Lung, Ken (JUS)
Cc: Calwell, Carolyn (ENERGY)
Subject: note re Mississauga Plant
Attachments: Greenfield South BN LSB (Sept 26-11) (2A) (2).doc

Privileged and Confidential

Hi Ken – as requested, a note on the Mississauga Plant. Our legal branch has not been asked to provide any advice re cancellation.

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Ministry of the Attorney General

Briefing Note

Legal Services Division

Legal Services Branch – ENE/MOI

ISSUE:

- Greenfield South Gas Generating Plant in Mississauga.

BACKGROUND

- Greenfield South Generating Station is a 280 MW combined cycle natural gas plant located in the City of Mississauga on a 4.5 hectare property at 2315 Loreland Avenue (the "Greenfield project").
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Approvals and Commercial Status

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- LSB had not been asked to provide advice on this particular contract during any recent timeframe.

Date: September 26, 2011

Prepared by: James P.H. Rehob
Senior Counsel
5-6676

Approved by: Halyna Perun, A/Director
Legal Services Branch
Ministry of Energy/Ministry of Infrastructure
5-6681

Perun, Halyna N. (ENERGY)

From: Lung, Ken (JUS)
Sent: September 27, 2011 9:44 AM
To: Perun, Halyna N. (ENERGY); Calwell, Carolyn (ENERGY)
Subject: FW: note re Mississauga Plant
Attachments: Greenfield South BN LSB (Sept 26-11) (2A) (2).doc

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Briefing Note

Legal Services Division

Legal Services Branch – ENE/MOI

ISSUE:

- Greenfield South Gas Generating Plant In Mississauga.

BACKGROUND

- Greenfield South Generating Station, once completed, will be is a 280 MW combined cycle natural gas plant located in the City of Mississauga on a 4.5 hectare property at 2315 Loreland Avenue (the "Greenfield project").
- The Greenfield project arose out of a Clean Energy Supply (CES) procurement process in 2004. The procuring party was originally the Ministry of Energy?? -This contract, with Greenfield South Power Corporation, was eventually assumed by the OPA.
- The project was undertaken to meet local reliability needs for the Southwest and Western GTA and has been positioned as part of the coal closure strategy.
- The plant is 200 metres from the nearest residence, 700 metres from the nearest hospital and 1.1 km from the nearest school.
- On September XX, 2011, the government announced that the generating station would be re-located?? that there are discussions with the proponent for a new site??
- Currently there are four Liberal candidates in Etobicoke and Mississauga, Denna Cansfield, Charles Sousa (in his riding), Laurel Breton, and Dipika Damerla, who have referred to terminating the Greenfield South project.

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Approvals and Commercial Status (from Ken: under this section, largely reversing the chronology)

- In July 2011, Greenfield reported proceeding with construction including laying foundations for the steam and gas turbine halls, and having placed orders for the major equipment (generators, turbines, etc.) involved.
- In June, 2011, MOE announced that it will conduct an updated review of the approval for the Greenfield South facility to assess recent developments. To date, no end date was set for this process. In May, 2011, the proponent finalized its financing arrangements and the City of Mississauga issued Building Permits for the building housing the generation equipment.

• In March, 2011, OPA renegotiated the initial Commercial Operation Date (C.O.D.) with the proponent, Greenfield Power Corp., in recognition of the lengthy regulatory approvals and financing delays experienced by Greenfield South. The new C.O.D. is the third quarter (Q3) of 2014.

• In 2008, MOE had granted all necessary environmental approvals.

• However, there was a lengthy period of *force majeure* resulting from approval delays;

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• In 2007, the Ontario Municipal Board reviewed and approved of the zoning of the project site after a lengthy and protracted process.

• In 2008, MOE had granted all necessary environmental approvals.

• In March, 2011, OPA renegotiated the initial Commercial Operation Date (C.O.D.) with the proponent, Greenfield Power Corp., in recognition of the lengthy regulatory approvals and financing delays experienced by Greenfield South. The new C.O.D. is the third quarter (Q3) of 2014.

• In May, 2011, the proponent finalized its financing arrangements and the City of Mississauga Issued Building Permits for the building housing the generation equipment.

• In June, 2011, MOE announced that it will conduct an updated review of the approval for the Greenfield South facility to assess recent developments. To date, no end-date was set for this process.

• In July 2011, Greenfield reported proceeding with construction including laying foundations for the steam and gas turbine halls, and having placed orders for the major equipment (generators, turbines, etc.) involved.

Status Legal

Options for Cancelling Greenfield South Contract

— There is contract between the proponent and OPG relating to the power station. Construction has already commenced.

• Cancellation of the project at this stage would involve the termination of the contract by the parties.

• ENE Legal Services Branch has not been consulted prior to the announcement and currently does not have any information concerning any recent discussions with the proponent.

• Further study of the specific contract itself and the provisions sought to be utilized in any given scenario would be necessary to provide further certainty on remedies available to each party.

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- Any cancellation of the Greenfield South Project carries the high risk of litigation, since the proponent may be quite prepared to bring suit to protect its financial interests, including development costs incurred to date.
- LSB had not been asked to provide advice on this particular contract during any recent timeframe.

Date: September 26, 2011

Prepared by: James P.H. Rehob
Senior Counsel
5-6676

Approved by: Halyna Perun, A/Director
Legal Services Branch
Ministry of Energy/Ministry of Infrastructure
5-6681



Perun, Halyna N. (ENERGY)

From: Calwell, Carolyn (ENERGY)
Sent: September 27, 2011 10:30 AM
To: Lung, Ken (JUS); Perun, Halyna N. (ENERGY)
Subject: RE: note re Mississauga Plant
Attachments: Greenfield South BN LSB (Sept 27-11) (f).doc

Thanks for the suggestions, Ken. Please find attached a re-worked and cleaned up note that responds to your feedback.

Carolyn

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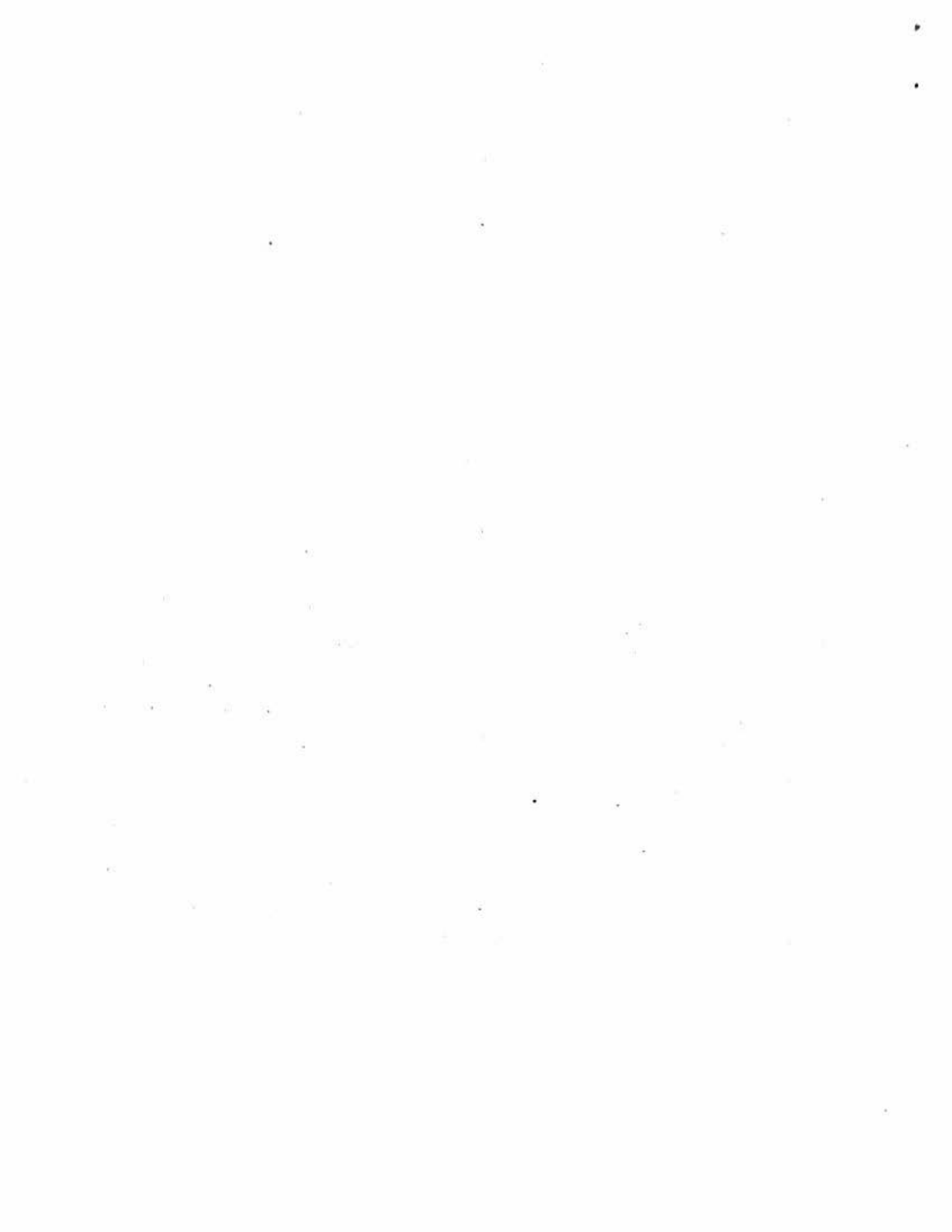
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Briefing Note

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Legal Services Branch – ENE/MOI

ISSUE:

- Greenfield South Gas Generating Plant in Mississauga.

BACKGROUND

- Greenfield South Generating Station, is a 280 MW combined cycle natural gas plant under construction in the City of Mississauga on a 4.5 hectare property at 2315 Loreland Avenue (the "Greenfield project").
- The Greenfield project arose out of a Ministry of Energy Clean Energy Supply (CES) procurement process in 2004. This contract, with Greenfield South Power Corporation ("Greenfield Co."), was eventually assumed by the OPA.
- The project was undertaken to meet local reliability needs for the Southwest and Western GTA and has been positioned as part of the coal closure strategy.
- The plant is 200 metres from the nearest residence, 700 metres from the nearest hospital and 1.1 km from the nearest school.
- On September 24, 2011, the government announced that construction of the generating station would stop and that the station would be relocated.

CHRONOLOGY

- In 2007, the Ontario Municipal Board reviewed and approved of the zoning of the project site after a lengthy and protracted process.
- In 2008, MOE granted all necessary environmental approvals.
- In March 2011, OPA renegotiated the initial Commercial Operation Date (C.O.D.) with Greenfield Co., in recognition of lengthy regulatory approvals and financing delays experienced by Greenfield Co. The new C.O.D. is the third quarter (Q3) of 2014.
- In May 2011, Greenfield Co. finalized its financing arrangements and the City of Mississauga issued Building Permits for the building housing the generation equipment.
- In June 2011, MOE announced that it will conduct an updated review of the approval for the gas plant to assess recent developments. No end-date was set for this process.

- In July 2011, Greenfield Co. reported that it had laid foundations for the steam and gas turbine halls and placed orders for the major equipment (generators, turbines, etc.).

Status

- There is contract between Greenfield Co. and OPG relating to the power station. Construction has already commenced.
- Cancellation of the project at this stage would involve the termination of the contract by the parties.
- ENE Legal Services Branch was not consulted prior to the announcement and currently does not have any information concerning any recent discussions with Greenfield Co.

Date: September 26, 2011

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Thanks – yes, it's OPA not OPG (apologies). The change is accepted in the attached.

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From: Calwell, Carolyn (ENERGY)
Sent: September 27, 2011 10:30 AM
To: Lung, Ken (JUS); Perun, Halyna N. (ENERGY)
Subject: RE: note re Mississauga Plant

Thanks for the suggestions, Ken. Please find attached a re-worked and cleaned up note that responds to your feedback.

Carolyn

From: Lung, Ken (JUS)
Sent: September 27, 2011 9:44 AM
To: Perun, Halyna N. (ENERGY); Calwell, Carolyn (ENERGY)
Subject: FW: note re Mississauga Plant

Please consider suggested changes. Intended at this point to be an FYI note for readers.

From: Perun, Halyna N. (ENERGY)
Sent: September 26, 2011 5:27 PM
To: Lung, Ken (JUS)
Cc: Calwell, Carolyn (ENERGY)
Subject: note re Mississauga Plant

Privileged and Confidential

Hi Ken – as requested, a note on the Mississauga Plant. Our legal branch has not been asked to provide any advice re cancellation.

Halyna

Halyna N. Perun
A/Director

Legal Services Branch
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777 Bay Street, 4th Floor, Suite 425
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Perun, Halyna N. (ENERGY)

From: Perun, Halyna N. (ENERGY)
Sent: October 7, 2011 4:05 PM
To: Rehob, James (ENERGY)
Cc: Calwell, Carolyn (ENERGY)
Subject: mississauga plant

Privileged and Confidential

The Deputy has just relayed the following to me. The Premier called the SOC an hour ago – what he has asked is for options on the Mississauga Gas Plant. He has asked for staff to be creative: policy and legal options.

Legal – ideas: how to stop the building of the plant: termination of contract; changing the set back rules; legislation to accomplish

We've been asked to develop options for Tuesday afternoon or Wed. morning. Rick Jennings will be contact Kevin French at MOE. The Deputy has contact Colin Anderson and I have put in a call to Mike Lyle.

SOC has asked the Premier to caution political staff not to talk about options, make promises etc

I've advised the Deputy that I will likely need to engage CLOC on some of this and also MOE legal. He's fine with that.

James – we've now spoken – so thanks for taking a crack at ideas – much appreciated.

Thank you!

Halyna

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Perun, Halyna N. (ENERGY)

From: Jennings, Rick (ENERGY)
Sent: October 7, 2011 4:39 PM
To: Perun, Halyna N. (ENERGY)
Cc: King, Ryan (ENERGY)
Subject: RE: miisissauga GP

Garry and Allan, however, neither are in today but will be in on Tuesday. We will likely need to discuss options with the contract managers at the OPA. I gave a heads-up to the OPA in a general sense about this yesterday, so the procurement people there are aware of it. I believe that David was going to mention it to Collin Andersen today.

From: Perun, Halyna N. (ENERGY)
Sent: October 7, 2011 4:14 PM
To: Jennings, Rick (ENERGY)
Cc: King, Ryan (ENERGY)
Subject: miisissauga GP

Privileged and Confidential

Options

Hi Rick – I received the Deputy's message. We'll be working up the legal options and I am assuming that you and I should collaborate on one product. Whom should we be working with in your office?

Thanks Rick

Halyna

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Perun, Halyna N. (ENERGY)

From: Rehob, James (ENERGY)
Sent: October 7, 2011 5:02 PM
To: Perun, Halyna N. (ENERGY)
Cc: Calwell, Carolyn (ENERGY)
Subject: Cancelling Green South Gas Plant / Preliminary Advice on Options and Issues

Privileged & Confidential Legal Advice / Solicitor & Client Privileged

October 7, 2011

Good day, Halyna. You asked me to provide you with a list of considerations (options and issues) which could be considered in relation to the cancellation of the Greenfield South power plant, presently being constructed in Mississauga. Here are my views in this regard:

References to commercial contract payments, damages and other funds will usually be cost-recovered from the rate-base. Hence, there will be rate-payer impacts.

- **OPTION 1** Since the OPA is the counterparty to the original 2005 contract (which arose out of the Ministry passing it the initiative to procure clean energy supply), direct the OPA to take all necessary legal and commercial steps to cancel the contract, including but not limited to:
 - Directing the OPA to renegotiate the contract with a view to settlement, relocation or temporary (indefinite) suspension (would involve compensatory payments on a commercial basis likely plus premium for inconvenience, compensation for the cancellation/suspension of supplier contracts etc.)
 - **Termination on Notice (if timing permits)**
 - Include notification of immediate stopping the flow of funds (recognizing that this will give rise to cascading liability claims from the proponent and all related suppliers against OPA re. the project)
 - Attempting to trigger *force majeure* provisions.
 - (Attempting to recharacterize the entire transaction from a gas-plant to something more environmentally innocuous such as biofuels if that would be any more acceptable to the community)

Risk: Government and OPA would face commercial claims from the developer and any suppliers involved in the construction of the project, including gas companies constructing the gas line and supplying natural gas to the project – Union and Enbridge are large, powerful, well-connected entities and this should form part of the considerations. Note: in contrast with Option 2 below, that having the OPA cancel the contract keeps the liability with the OPA as the primary target, although the Crown would likely be added to any suit brought by the developer going forward. Proponent will explore whether Government has breached the discriminatory action (Government/Legislature changing law causing commercial harm) clause under the contract. (You noted that the contract itself may provide for the overarching liability limitation – capping liability at the total of sunk costs. I wonder whether this includes ongoing supplier contracts, etc.)

- **OPTION 2:** Government could (together with OPA) arrange settlement discussions with the developer, (directing either explicitly or implicitly the OPA to engage and participate with Government in these settlement discussion) – **OPTION 2A** could even consider having OPA re-assign the contract back over to the Crown (a commercial step) and allow Government all and immediate authority to negotiate directly with the developer.
 - Government can then directly participate and control the negotiation process and make all major decisions independent of the OPA (avoiding OPA internal decision/approval processes, such as Board of Director approvals, which could slow timing)

Risk: Government would be the sole (primary) location for all contract damages suits of developer and suppliers.

- **OPTION 3: Injunction:** While quite weak, the Government could consider bringing an Application for Injunctive Relief (*ex parte*) if it can prove that there is a serious issue to be tried by the court, that irreparable harm will ensue if the relief sought (the immediate stopping of construction) is not granted, and that the balance of conveniences favours the court granting the injunction (issuing a declaratory order ordering the construction to cease). I believe that this would likely have to proceed as part of a wider action (e.g. the Court may wish to see that the matter was part of a claim and not a stand-alone issue for it to resolve), but this would have to be confirmed with CLOC.

- **OPTION 4:** OIC and Directive to OEB which could explore adding additional license conditions to the licensee's (Developer's) license that required it to meet, or prove to the OEB that will be in a position to meet, any new environmental requirements provided for the Ministry of Environment or Ministry of Natural Resources, assuming that MOE imposes new requirements as part of its ongoing review being conducted since July, 2011. (Weak legislative basis since OEB does not have a primary role in environmental review and OEB has already granted leave to construct.)

I wish to acknowledge the kind assistance of Jennifer, who assisted me in brainstorming and locating documents – thank you.

Kindly,
James

James P. H. Rehob
Senior Counsel
Ministry of Energy and
Ministry of Infrastructure
Legal Services Branch
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Perun, Halyna N. (ENERGY)

From: Perun, Halyna N. (ENERGY)
Sent: October 7, 2011 5:21 PM
To: Wilson, Malliha (JUS)
Cc: Hamison, Troy (JUS); Lung, Ken (JUS); Roszell, Rand (ENE)
Subject: Mississauga Gas Plant

Privileged and Confidential

The Secretary of the Cabinet has conveyed to Energy a request from the Premier that Energy work with the Ontario Power Authority and Environment to develop legal and negotiating options with respect to the Mississauga Gas Plant.

You may recall that the Liberals did say that if elected they would cancel the Plant. Energy is now being asked to brainstorm on options. The SOC has invited Energy (DM and ADM Rick Jennings), Environment (ADM Kevin French) and the OPA (CEO Colin Anderson and General Counsel Mike Lyle) to a meeting on Wed. morning to discuss this further. I have been invited to attend.

The SOC has cautioned the Premier to caution his staff, the Ministers' and their staffs not to discuss any way forward with the company building the plant.

We'll be meeting with the Energy clients on Tuesday morning to assist in developing the options – at this point I am not sure whether the SOC expects a written product or whether she'd like to simply discuss orally – but I'll keep you posted as I learn more.

Regards,

Halyna

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10/07/2011

Perun, Halyna N. (ENERGY)

From: Roszell, Rand (ENE)
Sent: October 7, 2011 5:21 PM
To: Perun, Halyna N. (ENERGY)
Subject: Re: need to speak to you

Thanks - if we don't connect tonight, am in Tues c. 8:15, then in SMC from 10-12:30.

Am asking 2 of my colleagues to meet first thing Tuesday to discuss
Then will see Kevin @ SMC @ 10.

Also, look fwd to your note...have a great week-end if we don't chat

From: Perun, Halyna N. (ENERGY)
To: Roszell, Rand (ENE)
Sent: Fri Oct 07 17:14:04 2011
Subject: RE: need to speak to you

Wed morning

Halyna

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From: Roszell, Rand (ENE)
Sent: October 7, 2011 5:08 PM
To: Perun, Halyna N. (ENERGY)
Subject: Re: need to speak to you

Thanks for the heads' up - when's the session?

From: Perun, Halyna N. (ENERGY)
To: Roszell, Rand (ENE)
Sent: Fri Oct 07 17:06:13 2011
Subject: RE: need to speak to you

Privileged and Confidential

Your client Kevin French has been invited to a "brainstorming session" with the Secretary of Cabinet on a matter that also concerns Energy and we're to assist in creating options for that discussion. Pertains to the Mississauga Gas Plant. I've been invited to attend – and am sending a note to Malliha as a head's up shortly – I'll copy you on that note. I'll try to reach you at home this evening before I head up north for the weekend

Halyna

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From: Roszell, Rand (ENE)
Sent: October 7, 2011 4:52 PM
To: Perun, Halyna N. (ENERGY)
Subject: Re: need to speak to you

Am in (public) transit.

Can you call me @ home c. 6:15 -289 239 7953 or drop me a discreet e-mail?

From: Perun, Halyna N. (ENERGY)
To: Roszell, Rand (ENE)
Sent: Fri Oct 07 16:10:29 2011
Subject: need to speak to you

Hi rand – are you available for a short call? – rather urgent – thank you

Halyna

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Perun, Halyna N. (ENERGY)

From: Wilson, Malliha (JUS)
Sent: October 7, 2011 6:33 PM
To: Perun, Halyna N. (ENERGY)
Subject: Re: Mississauga Gas Plant

Thx. Stay in touch so we can help u

Sent from my BlackBerry Wireless Device

From: Perun, Halyna N. (ENERGY)
To: Wilson, Malliha (JUS)
Cc: Harrison, Troy (JUS); Lung, Ken (JUS); Roszell, Rand (ENE)
Sent: Fri Oct 07 17:21:28 2011
Subject: Mississauga Gas Plant

Privileged and Confidential

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You may recall that the Liberals did say that if elected they would cancel the Plant. Energy is now being asked to brainstorm on options. The SOC has invited Energy (DM and ADM Rick Jennings), Environment (ADM Kevin French) and the OPA (CEO Colin Anderson and General Counsel Mike Lyle) to a meeting on Wed. morning to discuss this further. I have been invited to attend.

The SOC has cautioned the Premier to caution his staff, the Ministers' and their staffs not to discuss any way forward with the company building the plant.

We'll be meeting with the Energy clients on Tuesday morning to assist in developing the options – at this point I am not sure whether the SOC expects a written product or whether she'd like to simply discuss orally – but I'll keep you posted as I learn more.

Regards,

Halyna

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Perun, Halyna N. (ENERGY)

From: Perun, Halyna N. (ENERGY)
Sent: October 7, 2011 7:27 PM
To: Wilson, Malliha (JUS)
Subject: Re: Mississauga Gas Plant

Yes, for sure. The Dep said he didn't want us to work on the weekend - so I expect it will be quiet til Tuesday morning - hope you have a nice Thanksgiving and I will stay in touch

Halyna Perun
A\Director
Ph: 416 325 6681
BB: 416 671 2607

Sent using BlackBerry

From: Wilson, Malliha (JUS)
To: Perun, Halyna N. (ENERGY)
Sent: Fri Oct 07 18:32:41 2011
Subject: Re: Mississauga Gas Plant

Thx. Stay in touch so we can help u

Sent from my BlackBerry Wireless Device

From: Perun, Halyna N. (ENERGY)
To: Wilson, Malliha (JUS)
Cc: Harrison, Troy (JUS); Lung, Ken (JUS); Roszell, Rand (ENE)
Sent: Fri Oct 07 17:21:28 2011
Subject: Mississauga Gas Plant

Privileged and Confidential

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Regards,

Halyna

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Perun, Halyna N. (ENERGY)

From: Perun, Halyna N. (ENERGY)
Sent: October 10, 2011 9:21 PM
To: Slater, Craig (JUS)
Cc: Calwell, Carolyn (ENERGY); Roszell, Rand (ENE)
Subject: Fw: Mississauga Gas Plant

Privileged and Confidential

Hi Craig - Hope you had a restful weekend. This is a head's up that we may need the assistance of your office tomorrow on a rather urgent basis in developing options for the SOC's review that outline how to move forward with a lib promise that the Mississauga Gas Plant would not be proceeding (see below) at its current location. We'll be meeting with clients to support the development of options tomorrow morning and they may want to know, for example, the feasibility of bringing an application for an injunction. The contract is between a private co and the Ontario Power Authority (I believe based on same template as the TransCanada one) - we've not seen that contract as yet. The company has the requisite approvals (environmental and municipal - though the Minister of Environment had announced in June that MOE will conduct an updated review of the approval) to proceed with construction and there has apparently been quite a lot of activity on the site - despite the pronouncement that the plant would not be proceeding should the libs get reelected. The SOC has asked ENERGY and Environment to work on creative options - legal and other. I have not heard more on this over the weekend but expect that we'll be having a very busy day tomorrow preparing for the meeting with the SOC Wed morning. Either Carolyn or I will be in touch with you further on this in the morning. Thank you

Halyna Perun
A\Director
Ph: 416 325 6681
BB: 416 671 2607

Sent using BlackBerry

From: Perun, Halyna N. (ENERGY)
To: Wilson, Malliha (JUS)
Cc: Harrison, Troy (JUS); Lung, Ken (JUS); Roszell, Rand (ENE)
Sent: Fri Oct 07 17:21:28 2011
Subject: Mississauga Gas Plant

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Regards,

Halyna

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Perun, Halyna N. (ENERGY)

From: Slater, Craig (JUS)
Sent: October 11, 2011 8:28 AM
To: Perun, Halyna N. (ENERGY)
Cc: Calwell, Carolyn (ENERGY); Roszell, Rand (ENE)
Subject: RE: Mississauga Gas Plant

Please contact me directly. We are sorting through the counsel who will be engaged on this.

From: Perun, Halyna N. (ENERGY)
Sent: October 10, 2011 9:21 PM
To: Slater, Craig (JUS)
Cc: Calwell, Carolyn (ENERGY); Roszell, Rand (ENE)
Subject: Fw: Mississauga Gas Plant

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Sent using BlackBerry

From: Perun, Halyna N. (ENERGY)
To: Wilson, Malliha (JUS)
Cc: Harrison, Troy (JUS); Lung, Ken (JUS); Roszell, Rand (ENE)
Sent: Fri Oct 07 17:21:28 2011
Subject: Mississauga Gas Plant

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Regards,

Halyna

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Perun, Halyna N. (ENERGY)

From: Perun, Halyna N. (ENERGY)
Sent: October 11, 2011 11:09 AM
To: Jennings, Rick (ENERGY); Jenkins, Allan (ENERGY); King, Ryan (ENERGY); McKeever, Garry (ENERGY)
Cc: Calwell, Carolyn (ENERGY); Rehob, James (ENERGY)
Subject: mississauga gas plant

Hi - I have not been successful in reaching Mike Lyle this morning – We need to review the contract in place re Mississauga Gas Plant as soon as possible – do any of you have it? Please let us know and we'll come by to pick up a copy thank you

Halyna

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Perun, Halyna N. (ENERGY)

From: Wong, Taia (JUS)
Sent: October 11, 2011 11:20 AM
To: Perun, Halyna N. (ENERGY)
Subject: Mississauga Plant

Hi Halyna,

Can you please send me a copy of the contract in this matter? I'd appreciate it if you could send it as soon as possible.

Also, please let us know by early afternoon if you become aware of any other options.

Thanks,
Taia

Perun, Halyna N. (ENERGY)

From: McKeever, Garry (ENERGY)
Sent: October 11, 2011 11:23 AM
To: Perun, Halyna N. (ENERGY); Jennings, Rick (ENERGY); Jenkins, Allan (ENERGY); King, Ryan (ENERGY)
Cc: Calwell, Carolyn (ENERGY); Rehob, James (ENERGY)
Subject: RE: mississauga gas plant

Halyna

The contract is confidential. We have not seen it. It would have to come from the OPA. In Mike's absence, you might want to call JoAnne Butler.

Garry

From: Perun, Halyna N. (ENERGY)
Sent: October 11, 2011 11:09 AM
To: Jennings, Rick (ENERGY); Jenkins, Allan (ENERGY); King, Ryan (ENERGY); McKeever, Garry (ENERGY)
Cc: Calwell, Carolyn (ENERGY); Rehob, James (ENERGY)
Subject: mississauga gas plant

Hi - I have not been successful in reaching Mike Lyle this morning - We need to review the contract in place re Mississauga Gas Plant as soon as possible - do any of you have it? Please let us know and we'll come by to pick up a copy thank you

Halyna

Halyna N. Perun
A/Director
Legal Services Branch
Ministries of Energy & Infrastructure
777 Bay Street, 4th Floor, Suite 425
Toronto, ON M5G 2E5
Ph: (416) 325-6681 / Fax: (416) 325-1781
BB: (416) 671-2607
E-mail: Halyna.Perun2@ontario.ca

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Perun, Halyna N. (ENERGY)

From: Silva, Joseph (ENERGY)
Sent: October 11, 2011 11:36 AM
To: Jennings, Rick (ENERGY)
Cc: Perun, Halyna N. (ENERGY); King, Ryan (ENERGY)
Subject: Paper for options meeting

Importance: High

Hi Rick,

The Deputy is hoping to have paper (existing deck with info and options?) that he and folks can bring to the options meeting being hosted by SoC tomorrow. Can you advise please...

Thanks very much
Joseph

Joseph Silva

Executive Assistant (A) to the Deputy Minister of Energy
Hearst Block 4th Flr, 900 Bay St Toronto ON M7A 2E1
Tel: 416-325-2371 , Email: Joseph.Silva@ontario.ca

Perun, Halyna N. (ENERGY)

From: Wong, Taia (JUS)
Sent: October 11, 2011 11:50 AM
To: Perun, Halyna N. (ENERGY)
Subject: RE: Mississauga Plant

Thanks!

From: Perun, Halyna N. (ENERGY)
Sent: October 11, 2011 11:50 AM
To: Wong, Taia (JUS)
Subject: RE: Mississauga Plant

Hi Taia - We still don't have it - the Ontario Power Authority has not produced it as yet – but will do as soon as I have it

Halyna

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From: Wong, Taia (JUS)
Sent: October 11, 2011 11:20 AM
To: Perun, Halyna N. (ENERGY)
Subject: Mississauga Plant

Hi Halyna,

Can you please send me a copy of the contract in this matter? I'd appreciate it if you could send it as soon as possible.

Also, please let us know by early afternoon if you become aware of any other options.

Thanks,
Taia

Perun, Halyna N. (ENERGY)

From: King, Ryan (ENERGY)
Sent: October 11, 2011 12:05 PM
To: Perun, Halyna N. (ENERGY)
Cc: Jennings, Rick (ENERGY)
Subject: FW:
Attachments: Gas Plant Considerations 2.ppt

Halyna,
This is a draft deck we're working on for the meeting tomorrow.

From: Jenkins, Allan (ENERGY)
Sent: October 11, 2011 12:05 PM
To: Jennings, Rick (ENERGY); McKeever, Garry (ENERGY)
Cc: King, Ryan (ENERGY)
Subject: RE:

Formatted the presentation and made some additions of text and images.

From: Jennings, Rick (ENERGY)
Sent: October 11, 2011 10:31 AM
To: Jenkins, Allan (ENERGY); McKeever, Garry (ENERGY)
Cc: King, Ryan (ENERGY)
Subject:

See attached per our discussion



Gas Plant Considerations

Date: October 11, 2011

Key Facts About the Greenfield South Plant

- Successful applicant in Ministry of Energy run RFP, contract signed with the OPA in April 2005.
- Eastern Power, the project developer, has received all required provincial approvals, including Environmental Assessment and Certificates of Approval;
- Eastern Power has received all required municipal approvals, including building site approval from the City of Mississauga issued in May 2011;
- Eastern Power has secured financing (confirmed by the OPA).



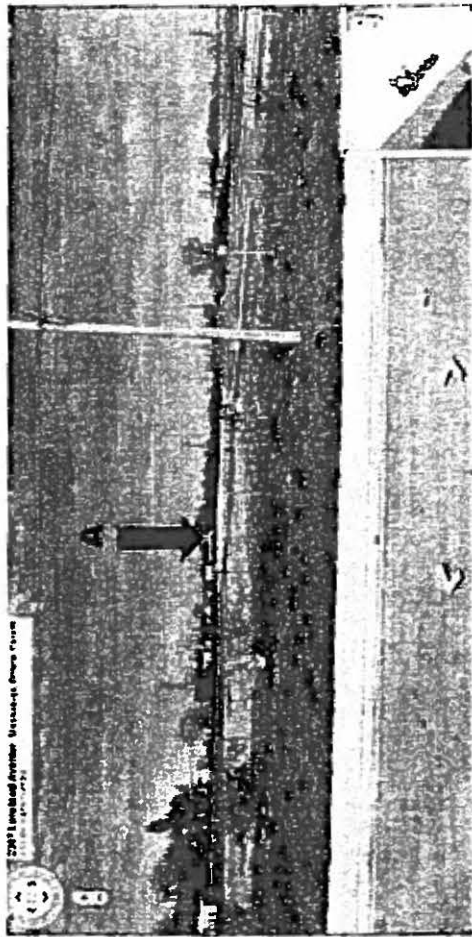
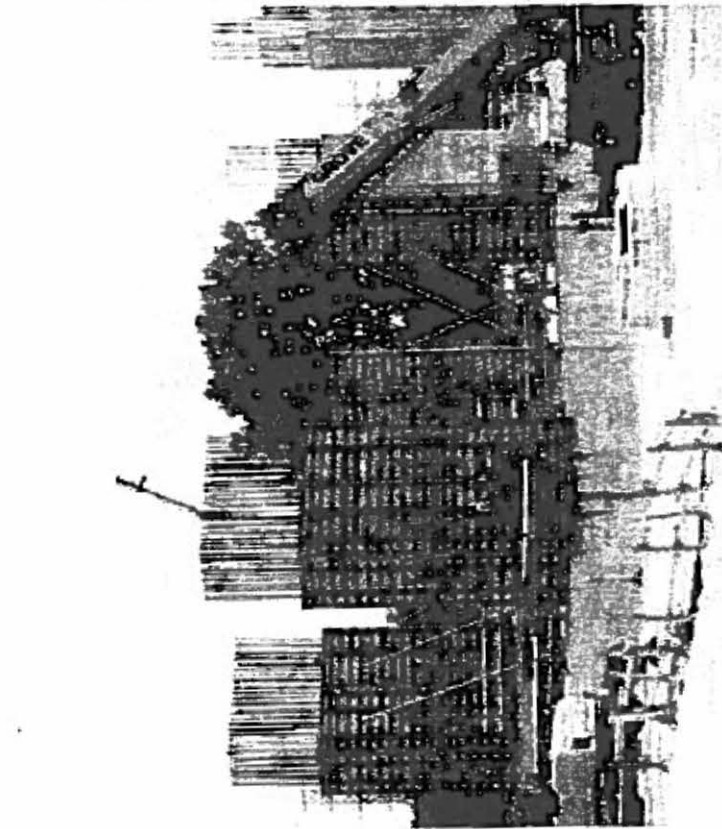
Legend:

A – Proposed Greenfield Site
B – Closest House
C – Closest Subdivision (North)
D – Closest Subdivision (South)
E – Trillium Heath Centre
F – Sherway Gardens Mall

Distance:

A to B: 220 Meters
A to C: 270 Meters
A to D: 500 Meters
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MINISTRY OF ENERGY



Recent Events

- On September 24, in Mississauga, local Liberal party candidates announced that “construction on the project would be halted” and that “if elected the Government would work with Eastern to choose a new site.” The Mayor of Mississauga attended the announcement and endorsed the decision.
- On September 28, the media carried pictures of the plant with construction well underway.
- On October 6, media reported Liberal insiders as saying that Eastern Power was warned back in May that any work they did was at their own risk.

Issues

- Construction continues at the Greenfield South site.
- The project has all applicable approvals, a regulatory mechanism for stopping construction could be challenged in the absence of a breach of approval conditions.
- Legal interaction with Eastern Power is through the Ontario Power Authority which holds and administers the contract.
- Statements have been made by local politicians that the plant would not be relocated to a site in Mississauga or Toronto.
- Alternative site options and alternative ways to supply Mississauga have not been identified. Alternative sites would require new provincial and municipal approvals processes to be undertaken.

Options For Stopping the Plant

- Regulatory – would have to overrule approvals already received
- Contractual – unilateral cancellation would lead to legal action, Government vulnerable to damages
- Negotiations – in return for ceasing construction, coverage of expenses to date and a new contract for a new site.

Next Steps

- OPA be could asked to approach Eastern Power about negotiating settlement, could include covering costs to date, contract for a new site, and covering foregone revenue.
- Could require a Ministerial direction to the OPA to renegotiate the contract or cancel the contract. The Government could agree to cover some or all of the settlement costs.
- Cambridge is a potential alternate site:
 - The project would have to be reconfigured (450 MW peaking plant versus 280 MW combined cycle plant);
 - the developer would likely ask the OPA to take approval risk; and,
 - TransCanada has been in discussions about this site although nothing has been agreed to.
 - Does not directly address supply needs in Mississauga and Toronto
- Proponent may be willing to settle for a large cash settlement representing foregone net revenue or may view its financial prospects as being better though the courts.

Perun, Halyna N. (ENERGY)

From: King, Ryan (ENERGY)
Sent: October 11, 2011 12:06 PM
To: Silva, Joseph (ENERGY); Jennings, Rick (ENERGY)
Cc: Perun, Halyna N. (ENERGY)
Subject: RE: Paper for options meeting

Joseph,
We are currently working on a deck with options for the meeting tomorrow

From: Silva, Joseph (ENERGY)
Sent: October 11, 2011 11:36 AM
To: Jennings, Rick (ENERGY)
Cc: Perun, Halyna N. (ENERGY); King, Ryan (ENERGY)
Subject: Paper for options meeting
Importance: High

Hi Rick,

The Deputy is hoping to have paper (existing deck with info and options?) that he and folks can bring to the options meeting being hosted by SoC tomorrow. Can you advise please...

Thanks very much
Joseph

Joseph Silva
Executive Assistant (A) to the Deputy Minister of Energy
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Tel: 416-325-2371 , Email: Joseph.Silva@ontario.ca

145

14

15

16

17

Perun, Halyna N. (ENERGY)

From: Jennings, Rick (ENERGY)
Sent: October 11, 2011 12:09 PM
To: Perun, Halyna N. (ENERGY); Jenkins, Allan (ENERGY); King, Ryan (ENERGY); McKeever, Garry (ENERGY)
Cc: Calwell, Carolyn (ENERGY); Rehob, James (ENERGY)
Subject: RE: mississauga gas plant

I have been trying to touch base with JoAnne Butler at the OPA on this. I suspect that the OPA staff including Mike are working on options. I will let you know when I hear back from them.

From: Perun, Halyna N. (ENERGY)
Sent: October 11, 2011 11:09 AM
To: Jennings, Rick (ENERGY); Jenkins, Allan (ENERGY); King, Ryan (ENERGY); McKeever, Garry (ENERGY)
Cc: Calwell, Carolyn (ENERGY); Rehob, James (ENERGY)
Subject: mississauga gas plant

Hi - I have not been successful in reaching Mike Lyle this morning – We need to review the contract in place re Mississauga Gas Plant as soon as possible – do any of you have it? Please let us know and we'll come by to pick up a copy thank you

Halyna

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Perun, Halyna N. (ENERGY)

From: Perun, Halyna N. (ENERGY)
Sent: October 11, 2011 12:15 PM
To: Rehob, James (ENERGY)
Cc: Calwell, Carolyn (ENERGY)
Subject: FW:
Attachments: Gas Plant Considerations 2.ppt

Hi James – Please work on adding to this version. We are at a handicap as we don't have the contract as yet – though I guess we can make certain assumptions based on the TCE contract.

Please provide your additions to Carolyn for her review

Thank you

Halyna

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From: Perun, Halyna N. (ENERGY)
Sent: October 11, 2011 12:07 PM
To: Calwell, Carolyn (ENERGY); Rehob, James (ENERGY)
Subject: FW:

Halyna

Halyna N. Perun
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Ministries of Energy & Infrastructure
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Sent: October 11, 2011 12:05 PM
To: Perun, Halyna N. (ENERGY)
Cc: Jennings, Rick (ENERGY)
Subject: FW:

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Sent: October 11, 2011 12:05 PM
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See attached per our discussion



Ontario

MINISTRY OF ENERGY

Gas Plant Considerations

Date: October 11, 2011

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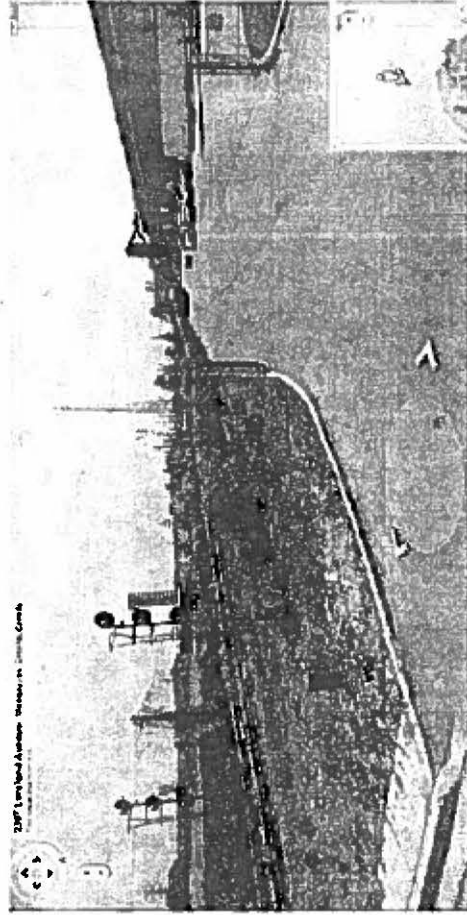
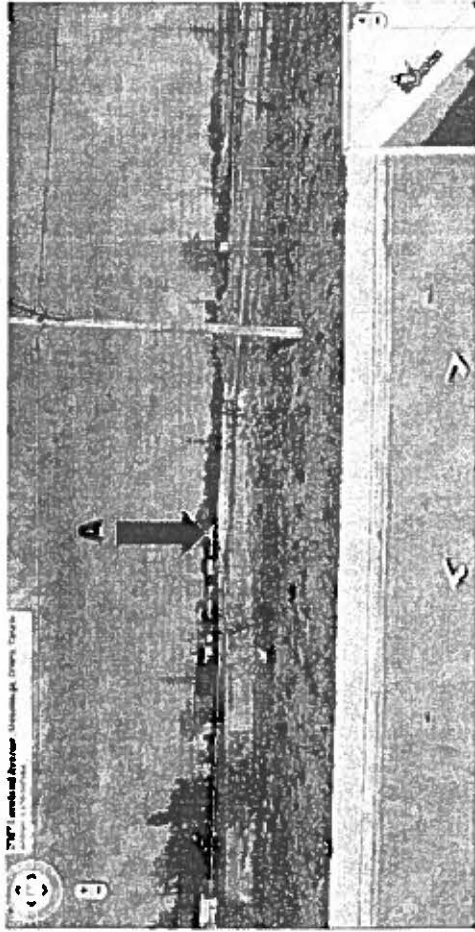
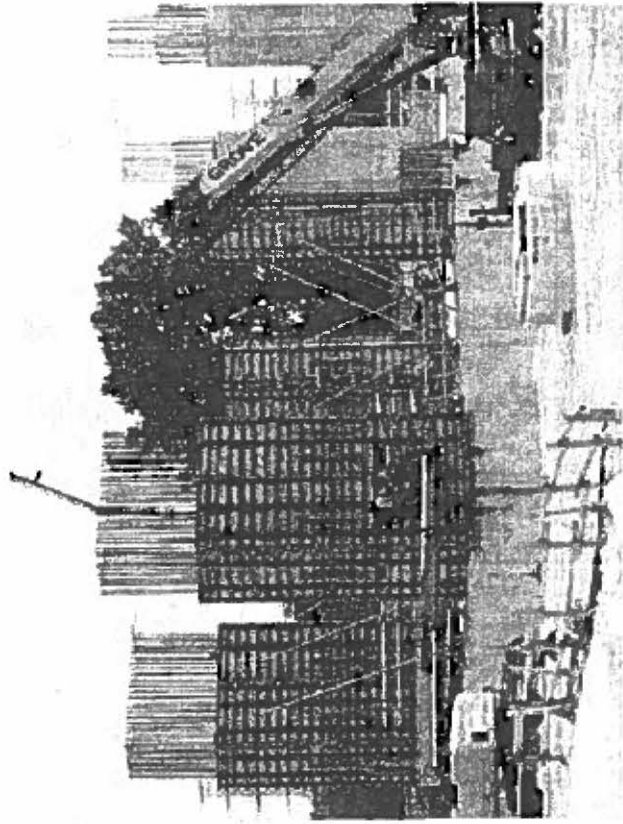


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- Proponent may be willing to settle for a large cash settlement representing foregone net revenue or may view its financial prospects as being better though the courts.

Perun, Halyna N. (ENERGY)

From: Slater, Craig (JUS)
Sent: October 11, 2011 12:30 PM
To: Perun, Halyna N. (ENERGY); Scarfone, Janet (JUS); Lipman, Jay (ENE)
Cc: Calwell, Carolyn (ENERGY)
Subject: RE:

I am not sure that there is much more that we can add to this. The decision was made in the spring that Infrastructure Ontario would lead the negotiations that would explore possible alternative sites for TCE. TCE took the position that this was without prejudice to its ability to seek damages in arbitration and that it was agreeable to arbitrating any damages claim. We are not aware of the progress of those discussions, other than we are told that IO has now raised the issue of retaining counsel for the arbitration phase.

From: Perun, Halyna N. (ENERGY)
Sent: October 11, 2011 12:25 PM
To: Slater, Craig (JUS); Scarfone, Janet (JUS); Lipman, Jay (ENE)
Cc: Calwell, Carolyn (ENERGY)
Subject:

Hi - This is the Energy client's proposed draft deck so far.

FYI - we have not been successful in snagging a copy of the contract as yet - no response from the Ontario Power Authority so far to our request.

Janet - could you please send us a blurb about the possible legislative solution we discussed this morning?

Craig - do you want us to take a stab at articulating what has happened in TCE - or is there something you have ready for us?

Jay - please do not share with your client as yet - the request was that we (legal) add to it before it goes to your client

Halyna

Halyna N. Perun
A/Director
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Ministries of Energy & Infrastructure
777 Bay Street, 4th Floor, Suite 425
Toronto, ON M5G 2E5
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From: King, Ryan (ENERGY)
Sent: October 11, 2011 12:05 PM
To: Perun, Halyna N. (ENERGY)
Cc: Jennings, Rick (ENERGY)
Subject: FW:

Halyna,
This is a draft deck we're working on for the meeting tomorrow.

From: Jenkins, Allan (ENERGY)
Sent: October 11, 2011 12:05 PM
To: Jennings, Rick (ENERGY); McKeever, Garry (ENERGY)
Cc: King, Ryan (ENERGY)
Subject: RE:

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From: Jennings, Rick (ENERGY)
Sent: October 11, 2011 10:31 AM
To: Jenkins, Allan (ENERGY); McKeever, Garry (ENERGY)
Cc: King, Ryan (ENERGY)
Subject:

See attached per our discussion

Perun, Halyna N. (ENERGY)

From: Michael Lyle [Michael.Lyle@powerauthority.on.ca]
Sent: October 11, 2011 12:44 PM
To: Perun, Halyna N. (ENERGY)
Subject: RE: Mississauga

Ok. Just left you a message. I am in my office until 1.

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario, M5H 1T1
Direct: 416-969-6035
Fax: 416.969.6383
Email: michael.lyle@powerauthority.on.ca

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From: Perun, Halyna N. (ENERGY) [mailto:Halyna.Perun2@ontario.ca]
Sent: October 11, 2011 12:43 PM
To: Michael Lyle
Subject: RE: Mississauga

I am on a conference call now – will call you shortly?

Halyna

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From: Perun, Halyna N. (ENERGY)
Sent: October 11, 2011 12:03 PM
To: 'Michael Lyle'
Subject: RE: Missisauga

Privileged and Confidential

I should tell you that I also left a message for Susan Kennedy (that was before I heard your two vms - as I thought you hadn't responded) asking her for the contract. At this point I need to know if you would be prepared to provide the contract to me -- if not, then I need to let my Deputy know this as he had asked me to follow up with you to obtain it. Thank you

Halyna

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From: Perun, Halyna N. (ENERGY)
Sent: October 11, 2011 11:58 AM
To: 'Michael Lyle'
Subject: RE: Missisauga

Hi -- I missed your replies -- I do need to speak with you -- are you around now?

Halyna

Halyna N. Perun
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From: Perun, Halyna N. (ENERGY)
Sent: October 11, 2011 9:34 AM
To: 'Michael Lyle'
Subject: Mississauga

Privileged and Confidential

Hi Mike – Do you have the contract for me please? Also – I understand that Rick reviewed the issues with you and is putting together a deck (not sure if it's a joint deck – with the OPA) – would like to touch base with you about all this this morning sooner than later - thanks

Halyna

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From: Perun, Halyna N. (ENERGY)
Sent: October 7, 2011 3:28 PM
To: Michael Lyle
Subject: Please call

Hi Mike – I hope to talk to you before the weekend – Please call me when you can - Thank you

Halyna

Halyna N. Perun
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Perun, Halyna N. (ENERGY)

From: Jennings, Rick (ENERGY)
Sent: October 11, 2011 1:18 PM
To: Perun, Halyna N. (ENERGY)
Subject: FW:
Attachments: Gas Plant Considerations 2.ppt

Halyna, attached is the draft which I believe Ryan has already sent to you. This is principally a background deck.

As noted I have been trying to touch base with OPA staff, I will be seeing JoAnne at a meeting at 2 p.m.

Re options they are either Regulatory which Environment can speak to – I will also contact the Approvals ADM but per my most recent conversation with him a month ago believe that they are not advocating that route.

Re contractual options – the OPA could cancel the contract, they and their Board of Directors would likely insist on a Ministerial Direction to do so and perhaps an agreement from the Government to pick up some of the legal cost.

The OPA can approach the developer about negotiating a change to the contract including a revision to a new location. Again the OPA may require Ministerial Direction and/ or Government paying some or all of the costs.

From: King, Ryan (ENERGY)
Sent: October 11, 2011 12:05 PM
To: Perun, Halyna N. (ENERGY)
Cc: Jennings, Rick (ENERGY)
Subject: FW:

Halyna,
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Gas Plant Considerations

Date: October 11, 2011

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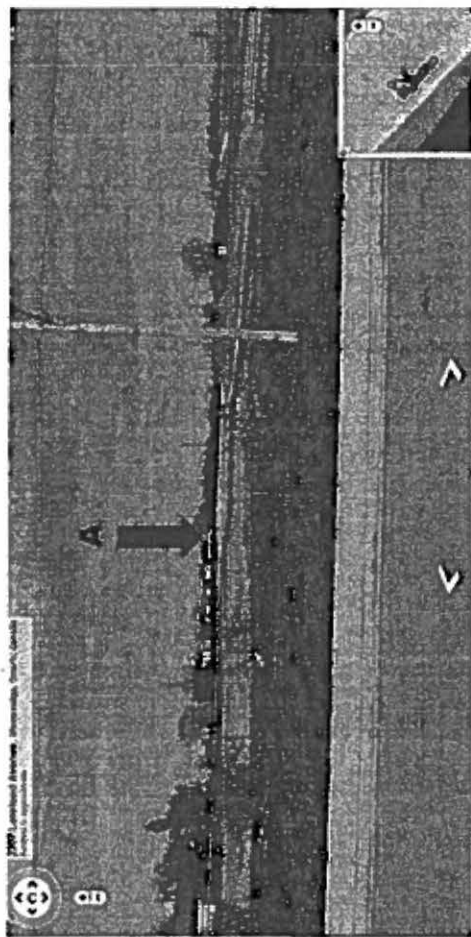
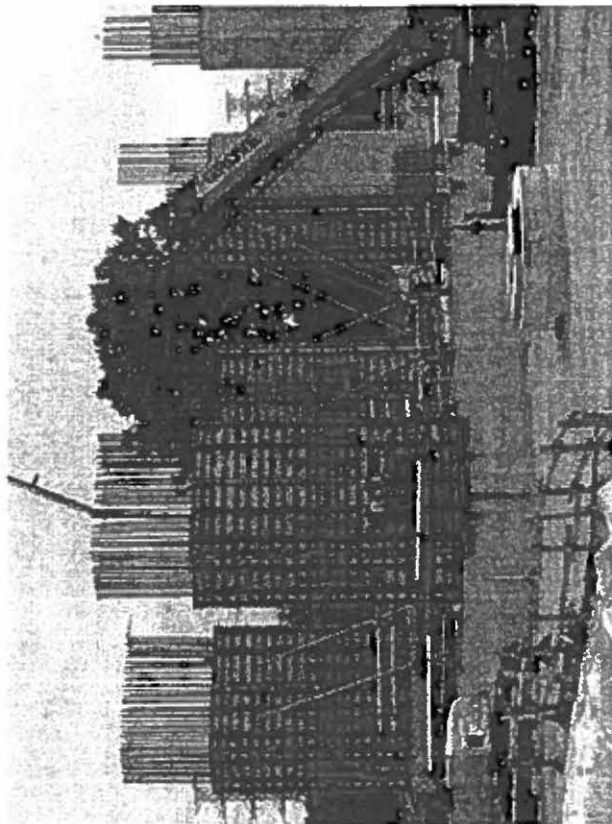


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- On September 28, the media carried pictures of the plant with construction well underway.
- On October 6, media reported Liberal insiders as saying that Eastern Power was warned back in May that any work they did was at their own risk.

Issues

- Construction continues at the Greenfield South site.
- The project has all applicable approvals, a regulatory mechanism for stopping construction could be challenged in the absence of a breach of approval conditions.
- Legal interaction with Eastern Power is through the Ontario Power Authority which holds and administers the contract.
- Statements have been made by local politicians that the plant would not be relocated to a site in Mississauga or Toronto.
- Alternative site options and alternative ways to supply Mississauga have not been identified. Alternative sites would require new provincial and municipal approvals processes to be undertaken.

Options For Stopping the Plant

- Regulatory – would have to overrule approvals already received
- Contractual – unilateral cancellation would lead to legal action, Government vulnerable to damages
- Negotiations – in return for ceasing construction, coverage of expenses to date and a new contract for a new site.

Next Steps

- OPA be could asked to approach Eastern Power about negotiating settlement, could include covering costs to date, contract for a new site, and covering foregone revenue.
- Could require a Ministerial direction to the OPA to renegotiate the contract or cancel the contract. The Government could agree to cover some or all of the settlement costs.
- Cambridge is a potential alternate site:
 - The project would have to be reconfigured (450 MW peaking plant versus 280 MW combined cycle plant);
 - the developer would likely ask the OPA to take approval risk; and,
 - TransCanada has been in discussions about this site although nothing has been agreed to.
 - Does not directly address supply needs in Mississauga and Toronto
- Proponent may be willing to settle for a large cash settlement representing foregone net revenue or may view its financial prospects as being better though the courts.



Ontario

MINISTRY OF **ENERGY**

Gas Plant Considerations

Date: October 11, 2011

Key Facts About the Greenfield South Plant

- Successful applicant in Ministry of Energy run RFP, contract signed with the OPA in April 2005.
- Eastern Power, the project developer, has received all required provincial approvals, including Environmental Assessment and Certificates of Approval;
- Eastern Power has received all required municipal approvals, including building site approval from the City of Mississauga issued in May 2011;
- Eastern Power has secured financing (confirmed by the OPA).

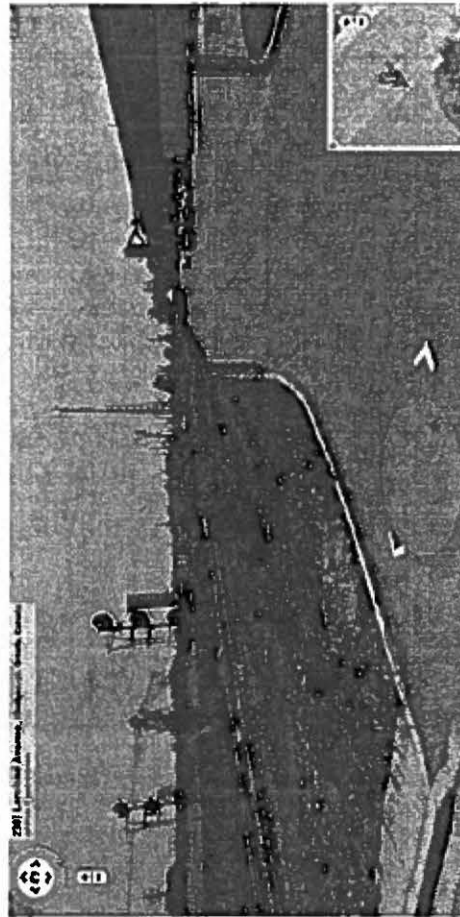
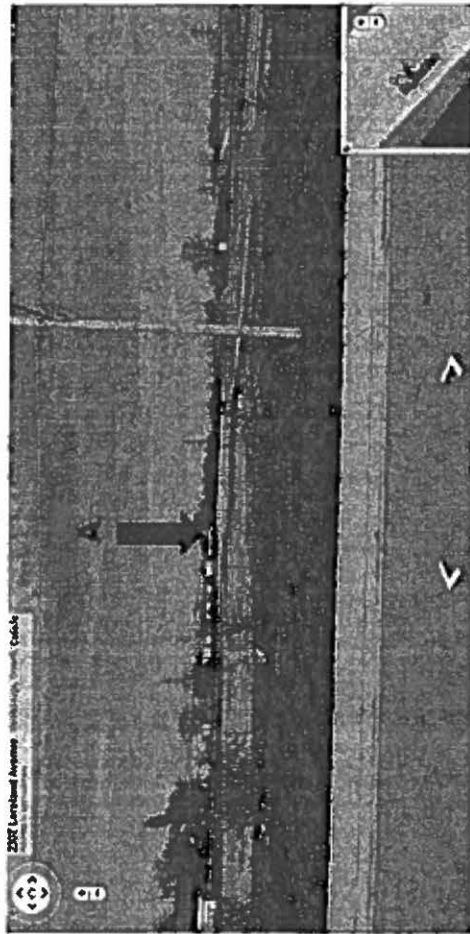
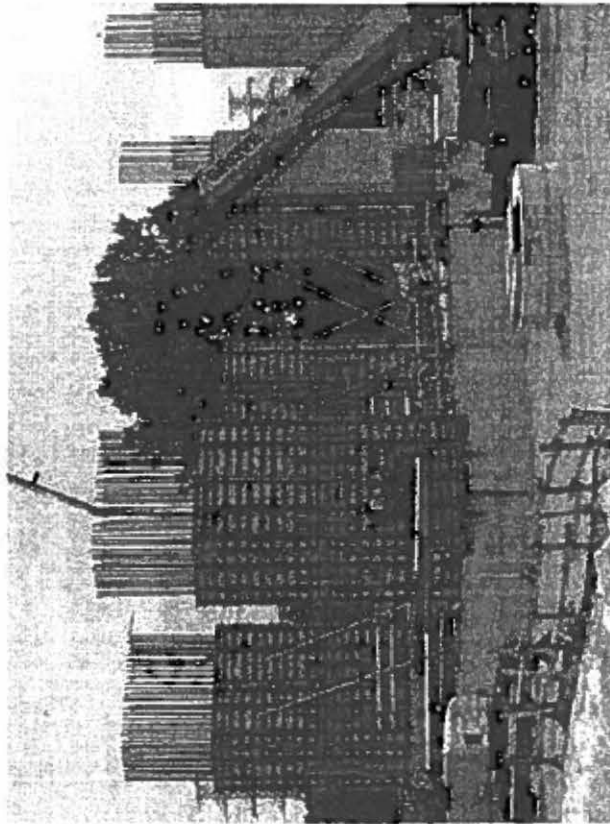


Legend:

A – Proposed Greenfield Site
B – Closest House
C – Closest Subdivision (North)
D – Closest Subdivision (South)
E – Trillium Heath Centre
F – Sherway Gardens Mall

Distance:

A to B: 220 Meters
A to C: 270 Meters
A to D: 500 Meters
A to E: 740 Meters
A to F: 910 Meters



Recent Events

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 - Does not directly address supply needs in Mississauga and Toronto
- Proponent may be willing to settle for a large cash settlement representing foregone net revenue or may view its financial prospects as being better though the courts.

Perun, Halyna N. (ENERGY)

From: Jennings, Rick (ENERGY)
Sent: October 11, 2011 1:32 PM
To: Perun, Halyna N. (ENERGY)
Cc: Calwell, Carolyn (ENERGY); Rehob, James (ENERGY)
Subject: RE:

Thanks yes, I understand that that is always legally an option. The pros and cons would have to be carefully considered.

From: Perun, Halyna N. (ENERGY)
Sent: October 11, 2011 1:25 PM
To: Jennings, Rick (ENERGY)
Cc: Calwell, Carolyn (ENERGY); Rehob, James (ENERGY)
Subject: RE:

Privileged and Confidential

Hi Rick – Thanks for sending – We'll be adding to this version then. For example, the SOC was particularly interested in a legislative option. Legislation could in fact cancel a contract, provide for no compensation, and prevent any party to the contract from suing the Crown or the OPA, should that be desired. The language in the legislation would need to be very explicit -

Halyna

Halyna N. Perun
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From: Jennings, Rick (ENERGY)
Sent: October 11, 2011 1:18 PM
To: Perun, Halyna N. (ENERGY)
Subject: FW:

Halyna, attached is the draft which I believe Ryan has already sent to you. This is principally a background deck.

As noted I have been trying to touch base with OPA staff, I will be seeing JoAnne at a meeting at 2 p.m.

Re options they are either Regulatory which Environment can speak to – I will also contact the Approvals ADM but per my most recent conversation with him a month ago believe that they are not advocating that route.

Re contractual options – the OPA could cancel the contract, they and their Board of Directors would likely insist on a Ministerial Direction to do so and perhaps an agreement from the Government to pick up some of the legal cost.

The OPA can approach the developer about negotiating a change to the contract including a revision to a new location. . .
Again the OPA may require Ministerial Direction and/ or Government paying some or all of the costs.

From: King, Ryan (ENERGY)
Sent: October 11, 2011 12:05 PM
To: Perun, Halyna N. (ENERGY)
Cc: Jennings, Rick (ENERGY)
Subject: FW:

Halyna,
This is a draft deck we're working on for the meeting tomorrow.

From: Jenkins, Allan (ENERGY)
Sent: October 11, 2011 12:05 PM
To: Jennings, Rick (ENERGY); McKeever, Garry (ENERGY)
Cc: King, Ryan (ENERGY)
Subject: RE:

Formatted the presentation and made some additions of text and images.

From: Jennings, Rick (ENERGY)
Sent: October 11, 2011 10:31 AM
To: Jenkins, Allan (ENERGY); McKeever, Garry (ENERGY)
Cc: King, Ryan (ENERGY)
Subject:

See attached per our discussion

Perun, Halyna N. (ENERGY)

From: Michael Lyle [Michael.Lyle@powerauthority.on.ca]
Sent: October 11, 2011 1:49 PM
To: Perun, Halyna N. (ENERGY)
Subject: RE: Missisauga
Attachments: Amended and Restated CES Contract with Greenfield South dated March 16 2009.pdf

See attached copy of the contract.

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario, M5H 1T1
Direct: 416-969-6035
Fax: 416.969.6383
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From: Perun, Halyna N. (ENERGY) [mailto:Halyna.Perun2@ontario.ca]
Sent: October 11, 2011 12:43 PM
To: Michael Lyle
Subject: RE: Missisauga

I am on a conference call now – will call you shortly?

Halyna

Halyna N. Perun
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From: Perun, Halyna N. (ENERGY)
Sent: October 11, 2011 12:03 PM
To: 'Michael Lyle'
Subject: RE: Mississauga

Privileged and Confidential

I should tell you that I also left a message for Susan Kennedy (that was before I heard your two vms - as I thought you hadn't responded) asking her for the contract. At this point I need to know if you would be prepared to provide the contract to me - if not, then I need to let my Deputy know this as he had asked me to follow up with you to obtain it. Thank you

Halyna

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From: Perun, Halyna N. (ENERGY)
Sent: October 11, 2011 11:58 AM
To: 'Michael Lyle'
Subject: RE: Mississauga

Hi - I missed your replies - I do need to speak with you - are you around now?

Halyna

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From: Perun, Halyna N. (ENERGY)
Sent: October 11, 2011 9:34 AM
To: 'Michael Lyle'
Subject: Mississauga

Privileged and Confidential

Hi Mike – Do you have the contract for me please? Also – I understand that Rick reviewed the issues with you and is putting together a deck (not sure if it's a joint deck – with the OPA) – would like to touch base with you about all this this morning sooner than later - thanks

Halyna

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From: Perun, Halyna N. (ENERGY)
Sent: October 7, 2011 3:28 PM
To: Michael Lyle
Subject: Please call

Hi Mike – I hope to talk to you before the weekend – Please call me when you can - Thank you

Halyna

Halyna N. Perun
A/Director
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Ministries of Energy & Infrastructure
777 Bay Street, 4th Floor, Suite 425
Toronto, ON M5G 2E5
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Reference: Amended and Restated CES Contract
Project: Greenfield South

PRIVILEGED AND CONFIDENTIAL

AMENDED AND RESTATED CLEAN ENERGY SUPPLY (ARCES) CONTRACT

Between

GREENFIELD SOUTH POWER CORPORATION

- and -

ONTARIO POWER AUTHORITY

DATED as of the 12th day of April, 2005

and amended and restated as of the 16th day of March, 2009

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EXHIBITS

Exhibit A	Summary of Contract Facility
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Exhibit C	Form of Irrevocable Standby Letter of Credit
Exhibit D	Form of Guarantee
Exhibit E	Determination of Availability
Exhibit F	Milestone Events and Milestone Dates for the Contract Facility
Exhibit G	Dispatch Options
Exhibit H	Form of Directed Dispatch Order

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Exhibit L	Form of Buyer Guarantee to Support Directed Dispatch (LT)
Exhibit M	Section 16.7 Test Conditions
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Exhibit O	Form of Quarterly Progress Reports
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Exhibit Q	Form of Long Term Operating Plan
Exhibit R	Form of Annual Operating Plan
Exhibit S	Form of Certificate of Liability Insurance
Exhibit T	Form of Certificate of Property Insurance
Exhibit U	Form of Supplier's Certificate re Commercial Operation
Exhibit V	Form of Company Representative Notice
Exhibit W	Form of Confidentiality Undertaking
Exhibit X	Form of Certificate of Independent Engineer

AMENDED AND RESTATED CLEAN ENERGY SUPPLY (ARCES) CONTRACT

This Amended and Restated Clean Energy Supply Contract (the "ARCES Contract") is dated as of the 12th day of April, 2005 and amended and restated as of the 16th day of March, 2009 (the "Amendment and Restatement Date") between Greenfield South Power Corporation, (formerly Greenfield 407 Power Corporation) a corporation incorporated under the laws of Ontario (the "Supplier"), and the Ontario Power Authority (the "Buyer"). The Supplier and the Buyer are each referred to herein as a "Party" and collectively as the "Parties".

WHEREAS the Supplier's proposal, among others, was selected by the Government of Ontario following a request for proposals dated September 13, 2004, as amended, to solicit the long-term supply of approximately 2,500 MW of new clean generating capacity and demand-side projects in Ontario (the "2,500 MW RFP");

AND WHEREAS the Supplier and the Buyer executed a Clean Energy Supply Contract dated as of the 12th day of April, 2005 (the "Original CES Contract") in order to formalize the long-term contractual arrangements for the Supplier to develop and operate the Contract Facility, and to supply Electricity and Related Products from the Contract Facility, directly or indirectly, to the IESO-Administered Markets or to an End-User (as defined therein);

AND WHEREAS, due to events of Force Majeure, the development of the Contract Facility has suffered extensive delays;

AND WHEREAS the Parties wish to amend and restate the Original CES Contract and enter into this ARCES Contract in order to provide for amended contractual arrangements for the Supplier to develop and operate the Contract Facility;

NOW THEREFORE, in consideration of the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions

In addition to the terms defined elsewhere herein, the following capitalized terms shall have the meanings stated below when used in this Agreement:

"2,500 MW RFP" has the meaning ascribed to it in the Recitals.

"Adjusted Contract Capacity" or "ACC" has the meaning ascribed to it in Exhibit J.

"Affiliate" means any Person that: (i) Controls a Party; (ii) is Controlled by a Party; or (iii) is Controlled by the same Person that Controls a Party.

"Agreement" means this ARCES Contract as it may be amended, restated or replaced from time to time.

"Amendment and Restatement Date" has the meaning ascribed to it in the Recitals.

"Ancillary Services" has the meaning ascribed to it in the IESO Market Rules.

"Annual Average Contract Capacity" means the simple average, expressed in MW, of the Summer Contract Capacity and the Winter Contract Capacity.

"Annual Operating Plan" has the meaning ascribed to it in Section 15.3(b)(ii).

"Arbitration Panel" has the meaning ascribed to it in Exhibit K.

"ARCES Contract" has the meaning ascribed to it in the Recitals hereto.

"Arm's Length" means, with respect to two or more Persons, that such Persons are not related to each other within the meaning of subsections 251(2), (3), (3.1), (3.2), (4), (5) and (6) of the *Income Tax Act* (Canada) or that such Persons, as a matter of fact, deal with each other at a particular time at arm's length.

"Assignee" has the meaning ascribed to it in Section 16.5(c).

"Assignment Period" has the meaning ascribed to it in Section 16.5(e).

"Assumed Deemed Dispatch Payment" means an amount equivalent to the Monthly Payment that would have been payable by the Buyer to the Supplier or payable by the Supplier to the Buyer in a given Settlement Month, as the case may be, if the Contract Capacity of the Contract Facility had been subject to the Deemed Dispatch Option for all hours in the entire Settlement Month.

"Automatic System Voltage Support" means the capability of the Contract Facility to, both automatically and under the direction of the IESO, respond to changes in system voltage in such a manner as to control these changes within an acceptable range and which requires the automatic or manual adjustment in production or absorption of reactive power by the Contract Facility. Automatic System Voltage Support shall be deemed to be provided if the requirements set out in Section 2.8(d) have been met.

"Availability" or "AV" has the meaning ascribed to it in Exhibit E.

"Average Test Capacity" has the meaning ascribed to it in Section 15.6(d).

"Bank Act" means the *Bank Act* (Canada), as amended from time to time.

"BTU" means British thermal unit (HHV).

"Business Day" means a day, other than a Saturday or Sunday or statutory holiday in the Province of Ontario or any other day on which banking institutions in Toronto, Ontario are not open for the transaction of business.

"Buyer" means the Ontario Power Authority and its successors and permitted assigns.

"Buyer Event of Default" has the meaning ascribed to it in Section 10.3.

"Buyer Security" has the meaning ascribed to it in Exhibit G.

"Buyer Statement" has the meaning ascribed to it in Section 12.2(g).

"Buyer's Website" means the website of the Buyer located at URL www.powerauthority.on.ca/gp or such other URL as the Buyer may notify to the Supplier from time to time.

"Cancellation Notice" has the meaning ascribed to it in Exhibit G.

"Cancelled Directed Dispatch Order", with respect to the Directed Dispatch Option, has the meaning ascribed to it in Exhibit G.

"Capacity Check Test" has the meaning ascribed to it in Section 15.6(a).

"Capacity Confirmation" has the meaning ascribed to it in Section 15.6(c).

"Capacity Products" means any products related to the rated, continuous load-carrying capability of a generating facility to generate and deliver Electricity at a given time.

"Capacity Reduction Factor" or **"CRF"** shall be an amount equivalent to 1.0 until, and to the extent, determined otherwise pursuant to Sections 15.6(e) and (f).

"CES Contract" means a clean energy supply contract entered into by the Ontario Power Authority in accordance with the directive issued by the Ontario Minister of Energy to the Ontario Power Authority dated March 24, 2005.

"Claim" means a claim or cause of action in contract, in tort, under any Laws and Regulations or otherwise.

"Clean Energy Supply Contract" means a CES Contract.

"Commercial Operation" has the meaning ascribed to it in Section 2.6(a).

"Commercial Operation Date" means the date on which Commercial Operation is first attained.

"Commercially Reasonable Efforts" means efforts which are designed to enable a Party, directly or indirectly, to satisfy a condition to, or otherwise assist in the consummation of, the transactions contemplated by this Agreement and which do not require the performing Party to expend any funds or assume liabilities, other than expenditures and liabilities which are reasonable in nature and amount in the context of the transactions contemplated by this Agreement.

"Company Representative" has the meaning ascribed to it in Section 15.1.

"Completion and Performance Security" has the meaning ascribed to it in Section 6.1(a).

"Confidential Information" means all information that has been identified as confidential and which is furnished or disclosed by the Disclosing Party and its Representatives to the Receiving Party and its Representatives in connection with this Agreement, whether before or after its execution, including all new information derived at any time from any such confidential information, but excluding: (i) publicly-available information, unless made public by the Receiving Party or its Representatives in a manner not permitted by this Agreement; (ii) information already known to the Receiving Party prior to being furnished by the Disclosing Party; and (iii) information disclosed to the Receiving Party from a source other than the Disclosing Party or its Representatives, if such source is not subject to any agreement with the Disclosing Party prohibiting such disclosure to the Receiving Party; and (iv) information that is independently developed by the Receiving Party.

"Confidentiality Undertaking" means a confidentiality undertaking in the form of Exhibit W.

"Connection Agreement" means the agreement entered into by a Transmitter with the Supplier with respect to the connection of the Contract Facility to a Transmission System in accordance with the Transmission System Code and governing the terms and conditions of such connection.

"Connection Cost Recovery Agreement" means the agreement entered into by a Transmitter with the Supplier with respect to the recovery of costs with respect to the connection of the Contract Facility to a Transmission System in accordance with the Transmission System Code.

"Connection Costs" mean those costs which are payable by the Supplier related to the reliable connection of the Contract Facility to a Transmission System, a Local Distribution System, or an End-User Load, as applicable, as more particularly specified pursuant to the System Impact Assessment, Customer Impact Assessment, and Connection Impact Assessment, as applicable. For greater certainty, Connection Costs shall not include System Upgrade Costs.

"Connection Point" means the electrical point or points of connection, as defined in the IESO Market Rules, between the Contract Facility and the IESO-Controlled Grid and as specified in Exhibit A. For certainty, the Connection Point is defined by reference to electrical connection points.

"Contingent Support Payment" or "CSP" means the positive amount, if any, by which the Total Monthly Fixed Capacity Payment exceeds the Imputed Net Revenue for a Settlement Month, expressed in Dollars and calculated in accordance with Exhibit J.

"Contract Capacity" means, as applicable, the Summer Contract Capacity or Winter Contract Capacity, expressed in MW.

"Contract Facility" means the extent to which the Facility is used to produce the Contract Capacity and Related Products.

"Contract Facility Amendment" has the meaning ascribed to it in Section 2.1(c).

"Contract Heat Rate" or "CHR" means, as applicable, the Summer Contract Heat Rate or the Winter Contract Heat Rate, expressed in MMBTU/MWh using higher heating value.

"Contract Year" means a twelve (12) month period during the Term which begins on the Term Commencement Date or an anniversary date thereof.

"Control" means, with respect to any Person at any time, (i) holding, whether directly or indirectly, as owner or other beneficiary, other than solely as the beneficiary of an unrealized security interest, securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint fifty percent (50%) or more of the individuals who are responsible for the supervision or management of that Person, or (ii) the exercise of *de facto* control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interests, by contract or trust or otherwise.

"Counterparty" has the meaning ascribed to it in Exhibit L.

"CPI" or "Consumer Price Index" means the consumer price index for "All Items" published or established by Statistics Canada (or its successors) for any relevant calendar month in relation to the Province of Ontario.

"CPI_B" has the meaning ascribed to it in Exhibit J.

"Credit Rating" means, (i) with respect to the Supplier (or the Guarantor, if a Guarantee is in place) (A) its long-term senior unsecured debt rating (not supported by third party credit enhancement) or (B) the lower of its issuer or corporate credit rating, as applicable, in either case being the lower provided by S&P, Moody's or DBRS or any other established and reputable debt rating agency, agreed to by the Parties from time to time, each acting reasonably, and (ii) with respect to any other Person, its long-term senior unsecured debt rating or its deposit rating as provided by Moody's, S&P, DBRS, or, if such Person is a financial institution, Fitch IBCA, or any other established and reputable rating agency, as agreed to by the Parties, acting reasonably, from time to time.

"Creditworthiness Value" has the meaning ascribed to it in Section 6.4(b).

"CTG" means a combustion turbine-generator.

"Customer Impact Assessment" means a study conducted by a Transmitter to assess the impact of the connection of the Contract Facility on the transmission customers in the area.

"Day-Ahead Energy Forward Market" means a forward market, established under the IESO Market Rules or otherwise, for Electricity or for Electricity and Related Products for each hour of a given day, that clears the day before based upon submitted bids to buy and offers to sell, and shall include, for purposes of this Agreement, such other mechanisms or amendments to the IESO Market Rules to enhance pre-dispatch scheduling and unit commitment of generators on a day-ahead basis.

"DBRS" means Dominion Bond Rating Service Limited or its successors.

"DDO" has the meaning ascribed to it in Exhibit L.

"Debtor" has the meaning ascribed to it in Exhibit L.

"Deemed Dispatch Hour" has the meaning ascribed to it in Exhibit J.

"Deemed Dispatch Interval" or **"DDI"** has the meaning ascribed to it in Exhibit J.

"Deemed Dispatch Option" has the meaning ascribed to it in Exhibit G.

"Deemed Shut-Down Hour" has the meaning ascribed to it in Exhibit J.

"Deemed Start-Up" or **"DeemSU"** has the meaning ascribed to it in Exhibit J.

"Deemed Start-Up Hour" has the meaning ascribed to it in Exhibit J.

"Delivery Point" means the reference point determined in accordance with the IESO Market Rules and used for settlement purposes in the real-time markets.

"Directed Dispatch Hour" has the meaning ascribed to it in Exhibit J.

"Directed Dispatch Interval" has the meaning ascribed to it in Exhibit J.

"Directed Dispatch Option" has the meaning ascribed to it in Exhibit G.

"Directed Dispatch Order" means a Directed Dispatch Order (DA) or Directed Dispatch Order (LT), as applicable.

"Directed Dispatch Order (DA)" means a daily directed dispatch order issued by the Buyer in the form attached as Exhibit H.

"Directed Dispatch Order (LT)" means a long term directed dispatch order issued by the Buyer in the form attached as Exhibit H.

"Directed Production Interval" has the meaning ascribed thereto in Exhibit J.

"Directed Shut-Down Hour" is the last hour of a Directed Dispatch Interval as set out in a Directed Dispatch Order.

"Directed Start-Up" or **"DirSU"** has the meaning ascribed to it in Exhibit J.

"Directed Start-Up Hour" is the first hour of a Directed Dispatch Interval as set out in a Directed Dispatch Order.

"Disclosing Party", with respect to Confidential Information, is the Party providing or disclosing such Confidential Information and may be the Buyer or the Supplier, as applicable.

"Discriminatory Action" has the meaning ascribed to it in Section 13.1.

"Discriminatory Action Compensation" has the meaning ascribed to it in Section 13.2.

"Discriminatory Action Compensation Amount" has the meaning ascribed to it in Section 13.3(e)(i).

"Discriminatory Action Compensation Notice" has the meaning ascribed to it in Section 13.3(e)(i).

"Dispatch Rights" has the meaning ascribed to it in Section 3.1.

"Dispatcher" has the meaning ascribed to it in Section 3.3.

"Dollars", or "\$" means Canadian dollars and cents.

"Electricity" means electric energy.

"Electricity Act" means the *Electricity Act, 1998* (Ontario), as amended or replaced from time to time.

"Emission Reduction Credits" means the credits associated with the amount of emissions to the air avoided by reducing the emissions below the lower of actual historical emissions or regulatory limits, including "emission reduction credits" as defined in O. Reg. 397/01 made under the *Environmental Protection Act* (Ontario), as amended from time to time, or such other regulation as may be promulgated under the *Environmental Protection Act* (Ontario).

"End-User" means a Person who owns or operates an End-User Load.

"End-User Load" means a load facility which utilizes electricity supplied through a direct connection to the Transmission System, the Local Distribution System or the Facility.

"Environmental and Site Plan Milestone Approvals" means all environmental and site plan approvals and permits necessary or appropriate for construction of the Facility to commence (including site preparation and installation or transportation of equipment to the site).

"Environmental Attributes" means environmental attributes associated with a generating facility having decreased environmental impacts, and includes:

- (a) rights to any fungible or non-fungible attributes, whether arising from the generating facility itself, from the interaction of the generating facility with the IESO-Controlled Grid or because of applicable legislation or voluntary programs established by Governmental Authorities;
- (b) any and all rights relating to the nature of the energy source as may be defined and awarded through applicable legislation or voluntary programs. Specific environmental attributes include ownership rights to Emission Reduction Credits or entitlements resulting from interaction of the generating facility with the IESO-Controlled Grid, or as specified by applicable legislation or voluntary programs, and the right to qualify and register these with competent authorities; and

- (c) all revenues, entitlements, benefits, and other proceeds arising from or related to the foregoing.

"EPC Contract" means the engineering, procurement and construction contract for the Contract Facility entered into by the Supplier and the EPC Contractor.

"EPC Contractor" means the contractor engaged by the Supplier to perform the engineering, procurement and construction of the Contract Facility.

"EPT" means Eastern Prevailing Time.

"Equipment" has the meaning ascribed thereto in Section 2.10(b)(ii).

"EST" means the Eastern Standard Time applicable in the IESO-Administered Markets, as set forth in the IESO Market Rules.

"Event of Default" means a Supplier Event of Default or a Buyer Event of Default.

"Expiry" has the meaning ascribed to it in Exhibit L.

"Exposure Amount" has the meaning ascribed to it in Exhibit G.

"Exposure Threshold Amount" has the meaning ascribed to it in Exhibit G.

"Facility" means the generation facility to be developed, constructed, owned, and operated by the Supplier, as described in Exhibit A hereto.

"Final Capacity Check Test" has the meaning ascribed to it in Section 15.6(f).

"Financial Closing" means the first date on which drawdown is permissible under the credit facility for the financing of the Contract Facility or, in the event that financing of the Contract Facility does not include a credit facility, the first date on which funding is otherwise available and dedicated for the financing of the Contract Facility.

"Financial Indicators" means the Tangible Net Worth and the Credit Rating.

"FIPPA" means the *Freedom of Information and Protection of Privacy Act* (Ontario), as amended or supplemented from time to time.

"FIPPA Records" has the meaning ascribed to it in Section 8.5.

"Fitch IBCA" means Fitch IBCA, Duff & Phelps, a division of Fitch Inc., or its successors.

"Force Majeure" has the meaning ascribed to it in Section 11.3.

"Force Majeure Available Capacity" has the meaning ascribed to it in Exhibit J.

"Force Majeure Capacity Reduction Factor" or "FMCRF" has the meaning ascribed to it in Exhibit J.

"Force Majeure Outage Capacity" or "FMOC" has the meaning ascribed to it in Exhibit J.

"Force Majeure Outage Hour" or "FMOH" has the meaning ascribed to it in Exhibit J.

"Further Capacity Check Test" has the meaning ascribed to it in Section 15.6(d).

"Future Contract Related Products" means all Related Products that relate to the Contract Capacity and that were not capable of being traded by the Supplier in the IESO-Administered Markets or other markets on or before the date of this Agreement, but shall not include steam and hot water produced by the Contract Facility.

"GAAP" means Canadian or U.S. generally accepted accounting principles approved or recommended from time to time by the Canadian Institute of Chartered Accountants or the Financial Accounting Standards Board, as applicable, or any successor institutes, applied on a consistent basis.

"Gas" means natural gas as supplied by pipeline.

"Gas Cancellation Amount" or "GCA_m" has the meaning ascribed to it in Exhibit J.

"Gas Cancellation Price" or "GCP_d" has the meaning ascribed to it in Exhibit J.

"Gas Cancellation Volume" or "GCV_d" has the meaning ascribed to it in Exhibit J.

"Gas Price" or "GP_d" means either Gas Price (DA) or Gas Price (LT), as applicable.

"Gas Price (DA)" or "GP(DA)_d" means the "day-ahead" price of natural gas applicable for day "d", determined in accordance with the Gas Price Index (DA), and converted from US dollars per MMBTU into Dollars per MMBTU as follows: the Gas Price (DA) applicable during each day "d", which is posted on the Gas Price Index (DA) on day "d-1" (which for purposes of the Gas Price Index (DA) shall be the last Business Day prior to day "d") will be converted from US dollars to Dollars utilizing the Bank of Canada noon spot exchange rate between US dollars and Dollars on day "d-1".

"Gas Price (LT)" or "GP(LT)_d" means the "long-term" price of natural gas applicable for day "d", in Dollars per MMBTU, determined in accordance with Exhibit G.

"Gas Price Index (DA)" means the Union Dawn Daily Spot Gas Price Index (day ahead) administered by NGx.

"Gas Price Redetermination Date" has the meaning ascribed to it in Section 1.10(c).

"Gas Provider" has the meaning ascribed to it in Exhibit G.

"Gas Sale Transaction Costs" or "GSTC" has the meaning ascribed to it in Exhibit J.

"Good Engineering and Operating Practices" means any of the practices, methods and activities adopted by a significant portion of the North American electric utility industry as good practices applicable to the design, building, and operation of generation facilities of similar type,

size and capacity or any of the practices, methods or activities which, in the exercise of skill, diligence, prudence, foresight and reasonable judgement by a prudent generator in light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and Laws and Regulations. Good Engineering and Operating Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather are intended to delineate acceptable practices, methods, or acts generally accepted in the North American electric utility industry. Without limiting the generality of the foregoing and in respect of the operation of the Contract Facility, Good Engineering and Operating Practices include making Commercially Reasonable Efforts to ensure that:

- (a) adequate materials, resources and supplies, including fuel, are available to meet the Contract Facility's needs under reasonable conditions and reasonably anticipated abnormal conditions;
- (b) sufficient operating personnel are available and are adequately experienced and trained to operate the Contract Facility properly, efficiently and taking into account manufacturers' guidelines and specifications and are capable of responding to abnormal conditions;
- (c) preventative, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation and taking into account manufacturers' recommendations and are performed by knowledgeable, trained and experienced personnel utilising proper equipment, tools and procedures; and
- (d) appropriate monitoring and testing is done to ensure equipment is functioning as designed and to provide assurance that equipment will function properly under both normal and abnormal conditions.

"Government of Canada" means Her Majesty the Queen in right of Canada.

"Government of Ontario" means Her Majesty the Queen in right of Ontario.

"Governmental Authority" means any federal, provincial, or municipal government, parliament or legislature, or any regulatory authority, agency, tribunal, commission, board or department of any such government, parliament or legislature, or any court or other law, regulation or rule-making entity, having jurisdiction in the relevant circumstances, including the IESO, the OEB, the Electrical Safety Authority, and any Person acting under the authority of any Governmental Authority, but excluding the Ontario Power Authority.

"GST" means the goods and services tax exigible pursuant to the *Excise Tax Act* (Canada), as amended from time to time.

"Guarantee" has the meaning ascribed to it in Section 6.4(a).

"Guaranteed Obligations" has the meaning ascribed to it in Exhibit D.

"Guarantor" has the meaning ascribed to it in Section 6.4(a).

"HHV" means higher heating value.

"HOEP" or "Hourly Ontario Energy Price" has the meaning provided to it in the IESO Market Rules, and expressed in Dollars per MWh.

"IBC Forms 4042 and 4047" means Insurance Bureau of Canada Forms 4042 and 4047, as each may be amended or replaced from time to time.

"IE Certificate" has the meaning ascribed to it in Section 2.6(a)(i).

"IESO" means the Independent Electricity System Operator established under Part II of the *Electricity Act*, or its successor.

"IESO-Administered Markets" has the meaning ascribed to it by the IESO Market Rules.

"IESO-Controlled Grid" has the meaning ascribed to it by the IESO Market Rules.

"IESO Market Rules" means the rules governing the IESO-Controlled Grid and establishing and governing the IESO-Administered Markets, together with all market manuals, policies, and guidelines issued by the IESO, all as amended or replaced from time to time.

"Imputed Gross Energy Market Revenue" or "IGEMR" is the total gross revenue deemed to be earned by the Supplier for the Contract Facility for a Settlement Month, as calculated in accordance with Exhibit J.

"Imputed Net Revenue" or "INR" means, for a Settlement Month, the Imputed Gross Energy Market Revenue less the Imputed Variable Energy Cost, as calculated in accordance with Exhibit J.

"Imputed Production" or "IP" means, for a specified period within the Term, the aggregate amount of Electricity, expressed in MWh, imputed to be produced by the Contract Facility in accordance with Exhibit J.

"Imputed Production Hour" or "IPH" is a Directed Dispatch Hour or Deemed Dispatch Hour, as applicable.

"Imputed Production Interval" or "IPI" is a Directed Dispatch Interval or Deemed Dispatch Interval, as applicable.

"Imputed Shut-Down Hour" is a Directed Shut-Down Hour or a Deemed Shut-Down Hour, as applicable.

"Imputed Start-Up" or "ISU" has the meaning ascribed to it in Exhibit J.

"Imputed Start-Up Hour" is a Directed Start-Up Hour or a Deemed Start-Up Hour, as applicable.

"Imputed Variable Energy Cost" or "IVEC" means the total Variable Energy Cost in relation to the Imputed Production as calculated in accordance with Exhibit J.

"including" means "including, without limitation".

"Indemnifiable Loss" has the meaning ascribed to it in Section 14.3.

"Indemnitees" has the meaning ascribed to it in Section 14.3.

"Independent Engineer" has the meaning ascribed to it in Section 2.6(c).

"Insolvency Legislation" means the *Bankruptcy and Insolvency Act* (Canada), the *Winding Up and Restructuring Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada) and the bankruptcy, insolvency, creditor protection or similar laws of any other jurisdiction (regardless of the jurisdiction of such application or competence of such law), as they may be amended from time to time.

"Interest Rate" means the annual rate of interest established by the Royal Bank of Canada or its successor, from time to time, as the interest rate it will charge for demand loans in Dollars to its commercial customers in Canada and which it designates as its **"prime rate"** based on a year of 365 or 366 days, as applicable. Any change in such prime rate shall be effective automatically on the date such change is announced by the Royal Bank of Canada.

"TPIH" has the meaning ascribed to it in Exhibit J.

"TTA" means the *Income Tax Act* (Canada), as amended from time to time.

"kV" means kilovolts.

"kW" means kilowatt.

"KWh" means kilowatt hour

"Laws and Regulations" means:

- (a) applicable Canadian federal, provincial or municipal laws, orders-in-council, by-laws, codes, rules, policies, regulations and statutes;
- (b) applicable orders, decisions, codes, judgments, injunctions, decrees, awards and writs of any court, tribunal, arbitrator, Governmental Authority or other Person having jurisdiction;
- (c) applicable rulings and conditions of any licence, permit, certificate, registration, authorization, consent and approval issued by a Governmental Authority;
- (d) any requirements under or prescribed by applicable common law; and
- (e) the IESO Market Rules, as well as any manuals or interpretation bulletins issued by the IESO from time to time that are binding on the Supplier.

"Letter of Credit" means one or more irrevocable and unconditional standby letters of credit issued by a financial institution and respect of which there is not a Negative Outlook or other Material Adverse Effect and listed in either Schedule I or II of the *Bank Act* (Canada) or such other financial institution and having a minimum Credit Rating of (i) A- with S&P, (ii) A3 with Moody's, (iii) A (low) with DBRS, or (iv) A- with Fitch IBCA, in substantially the form attached as Exhibit C or in a form acceptable to the Buyer, acting reasonably, and otherwise conforming to the provisions of Section 6.3.

"Locational Marginal Pricing" or "LMP" means the form of pricing of Electricity, as determined and modified by the IESO from time to time, to be considered and implemented by the IESO, if at all, based upon a non-uniform, real-time, price of Electricity at each point, node, zone or other price reference location on the IESO-Controlled Grid and having the effect that such real-time prices reflect the costs of transmission congestion.

"Long Term Operating Plan" has the meaning ascribed to it in Section 15.3(b)(i).

"Market Price" means the spot price per MWh for Electricity in the IESO-Administered Markets applicable to the class of generator to which the Supplier belongs in accordance with the IESO Market Rules.

"Market Settlement Charges" means all market settlement amounts and charges described in Chapter 9 of the IESO Market Rules.

"Material Adverse Effect" means any change (or changes taken together) in, or effect on, the affected Person that materially and adversely affects the ability of such Person to perform its obligations hereunder, where such Person is a Party, or whether or not such Person is a Party, any change that materially and adversely affects the business or financial prospects of such Person, including a Negative Outlook with respect to such Person, or the ability of such Person to carry out obligations contemplated hereunder, including without limitation obligations under a guarantee or a letter of credit.

"Max Increment," has the meaning ascribed to it in Exhibit J.

"Maximum Guarantee Amount" has the meaning ascribed to it in Exhibit D.

"Metering Plan" means a report that is provided by the Supplier to the Buyer and that (a) verifies that the revenue-quality interval meters conform with Measurement Canada Regulations, and (b) provides all required information, and equipment specifications needed to permit the Buyer to remotely access, verify, adjust, and/or total revenue meter readings to accurately calculate the generator output at the Delivery Point net of any Station Service Loads, and which is updated promptly, and, in any event, within ten (10) Business Days after any change to the metering installation occurs.

"Milestone Dates" means those dates set forth in the second column of the table contained in Exhibit F, with respect to the attainment of the corresponding Milestone Events set out in the first column of the table contained in Exhibit F.

"Milestone Events" means those events set forth in the first column of the table contained in Exhibit F which are considered critical by the Parties for the timely construction, financing, completion and operation of the Contract Facility, and which are to be completed by the corresponding Milestone Dates.

"MMBTU" means one million BTUs.

"Monthly Payment" has the meaning ascribed to it in Section 4.2.

"Moody's" means Moody's Investors Service, Inc. or its successor.

"MW" means megawatt.

"MWh" means megawatt hour.

"Nameplate Capacity" means the rated, continuous load-carrying capability, expressed in MW, of the Facility to generate and deliver Electricity at a given time as set out in Exhibit B, and which includes the Contract Capacity.

"Negative Interval Net Revenue Recapture" or "NINRR" has the meaning ascribed to it in Exhibit J.

"Negative Outlook" means, with respect to any credit rating agency providing a Credit Rating for purposes of this Agreement, a potential or threatened downgrade to the Credit Rating of any Person and, with respect to any financial institution providing a Letter of Credit, any material deterioration of any of the Financial Indicators, or other material adverse effect, with respect to such financial institution such that the Buyer has grounds for believing that the Letter of Credit may not be honoured if and when the Buyer seeks to daily draw upon it.

"Net Revenue Requirement" or "NRRy" means the amount, expressed in Dollars per MW-month for any given Settlement Month, as set out in Exhibit B as being applicable for such month, and subject to indexation as set out in Exhibit J.

"Net Revenue Requirement Indexing Factor" or "NRRIF" has the meaning ascribed to it in Exhibit J.

"New Agreement" means a new agreement substantially in the form of this Agreement, which is to be entered into with a Secured Lender who is at Arm's Length with the Supplier or a Person identified by such Secured Lender following termination of this Agreement, as set out in Section 12.2(g).

"NGx" means the Natural Gas Exchange of the Toronto Stock Exchange, or its successor.

"Notice of Discriminatory Action" has the meaning ascribed to it in Section 13.3(a).

"Notice of Dispute" has the meaning ascribed to it in Section 13.3(b).

"NRR₂" has the meaning ascribed to it in Exhibit J.

"O&M Cost" or "O&M" means the costs required to operate and maintain the Contract Facility, as set out in Exhibit B, as adjusted from time to time in accordance with Exhibit J.

"O&M_y" and "O&M_{y-1}" mean the O&M Costs for Contract Year "y" and "y-1", respectively.

"OEB" means the Ontario Energy Board, or its successor.

"Ontario Emissions Trading Program" or "OETP" means the Ontario Emissions Trading Program operating under Regulation 397/01 of the *Environmental Protection Act* (Ontario).

"Original CES Contract" has the meaning ascribed to it in the Recitals.

"Other Suppliers" means all of the other suppliers that have with the Buyer a CES Contract or other bilateral arrangements with the Buyer similar in nature to this Agreement or to a CES Contract.

"Outage" means the removal of equipment from service, unavailability for connection of equipment or temporary de-rating, restriction of use or reduction in performance of equipment for any reason, including to permit the performance of inspections, tests, repairs or maintenance on equipment, which results in a partial or total interruption in the ability of the Contract Facility to make the Contract Capacity available and deliver the Electricity from the Contract Facility. For greater certainty, in the event that the capacity of the Facility is de-rated, the amount by which such capacity is reduced shall be deemed to first reduce the Supplier's Capacity, with any excess of the reduction of the capacity over the Supplier's Capacity then being deemed to reduce the Contract Capacity.

"Outage HOEP" or "OHOEP" has the meaning ascribed to it in Exhibit J.

"Outage Hours" means the duration, expressed in hours, of any Outages.

"Party" means each of the Supplier and the Buyer, and the Supplier and the Buyer are collectively referred to as the "Parties".

"Payment Date" has the meaning ascribed to it in Section 5.3.

"Person" means a natural person, firm, trust, partnership, limited partnership, company or corporation (with or without share capital), joint venture, sole proprietorship, Governmental Authority or other entity of any kind.

"Planned Outage" means an Outage which is planned and intentional, and has been disclosed to the Buyer pursuant to Section 15.3(b)(ii)(B) or Section 15.3(b)(iv).

"Pre-Dispatch Price" means the pre-dispatch price for Electricity, being the hourly price determined from the Pre-Dispatch Schedule for a specified number of hours in advance of clearing of the Real-Time Market, as determined by the IESO-Administered Markets.

"Pre-Dispatch Schedule" has the meaning ascribed to it in the IESO Market Rules.

"Preliminary Notice" has the meaning ascribed to it in Section 13.3(a).

"Price Evolution Event" has the meaning ascribed to it in Section 1.8(b).

"Price Unavailability Event" has the meaning ascribed to it in Section 1.9(b).

"Priority Electrical Zone" means an electrical area identified as a Priority Electrical Zone in Appendix O of the 2,500 MW RFP.

"Proposal" means the proposal submission made by the Supplier in response to the 2,500 MW RFP in respect of constructing and developing the Contract Facility and which was selected by the Ontario Power Authority, and all clarifications in respect of such Proposal provided by the Supplier in writing as requested by or on behalf of the Ontario Power Authority from time to time in accordance with the 2,500 MW RFP prior to the date of this Agreement.

"PST" means the Ontario provincial sales tax exigible under the *Retail Sales Tax Act* (Ontario), as amended from time to time.

"Real-Time Market" has the meaning ascribed to it in the IESO Market Rules.

"Receiving Party", with respect to Confidential Information, is the Party receiving Confidential Information and may be Buyer or the Supplier, as applicable.

"Records" means any recorded information in any form: (a) provided by the Buyer to the Supplier, or provided by the Supplier to the Buyer, for purposes of this Agreement, or (b) created by the Supplier in the performance of this Agreement.

"Related Products" means all Capacity Products, Ancillary Services, transmission rights, any Environmental Attributes, and any other products or services that may be provided by the Contract Facility from time to time (including steam and hot water produced by the Contract Facility), that may be traded in the IESO-Administered Markets or other markets, or otherwise sold, and which shall be deemed to include products and services for which no market may exist, such as capacity reserves.

"Replacement Guarantee" has the meaning ascribed to it in Section 6.4(c).

"Replacement Price" has the meaning ascribed to it in Sections 1.7(b)(i) and 1.8(b)(i), as applicable.

"Replacement Provision(s)" has the meaning ascribed to it in Sections 1.7(b)(ii), 1.9(b) and 1.10(d), as applicable.

"Reportable Events" means any one or more of the following:

- (a) obtain regulatory approvals, including municipal site plan approvals and environmental permitting, to allow construction to commence for the Contract Facility;

- (b) completion of connection assessments, including receipt of approvals from the IESO, and the Transmitter as applicable;
- (c) execution of the EPC Contract in respect of the Contract Facility;
- (d) Financial Closing in respect of the Contract Facility;
- (e) ordering of major equipment for the Contract Facility;
- (f) delivery of major equipment for the Contract Facility;
- (g) commencement of construction of the Contract Facility;
- (h) connection of the Contract Facility to the Transmission System;
- (i) testing and commissioning of the Contract Facility; and
- (j) Commercial Operation.

"Reported Outage Availability Capacity" has the meaning ascribed thereto in Exhibit J.

"Representatives" means a Party's directors, officers, employees, auditors, consultants (including economic and legal advisors), contractors and agents and those of its Affiliates and, in the case of the Buyer, shall include without limitation any Person from time to time appointed as the Dispatcher, and the agents and advisors of such Persons. While the Buyer is the Ontario Power Authority, this definition shall also include the Government of Ontario, the IESO, and their respective directors, officers, employees, auditors, consultants (including economic and legal advisors), contractors and agents.

"Request" has the meaning ascribed to it in Exhibit K.

"Revenue Sharing Payment" or "RSP" means the positive amount, if any, by which the Imputed Net Revenue exceeds the Total Monthly Fixed Capacity Payment, expressed in Dollars, and calculated in accordance with Exhibit J.

"RFCRP" has the meaning ascribed to it in Exhibit J.

"RFFC" has the meaning ascribed to it in Exhibit J.

"ROC" or "Reported Outage Capacity" has the meaning ascribed to it in Exhibit J.

"ROH" or "Reported Outage Hour" has the meaning ascribed to it in Exhibit J.

"Rules" has the meaning ascribed to it in Exhibit K.

"S&P" means the Standard and Poors Rating Group (a division of McGraw-Hill Inc.) or its successors.

"Secured Lender" means a lender under a Secured Lender's Security Agreement.

"Secured Lender's Security Agreement" means an agreement or instrument, including a deed of trust or similar instrument securing loans, notes, bonds or debentures or other indebtedness, liabilities or obligations, containing a charge, mortgage, pledge, security interest, assignment, sublease, deed of trust or similar instrument with respect to all or any part of the Supplier's Interest granted by the Supplier that is security for any indebtedness, liability or obligation of the Supplier, together with any amendment, change, supplement, restatement, extension, renewal or modification thereof.

"Senior Conference" has the meaning ascribed to it in Section 16.1.

"Settlement Month" has the meaning ascribed to it in Section 5.2, provided that if the remaining Term is less than one calendar month, the Settlement Month shall be the remaining Term of this Agreement.

"Start-Up Costs" or "SUC_d" means the costs to start up the Contract Facility as required by this Agreement, and calculated, with respect to day "d", as the number of MMBTU per start-up set out in Exhibit B multiplied by the Gas Price.

"Statement" has the meaning ascribed to it in Section 5.2.

"Station Service Loads" means energy consumed to power the on-site maintenance and operation of generation facilities but excludes energy consumed in association with activities which could be ceased or moved to other locations without impeding the normal and safe operation of the Contract Facility.

"Sum" has the meaning ascribed thereto in Section 10.2(e)(i).

"Summer Contract Capacity" means that portion of the Nameplate Capacity set out in Exhibit B, and expressed in MW, as being applicable for the calendar months of May through October, inclusive.

"Summer Contract Heat Rate" means the heat rate set out in Exhibit B, and expressed in MMBTU/MWh using higher heating value, as being applicable for the calendar months of May through October, inclusive.

"Supplier" means Greenfield South Power Corporation, and, subject to Section 16.5, includes any successor to Greenfield South Power Corporation resulting from any merger, arrangement or other reorganization of or including Greenfield South Power Corporation or any continuance under the laws of another jurisdiction or permitted assignee.

"Supplier Event of Default" has the meaning ascribed to it in Section 10.1.

"Supplier Indemnities" has the meaning ascribed thereto in Section 14.6(c).

"Supplier Non-acceptance Notice" has the meaning ascribed to it in Section 13.3(e).

"Supplier's Capacity" means that amount of capacity, expressed in MW, set out in Exhibit B that is equivalent to the Nameplate Capacity less the Contract Capacity.

"Supplier's Interest" means the right, title and interest of the Supplier in or to the Contract Facility and this Agreement, or any benefit or advantage of any of the foregoing.

"Suppliers" has the meaning ascribed to it in Exhibit K.

"System Impact Assessment" means a study conducted by the IESO pursuant to section 6.1.5 of Chapter 4 of the IESO Market Rules, to assess the impact of a new connection of the Contract Facility to the IESO-Controlled Grid, or of the modification of an existing connection of the Contract Facility to the IESO-Controlled Grid on the reliability of the integrated power system.

"System Upgrade Costs" means all costs for facilities incurred by Transmitters or Local Distribution Companies and invoiced to the Supplier, in relation to System Upgrades, and which may include design, engineering, procurement, construction, installation and commissioning costs, as determined in accordance with the Transmitters' or Local Distribution Companies' respective policies and procedures and by the OEB, if necessary, and as amended pursuant to Section 2.3(e). For greater certainty, System Upgrade Costs shall not include Connection Costs.

"System Upgrades" means all additions, improvements, and upgrades to the Transmission System and Local Distribution System to be built by a Transmitter or LDC that are (or will be) determined to be required to ensure the reliable delivery of Electricity from new generating capacity to loads in the Province of Ontario.

"Tangible Net Worth" means in respect of the Supplier or a Guarantor, at any time and without duplication, an amount determined in accordance with GAAP, and calculated as (a) the aggregate book value of all assets, minus (b) the aggregate book value of all liabilities, minus (c) the sum of any amounts shown on account of patents, patent applications, service marks, industrial designs, copyrights, trade marks and trade names, and licenses, prepaid assets, goodwill and all other intangibles.

"Taxes" means all *ad valorem*, property, occupation, severance, production, transmission, utility, gross production, gross receipts, sales, use, excise and other taxes, governmental charges, licenses, permits and assessments, other than (i) GST and PST and (ii) taxes based on profits, net income or net worth.

"Term" has the meaning ascribed to it in Section 9.1(b).

"Term Commencement Date" has the meaning ascribed to it in Section 9.1(b).

"Termination Date" means the date on which this Agreement terminates as a result of an early termination of this Agreement in accordance with this Agreement.

"Termination Notice" has the meaning ascribed to it in Exhibit L.

"Test Protocol" has the meaning ascribed thereto in Section 15.6(a).

"Total Monthly Fixed Capacity Payment" or "TMFCP_m" means the total monthly fixed capacity payment applicable to the Contract Facility for a Settlement Month, expressed in \$, and calculated in accordance with Exhibit J.

"Transmission System" means a system for conveying Electricity at voltages of more than 50 kV and includes any structures, equipment or other things used for that purpose.

"Transmission System Code" means the code approved by the OEB and in effect from time to time, which, among other things, sets the standards for a Transmitter's existing Transmission System and for expanding the Transmitter's transmission facilities in order to connect new customers to it or accommodate increase in capacity or load of existing customers.

"Transmitter" means a Person licensed as a "transmitter" by the OEB in connection with a Transmission System.

"Variable Energy Cost" means the amount calculated on a daily basis in accordance with Exhibit J, and which is abbreviated as "VEC_d".

"Winter Contract Capacity" means that portion of the Nameplate Capacity, expressed in MW, set out in Exhibit B, as being applicable for the calendar months of November through April, inclusive.

"Winter Contract Heat Rate" means the heat rate expressed in MMBTU/MWh using higher heating value, as set out in Exhibit B, as being applicable for the calendar months of November through April, inclusive.

1.2 Exhibits

The following Exhibits are attached to and form part of this Agreement:

Exhibit A	Summary of Contract Facility
Exhibit B	Contract Capacity, Net Revenue Requirement, and Other Stated Variables
Exhibit C	Form of Irrevocable Standby Letter of Credit
Exhibit D	Form of Guarantee
Exhibit E	Determination of Availability
Exhibit F	Milestone Events and Milestone Dates for the Contract Facility
Exhibit G	Dispatch Options
Exhibit H	Form of Directed Dispatch Order
Exhibit I	Form of Force Majeure Notice
Exhibit J	Calculation of CSP and RSP
Exhibit K	Arbitration Procedures Applicable to Sections 1.6 to 1.10 inclusive
Exhibit L	Form of Buyer Guarantee to Support Directed Dispatch (LT)
Exhibit M	Section 16.7 Test Conditions
Exhibit N	Form of Acknowledgement of Secured Lender's Rights
Exhibit O	Form of Quarterly Progress Reports
Exhibit P	[Intentionally Deleted]
Exhibit Q	Form of Long Term Operating Plan
Exhibit R	Form of Annual Operating Plan
Exhibit S	Form of Certificate of Liability Insurance
Exhibit T	Form of Certificate of Property Insurance
Exhibit U	Form of Supplier's Certificate for Commercial Operation
Exhibit V	Form of Company Representative Notice

Exhibit W Form of Confidentiality Undertaking
Exhibit X Form of Certificate of Independent Engineer

Exhibits I, O, Q, R, S, T, U, V, W and X reflect the corresponding forms appearing on the Buyer's Website as at the Amendment and Restatement Date. The Supplier acknowledges and agrees that the Buyer may, at any time and from time to time after the date hereof, acting reasonably, without notice to the Supplier, amend or replace each such form of certificate, notice or report, and post such amended or replacement form on the Buyer's Website, and thereafter such amended or replaced form as it appears on the Buyer's Website shall replace and shall be used by the Supplier or the Buyer, as the case may be, in the stead of the then current form. It shall be the responsibility of the Supplier to ensure that the latest draft of the relevant form, as posted on the Buyer's Website, is used.

1.3 Headings and Table of Contents

The inclusion of headings and a table of contents in this Agreement are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.4 Gender and Number

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated, and shall be paid, in Dollars.

1.6 IESO Market Rules and Statutes

- (a) Unless otherwise expressly stipulated, any reference in this Agreement to the IESO Market Rules or to a statute or to a regulation or rule promulgated under a statute or to any provision of a statute, regulation or rule shall be a reference to the IESO Market Rules, statute, regulation, rule or provision as amended, re-enacted or replaced from time to time. In the event of any conflict or inconsistency with the IESO Market Rules and the terms of this Agreement, the IESO Market Rules shall govern to the extent of such conflict or inconsistency.
- (b) To the extent that there is a change in the IESO Market Rules following the date hereof, such that the Supplier's economics as contemplated hereunder after the introduction of such change do not substantially reflect the Supplier's economics as contemplated hereunder prior to the introduction of such change, then:
 - (i) either Party shall notify the other Party promptly and, in any event, within ten (10) Business Days upon becoming aware of the consequences of such change;

- (ii) the Parties and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate, shall engage in good faith negotiations to amend this Agreement and the respective agreements of those Other Suppliers on the basis that such amendments together with the change in the IESO Market Rules will substantially reflect the economics as contemplated hereunder of the Supplier and, at the Buyer's discretion, those Other Suppliers, prior to the introduction of such change in the IESO Market Rules; and
 - (iii) if the Parties fail to reach agreement on the amendments described in Section 1.6(b)(ii) within sixty (60) days after the change in the IESO Market Rules became effective, the matter shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.6(c)(iii).
- (c) The terms of this Agreement shall be amended either:
- (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.6(b)(iii);
 - (ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.6(b)(iii); or
 - (iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.6(b)(iii), where the Supplier failed to participate in such arbitration,
- with such agreement or amendment, as the case may be, having effect from and after the date that the change in the IESO Market Rules became effective.
- (d) This Section 1.6 shall not apply to the circumstances addressed in Sections 1.7, 1.8, 1.9, and 1.10, or 2.12.

1.7 Introduction of the Day-Ahead Energy Forward Market

- (a) If (i) the IESO has made an announcement that the Day-Ahead Energy Forward Market is likely to be opened within the succeeding twelve (12) calendar months, and (ii) the amendments to the IESO Market Rules for the Day-Ahead Energy Forward Market have been substantially developed by the IESO, the Buyer shall propose a Replacement Price and Replacement Provision(s), based on Sections 1.7(b) and 1.7(c), to the Supplier and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate. If the Parties are unable to

agree on the Buyer's proposal or that of the Supplier or any of those Other Suppliers, as the case may be, within sixty (60) days after the date the Day-Ahead Energy Forward Market is opened for operation in Ontario, then the Replacement Price and the Replacement Provision(s), as applicable, shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.7(d)(iii).

- (b) For purposes of Section 1.7(a), the Replacement Price and the Replacement Provision(s) will be based on the following principles, with such modifications to take effect from and after the date set out in Section 1.7(d):
 - (i) in Exhibit J, all references to HOEP will be replaced with an hourly Electricity price established under the Day-Ahead Energy Forward Market (the "Replacement Price"), and
 - (ii) in Exhibit J, all references to Imputed Start-Up Hour and Imputed Shut-Down Hour shall continue, but shall be modified (the "Replacement Provision(s)") by using information or prices made available under the Day-Ahead Energy Forward Market to deem an operating pattern for a facility with the attributes as set out in this Agreement that emulates a facility's commitment to maximize deemed operation during hours of positive Imputed Net Revenue and minimize deemed operation during hours of negative Imputed Net Revenue, with due consideration for compensatory market-based payments that may be made available to such generators to offset incurred but non-recovered costs.
- (c) For purposes of Section 1.7(a), the following additional principles shall apply in Exhibit J if the Day-Ahead Energy Forward Market is opened for operation:
 - (i) Start-Up Costs shall continue to be imputed for only one (1) Deemed Start-Up or Directed Start-Up per day in accordance with Exhibit J;
 - (ii) the Contract Facility shall continue to be deemed to commence and cease operation based on an Imputed Start-Up Hour and Imputed Shut-Down Hour as determined in accordance with the provisions of Section 1.7(b)(ii) above; and
 - (iii) any amendments to this Agreement to accommodate the opening of the Day-Ahead Energy Forward Market as contemplated by this Section 1.7 shall be made on the basis that the economic effect of such amendments

substantially reflect the Supplier's economics as contemplated hereunder prior to the introduction of the Day-Ahead Energy Forward Market.

- (d) The terms of this Agreement shall be amended either:
- (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.7(a);
 - (ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel, made pursuant to Section 1.7(a); or
 - (iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.7(a), where the Supplier failed to participate in such arbitration,

with such agreement or amendment, as the case may be, having effect from and after the date the Day-Ahead Energy Forward Market was opened for operation in Ontario.

- (e) Until such time as this Agreement is amended in accordance with Section 1.7(d), Exhibit J will continue to apply to calculate CSP and RSP, as applicable, and all references to HOEP shall continue, and payments of CSP and RSP shall continue to be made until such time, provided that all such payments shall be subject to recalculation and readjustment as a result of the agreement or award set out in Section 1.7(d), and any Party owing monies to the other pursuant to such recalculation shall pay, within ten (10) Business Days after receipt of an invoice from the other Party, such monies owing together with interest at the Interest Rate, calculated daily, from and including the time such payments were due to the date of payment thereof. If Pre-Dispatch Prices are not applicable in the context of the Day-Ahead Energy Forward Market, then all references in Stage III of Exhibit J to Pre-Dispatch Prices and their use in determining Imputed Start-Up Hours and Imputed Shut-Down Hours shall be deleted.

1.8 Evolution of the IESO-Administered Markets

- (a) If (i) the IESO or the Government of Ontario have made an announcement with the effect that a Price Evolution Event is likely to occur within the succeeding twelve (12) calendar months, and (ii) the replacement rules and regulations pertaining to the Price Evolution Event have been approved by the applicable authority, the Buyer shall propose a Replacement Price, based on Section 1.8(b), to the Supplier and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate. If the Parties are unable to agree on the Buyer's proposal or that of the Supplier or any of those Other Suppliers, as the case may be, within sixty (60) days after the date the Price Evolution Event occurs, then the Replacement Price shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that

it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.8(d)(iii).

- (b) For purposes of Section 1.8(a), a "Price Evolution Event" means that the IESO Market Rules have changed (including the implementation of LMP by the IESO) such that HOEP or the replacement value for HOEP under a Day-Ahead Energy Forward Market, as determined through the application of Section 1.7, is no longer provided for, and is replaced by another market-based price signal(s). In such a case, this Agreement will be modified based on the following principles, with such modifications to take effect from and after the date set out in Section 1.8(d):
 - (i) in Exhibit J, HOEP, or its replacement value under a Day-Ahead Energy Forward Market, if applicable, will be replaced with the Ontario Electricity market price that most closely emulates the price actually paid to Supplier by the Ontario Electricity market for Electricity output from the Contract Facility (the "Replacement Price"); and
 - (ii) it is expected that all other features of Exhibit J will be applicable.
- (c) If the IESO Market Rules are amended to provide for an installed capacity market, then either Party may propose, by notice in writing to the other Party, amendments to this Agreement and the Buyer and the Supplier and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate, shall then engage in good faith negotiations to amend this Agreement and the respective agreements of those Other Suppliers so as to facilitate the Supplier's participation in such installed capacity market, on the basis that the economic effect of such amendments substantially reflect the Supplier's economics as contemplated hereunder prior to the introduction of the installed capacity market. If the Parties fail to reach agreement on the amendments described in this Section 1.8(c), the matter shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.8(d)(iii).
- (d) The terms of this Agreement shall be amended either:
 - (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Sections 1.8(a) or 1.8(c), as the case may be;

- (ii) by the agreement of the Parties made pursuant to and in implementation of an award of the Arbitration Panel made pursuant to Sections 1.8(a) or 1.8(c), as the case may be; or
- (iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Sections 1.8(a) or 1.8(c), as the case may be, where the Supplier failed to participate in such arbitration,

with such agreement or amendment, as applicable, having effect from and after the date that the Price Evolution Event occurred or the installed capacity market was introduced, respectively.

- (e) Until such time as this Agreement is amended in accordance with Section 1.8(d), Exhibit J will continue to apply to calculate CSP and RSP, as applicable, using the Buyer's proposal submitted under Sections 1.8(a) or 1.8(c), as the case may be, provided that all such payments shall be subject to recalculation and readjustment as a result of the agreement or award set out in Section 1.8(d), and any Party owing monies to the other pursuant to such recalculation shall, within ten (10) Business Days after receipt of an invoice from the other Party, pay such monies owing together with interest at the Interest Rate, calculated daily, from and including the time such payments were due to the date of payment thereof.
- (f) This Section 1.8 shall not apply in the circumstances addressed in Section 1.7 or 2.12.

1.9 Price Unavailability Events

- (a) If (i) the IESO or the Government of Ontario has made an announcement with the effect that a Price Unavailability Event is likely to occur within the succeeding twelve (12) calendar months, and (ii) the replacement rules and regulations pertaining to the Replacement Provision(s) have been approved by the applicable authority, the Buyer shall propose Replacement Provision(s), based on Section 1.9(b), to the Supplier and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate. If the Parties are unable to agree on the Buyer's proposal or that of the Supplier or any of those Other Suppliers, as the case may be, within sixty (60) days after the date the Price Unavailability Event occurs, then the Replacement Provision(s) shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.9(c)(iii).

(b) For purposes of Section 1.9(a), a "Price Unavailability Event" means that HOEP or the replacement value for HOEP under a Day-Ahead Energy Forward Market as determined through the application of Section 1.7 or the replacement market-based price signals referred to in Section 1.8 is no longer available. In such a case, this Agreement will be modified based on the following principles, with such modifications to take effect from and after the date set out in Section 1.9(c):

- (i) this Agreement will be amended as necessary to ensure the Supplier will participate in any revised processes determined by the IESO to facilitate unit commitment, unit dispatch, and/or outage scheduling;
- (ii) Exhibit J will be modified to define the Imputed Net Revenue to be based on Imputed Variable Energy Costs for the actual Electricity produced in a month and any actual Electricity payments made to the Supplier for Electricity produced by the Contract Capacity. In calculating the Imputed Variable Energy Cost, the stated variables contained in Exhibit B of this Agreement will be used, and
- (iii) in Exhibit J, HOEP, or the replacement value for HOEP under a Day-Ahead Energy Forward Market as determined through the application of Section 1.7, or the replacement market-based price signals referred to in Section 1.8, will be replaced with the actual price received by the Supplier for Electricity produced by the Contract Facility,

and the modifications and amendments described in Sections 1.9(b)(i), 1.9(b)(ii), and (iii) are collectively referred to as the "Replacement Provision(s)".

(c) The terms of this Agreement shall be amended either:

- (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.9(a);
- (ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel, made pursuant to Section 1.9(a); or
- (iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.9(a), where the Supplier failed to participate in such arbitration,

with such agreement or amendment, as the case may be, having effect from and after the date the Price Unavailability Event occurred.

(d) Until such time as this Agreement is amended in accordance with Section 1.9(c), Exhibit J will continue to apply to calculate CSP and RSP, as applicable, using the Buyer's proposal submitted under Section 1.9(a), provided that all such payments shall be subject to recalculation and readjustment as a result of the agreement or award set out in Section 1.9(c), and any Party owing monies to the other pursuant to such recalculation shall pay, within ten (10) Business Days after receipt of an

invoice from the other Party, such monies owing together with interest at the Interest Rate, calculated daily, from and including the time such payments were due to the date of payment thereof.

- (e) This Section 1.9 shall not apply to the circumstances addressed in Sections 1.7 and 1.8 or 2.12.

1.10 Invalidity, Unenforceability, or Inapplicability of Indices and Other Provisions

In the event that either the Buyer or the Supplier, acting reasonably, considers that any provision of this Agreement is invalid, inapplicable, or unenforceable, or in the event that any index or price quotation referred to in this Agreement, including the Gas Price Index (DA), ceases to be published, or if the basis therefor is changed materially, then:

- (a) if a provision is considered to be invalid, inapplicable or unenforceable, then the Party considering such provision to be invalid, inapplicable or unenforceable may propose, by notice in writing to the other Party, a replacement provision and the Buyer and the Supplier and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate, shall engage in good faith negotiations to replace such provision with a valid, enforceable, and applicable provision, the economic effect of which substantially reflects that of the invalid, unenforceable, or inapplicable provision which it replaces;
- (b) if any index or price quotation referred to in this Agreement, other than the Gas Price Index (DA), ceases to be published, or if the basis therefor is changed materially, then the Buyer and the Supplier and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate, shall engage in good faith negotiations to substitute an available replacement index or price quotation that most nearly, of those then publicly available, approximates the intent and purpose of the index or price quotation that has so ceased or changed and this Agreement shall be amended as necessary to accommodate such replacement index or price quotation;
- (c) if the Gas Price Index (DA) ceases to be published or announced, or if the basis therefor is changed materially (the date that the first of such events occurs being herein called the "Gas Price Redetermination Date"), then the Buyer and the Supplier and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate, shall engage in good faith negotiations to substitute an available replacement index or price source that most nearly, of those then publicly available, approximates the intent and purpose of the Gas Price Index (DA). During the negotiations (and any subsequent arbitration conducted in accordance with Section 1.10(d)) for determining an alternate Gas Price Index (DA), the last Gas Price (DA) in effect before the Gas Price Redetermination Date shall continue to be used for purposes of this Agreement as the Gas Price (DA), but if a replacement index or price source is determined and this Agreement is amended pursuant to Section 1.10(e), an adjustment will be made and such replacement index or price source shall be used as the new Gas Price Index (DA)

for purposes of this Agreement, retroactive from the Gas Price Redetermination Date to the date that this Agreement is amended pursuant to Section 1.10(e), on which basis the Monthly Payment in respect of such retroactive period shall be recalculated and readjusted by the Parties;

- (d) if a Party does not believe that a provision is invalid, inapplicable or unenforceable, or that the basis for any index or price quotation is changed materially, or if the negotiations set out in Sections 1.10(a) or 1.10(b) or 1.10(c) are not successful, then if the Parties are unable to agree on all such issues and any amendments required to this Agreement (the "Replacement Provision(s)") within thirty (30) days after either the giving of the notice under Section 1.10(a) or the occurrence of the event in Section 1.10(b) or 1.10(c), then the Replacement Provision(s) shall be determined by mandatory and binding arbitration from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.10(e)(iii); and
- (e) the terms of this Agreement shall be amended either:
 - (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.10(d);
 - (ii) by the agreement of the Parties made pursuant to and in implementation of an award of the Arbitration Panel made pursuant to Section 1.10(d); or
 - (iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.10(d), where the Supplier failed to participate in such arbitration,

with such agreement or amendment, as applicable, having effect as of the date of the invalidity, inapplicability or unenforceability or from and after the date that the relevant index or quotation ceased to be published or the basis therefor is changed materially, as the case may be.

This Section 1.10 shall not apply to the circumstances addressed in Sections 1.7, 1.8, 1.9 or 2.12.

1.11 Entire Agreement

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement. There are no warranties, conditions, or representations (including any that may be implied by statute) and there are no agreements in connection with the subject matter of this Agreement except as specifically set forth or referred to in this Agreement. No reliance is placed on any warranty, representation, opinion, advice or assertion of fact made by a Party to this Agreement, or its directors, officers, employees or agents, to the other Party to this

Agreement or its directors, officers, employees or agents, except to the extent that the same has been reduced to writing and included as a term of this Agreement.

1.12 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of any provision of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver or operate as a waiver of, or estoppel with respect to, any subsequent failure to comply unless otherwise expressly provided.

1.13 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

1.14 Preparation of Agreement

Notwithstanding the fact that this Agreement was drafted by the Buyer's legal and other professional advisors, the Parties acknowledge and agree that any doubt or ambiguity in the meaning, application or enforceability of any term or provision of this Agreement shall not be construed or interpreted against the Buyer or in favour of the Supplier when interpreting such term or provision, by virtue of such fact.

ARTICLE 2

DEVELOPMENT AND OPERATION OF THE CONTRACT FACILITY

2.1 Design and Construction of the Contract Facility

- (a) The Supplier agrees to design and build the Contract Facility using Good Engineering and Operating Practices and meeting all relevant requirements of the IESO Market Rules, Transmission System Code, the Connection Agreement, in each case, as applicable, and all other Laws and Regulations. The Supplier shall ensure that the Contract Facility is designed, engineered and constructed to operate in accordance with the requirements of this Agreement during the Term.
- (b) The Supplier agrees to provide to the Buyer a single line electrical drawing which identifies the as-built Connection Point(s), clearly showing area transmission and distribution facilities, including the transmission station(s) that is electrically closest to the Contract Facility. If the Proposal provides that the Connection Point, or all Connection Points with respect to multiple generating facilities being aggregated, are within a Priority Electrical Zone, then the Supplier agrees that such Connection Point, or all Connection Points with respect to multiple generating facilities being aggregated, shall be located within a Priority Electrical Zone.

- (c) The Supplier shall at no time after the date of this Agreement modify, vary, or amend in any material respect any of the features or specifications of the Contract Facility outlined in the Proposal (the "Contract Facility Amendment") without first notifying the Buyer in writing and obtaining the Buyer's consent in writing, which consent shall not be unreasonably withheld, provided that it shall not be unreasonable for the Buyer to withhold its consent to any modification, variation or amendment which would, or would be likely to, materially adversely affect the ability of the Supplier to comply with its obligations under this Agreement. Any Contract Facility Amendment that has not been consented to by the Buyer (other than in instances where such consent has been unreasonably withheld) shall, if not removed within ten (10) Business Days after such Contract Facility Amendment occurred, constitute a Supplier Event of Default. For purposes of this paragraph, the failure of the Contract Facility to have a Connection Point as described in the Proposal shall be deemed to be a Contract Facility Amendment.
- (d) If the Buyer's consent in writing has been given in relation to a reduction in the Contract Capacity pursuant to Section 2.1(c), the Contract Capacity shall be deemed to be reduced to the lower amount, effective at the time stated in such notice. If the Buyer's consent has been given in relation to an increase in the Contract Capacity pursuant to Section 2.1(c), the Contract Capacity shall be increased to the higher amount, effective as of the time stated in such notice, provided that such increase shall not be effective until the Supplier performs a Capacity Check Test confirming the increased amount of the Contract Capacity.
- (e) For purposes of Section 2.1(c), in the event that the Nameplate Capacity of the Facility will be reduced as a result of a term, condition, or restriction imposed by, or contained in a permit, certificate, licence or other approval issued by, a Governmental Authority in respect of the Facility, then the amount by which such Nameplate Capacity is reduced shall be deemed to first reduce the Supplier's Capacity, with any excess of the reduction of the Nameplate Capacity over the Supplier's Capacity then being deemed to reduce the Contract Capacity.

2.2 Additional Development and Construction Covenants

- (a) The Supplier agrees that the Facility shall be located in the Province of Ontario and shall affect supply or demand in the IESO-Administered Markets.
- (b) The Supplier agrees to arrange, at its expense, for all Facility connection requirements in accordance with the Connection Agreement to permit the delivery of Electricity to the IESO-Controlled Grid Local Distribution System or End User, as the case may be. The Supplier agrees to provide to the Buyer a copy of the Customer Impact Assessment final report and the executed Connection Cost Recovery Agreement within ten (10) Business Days of the Supplier's receipt of each of such documents.
- (c) The Supplier agrees to ensure that revenue-quality interval meters will be operated, and maintained, at its expense, to calculate the output of Electricity

from the Contract Facility at the generator terminals net of any Station Service Loads. Revenue meters registered with the IESO or provided by a LDC can be used to fulfill this obligation, in whole or in part, so long as the Metering Plan specifies: (i) how the metered quantities from those meters will be adjusted, if necessary, to account for any electrical losses that may occur due to differences between the physical locations of the meters and the generator terminals, and (ii) how the metered quantities from those meters will be totalized, if necessary, with other revenue-quality metered data to accurately calculate the output of the Contract Facility at the generator terminals net of any Station Service Loads. The Buyer retains the right to audit the metering equipment to confirm the accuracy of the Metering Plan. The Supplier shall have the Metering Plan approved by the Buyer, and shall deliver a copy to the Buyer for its approval no later than sixty (60) days prior to the Term Commencement Date. The Buyer agrees to review the Metering Plan submitted by the Supplier, and to either approve the plan or provide the Supplier with its comments by the later of fifteen (15) Business Days after receipt and fifteen (15) Business Days prior to the Term Commencement Date. The Supplier will provide the Buyer with a commissioning report for all revenue meters referenced in the Metering Plan prior to any use of metered data for the purposes expressed in Sections 2.6(a)(i)(D) or 15.6.

- (d) The Supplier agrees to provide, at its expense, all power system components on the Supplier's side of the Connection Point, including all transformation, switching and auxiliary equipment, such as synchronizing and protection and control equipment, pursuant to requirements deemed necessary by the IESO, the Transmitter, the LDC (and as specified in the System Impact Assessment, the Customer Impact Assessment and the Connection Impact Assessment, as applicable), and the End-User, as applicable, to protect the safety and security of the IESO-Controlled Grid, the Local Distribution System, each of their respective customers, and the End-User Load, as the case may be. The equipment to be so provided by the Supplier shall include such electrical equipment as the IESO, the Transmitter, the LDC, and the End-User, as applicable, deem necessary, from time to time, for the safe and secure operation of the IESO-Controlled Grid, the Local Distribution System, and the End-User Load, as required by the IESO Market Rules, the Transmission System Code, the Distribution System Code, and the End-User, as applicable.
- (e) The Supplier agrees to install protective equipment to protect its own personnel, property, and equipment from variations in frequency and voltage or from temporary delivery of other than three-phase power, whether caused by the Facility, the IESO-Controlled Grid, the Local Distribution System, or the End-User Load, as the case may be.

2.3 Allocation and Treatment of System Upgrade Costs

The Supplier agrees to arrange, at its sole cost and expense, for all System Upgrades that may be required to permit the delivery of Electricity and Related Products to the IESO-Controlled Grid, the Local Distribution System, or the End-User, as the case may be.

The Buyer shall reimburse the Supplier for all System Upgrade Costs incurred by the Supplier on the following basis:

- (a) The Supplier shall pay all System Upgrade Costs to the Transmitter and the LDC, as applicable, as and when due.
- (b) The Supplier shall submit to the Buyer an invoice itemizing and describing the System Upgrade Costs, together with copies of each of the paid receipts issued by the Transmitter and LDC, as applicable. If the System Upgrade Costs are adjusted subsequent to the Commercial Operation Date, the Supplier shall forthwith provide written evidence thereof to the Buyer.
- (c) The Buyer shall, within a reasonable time, review the Supplier's invoices and copies of each of the paid receipts to verify that all of the amounts described in each such invoice constitute System Upgrade Costs paid by the Supplier to the Transmitter and the LDC, as applicable, on the understanding that the determination of System Upgrade Costs shall not be capped by or limited to any preliminary estimates of System Upgrade Costs that may have been assessed by or on behalf of the Ontario Ministry of Energy for the purposes of reviewing and evaluating the Supplier's Proposal under the terms of the 2,500 MW RFP. The Supplier consents to the applicable Transmitter and LDC disclosing to the Buyer, on request, all information relating to System Upgrade Costs, including any information provided by the Supplier to the applicable Transmitter and the applicable LDC that relates to, or affects, System Upgrade Costs.
- (d) The Buyer will reimburse the System Upgrade Costs to the Supplier on the basis that System Upgrade Costs shall be amortized over the first ten (10) years of the Term in equal annual payments of principal commencing on the Term Commencement Date, and until the System Upgrade Costs are fully reimbursed, the unpaid balance of System Upgrade Costs shall bear interest at the Interest Rate commencing on the Term Commencement Date, and shall be calculated and payable monthly, in arrears, on the last day of each month.
- (e) If the OEB issues an order or directive resulting in an increase or decrease in the System Upgrade Costs to be paid by the Supplier, then the amount of System Upgrade Costs shall be deemed, from the date of such order or directive, to be adjusted by the amount of such increase or decrease, and the adjusted unpaid principal balance of System Upgrade Costs owing to the Supplier shall be reamortized over the period from the date of such order or directive until the tenth (10th) anniversary of the Term Commencement Date in equal annual payments of principal commencing on the next anniversary of the Term Commencement Date. Until the System Upgrade Costs are fully reimbursed, the unpaid balance of System Upgrade Costs shall bear interest at the Interest Rate which shall be calculated and payable monthly, in arrears, on the last day of each month.
- (f) If the Agreement has been terminated by the Buyer as a result of a Supplier Event of Default, then the Supplier shall forfeit all rights to receive any further payments

after the Termination Date on account of System Upgrade Costs pursuant to Sections 2.3(d) or 2.3(e), as applicable, as liquidated damages and not as a penalty.

2.4 Allocation and Treatment of Connection Costs

If the OEB issues an order or directive resulting in a Transmitter or a LDC, instead of the Supplier as a generator, being responsible for the payment of any Connection Costs, then notwithstanding anything in this Agreement to the contrary, the Net Revenue Requirement applicable from and after the effective date of such order or directive shall be reduced, by mutual agreement, by an amount commensurate with such reduction in Connection Costs as a result of such OEB order or directive, amortized on a straight-line basis over the balance of the Term.

2.5 Milestone Dates

The Supplier acknowledges that time is of the essence to the Buyer with respect to attaining Financial Closing and Commercial Operation of the Contract Facility by their corresponding Milestone Dates set out by the Supplier in Exhibit F, and the Parties agree:

(a) that each of the Milestone Events corresponding to:

- (i) Financial Closing; and
- (ii) attaining Commercial Operation,

shall be achieved in a timely manner and by its corresponding Milestone Date, failing which the Supplier shall pay to the Buyer within five (5) Business Days after receipt of an invoice from the Buyer, as liquidated damages and not as a penalty, a sum of money equal to (A) \$50 per MW multiplied by the Annual Average Contract Capacity for each calendar day after the Milestone Date in respect of Financial Closing; and (B) \$150 per MW multiplied by the Annual Average Contract Capacity for each calendar day after the Milestone Date in respect of Commercial Operation, until the corresponding Milestone Event has been achieved. However, if Commercial Operation is achieved on or before its corresponding Milestone Date, then all liquidated damages for delay in achieving Financial Closing paid by the Supplier under this Section 2.5(a) shall be refunded to the Supplier, without interest, two weeks following the Commercial Operation Date; and

(b) the maximum time period that liquidated damages shall be calculated and payable under Section 2.5(a) by the Supplier:

- (i) for failure to meet the Milestone Date in respect of Financial Closing, shall be ninety (90) days; and
- (ii) for failure to meet the Milestone Date in respect of Commercial Operation, shall be five hundred and forty-five (545) days.

If there occurs or arises any incident, event or circumstance which results, or is likely to result, in a delay in the aggregate of thirty (30) days or more in obtaining Environmental and Site Plan Milestone Approvals, execution of the EPC Contract or commencement of construction of the Contract Facility, in each case following the Milestone Date therefor, including delays arising from events of Force Majeure, the Party first becoming aware of such delay or likely delay shall promptly (and, in any event, within ten (10) Business Days) notify the other Party and the Parties shall meet to discuss strategies for restoring, to the extent possible and practicable to do so, the development, construction and/or commissioning of the Facility to the schedule which will achieve Commercial Operation by the Milestone Date therefor.

2.6 Requirements for Commercial Operation

- (a) The Contract Facility will be deemed to have achieved **"Commercial Operation"** as at the point in time confirmed by the Buyer in a written notice as described in paragraph 2.6(b)(i) following receipt by the Buyer from the Supplier of the following:
 - (i) a certificate (the **"IE Certificate"**) addressed to it from an Independent Engineer in the form attached hereto as Exhibit X, procured at the expense of the Supplier, and otherwise acceptable to the Buyer, acting reasonably, stating that:
 - (A) the Contract Facility has been completed in all material respects, excepting punch list items that do not materially and adversely affect the ability of the Contract Facility to operate in accordance with this Agreement;
 - (B) the Connection Point of the Contract Facility is at the location specified in Exhibit A;
 - (C) the Contract Facility has been constructed, connected, commissioned and synchronized to the IESO-Controlled Grid, such that 100% of the Contract Capacity for the Contract Facility is available to generate Electricity in compliance with Good Engineering and Operating Practices;
 - (D) the Contract Facility has generated Electricity in compliance with all Laws and Regulations for four (4) continuous hours at an uninterrupted rate not less than 100% of the Contract Capacity for the Contract Facility. This requirement shall be evaluated based on calculation of the generator output at the Delivery Point net of any Station Service Loads, in accordance with the Metering Plan, and shall be satisfied if the energy output in each of the four (4) hours (in MWh), divided by one hour, is equal to or greater than the Contract Capacity for the Contract Facility. The Supplier acknowledges and agrees that the Contract Capacity for the Contract Facility and the Station Service Loads, as may be

measured by the foregoing test, shall not be adjusted for ambient weather or other conditions whatsoever;

- (E) the Contract Facility has demonstrated, through performance testing in accordance with the American Society of Mechanical Engineers PTC 46 - 1996 Performance Test Code on Overall Plant Performance for a combined cycle gas turbine (CCGT) generation facility or other equivalent international performance test procedures agreed to by the Buyer acting reasonably, an electrical output, measured at the Delivery Point net of any Station Service Loads, demonstrating the maximum capacity of the Contract Facility, and the Contract Facility has achieved the Contract Capacity for the Contract Facility. A copy of the performance test report is to be attached to the IE Certificate. For greater certainty, any obligations of the Supplier under this Agreement relating to or premised upon the amount of Nameplate Capacity shall remain in effect, unamended, notwithstanding that the maximum capacity of the Contract Facility as demonstrated during the performance test may be less than the Nameplate Capacity; and
 - (F) it has been demonstrated that the Contract Facility has a minimum ramp rate (being defined as the rate of increase or decrease in energy output that the Contract Facility is capable of achieving after start-up, synchronization to the IESO-Controlled Grid, and technically required hold points, with such interval being between the minimum load and the maximum continuous output rating, being the maximum continuous output rating of the plant) over a single five minute interval of at least "x" MW/minute, where "x" is a value equal to 4% of the Nameplate Capacity;
- (ii) all material documentation and information required to be provided pursuant to this Agreement to the Buyer by the Supplier or by any third parties prior to Commercial Operation;
 - (iii) a certificate addressed to it from the Supplier with respect to the Commercial Operation of the Contract Facility and other documentation and information required to be provided to the Buyer by the Supplier in the form attached hereto as Exhibit U; and
 - (iv) a proposed Commercial Operation Date.
- (b) The Buyer shall make Commercially Reasonable Efforts within 30 days following receipt of the proposed IE Certificate and the Supplier's certificate under paragraph 2.6(a)(iii) to notify the Supplier in writing that the Supplier:

- (i) has met all of the requirements of subsection 2.6(a), that Commercial Operation has been achieved, and confirming the Commercial Operation Date; or
- (ii) has not met all of the requirements of subsection 2.6(a) and that Commercial Operation has not been achieved;

In the case of notice under paragraph 2.6(b)(ii), the Buyer shall provide to the Supplier reasonable particulars in respect of the requirements of subsection 2.6(a) that have not been met.

- (c) For the purposes of Section 2.6(a), an "Independent Engineer" is an engineer that is:
 - (i) a professional engineer duly qualified and licensed to practice engineering in the Province of Ontario; and
 - (ii) employed by an independent engineering firm which holds a certificate of authorization issued by the Professional Engineers Ontario that is not affiliated with or directly or indirectly controlled by the Supplier and that does not have a vested interest in the design, engineering, procurement, construction and/or testing of the Contract Facility.

2.7 Buyer Information During Design and Construction

Prior to the Term Commencement Date, the Supplier shall provide the Buyer with progress reports as follows:

- (a) By the fifteenth (15th) day of each calendar quarter following the date of this Agreement and continuing until the Term Commencement Date, the Supplier shall provide the Buyer with quarterly progress reports in the form of Exhibit O, describing the status of efforts made by the Supplier to meet each Milestone Date and the progress toward each of the Reportable Events. At the Buyer's request, the Supplier shall provide an opportunity for the Buyer to meet with appropriate personnel of the Supplier to discuss and assess the contents of any such quarterly progress report.
- (b) In addition to the quarterly progress reports it is required to provide pursuant to Section 2.7(a), the Supplier shall also provide the Buyer with notice of any material incident, event or concern which may occur or arise during the course of the development, construction or commissioning of the Facility, promptly and, in any event, within ten (10) Business Days following the later of: (i) the Supplier becoming aware of any such incident, event or concern occurring or arising; and (ii) the Supplier becoming aware of the materiality of same, with such timing in each case based upon the Supplier having acted in accordance with Good Engineering and Operating Practices.

2.8 Operation Covenants

- (a) The Supplier agrees to own the Contract Facility during the Term and to operate and maintain the Contract Facility during the Term using Good Engineering and Operating Practices, and meeting all applicable requirements of the IESO Market Rules, the Transmission System Code, the Connection Agreement and all other Laws and Regulations. For certainty, the Parties acknowledge that the Buyer is not purchasing from the Supplier, nor is the Supplier selling to the Buyer, any Electricity or Related Products.
- (b) The Supplier agrees to assume all risk, liability and obligation and to indemnify, defend and hold harmless the Indemnitees in respect of all actions, causes of action, suits, proceedings, claims, demands, losses, damages, penalties, fines, costs, obligations and liabilities arising out of a discharge of any contaminant into the natural environment, at or related to, the Facility and any fines or orders of any kind that may be levied or made in connection therewith pursuant to the *Environmental Protection Act* (Ontario), the *Ontario Water Resources Act*, the *Dangerous Goods Transportation Act* (Ontario) or other similar legislation, whether federal or provincial, except to the degree that such discharge shall have been due to the negligence or wilful misconduct of the Indemnitees.
- (c) The Supplier agrees to use Commercially Reasonable Efforts to maintain or enter into any fuel supply contracts that are necessary for the proper operation of the Contract Facility during the Term. The Supplier further agrees that the Contract Facility shall not burn or otherwise use any fuel other than Gas. Without limiting the generality of the foregoing, a Supplier who is also a load facility under the IESO Market Rules shall be solely responsible for all charges (net of any applicable credits) in relation to Electricity consumed by it in order to operate the Facility in accordance with this Agreement.
- (d) If the Proposal provides that Automatic System Voltage Support will be provided by the Contract Facility, the Supplier agrees to provide such Automatic System Voltage Support throughout the Term in accordance with all relevant requirements under the IESO Market Rules for a generator, whether directly connected to a Transmission System, LDC or End-user Load, including the requirements described in the amendments approved by the IESO and described in http://www.theimo.com/imoweb/pubs/mr/mr_00244-R00_BA.pdf.

2.9 Metering and Dispatch Capabilities

- (a) The Supplier covenants and agrees to provide, at its expense, separate meters and ancillary metering and monitoring equipment for the Contract Facility as required by the IESO Market Rules.
- (b) The Buyer retains the right to audit, at any time during the Term, on reasonable notice to the Supplier and during normal business hours, the metering equipment to confirm the accuracy of the Metering Plan. The Supplier shall have the

Metering Plan approved by the Buyer and shall deliver a copy to the Buyer for its approval no later than sixty (60) days prior to Commercial Operation. The Buyer agrees to review the Metering Plan submitted by the Supplier and to either approve the plan or provide the Supplier with its comments within fifteen (15) Business Days after receipt. The Supplier will provide the Buyer with a commissioning report for all revenue meters referenced in the Metering Plan prior to any use of metered data for the purposes expressed in Section 15.6.

- (c) The Supplier shall maintain (or be responsible for arranging on its behalf) a system satisfactory to the Buyer commencing the day prior to the Term Commencement Date and continuing every day throughout the Term, to receive Directed Dispatch Orders from either the Buyer or the Dispatcher, as the case may be, prior to the applicable daily deadlines set out in Exhibit G.

2.10 Insurance Covenants

- (a) The Supplier hereby agrees to put in effect and maintain, or cause its contractors, where appropriate, to maintain, from the commencement of the construction of the Facility to the expiry of the Term, at its own cost and expense, all the necessary and appropriate insurance that a prudent Person in the business of developing and operating the Facility would maintain including the policies set out in this Section 2.10. All insurance policies to be effected and maintained as required hereunder shall:
 - (i) be placed with insurers licensed to underwrite insurance in the Province of Ontario and having an overall A.M. Best's Rating of at least A- (except in the case of automobile liability insurance where the minimum rating of the insurer shall be B+);
 - (ii) provide that they shall continue in effect and remain unaltered for the benefit of the Supplier for a period of not less than sixty (60) days after written notice of any cancellation or any change or amendment restricting coverage; and
 - (iii) be capable of being reviewed and altered during the term of the policy to account for any changes in Laws and Regulations which affect coverage of the risk insured.
- (b) The Supplier shall put in effect and maintain, or cause its contractors, where appropriate, to maintain, at a minimum, the following insurance policies:
 - (i) "all-risk" property insurance covering property of every description insuring not less than the full replacement value of the Facility; and
 - (A) for the period prior to the Commercial Operation Date:
 - (1) shall be in the joint names of at least the Supplier and its principal contractors, with no co-insurance restriction; the

policy shall include as additional insureds all subcontractors and the coverage shall not be less than the insurance required by IBC Forms 4042 and 4047, extended to include testing and commissioning, or their equivalent replacement; and

- (2) shall provide delayed start-up coverage on a fixed expense basis with an indemnity period of not less than twelve (12) months and a deductible waiting period of not more than sixty (60) days; and

(B) for the period from and after the Commercial Operation Date:

- (1) shall be in the name of the Supplier; and
- (2) shall provide for business interruption coverage on an actual loss sustained basis with a waiting period of not more than ninety (90) days.

These policies shall contain a waiver of subrogation in favour of the Indemnitees. Deductibles for these policies shall not exceed \$250,000 for all losses (other than damage to Equipment; which will be subject to the deductibles set forth in Section 2.10(b)(ii)), except for 3% of full replacement value of damage to property (with a minimum deductible of \$250,000) for damage to property arising from or relating to each of flood and earthquake.

- (ii) equipment breakdown insurance, in the joint names of the Supplier and, for the period prior to the Commercial Operation Date, its principal contractors, insuring not less than the full replacement value of the boilers, machinery, pressure vessels, electrical and mechanical machines, air conditioning and refrigeration systems, computers, communications and electronic systems, service supply objects, heat recovery steam generator units, steam turbine generator units, generator step-up transformer units and combustion gas turbine generator units and all other equipment forming part of the Facility (the "Equipment"). The coverage shall not be less than the insurance provided by the forms known and referred to in the insurance industry as "Comprehensive Boiler and Machinery Form" or "Equipment Breakdown Insurance". This policy shall contain a waiver of subrogation in favour of the Indemnitees. Deductibles in respect of this policy or the portion of the "all risk" property insurance relating to the Equipment (as described in Section 2.10(b)(i)) shall not exceed:
 - (A) \$3,000,000 for property damage arising from and relating to testing and commissioning of Equipment prior to the Commercial Operation Date; and

- (B) \$3,000,000 for property damage arising from and after the Commercial Operation Date;

Equipment breakdown insurance coverage may be obtained as part of the "all risk" property insurance.

- (iii) commercial general liability insurance on an occurrence basis for death, bodily injury and property damage and other types of damage that may be caused to third parties as a result of the Supplier's activities in connection with the Facility or performance of its obligations under this Agreement, to an inclusive limit of not less than \$10,000,000 per occurrence and in aggregate and with a deductible not exceeding \$100,000. This policy shall include the Indemnitees as additional insureds and shall be non-contributing and primary with respect to coverage in favour of the Indemnitees. The coverage provided shall not be less than the insurance required by IBC Form 2100-2, 4-1998 (but not its replacement) and IBC Form 2320 (version in effect as at the date hereof but not its replacement). The policy shall include the following coverage:
 - (A) broad form products, premises and completed operations liability for a period of not less than twenty-four (24) months after the Commercial Operation Date;
 - (B) cross-liability and severability of interests clause;
 - (C) contingent employer's liability;
 - (D) tenant's legal liability (if applicable and with applicable sublimits);
 - (E) blanket contractual liability of the Supplier under this Agreement;
 - (F) damage arising from shoring, blasting, excavating, underpinning, demolition pile driving and caisson work, work below ground surface, tunnelling, and grading (if applicable);
 - (G) non-owned automobile liability with blanket contractual coverage for hired automobiles; and
 - (H) liability on the part of the Supplier resulting from activities or work performed by its contractors and subcontractors.
- (iv) automobile liability insurance, providing coverage for owned, non-owned or hired automobiles with a combined single liability limit of not less than \$2,000,000 per occurrence;
- (v) environmental impairment liability insurance, providing coverage for first party property damage and site clean-up and any third party claims for bodily injury, property damage and clean-up for any environmental

incidents arising out of the construction, operation or maintenance of the Facility, with a limit of not less than \$5,000,000 per occurrence and in aggregate and with a deductible not exceeding \$100,000. This policy shall include the Indemnitees as additional insureds and shall be non-contributing and primary with respect to coverage in favour of the Indemnitees. The policy shall contain a cross-liability and severability of interests clause; and

- (vi) any additional insurance required to be provided under all Laws and Regulations.
- (c) For purposes of the insurance coverage under Sections 2.10(b)(i) and (ii), the Supplier may procure and maintain separate insurance policies to cover the period prior to the Commercial Operation Date and the period from and after the Commercial Operation Date.
- (d) The Supplier shall provide the Buyer with proof of the insurance referred to in this Agreement in the form attached hereto as Exhibit S (Certificate of Liability Insurance) and as Exhibit T (Certificate of Property Insurance) that references this Agreement and confirms the relevant coverage, including endorsements, on or before the commencement of the construction of the Facility, and renewals or replacements on or before the expiry of any such insurance. The policies for the insurance coverage under Sections 2.10(b)(iii) and 2.10(b)(v) shall be endorsed to provide the Buyer with:
 - (i) not less than sixty (60) days notice in writing in advance of any termination, cancellation or non-renewal thereof, and the Supplier shall ensure that the Buyer receives such notice prior to the commencement of such sixty (60) day period; and
 - (ii) notice in writing at the time of any material change or amendment thereto (including any reduction in limits, increase in deductibles, exhaustion of aggregate limits, and change in named insured), and the Supplier shall ensure that the Buyer receives such notice at such time.

Upon the request of the Buyer, the Supplier will provide the Buyer with a copy of each insurance policy to be furnished within ten (10) Business Days of the request being made by the Buyer. The provision to the Buyer of any certificate of insurance, insurance policy or other evidence of compliance with this Section 2.10 shall not imply acceptance by the Buyer that the extent of insurance coverage is sufficient and otherwise complies with this Section 2.10.

- (e) If the Supplier is subject to the *Workplace Safety and Insurance Act* (Ontario), it shall submit a valid clearance certificate of *Workplace Safety and Insurance Act* coverage to the Buyer prior to the commencement of construction of the Contract Facility. In addition, the Supplier shall, from time to time at the request of the Buyer, provide additional *Workplace Safety and Insurance Act* clearance

certificates. The Supplier agrees to pay when due, and to ensure that each of its contractors and subcontractors pays when due, all amounts required to be paid by it and its contractors and subcontractors, from time to time from the commencement of construction of the Contract Facility, under the *Workplace Safety and Insurance Act*, failing which the Buyer shall have the right, in addition to and not in substitution for any other right it may have pursuant to this Agreement or otherwise at law or in equity, to pay to the Workplace Safety and Insurance Board any amount due pursuant to the *Workplace Safety and Insurance Act* and unpaid by the Supplier or its contractors and subcontractors and to deduct such amount from any amount due and owing from time to time to the Supplier pursuant to this Agreement together with all costs incurred by the Buyer in connection therewith.

- (f) In addition to all other rights and remedies available to the Buyer in this Agreement, if the Supplier fails to comply with this Section 2.10, the Buyer shall have the right (but not the obligation) to:
 - (i) obtain any and all insurance policies that the Supplier has failed to obtain and maintain or in respect of which the Supplier has failed to notify the Buyer in the manner contemplated herein. The Buyer shall have the right to deliver an invoice to the Supplier containing a statement of the reasonable costs of obtaining such insurance policies, together with any associated administrative and legal and other reasonable costs (collectively, the "Insurance Costs") and the Supplier shall within ten (10) days of the date of receiving such invoice pay to the Buyer an amount equal to the Insurance Costs, irrespective of whether or not the Buyer proceeds to obtain or has in fact obtained any such insurance policy or policies. The parties agree that the Insurance Costs are a reasonable pre-estimate of damages and not a penalty. If the Supplier fails to pay to the Buyer the amount of the Insurance Costs, the Buyer shall be entitled to draw and retain from the Completion and Performance Security the amount of the Insurance Costs; or
 - (ii) withhold any Contingent Support Payment until such time as the Supplier provides the certificates of insurance or copies of insurance policies as required under this Section 2.10.
- (g) Where the Supplier is made up of more than one legal entity (whether in the form of partnership, joint venture or otherwise), the Supplier shall provide to the Buyer an irrevocable direction designating one such legal entity as responsible for all insurance matters under this Section 2.10, and for the provision of information in relation thereto to the Buyer as contemplated in this Agreement, and such entity shall be so responsible. The Supplier agrees that such designate shall be authorized to bind the Supplier and all legal entities constituting the Supplier in respect of all matters relating to this Section 2.10.

2.11 Compliance with Laws and Regulations and Registration with the IESO

- (a) The Buyer and the Supplier shall each comply, in all material respects, with all Laws and Regulations required to perform or comply with their respective obligations under this Agreement.
- (b) The Buyer and the Supplier shall each furnish, in a timely manner, information to Governmental Authorities and shall each obtain and maintain in good standing any licence, permit, certificate, registration, authorization, consent or approval of any Governmental Authority required to perform or comply with their respective obligations under this Agreement, including such licensing as is required by the OEB, including its generator license. Without limiting the generality of the foregoing, the Supplier agrees to meet all applicable Facility registration requirements as specified in the IESO Market Rules and shall provide to the Buyer the following:
 - (i) Electric Safety Authority Connection Authorization;
 - (ii) IESO Notification Form re: connection of new facility;
 - (iii) IESO Authorization to Participate; and
 - (iv) OEB generator license.
- (c) The Supplier shall register with the IESO as a "Metered Market Participant" and as a "Generator" pursuant to the IESO Market Rules. The settlement of Market Settlement Charges shall take place directly between the Supplier as the "Metered Market Participant" and the IESO, and any costs incurred by the Supplier acting as the "Metered Market Participant" pursuant to the IESO Market Rules in respect of this Agreement shall be charged to and be the sole responsibility of the Supplier, unless otherwise expressly determined pursuant to Section 1.6, 1.7, 1.8 or 1.9 hereof.

2.12 Environmental Attributes and Future Contract Related Products

- (a) The Supplier shall from time to time during the Term of this Agreement, on behalf of the Buyer, obtain, quantify, and register with the relevant authorities or agencies all Environmental Attributes related to the Contract Facility that are required pursuant to applicable legislation, and same shall be immediately transferred, assigned or held in trust for the Buyer who thereafter shall retain, all rights, title, and interest in all such Environmental Attributes. The Supplier shall not participate in any voluntary programs with respect to any Environmental Attributes associated with the Contract Facility without the prior written consent of the Buyer, which consent may be unreasonably withheld.
- (b) Notwithstanding Section 2.12(a), the Supplier shall continue to be entitled to all rights, title, and interest to all emission allowances and Emission Reduction Credits that pertain to the Contract Facility and of a type that were available under

the Ontario Emissions Trading Program as of September 13, 2004. However, the amount of the Supplier's entitlement to any such emission allowance or Emission Reduction Credit shall be determined with reference to the levels in effect as of the date of the Supplier's claim to any such entitlement. For certainty, revenue arising from such OETP credits and allowances will not be included in Imputed Net Revenue.

- (c) The Supplier will provide the Buyer with prior written notice of the development by the Supplier of any Future Contract Related Products from time to time.

ARTICLE 3 DISPATCH OPTIONS

3.1 Rights to Dispatch the Contract Facility

The Buyer shall have the right, from time to time throughout the Term, to select the dispatch mechanism governing the Contract Facility (the "Dispatch Rights") in every given hour of the Term in accordance with, and subject to, the provisions of this Article 3.

3.2 Available Dispatch Options

The Buyer's Dispatch Rights shall be restricted to the Deemed Dispatch Option and the Directed Dispatch Option in each case as described in Exhibit G.

3.3 Appointment of the Dispatcher Under the Directed Dispatch Option

- (a) The Buyer shall be entitled, without the consent of the Supplier, to appoint any Person from time to time throughout the Term and for any stated length of time up to the balance of the Term (the "Dispatcher") to exercise the Dispatch Rights under the Directed Dispatch Option in the place of the Buyer.
- (b) The appointment of the Dispatcher will be made on the following basis:
 - (i) the Buyer will provide written notice to the Supplier at least five (5) Business Days prior to the exercise of Dispatch Rights by the Dispatcher;
 - (ii) the Dispatcher shall be entitled, during the term of its appointment, to exercise the Dispatch Rights under the Directed Dispatch Option in the place of the Buyer and communicate all Directed Dispatch Orders directly with the Supplier. However, the Dispatcher shall not have the authority to act for, or in the place of, the Buyer in any other respect under this Agreement and shall not be directly liable to the Supplier;
 - (iii) the appointment of the Dispatcher will not relieve the Buyer of its obligations to the Supplier under this Agreement, and all Monthly Payments shall continue to be made and settled directly between the Buyer and the Supplier; and

- (iv) the appointment of the Dispatcher may be revoked by the Buyer at any time prior to the expiry of the term of the Dispatcher's appointment by providing written notice to the Supplier at least one (1) Business Day prior to the revocation of the appointment of the Dispatcher. For greater certainty, the revocation of the appointment of the Dispatcher shall not affect the validity of any outstanding Directed Dispatch Order, which shall continue to be governed by the terms of Exhibit G.

3.4 Future Tolling Dispatch

The Parties acknowledge that the market for Electricity and Related Products continues to evolve within the Province of Ontario, and that it is important to the Buyer to encourage market evolution in certain directions. Subject to Section 12.1(h), the Supplier agrees that if requested to do so by the Buyer, it will enter into good faith negotiations with the Buyer to allow the Contract Capacity to be dispatched by the Buyer, a Dispatcher or an assignee of the Buyer during all or any portion of the then remaining Term on a tolling basis, provided that it shall be a principle of such negotiations that the Supplier shall not be required to accept any tolling dispatch mechanism which adversely impacts the Supplier's economics as contemplated hereunder prior to the introduction of such tolling dispatch mechanism. Any disputes arising under this Section 3.4 are not subject to resolution pursuant to Section 16.2.

ARTICLE 4

OPERATION OF CONTRACT FACILITY AND PAYMENT OBLIGATIONS

4.1 Operation of Contract Facility During the Term

- (a) From and after the beginning of the hour ending 01:00 (EST) of the Term Commencement Date, the Supplier agrees to operate the Contract Facility in accordance with the terms of this Agreement and the Monthly Payments shall begin to accrue and be payable in accordance with Section 4.2 and Article 5. For certainty, the Parties acknowledge that the Buyer is not purchasing from the Supplier, nor is the Supplier selling to the Buyer, any Electricity or Related Products.
- (b) The Supplier will provide the Buyer with prior written notice of the development by the Supplier of any Future Contract Related Products from time to time.

4.2 Amount of Monthly Payment

The "Monthly Payment" shall be an amount equal to one of the following:

- (a) the Contingent Support Payment, if any, which shall be owed by the Buyer to the Supplier; or
- (b) the Revenue Sharing Payment, if any, which shall be owed by the Supplier to the Buyer.

4.3 Supplier Option to Adjust Contract Capacity

At any time within the six (6) month period immediately prior to the Term Commencement Date, the Supplier shall, once during such period, have the right to adjust the Summer Contract Capacity and/or the Winter Contract Capacity to a lower or higher amount by providing written notice thereof to the Buyer during such period, provided that any such increase or decrease shall not be greater than twenty-five (25) MW. The adjustment in the Contract Capacity set out in this Section 4.3 shall take effect on the Term Commencement Date, provided that there is no Supplier Event of Default as of the Term Commencement Date. The Supplier acknowledges that any such adjustment in the Contract Capacity shall not reduce any obligations of the Supplier in existence prior to the effective date of such adjustment and that such adjustment shall be permanent and the Contract Capacity, as adjusted, cannot be further adjusted at any point during the balance of the Term.

4.4 Supplier's Responsibility for Taxes

The Supplier is liable for and shall pay, or cause to be paid, or reimburse the Buyer if the Buyer has paid, all Taxes applicable to any Revenue Sharing Payment due to the Buyer. If any GST or PST is payable in connection with the Revenue Sharing Payment, such GST or PST shall be paid by the Supplier. In the event that the Buyer is required to remit such Taxes, the amount thereof shall be deducted from any sums becoming due to the Supplier hereunder, or shall be added to any sums becoming due to the Buyer hereunder.

4.5 Buyer's Responsibility for Taxes

The Buyer is liable for and shall pay, or cause to be paid, or reimburse the Supplier if the Supplier has paid, all Taxes applicable to any Contingent Support Payment due to the Supplier. If any GST or PST is payable in connection with the Contingent Support Payment, such GST or PST shall be paid by the Buyer. In the event that the Supplier is required to remit such Taxes, the amount thereof shall be deducted from any sums becoming due to the Buyer hereunder, or shall be added to any sums becoming due to the Supplier hereunder.

4.6 Non-Residency

If the Supplier is a non-resident of Canada, as that term is defined in the ITA, and the Buyer incurs any withholding or other similar Taxes as a result of such non-residency, then payments under this Agreement by the Buyer shall be reduced by the amount of such withholding Taxes and the Buyer shall remit such withholding Taxes to the applicable taxing authorities. The Buyer shall within sixty (60) days after remitting such Taxes, notify the Supplier in writing, providing reasonable detail of such payment so that the Supplier may claim any applicable rebates, refunds or credits from the applicable taxing authorities. If, after the Buyer has paid such amounts, the Buyer receives a refund, rebate or credit on account of such Taxes, then the Buyer shall promptly remit such refund, rebate or credit amount to the Supplier.

ARTICLE 5 STATEMENTS AND PAYMENTS

5.1 Meter and Other Data

- (a) The Supplier agrees to provide to the Buyer access to the meters in the Metering Plan to accommodate remote interrogation of the metered data on a daily basis. The Supplier agrees to provide to the Buyer, at all times, access to any other information relating to the Contract Facility that the Supplier has provided to, or received from, the IESO from time to time. The Buyer agrees to provide to the Supplier, upon the Supplier's request, any Market Price information and any other information that the Buyer will be utilizing in preparing any Statement that is not available directly to the Supplier from the IESO. Upon a Party becoming aware of any errors or omissions in any data or information provided in accordance with this Section 5.1, such Party shall notify the other Party, and if applicable, the IESO in accordance with the IESO Market Rules, on a timely basis.
- (b) Notwithstanding the foregoing, the Parties acknowledge and agree that all Statements shall be prepared based on market price information and settlement data from the IESO, and in the event of a discrepancy between market price information and settlement data from the IESO and information received directly from the Supplier pursuant to Section 5.1(a), then the market price information and settlement data from the IESO shall, subject to Section 5.7, be considered to be correct.

5.2 Statements

The Buyer shall prepare and deliver a settlement statement (the "Statement") to the Supplier, within ten (10) Business Days after the end of each calendar month in the Term that is the subject of the Statement (the "Settlement Month"), setting out the basis for the Monthly Payment with respect to the Settlement Month, as well as the basis for any other payments owing under this Agreement by either Party to the other in the Settlement Month. A Statement may be delivered by the Buyer to the Supplier by facsimile or electronic means and shall include the reference number assigned to this Agreement by the Buyer and a description of the components of the Monthly Payment and other payments, as described in this Agreement, including Sections 2.3(a)(iv) and 4.2, as applicable, owing to the Supplier for the Settlement Month.

5.3 Payment

The Party owing the Monthly Payment shall remit to the other Party full payment in respect of the Statement no later than twenty (20) Business Days after the end of the Settlement Month to which the Statement relates (the "Payment Date"). Any and all payments required to be made by either Party under any provision of this Agreement shall be made by wire transfer to the applicable account designated in Section 5.5, or as otherwise agreed by the Parties.

5.4 Interest

The Party owing the Monthly Payment shall pay interest on any late payment to the other Party, from the Payment Date to the date of payment, unless such late payment was through the fault of the other Party. The interest rate applicable to such late payment shall be the Interest Rate in effect on the date that the payment went into arrears, calculated daily, but shall not, under any circumstances, exceed the maximum interest rate permitted by Laws and Regulations.

5.5 Payment Account Information

Account for payments to Supplier:

The Supplier shall provide information in respect of its account for payments hereunder. Such information shall include the bank, bank's address, bank code, transit number and account number. The Buyer's obligation to make payments to the Supplier hereunder shall not commence until the Buyer has received such information in respect of the Supplier's account for payments.

Supplier's GST Registration Number: 85917 8972 RT0001

The Buyer acknowledges that the account information, when provided to the Buyer, and GST registration number of the Supplier above constitutes Supplier's Confidential Information and is subject to the obligations of the Buyer as set out in Article 8.

Account for payments to Buyer:

Royal Bank of Canada
Main Branch
200 Bay Street, Main Floor
Toronto, ON M5J 2J5

Account Number: 104-439-5
Transit Number: 00002

Buyer's GST Registration Number: 85419 5039 RT0001

The Supplier acknowledges that the account information and GST registration number of the Buyer above constitutes Buyer's Confidential Information and is subject to the obligations of the Supplier as set out in Article 8.

Either Party may change its account information from time to time by written notice to the other in accordance with Section 15.7.

5.6 Adjustment to Statement

- (a) Each Statement shall be subject to adjustment for errors in arithmetic, computation, or other errors, raised by a party during the period of one (1) year following the end of the calendar year in which such Statement was issued. If

there are no complaints raised, or if any complaints raised in the time period have been resolved, such Statement shall be final and subject to no further adjustment after the expiration of such period.

- (b) Notwithstanding the foregoing, the determination by the IESO of any information shall be final and binding on the Parties in accordance with the IESO Market Rules, and without limiting the generality of the foregoing, if a Statement contains an error in the data or information issued by the IESO which the IESO has requested be corrected, then the one (1) year limit set forth in Section 5.6(a) shall not apply to the correction of such error or the Buyer's ability to readjust the Statement.
- (c) Subject to Section 5.7, any adjustment to a Statement made pursuant to this Section 5.6 shall be made in the next subsequent Statement.

5.7 Disputed Statement

If the Supplier disputes a Statement or any portion thereof, the Party owing any amount set forth in the Statement shall, notwithstanding such dispute, pay the entire amount set forth in the Statement to the other Party. The Supplier shall provide written notice to the Buyer setting out the portions of the Statement that are in dispute with a brief explanation of the dispute. If it is subsequently determined or agreed that an adjustment to the Statement is appropriate, the Buyer will promptly prepare a revised Statement. Any overpayment or underpayment of any amount due under a Statement shall bear interest at the Interest Rate, calculated daily, from and including the time of such overpayment or underpayment to the date of the refund or payment thereof. Payment pursuant to the revised Statement shall be made on the tenth (10th) Business Day following the date on which the revised Statement is delivered to the Supplier. If a Statement dispute has not been resolved between the Parties within five (5) Business Days after receipt of written notice of such dispute by the Buyer, the dispute may be submitted by either Party to a Senior Conference pursuant to the terms of Section 16.1.

5.8 Statements and Payment Records

The Parties shall keep all books and records necessary to support the information contained in and with respect to each Statement and Monthly Payment made thereunder, in accordance with Section 15.2.

ARTICLE 6 CREDIT AND SECURITY REQUIREMENTS

6.1 Completion and Performance Security

- (a) The Parties acknowledge that the Supplier has, prior to the Amendment and Restatement Date, provided to the Buyer security for the performance of the Supplier's obligations under the Original CES Contract in an amount equal to \$14,000,000 in the form described in Section 6.2 (the "Completion and Performance Security").

- (b) Effective upon the Term Commencement Date, and provided that the Buyer has determined that any liquidated damages payable by the Supplier under Section 2.5 have been paid by the Supplier, then the amount of the Completion and Performance Security shall be reduced to an amount equal to \$11,000,000. The amount of the Completion and Performance Security shall be reduced to an amount equal to (i) \$8,000,000 effective upon the fifth anniversary of the Term Commencement Date, (ii) \$5,000,000 effective upon the tenth anniversary of the Term Commencement Date and (iii) \$2,500,000 effective upon the fifteenth anniversary of the Term Commencement Date.
- (c) In the event that the Buyer, in accordance with this Agreement, has recovered monies that were due to it using all or part of the Completion and Performance Security, the Supplier shall forthwith provide replacement security to cover an amount equal to that recovered or paid out of the Completion and Performance Security. In exchange for the Completion and Performance Security in the amended amount, the Buyer will return to the Supplier the original Completion and Performance Security.
- (d) If prior to Financial Closing or the date of receipt by the Buyer of the Completion and Performance Security, there occurs or arises incidents, events or circumstances which results, or is likely to result, in a delay in the aggregate of thirty (30) days or more in the achievement of Commercial Operation by the Milestone Date therefore including delays arising from events of Force Majeure, the Party first becoming aware of such delay or likely delay shall promptly (and, in any event, within ten (10) Business Days) notify the other Party and the Parties shall meet to discuss strategies for restoring, to the extent possible and practicable to do so, the development, construction and/or commissioning of the Facility to the schedule which will achieve Commercial Operation by the Milestone Date therefor. Notwithstanding the foregoing and any other provision of this Agreement, an event of Force Majeure shall not extend the date by which the Completion and Performance Security in the respective amounts set out in Sections 6.1(a) and 6.1(b) are each required to be provided by the Supplier.

6.2 Composition of Security

- (a) Prior to the date of receipt by the Supplier of the notification of the Buyer described in paragraph 2.6(b)(i) in respect of Commercial Operation, the Completion and Performance Security shall be provided in the form of a Letter of Credit, certified cheque, bank draft, or other equivalent form of surety instrument acceptable to the Buyer, acting reasonably, for the full amount, but for certainty, shall not include guarantees.
- (b) From and after the date of receipt by the Supplier of the Confirmation of the Buyer described in paragraph 2.6(b)(i) in respect of the Commercial Operation Date, the Completion and Performance Security shall be provided as set out in Section 6.2(b)(i) or (ii) below:

- (i) a Letter of Credit, certified cheque, bank draft, or other equivalent form of surety instrument acceptable to the Buyer, for the full amount of the Completion and Performance Security; or
- (ii) subject to Section 6.2(d), a Guarantee, up to a maximum amount determined pursuant to Section 6.4, but not to exceed ninety percent (90%) of the amount of the Completion and Performance Security, together with a Letter of Credit, certified cheque, bank draft, or other equivalent form of surety instrument acceptable to the Buyer, for the balance of the amount of the Completion and Performance Security.

To the extent that the amount of the Guarantee requirement increases or decreases from time to time in accordance with this Article 6, the amount of the Letter of Credit shall correspondingly be required to be decreased or increased, respectively, so that the total amount of the Completion and Performance Security held by the Buyer at all times from and after the Term Commencement Date remains in an aggregate amount as required pursuant to Section 6.1.

- (c) If the aggregate of the Supplier's Creditworthiness Value determined pursuant to Section 6.4(b) and the principal amount of the Letter of Credit, certified cheque, bank draft, or other equivalent form of surety instrument acceptable to the Buyer described in Section 6.2(b)(ii) is equal to or greater than the amount of the Completion and Performance Security, then no Guarantee is required.
- (d) If a Guarantee forms part of the Completion and Performance Security and:
 - (i) the Creditworthiness Value of the Supplier determined pursuant to Section 6.4(b) is equal to or greater than the Creditworthiness Value of the Guarantor determined pursuant to Section 6.4(b), provided the Guarantor has a Credit Rating required of a guarantor as set out in Section 6.4, or
 - (ii) the aggregate of the Supplier's Creditworthiness Value and the principal amount of the Letter of Credit, certified cheque, bank draft, or other equivalent form of surety instrument acceptable to the Buyer described in Section 6.2(b)(ii) is equal to or greater than the amount of the Completion and Performance Security,

then, provided the Supplier is not then in default under this Agreement, the Buyer shall, upon request by the Supplier, return the Guarantee to the Supplier.

6.3 Letter of Credit Provisions

Any Letter of Credit delivered hereunder shall be subject to the following provisions:

- (a) The Supplier shall (i) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (ii) if the financial institution that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide a substitute Letter of Credit or

other equivalent form of surety instrument satisfactory to the Buyer at least ten (10) Business Days prior to the expiration of the outstanding Letter of Credit, and (iii) if a financial institution issuing a Letter of Credit fails to honour the Buyer's properly documented request to draw on an outstanding Letter of Credit (other than a failure to honour as a result of a request to draw that does not conform to the requirements of such Letter of Credit), provide for the benefit of the Buyer (A) a substitute Letter of Credit that is issued by another financial institution, or (B) other surety instrument satisfactory to the Buyer in an amount equal to such outstanding Letter of Credit, in either case within five (5) Business Days after the Supplier receives notice of such refusal.

- (b) A Letter of Credit shall provide that the Buyer may draw upon the Letter of Credit in an amount (up to the face amount or part thereof remaining available to be drawn thereunder for which the Letter of Credit has been issued) that is equal to all amounts that are due and owing from the Supplier but that have not been paid to the Buyer within the time allowed for such payments under this Agreement (including any related notice or grace period or both). A Letter of Credit shall provide that a drawing may be made on the Letter of Credit upon submission to the financial institution issuing the Letter of Credit of one or more certificates specifying the amounts due and owing to the Buyer in accordance with the specific requirements of the Letter of Credit.
- (c) If the Supplier shall fail to renew, substitute, or sufficiently increase the amount of an outstanding Letter of Credit (as the case may be), or establish one or more additional Letters of Credit or other equivalent form of surety instrument satisfactory to the Buyer when required hereunder, then without limiting any other remedies the Buyer may have under this Agreement, the Buyer (i) may draw on the undrawn portion of any outstanding Letter of Credit and retain for its own account, as liquidated damages and not as a penalty, the amount equal to one (1%) percent of the face value of such outstanding Letter of Credit and/or (ii) prior to the expiry of such Letter of Credit, may draw on the entire, undrawn portion of any outstanding Letter of Credit, upon submission to the financial institution issuing such Letter of Credit of a certificate specifying the entire amount of the Letter of Credit is owing to the Buyer in accordance with the specific requirements of the Letter of Credit. Any amount then due and owing to the Buyer shall be received by the Buyer as liquidated damages and not as a penalty. If the amounts then due and owing are less than the amount drawn under such Letter of Credit, then such excess amount shall be held as Completion and Performance Security. The Supplier shall remain liable for any amounts due and owing to the Buyer and remaining unpaid after the application of the amounts so drawn by the Buyer. If the Supplier subsequently delivers a Letter of Credit or other surety instrument or other collateral permitted pursuant hereto, in each case satisfactory to the Buyer in its sole and absolute discretion as to form, substance and amount, then upon acceptance by the Buyer thereof, the Buyer shall remit to the Supplier all amounts held by the Buyer as Completion and Performance Security pursuant to this Section 6.3(c).

- (d) The costs and expenses of establishing, renewing, substituting, cancelling, increasing and reducing the amount of (as the case may be) one or more Letters of Credit shall be borne by the Supplier.
- (e) The Buyer shall return a Letter of Credit held by the Buyer to the Supplier, if the Supplier is substituting a Letter of Credit of a greater or lesser amount pursuant to Section 6.3(a), within five (5) Business Days from the Buyer's receipt of such substituted Letter of Credit.

6.4 Guarantee Provisions

- (a) The Buyer shall accept a guarantee in the form attached hereto as Exhibit D (the "Guarantee") from a guarantor of the Supplier (with the applicable party providing the Guarantee being referred to as the "Guarantor"), provided however that the Guarantor shall have a Credit Rating as listed in any of the four rows contained in the table below. Notwithstanding the foregoing, in the event the Guarantor has a Negative Outlook, then its Credit Rating, for purposes of calculating the Creditworthiness Value of the Guarantor in Section 6.4(b)(i), will be automatically demoted by one (1) row in the table in Section 6.4(b)(i). For greater certainty, a Guarantor with a Credit Rating in the fourth (4th) level set forth below without a Negative Outlook will no longer be able to provide a Guarantee if it subsequently receives a Negative Outlook. Subject to Section 6.2, the amount of the Guarantee shall be equal to or less than the Creditworthiness Value of the Guarantor, failing which the Supplier shall be required to provide alternative acceptable security as provided in Section 6.2(b) so as to remain in compliance with the Completion and Performance Security requirements set out in Section 6.1.
- (b) (i) A Person's Creditworthiness Value (the "Creditworthiness Value") shall be determined by the following formula:

$$S \times T$$

where S represents the Tangible Net Worth of the Person, expressed in Dollars, and T is a figure, used for weighting purposes, taken from the column entitled "Value of T" in the table below of the appropriate row corresponding to the Person's Credit Rating as adjusted by any Negative Outlook in accordance with Section 6.4(a) or 6.4(b)(ii), as applicable, provided that where the Person has Credit Ratings from more than one rating agency set out in the table below, then the lowest of such Credit Ratings, as adjusted by any Negative Outlook in accordance with Section 6.4(a) or 6.4(b)(ii), as applicable, shall be used:

Credit Rating of Person				
	S & P	DBRS	Moody's	Value of T
1.	At least A-	At least A low	At least A3	0.10

2.	At least BBB+	At least BBB high	At least Baa1	0.08
3.	At least BBB	At least BBB	At least Baa2	0.06
4.	At least BBB-	At least BBB low	At least Baa3	0.05

- (ii) In the event that any Person has a Negative Outlook, then its Credit Rating will automatically be demoted by one (1) row in the table in Section 6.4(b)(i).
- (c) Upon the consent of the Buyer, which consent shall not be unreasonably withheld, the Guarantor may substitute its Guarantee with a guarantee from an Affiliate or from any other Person who would qualify as a guarantor for an amount equivalent to the amount of the Guarantee (the "Replacement Guarantee"). The Replacement Guarantee shall be in the form of the Guarantee. Upon delivery of the Replacement Guarantee, (i) such Replacement Guarantee shall be deemed to be the "Guarantee" and such Affiliate or other Person providing such guarantee, as the case may be, shall be deemed to be the "Guarantor" for all purposes of this Agreement and (ii) the Buyer shall return the original Guarantee to the original Guarantor within five (5) Business Days of such delivery.
- (d) For greater clarity, all provisions of this Agreement that refer to (i) the Guarantor or similar references, or (ii) the Creditworthiness Value of the Guarantor or similar references, shall:
- (1) only apply in respect of the Guarantor if that Guarantor has, at the applicable time, issued a Guarantee in favour of the Buyer and that Guarantee remains in effect at that time (otherwise, the reference to Guarantor shall be excluded when interpreting the provision until such time as a Guarantee is provided); and
- (2) only refer to the Creditworthiness Value of the Supplier (and not the Creditworthiness Value of its Guarantor) when and for so long as its Guarantor has not provided a Guarantee that remains in effect at the applicable time.

6.5 Financial Statements

If there is a Guarantor, the Supplier shall, on a quarterly basis, provide to the Buyer (i) as soon as available and in no event later than sixty (60) days after the end of each fiscal quarter of the Guarantor, unaudited consolidated financial statements of the Guarantor, for such fiscal quarter prepared in accordance with GAAP, and (ii) as soon as possible and in no event later than one hundred and twenty (120) days after the end of each fiscal year, audited consolidated financial statements of the Guarantor for such fiscal year prepared in accordance with GAAP. Notwithstanding the foregoing, if any such financial statements are not available in a timely manner due to a delay in preparation or auditing, such delay shall not be considered a breach of

this Section 6.5 so long as the Guarantor is diligently pursuing the preparation, audit and delivery of such financial statements. Quarterly financial statements may be delivered electronically to the Buyer in PDF form. Upon each delivery of the Guarantor's financial statements to the Buyer, the Guarantor providing such financial statements shall be deemed to represent to the Buyer that its financial statements were prepared in accordance with GAAP and present fairly the financial position of the Guarantor for the relevant period then ended. In the event that the Guarantor does not publish financial statements on a quarterly basis, then unaudited consolidated financial statements shall be provided by the Guarantor, at a minimum, on a semi-annual basis. To the extent that the Supplier's Creditworthiness Value is such that the Guarantee is not required or it is returned to the Guarantor and cancelled pursuant to Section 6.2(d), then the obligations to provide financial statements under this Section 6.5 shall apply in full to the Supplier instead of the Guarantor.

6.6 Notice of Deterioration in Financial Indicators

The Supplier shall provide notice to the Buyer of any material deterioration of any of the Financial Indicators of the Supplier or the Guarantor immediately upon the Supplier becoming aware of such deterioration.

ARTICLE 7 REPRESENTATIONS

7.1 Representations of the Supplier

The Supplier represents to the Buyer as follows, and acknowledges that the Buyer is relying on such representations in entering into this Agreement:

- (a) The Supplier is a corporation incorporated under the laws of the Province of Ontario, is registered or otherwise qualified to carry on business in the Province of Ontario, and has the requisite power to enter into this Agreement and to perform its obligations hereunder.
- (b) This Agreement has been duly authorized, executed, and delivered by the Supplier and is a valid and binding obligation of the Supplier enforceable in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may only be granted in the discretion of a court of competent jurisdiction.
- (c) The execution and delivery of this Agreement by the Supplier and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Supplier under:
 - (i) any contract or obligation to which the Supplier is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;

- (ii) the articles, by-laws or other constating documents, or resolutions of the directors or shareholders of the Supplier;
 - (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
 - (iv) any licence, permit, approval, consent or authorization held by the Supplier; or
 - (v) any Laws and Regulations,
- that could have a Material Adverse Effect on the Supplier.
- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against or being contemplated by the Supplier or, to the knowledge of the Supplier, threatened against the Supplier.
 - (e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Supplier, threatened against the Supplier, that could have a Material Adverse Effect on the Supplier.
 - (f) All requirements for the Supplier to make any filing, declaration or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.
 - (g) The Supplier is not a non-resident of Canada for the purposes of the ITA.
 - (h) All statements, specifications, data confirmations and information that have been set out in the Proposal are complete and accurate in all material respects and are hereby restated and reaffirmed by the Supplier as representations made to the Buyer hereunder and there is no material information omitted from the Proposal which makes the information in the Proposal misleading or inaccurate.

In addition, the Supplier shall, upon delivery of each of the quarterly progress reports required to be provided to the Buyer pursuant to Section 2.7, represent in writing that each of the foregoing statements set out in Sections 7.1(a) to (h) inclusive continues to be true or, if any of such statements are no longer true, then the Supplier shall provide to the Buyer a qualified representation with respect to such statement. Such qualified representation provided by the Supplier to the Buyer shall be subject, however, to the rights of the Buyer in Section 10.1(d) to require the Supplier to cure or remove any such qualification with respect to such statement.

7.2 Representations of the Buyer

The Buyer represents to the Supplier as follows, and acknowledges that the Supplier is relying on such representations in entering into this Agreement:

- (a) The Buyer that was the original counterparty to this Agreement is a corporation without share capital created under the laws of Ontario, and has the requisite power to enter into this Agreement and to perform its obligations hereunder.
- (b) This Agreement has been duly authorized, executed, and delivered by the Buyer and is a valid and binding obligation of the Buyer enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may be granted solely in the discretion of a court of competent jurisdiction.
- (c) The execution and delivery of this Agreement by the Buyer and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Buyer under:
 - (i) any contract or obligation to which the Buyer is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
 - (ii) the by-laws or resolutions of the directors (or any committee thereof) or shareholder of the Buyer;
 - (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
 - (iv) any licence, permit, approval, consent or authorization held by the Buyer; or
 - (v) any Laws and Regulations,that could have a Material Adverse Effect on the Buyer.
- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against, or being contemplated by the Buyer or, to the knowledge of the Buyer, threatened against the Buyer.
- (e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Buyer, threatened against the Buyer, that could have a Material Adverse Effect on the Buyer.
- (f) All requirements for the Buyer to make any declaration, filing or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.

ARTICLE 8 CONFIDENTIALITY AND FIPPA

8.1 Confidential Information

From the date of this Agreement to and following the expiry of the Term, the Receiving Party shall keep confidential and secure and not disclose Confidential Information, except as follows:

- (a) The Receiving Party may disclose Confidential Information to its Representatives who need to know Confidential Information for the purpose of assisting the Receiving Party in complying with its obligations under this Agreement. On each copy made by the Receiving Party, the Receiving Party must reproduce all notices which appear on the original. The Receiving Party shall inform its Representatives of the confidentiality of Confidential Information and shall be responsible for any breach of this Article 8 by any of its Representatives.
- (b) If the Receiving Party or any of its Representatives are requested or required (by oral question, interrogatories, requests for information or documents, court order, civil investigative demand, or similar process) to disclose any Confidential Information in connection with litigation or any regulatory proceeding or investigation, or pursuant to any applicable law, order, regulation or ruling, the Receiving Party shall promptly notify the Disclosing Party. Unless the Disclosing Party obtains a protective order, the Receiving Party and its Representatives may disclose such portion of the Confidential Information to the Party seeking disclosure as is required by law or regulation in accordance with Section 8.2.
- (c) Where the Supplier is the Receiving Party, the Supplier may disclose Confidential Information to any Secured Lender or prospective lender or investor and its advisors, to the extent necessary, for securing financing for the Contract Facility, provided that any such Secured Lender or prospective lender or investor has been informed of the Supplier's confidentiality obligations hereunder and such Secured Lender or prospective lender or investor has covenanted in favour of the Buyer to hold such Confidential Information confidential and entered into a Confidentiality Undertaking in the form set out in Exhibit W or in a similar form prepared by the Supplier and approved by the Buyer.
- (d) Notwithstanding the foregoing, the Supplier consents to the disclosure of its name and contact particulars (including its address for service and the name of its Company Representative) by the Buyer to all Other Suppliers for the purposes of Sections 1.6 to 1.10 inclusive.

8.2 Notice Preceding Compelled Disclosure

If the Receiving Party or any of its Representatives are requested or required to disclose any Confidential Information, the Receiving Party shall promptly notify the Disclosing Party of such request or requirement so that the Disclosing Party may seek an appropriate protective order or waive compliance with this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, the Receiving Party or its Representatives are compelled to disclose the

Confidential Information, the Receiving Party and its Representatives may disclose only such of the Confidential Information to the Party compelling disclosure as is required by law only to such Person or Persons to which the Receiving Party is legally compelled to disclose and, in connection with such compelled disclosure, the Receiving Party and its Representatives shall provide notice to each such recipient (in co-operation with legal counsel for the Disclosing Party) that such Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in this Agreement and, if possible, shall obtain each recipient's written agreement to receive and use such Confidential Information subject to those terms and conditions.

8.3 Return of Information

Upon written request by the Disclosing Party, Confidential Information provided by the Disclosing Party in printed paper format or electronic format will be returned to the Disclosing Party and Confidential Information transmitted by the Disclosing Party in electronic format will be deleted from the emails and directories of the Receiving Party's and its Representatives' computers; provided, however, any Confidential Information (i) found in drafts, notes, studies and other documents prepared by or for the Receiving Party or its Representatives, or (ii) found in electronic format as part of the Receiving Party's off-site or on-site data storage/archival process system, will be held by the Receiving Party and kept subject to the terms of this Agreement or destroyed at the Receiving Party's option. Notwithstanding the foregoing, a Receiving Party shall be entitled to make at its own expense and retain one copy of any Confidential Information materials it receives for the limited purpose of discharging any obligation it may have under Laws and Regulations, and shall keep such retained copy subject to the terms of this Article 8.

8.4 Injunctive and Other Relief

The Receiving Party acknowledges that breach of any provisions of this Article may cause irreparable harm to the Disclosing Party or to any third-party to whom the Disclosing Party owes a duty of confidence, and that the injury to the Disclosing Party or to any third party may be difficult to calculate and inadequately compensable in damages. The Receiving Party agrees that the Disclosing Party is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third party) or any other remedy against any actual or potential breach of the provisions of this Article.

8.5 FIPPA Records and Compliance

The Parties acknowledge and agree that the Ontario Power Authority is subject to FIPPA and that FIPPA applies to and governs all Confidential Information in the custody or control of the Ontario Power Authority ("FIPPA Records") and may, subject to FIPPA, require the disclosure of such FIPPA Records to third parties. The Supplier agrees to provide a copy of any FIPPA Records that it previously provided to the Ontario Power Authority if the Supplier continues to possess such FIPPA Records in a deliverable form at the time of the Ontario Power Authority's request. If the Supplier does possess such FIPPA Records in a deliverable form, it shall provide the same within a reasonable time after being directed to do so by the Ontario Power Authority.

The provisions of this section shall survive any termination or expiry of this Agreement and shall prevail over any inconsistent provisions in this Agreement.

8.6 This Agreement

Notwithstanding any other provision of this Agreement or the Original CES Contract, each of this Agreement, the fact of the entry into this Agreement by the Parties, any differences between this Agreement and the Original CES Contract, and the termination of the Original CES Contract, is hereby designated as Buyer's Confidential Information, and the Supplier shall be deemed to be the Receiving Party and the Buyer shall be deemed to be the Disclosing Party in respect of such information. The Supplier hereby acknowledges and agrees to such designation of any and all such information. For clarity, the Buyer shall not be bound by any duty of confidentiality or non-disclosure to the Supplier in respect of such information, other than that which would have applied in the absence of this Section 8.6.

ARTICLE 9 TERM

9.1 Term

- (a) This Agreement shall become effective upon the date hereof.
- (b) The "Term" means that period of time commencing at the beginning of the hour ending 01:00 hours (EST) on the Commercial Operation Date (the "Term Commencement Date") and ending at 24:00 hours (EST) on the day before the twentieth (20th) anniversary date thereafter, subject to earlier termination in accordance with the provisions hereof. Neither Party shall have any right to extend or renew the Term except as agreed in writing by the Parties.

ARTICLE 10 TERMINATION AND DEFAULT

10.1 Events of Default by the Supplier

Each of the following will constitute an Event of Default by the Supplier (each, a "Supplier Event of Default"):

- (a) The Supplier or the Guarantor fails to make any payment when due, or, subject to Section 10.1(r), deliver and/or maintain the Completion and Performance Security as required under this Agreement, if such failure is not remedied within five (5) Business Days after written notice of such failure from the Buyer.
- (b) The Supplier fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Supplier Event of Default) if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Buyer, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Supplier is diligently

remedying such failure and such failure is capable of being cured during such extended cure period.

- (c) The Supplier fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Supplier and is not remedied within thirty (30) Business Days after receipt by the Supplier of written notice of such failure or cessation from the Buyer, provided that such cure period shall be extended by a further thirty (30) Business Days if the Supplier is diligently remedying such failure or cessation and such failure or cessation is capable of being corrected during such extended cure period.
- (d) Any representation made by the Supplier in this Agreement is not true or correct in any material respect when made and is not made true or correct in all material respects within thirty (30) Business Days after receipt by the Supplier of written notice of such fact from the Buyer, provided that such cure period (i) shall be extended for a further period of thirty (30) Business Days and (ii) may be extended by such further period of time as the Buyer in its sole and absolute discretion determines is reasonable, if, in each case, the Supplier is diligently correcting such breach and such breach is capable of being corrected during such extended cure period. For certainty, notwithstanding the receipt by the Buyer of a qualified representation by the Supplier with respect to any statement referred to in Sections 7.1(a) to 7.1(h), inclusive, the Buyer may, in its sole and absolute discretion, require the Supplier, within the time limits set out in this Section 10.1(d), to cure or remove any such qualification to such statement.
- (e) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering, the dissolution, termination of existence, liquidation or winding up of the Supplier, unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless, in the case of the Supplier, there has been a permitted and valid assignment of this Agreement by the Supplier under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Supplier's obligations under this Agreement.
- (f) The Supplier amalgamates with, or merges with or into, or transfers the Facility or all or substantially all of its assets to, another Person unless, at the time of such amalgamation, merger or transfer, there has been a permitted and valid assignment hereof by the Supplier under this Agreement to the resulting, surviving or transferee Person and such Person has assumed all of the Supplier's obligations under this Agreement.
- (g) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Supplier or of any of the Supplier's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar

instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within thirty (30) days of the appointment. By decree, judgment or order of a Governmental Authority, the Supplier is adjudicated bankrupt or insolvent or any substantial part of the Supplier's property is sequestered, and such decree, judgment or order continues undischarged and unstayed for a period of thirty (30) days after the entry thereof. A petition, proceeding or filing is made against the Supplier seeking to have the Supplier declared bankrupt or insolvent, or seeking adjustment or composition of any of its debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within thirty (30) days.

- (h) The Supplier makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy, or liquidator for all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provisions of any Insolvency Legislation.
- (i) The Supplier has defaulted under one or more obligations for indebtedness to other Persons, resulting in obligations for indebtedness in an aggregate amount of more than the greatest of: (1) five percent (5%) of its Tangible Net Worth, (2) \$50,000/MW multiplied by the Annual Average Contract Capacity, and (3) \$2,000,000, becoming immediately due and payable, unless: (A) such default is remedied within fifteen (15) Business Days after written notice of such failure from the Buyer, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Supplier is diligently remedying such default and such default is capable of being cured during such extended cure period; or (B) the Supplier has satisfied the Buyer that such default does not have a Material Adverse Effect on the Supplier's ability to perform its obligations under this Agreement.
- (j) The Supplier has made a Contract Facility Amendment that has not first been consented to by the Buyer and that has not been removed within ten (10) Business Days after such Contract Facility Amendment occurred.
- (k) The Commercial Operation Date has not occurred on or before the date which is one (1) year after the Milestone Date for Commercial Operation, unless the Supplier has, on or prior to such one year date, paid all liquidated damages accruing to such one year date pursuant to Section 2.5 and the full amount of the required Completion and Performance Security is being held by the Buyer in accordance with Section 6.1.
- (l) The Commercial Operation Date has not occurred on or before the date which is eighteen (18) months after the Milestone Date for Commercial Operation.
- (m) Either of the defaults described in Sections 15.6(d) and 15.6(f)(i) has occurred.

- (n) The Availability is less than: (i) seventy percent (70%) during the second Contract Year, (ii) seventy-five percent (75%) during the third Contract Year, or (iii) eighty percent (80%) during the fourth and each succeeding Contract Year.
- (o) The Supplier undergoes a change in Control without first obtaining the written approval of the Buyer if required pursuant to Sections 16.6 or 16.7.
- (p) The Supplier assigns this Agreement without first obtaining the consent of the Buyer, if required pursuant to this Agreement.
- (q) The Supplier has not disclosed each actual or potential Conflict of Interest (as that term is defined in the 2,500 MW RFP) and, if any such actual or potential Conflict of Interest is capable of being remedied, it has not been remedied within fifteen (15) Business Days after written notice of such nondisclosure from the Buyer.
- (r) The Supplier has failed to provide Completion and Performance Security in the amounts and by the dates required in Article 6.

10.2 Remedies of the Buyer

- (a) If any Supplier Event of Default (other than a Supplier Event of Default referred to in Sections 10.1(e), 10.1(g), and 10.1(h)) occurs and is continuing, upon written notice to the Supplier, the Buyer may, subject to Article 12, terminate this Agreement.
- (b) If a Supplier Event of Default referred to in Sections 10.1(b), 10.1(m), or 10.1(n) occurs and is continuing, in addition to the remedies set out in Section 10.2(a), at the discretion of the Buyer, either:
 - (i) the Supplier will forfeit an amount equivalent to the Assumed Deemed Dispatch Payment that would be payable to the Supplier, if any, for the Settlement Month in which such Supplier Event of Default occurs, as liquidated damages and not as a penalty; or
 - (ii) the Buyer may levy a performance assessment set-off, as liquidated damages and not as a penalty, equal to three (3) times the average Assumed Deemed Dispatch Payment that would be payable to the Supplier, if any, for the most recent twelve (12) Settlement Months (or the number of Settlement Months that have elapsed from the Term Commencement Date if less than twelve (12) Settlement Months have elapsed), in the event that three (3) or more Supplier Events of Default referred to in Sections 10.1(b), 10.1(m), or 10.1(n) have occurred within a Contract Year, regardless of whether such Supplier Events of Default have been subsequently cured,

and which may be satisfied by the Buyer setting off any payments due to the Supplier against any amounts payable by the Supplier to the Buyer including, at

the Buyer's option, the amount of any Completion and Performance Security provided to the Buyer pursuant to Article 6, and by drawing on the Completion and Performance Security, or any part thereof, and if the remedy in Section 10.2(a) has not been exercised, requiring the Supplier to replace such drawn security with new security.

- (c) If a Supplier Event of Default occurs and is continuing, the Buyer may, in addition to the remedies set out in Section 10.2(a):
 - (i) set off any payments due to the Supplier against any amounts payable by the Supplier to the Buyer including, at the Buyer's option, the amount of any Completion and Performance Security provided to the Buyer pursuant to Article 6; and
 - (ii) draw on the Completion and Performance Security, or any part thereof and, if the remedy in Section 10.2(a) has not been exercised, require the Supplier to replace such drawn security with new security.
- (d) Notwithstanding Sections 10.2(a), 10.2(b), and 10.2(c), upon the occurrence of a Supplier Event of Default referred to in Sections 10.1(e), 10.1(g) or 10.1(h), this Agreement shall automatically terminate without notice, act or formality, effective immediately before the occurrence of such Supplier Event of Default, in which case, for certainty, the Secured Lender shall have the rights available to it under Section 12.2(g).
- (e) If the Buyer terminates this Agreement pursuant to Section 10.2(a) or this Agreement is terminated pursuant to Section 10.2(d), the Buyer shall have the following option, exercisable in the sole and absolute discretion of the Buyer:
 - (i) if the Termination Date precedes the Commercial Operation Date, the Supplier shall pay, as liquidated damages and not as a penalty, an amount equivalent to (1) the amount of all Completion and Performance Security provided by or on behalf of the Supplier, plus (2) the amount of any portion of the Completion and Performance Security that the Supplier was required under Section 6.1 to provide to the Buyer as of the Termination Date (with the total amount of such liquidated damages being referred to as the "Sum"). The Buyer shall be entitled to retain all Completion and Performance Security provided by or on behalf of the Supplier and apply it towards the Supplier's obligation to pay the Sum. With respect to any unpaid portion of the Sum, the Buyer may exercise all remedies available to the Buyer including pursuing a claim for damages, as contemplated in Section 10.5; or
 - (ii) if the Termination Date is on or after the Commercial Operation Date, the Buyer shall be entitled to retain all Completion and Performance Security provided by or on behalf of the Supplier and exercise all other remedies

available to the Buyer including pursuing a claim for damages, as contemplated in Section 10.5.

- (f) Termination shall not relieve the Supplier or the Buyer of their respective responsibilities relating to the availability of the Contract Capacity and delivery of the Electricity and Related Products from the Contract Facility, or amounts payable under this Agreement, up to and including the Termination Date. The Buyer shall be responsible only for the payment of amounts accruing under this Agreement up to and including the Termination Date. In addition to its other rights of set off available to it pursuant to this Agreement and at law, the Buyer may hold back payment or set off its obligation to make such payment against any payments owed to it if the Supplier fails to comply with its obligations on termination.

10.3 Events of Default by the Buyer

Each of the following will constitute an Event of Default by the Buyer (each, a "Buyer Event of Default"):

- (a) The Buyer fails to make any payment under this Agreement when due, if such failure is not remedied within five (5) Business Days after written notice of such failure from the Supplier.
- (b) The Buyer fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Buyer Event of Default), if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Supplier, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Buyer is diligently remedying such failure and such failure is capable of being cured during such extended cure period.
- (c) The Buyer fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Buyer and is not remedied within thirty (30) Business Days after receipt by the Buyer of written notice of such failure or cessation from the Supplier, provided that such cure period shall be extended by a further thirty (30) Business Days if the Buyer is diligently remedying such failure or cessation and such failure or cessation is capable of being corrected during such extended cure period.
- (d) Any representation made by the Buyer in this Agreement is not materially true or correct in any material respect when made and is not made materially true or correct within thirty (30) Business Days after receipt by the Buyer of written notice of such fact from the Supplier, provided that such cure period shall be extended by a further thirty (30) Business Days if the Buyer is diligently

correcting such breach and such breach is capable of being corrected during such extended cure period.

- (e) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering the dissolution, termination of existence, liquidation or winding up of the Buyer unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless there has been a permitted and valid assignment of this Agreement by the Buyer under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Buyer's obligations under this Agreement.
- (f) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Buyer or of any of the Buyer's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within thirty (30) days of the appointment. By decree, judgment or order of Governmental Authority, the Buyer is adjudicated bankrupt or insolvent or any substantial part of the Buyer's property is sequestered, and such decree, judgment or order continues undischarged and unstayed for a period of thirty (30) days after the entry thereof. A petition, proceeding or filing is made against the Buyer seeking to have it declared bankrupt or insolvent, or seeking adjustment or composition of any of its debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within thirty (30) days.
- (g) The Buyer makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy or liquidator, of it or of all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provision of any Insolvency Legislation.
- (h) The Buyer assigns this Agreement (other than an assignment made pursuant to Sections 16.5(d) or 16.5(e)) without first obtaining the consent of the Supplier, if required pursuant to this Agreement.

10.4 Termination by the Supplier

- (a) If any Buyer Event of Default occurs and is continuing, then upon written notice to the Buyer, the Supplier may: (i) in accordance with Sections 16.5(d)(iii) and 16.5(e)(iii), terminate this Agreement, and (ii) set off any payments due to the Buyer against any amounts payable by the Buyer to the Supplier.
- (b) Notwithstanding the foregoing, if applicable, the Buyer shall be responsible for payment of amounts accruing under this Agreement only up to and including the Termination Date. The Supplier may hold back payment or set off against any

payments owed by it if the Buyer fails to comply with its obligations on termination.

10.5 Remedies for Termination Non-Exclusive

The termination of this Agreement by either Party and the payment of all amounts then due and owing to the other Party as expressly provided in this Agreement shall not limit, waive or extinguish in any way the recourse of either Party to any remedies available to it in relation to such termination at law, in equity or otherwise, nor shall such termination affect any rights that the Indemnitees may have pursuant to any indemnity given under this Agreement. Notwithstanding the foregoing, if the Buyer has exercised the option set out in Section 10.2(e)(i), then the Buyer's remedies against the Supplier in respect of the termination of this Agreement shall be limited to any unpaid portion of the Sum set out in Section 10.2(e)(i).

ARTICLE 11 FORCE MAJEURE

11.1 Effect of Invoking Force Majeure

(a) If, by reason of Force Majeure:

- (i) the Supplier is unable to make available all or any part of the Contract Capacity or is unable to deliver Electricity from the Contract Facility; or
- (ii) either Party is unable, wholly or partially, to perform or comply with its other obligations (other than payment obligations) hereunder, including the Supplier being unable to achieve a Milestone Event by the relevant Milestone Date;

then the Party so affected by Force Majeure shall be excused and relieved from performing or complying with such obligations (other than payment obligations) and shall not be liable for any liabilities, damages, losses, payments, costs, expenses (or Indemnifiable Losses, in the case of the Supplier affected by Force Majeure) to, or incurred by, the other Party in respect of or relating to such Force Majeure and such Party's failure to so perform or comply during the continuance and to the extent of the inability so caused from and after the invocation of Force Majeure. Notwithstanding the foregoing, during such time as the Supplier is so unable to perform or comply with its obligations as a result of a Force Majeure, to the extent that the Supplier is able to deliver a portion of the Contract Capacity and Electricity from the Contract Facility despite an event of Force Majeure, then the calculation of payment will be made with respect to such portion of the Contract Capacity and Electricity delivered in accordance with Exhibit J.

- (b) A Party shall be deemed to have invoked Force Majeure with effect from the commencement of the event or circumstances constituting Force Majeure when that Party gives to the other Party prompt notice, written or oral (but if oral, promptly confirmed in writing) of the effect of the Force Majeure and reasonably full particulars of the cause thereof, in substantially the form set forth as Exhibit I,

provided that such notice shall be given within ten (10) Business Days of the commencement of the event or circumstances constituting Force Majeure. If the effect of the Force Majeure and full particulars of the cause thereof cannot be reasonably determined within such ten (10) Business Day period, the Party invoking Force Majeure shall be allowed a further ten (10) Business Days (or such longer period as the Parties may agree in writing) to provide such full particulars, in substantially the form set forth as Exhibit I, to the other Party. For greater certainty, the reporting or discussion of a Force Majeure event provided in a periodic report from the Supplier to the Buyer pursuant to Section 2.7 shall not constitute sufficient notice of the occurrence of a Force Majeure event.

- (c) The Party invoking Force Majeure shall use Commercially Reasonable Efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the Force Majeure, but settlement of strikes, lockouts and other labour disturbances shall be wholly within the discretion of the Party involved.
- (d) The Party invoking Force Majeure shall give prompt written notice of the termination of the event of Force Majeure, provided that such notice shall be given within ten (10) Business Days of the termination of the event or circumstances constituting Force Majeure.
- (e) Nothing in this Section 11.1 shall relieve a Party of its obligations to make payments of any amounts that were due and owing before the occurrence of the Force Majeure or that otherwise may become due and payable during any period of Force Majeure.
- (f) If an event of Force Majeure causes the Supplier to not achieve a Milestone Event by the relevant Milestone Date, then such Milestone Date shall be extended for such reasonable period of delay directly resulting from such Force Majeure event. After the Term Commencement Date, an event of Force Majeure shall not extend the Term.
- (g) If an event of Force Majeure described in Section 11.3(h) has delayed the Commercial Operation Date by more than 365 days after the original Milestone Date (prior to any extension pursuant to Section 11.1(f)) set out for attaining Commercial Operation of the Facility, then notwithstanding anything in this Agreement to the contrary, while the delay that is a result of the event of Force Majeure is continuing, the Supplier at its sole option may terminate this Agreement upon notice to the Buyer and without any costs or payments of any kind to either Party, and all security shall be returned forthwith.
- (h) If, by reason of Force Majeure, the Commercial Operation Date is delayed by more than twenty-four (24) months after the original Milestone Date for Commercial Operation, prior to any extension pursuant to Section 11.1(f), then notwithstanding anything in this Agreement to the contrary, either Party may terminate this Agreement upon notice to the other Party and without any costs or payments of any kind to either Party, and all security shall be returned forthwith.

- (i) If, by reason of Force Majeure, the Supplier is unable to perform or comply with its obligations (other than payment obligations) hereunder for more than an aggregate of thirty-six (36) months in any sixty (60) month period during the Term, then either Party may terminate this Agreement upon notice to the other Party without any costs or payments of any kind to either Party, except for any amounts that were due or payable by a Party hereunder up to the date of termination, and all security shall be returned forthwith.

11.2 Exclusions

A Party shall not be entitled to invoke Force Majeure under this Article 11, nor shall it be relieved of its obligations hereunder in any of the following circumstances:

- (a) if and to the extent the Party seeking to invoke Force Majeure has caused the applicable event of Force Majeure by its fault or negligence, including the Supplier's failure to procure or maintain any fuel supply to be utilized by the Contract Facility;
- (b) if and to the extent the Party seeking to invoke Force Majeure has failed to use Commercially Reasonable Efforts to prevent or remedy the event of Force Majeure and remove, so far as possible and within a reasonable time period, the Force Majeure (except in the case of strikes, lockouts and other labour disturbances, the settlement of which shall be wholly within the discretion of the Party involved);
- (c) if and to the extent that the Party seeking to invoke Force Majeure because of arrest or restraint by a Governmental Authority, such arrest or restraint was the result of a breach by such Party of Laws and Regulations;
- (d) if the Force Majeure was caused by a lack of funds or other financial cause;
- (e) if the IESO amends the schedule of Planned Outages for the Contract Facility as set out in the Annual Operating Plan; or
- (f) if the Party invoking Force Majeure fails to comply with the notice provisions in Sections 11.1(b) or 11.1(d).

11.3 Definition of Force Majeure

For the purposes of this Agreement, the term "Force Majeure" means any act, event, cause or condition that prevents a Party from performing its obligations (other than payment obligations) hereunder, and that is beyond the affected Party's reasonable control, and shall include:

- (a) acts of God, including extreme wind, ice, lightning or other storms, earthquakes, tornadoes, hurricanes, cyclones, landslides, drought, floods and washouts;
- (b) fires or explosions;

- (c) local, regional or national states of emergency;
- (d) strikes and other labour disputes (other than legal strikes or labour disputes by employees of such Party or a third party (other than any Key Equipment Supplier) invoking Force Majeure, unless such strikes or labour disputes are the result or part of a general industry strike or labour dispute); for greater certainty, Force Majeure shall include strikes or other labour disputes by employees of any Key Equipment Supplier;
- (e) delays or disruptions in fuel supply resulting from a Force Majeure event (whether such event is in respect of a Party or a third party);
- (f) civil disobedience or disturbances, war (whether declared or not), acts of sabotage, blockades, insurrections, terrorism, revolution, riots or epidemics;
- (g) an order, judgment, legislation, ruling or direction by Governmental Authorities restraining a Party, provided that the affected Party has not applied for or assisted in the application for and has used Commercially Reasonable Efforts to oppose said order, judgment, legislation, ruling or direction; and
- (h) any inability to obtain, or to secure the renewal or amendment of, any permit, certificate, impact assessment, licence or approval of any Governmental Authority, Transmitter required to perform or comply with any obligation under this Agreement, unless the revocation or modification of any such necessary permit, certificate, impact assessment, licence or approval was caused by the violation of the terms thereof or consented to by the Party invoking Force Majeure;
- (i) any delay in achieving Commercial Operation on or before the corresponding Milestone Date set forth in Exhibit F, as a result of an amendment by the IESO to the outage schedule: (1) relating to the connection of the Contract Facility to the IESO-Controlled Grid, and/or (2) relating to the completion of any System Upgrades.
- (j) any unanticipated maintenance or outage affecting the Contract Facility:
 - (i) which is not identified in the Supplier's then current schedule of Planned Outages submitted to the IESO, or the Buyer, as the case may be, in advance of the occurrence of an event of Force Majeure referred to in this Section 11.3, and
 - (ii) which results directly from, or is scheduled or planned directly as a consequence of, an event of Force Majeure referred to in this Section 11.3, or which results from a failure of equipment that prevents the Contract Facility from producing Electricity, provided that:
 - (A) notice of the unanticipated maintenance or outage is provided to the Buyer by the Supplier concurrently, or as soon as reasonably

possible thereafter, with the notice in respect thereof provided to the IESO but, in any event, within ten (10) Business Days thereof;

- (B) the Supplier provides notice to the Buyer immediately, or as soon as reasonably possible thereafter, upon receipt from the IESO of advance acceptance or other proposed scheduling or approval of such maintenance or outage, if such approval is required to be obtained from the IESO;
- (C) the Supplier provides timely updates to the Buyer of the commencement date of the maintenance or outage and, where possible, provides seven (7) days advance notice of such date;
- (D) the unanticipated maintenance or outage is commenced within one hundred twenty (120) days of the commencement of the occurrence of the relevant event of Force Majeure; and
- (E) the Supplier schedules the unanticipated maintenance or outage in accordance with Good Engineering and Operating Practices.

For greater certainty, nothing in Section 11.3(j) shall be construed as limiting the duration of an event of Force Majeure. Each Party shall resume its obligations as soon as the event of Force Majeure has been overcome.

ARTICLE 12 LENDER'S RIGHTS

12.1 Lender Security

Notwithstanding Section 16.5, the Supplier, from time to time on or after the date of this Agreement shall have the right, at its cost, to enter into a Secured Lender's Security Agreement. For the avoidance of doubt, in the case of a deed of trust or similar instrument securing bonds or debentures where the trustee holds security on behalf of, or for the benefit of, other lenders, only the trustee shall be entitled to exercise the rights and remedies under the Secured Lender's Security Agreement as the Secured Lender on behalf of the lenders. A Secured Lender's Security Agreement shall be upon and subject to the following conditions:

- (a) A Secured Lender's Security Agreement may be made for any amounts and upon any terms (including terms of the loans, interest rates, payment terms and prepayment privileges or restrictions) as desired by the Supplier, except as otherwise provided in this Agreement.
- (b) A Secured Lender's Security Agreement may not secure any indebtedness, liability or obligation of the Supplier that is not related to the Contract Facility or cover any real or personal property of the Supplier not related to the Contract Facility. For greater certainty, a Secured Lender's Security Agreement may cover shares or partnership interests in the capital of the Supplier.

- (c) No Secured Lender's Security Agreement shall affect or encumber in any manner the Buyer's title to any government-owned premises. The Buyer shall have no liability whatsoever for payment of the principal sum secured by any Secured Lender's Security Agreement, or any interest accrued thereon or any other sum secured thereby or accruing thereunder; and the Secured Lender shall not be entitled to seek any damages against the Buyer for any or all of the same.
- (d) No Secured Lender's Security Agreement shall be binding upon the Buyer in the enforcement of the Buyer's rights and remedies provided in this Agreement or by Laws and Regulations; unless and until a copy of the original thereof and the registration details, if applicable, together with written notice of the address of the Secured Lender to which notices may be sent have been delivered to the Buyer by the Supplier or the Secured Lender; and in the event of an assignment of such Secured Lender's Security Agreement, such assignment shall not be binding upon the Buyer unless and until a copy thereof and the registration details, if applicable, together with written notice of the address of the assignee thereof to which notices may be sent, have been delivered to the Buyer by the Supplier or the Secured Lender.
- (e) If the Supplier is in default under or pursuant to the Secured Lender's Security Agreement and the Secured Lender intends to exercise any rights afforded to the Secured Lender under this Agreement, then the Secured Lender shall give notice of such default to the Buyer at least five (5) Business Days prior to exercising any such rights.
- (f) Any Secured Lender's Security Agreement permitted hereunder may secure two (2) or more separate debts, liabilities or obligations in favour of two (2) or more separate Secured Lenders, provided that such Secured Lender's Security Agreement complies with the provisions of this Article 12.
- (g) Any number of permitted Secured Lender's Security Agreements may be outstanding at any one time, provided that each such Secured Lender's Security Agreement complies with the provisions of this Article 12.
- (h) All rights acquired by a Secured Lender under any Secured Lender's Security Agreement shall be subject to all of the provisions of this Agreement, including the restrictions on assignment contained herein. While any Secured Lender's Security Agreement is outstanding, the Buyer and the Supplier shall not amend or supplement this Agreement (including agreeing to a tolling arrangement contemplated in Section 3.4 of this Agreement) or agree to a termination of this Agreement without the consent of the Secured Lender, which consent shall not be unreasonably withheld, conditioned, or delayed. A Secured Lender must respond within a reasonable period of time to any request to amend or supplement this Agreement.
- (i) Despite any enforcement of any Secured Lender's Security Agreement, the Supplier shall remain liable to the Buyer for the payment of all sums owing to the

Buyer under this Agreement and for the performance of all of the Supplier's obligations under this Agreement.

12.2 Rights and Obligations of Secured Lenders

While any Secured Lender's Security Agreement remains outstanding, and if the Buyer has received the notice referred to in Section 12.1(d) or the contents thereof are embodied in the agreement entered into by the Buyer in accordance with Section 12.3, the following provisions shall apply:

- (a) No Supplier Event of Default (other than those set out in Section 10.2(d)) shall be grounds for the termination by the Buyer of this Agreement until:
 - (i) any notice required to be given under Section 10.1 and 10.2(a) has been given to the Supplier and to the Secured Lender; and
 - (ii) the cure period set out in Section 12.2(b) has expired without a cure having been completed and without the Secured Lender having taken the actions therein contemplated.
- (b) In the event the Buyer has given any notice required to be given under Section 10.1, the Secured Lender shall, within the applicable cure period (including any extensions), if any, have the right (but not the obligation) to cure such default, and the Buyer shall accept such performance by such Secured Lender as if the same had been performed by the Supplier.
- (c) Any payment to be made or action to be taken by a Secured Lender hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Secured Lender if such payment is made or action is taken by a nominee or agent of the Secured Lender or a receiver or receiver and manager appointed by or on the application of the Secured Lender.
- (d) A Secured Lender shall be entitled to the Supplier's rights and benefits contained in this Agreement and shall become liable for the Supplier's obligations solely as provided in Section 12.2. A Secured Lender may, subject to the provisions of this Agreement, enforce any Secured Lender's Security Agreement and acquire the Supplier's Interest in any lawful way and, without limitation, a Secured Lender or its nominee or agent or a receiver or receiver and manager appointed by or on the application of the Secured Lender, may take possession of and manage the Contract Facility and, upon foreclosure, or without foreclosure upon exercise of any contractual or statutory power of sale under such Secured Lender's Security Agreement, may sell or assign the Supplier's Interest with the consent of the Buyer as required under Section 12.2(f).
- (e) Until a Secured Lender (i) forecloses or has otherwise taken ownership of the Supplier's Interest or (ii) has taken possession or control of the Supplier's Interest, whether directly or by an agent as a mortgagee in possession, or a receiver or receiver and manager has taken possession or control of the Supplier's

Interest by reference to the Secured Lender's Security Agreement, the Secured Lender shall not be liable for any of the Supplier's obligations or be entitled to any of the Supplier's rights and benefits contained in this Agreement, except by way of security. If the Secured Lender itself or by a nominee or agent, or a receiver or a receiver and manager appointed by or on the application of the Secured Lender, is the owner or is in control or possession of the Supplier's Interest, then the entity that is the owner or is in control or possession of the Supplier's Interest shall be bound by all of the Supplier's obligations. Once the Secured Lender or such other Person goes out of possession or control of the Supplier's Interest or transfers the Supplier's Interest in accordance with this Agreement to another Person who is at Arm's Length with the Secured Lender, the Secured Lender shall cease to be liable for any of the Supplier's obligations and shall cease to be entitled to any of the Supplier's rights and benefits contained in this Agreement, except, if the Secured Lender's Security Agreement remains outstanding, by way of security.

- (f) Despite anything else contained in this Agreement, any Person to whom the Supplier's Interest is transferred shall take the Supplier's Interest subject to the Supplier's obligations. No transfer shall be effective unless the Buyer:
 - (i) acting reasonably, if such transferee is at Arm's Length with the Secured Lender; or
 - (ii) acting in its sole and subjective discretion, if such transferee is not at Arm's Length with the Secured Lender,

has approved of the transferee and the transferee has entered into an agreement with the Buyer in form and substance satisfactory to the Buyer, acting reasonably, wherein the transferee agrees to assume and to perform the obligations of the Supplier in respect of the Supplier's Interest, whether arising before or after the transfer, and including the posting of the Completion and Performance Security required under Article 6.

- (g) In the event of the termination of this Agreement prior to the end of the Term due to a Supplier Event of Default, the Buyer shall, within ten (10) days after the date of such termination, deliver to each Secured Lender which is at Arm's Length with the Supplier a statement of all sums then known to the Buyer that would, at that time be due under this Agreement but for the termination and a notice to each such Secured Lender stating that the Buyer is willing to enter into a New Agreement (the "Buyer Statement"). Subject to the provisions of this Article 12, each such Secured Lender or its transferee approved by the Buyer pursuant to Section 12.2(f) hereof shall thereupon have the option to obtain from the Buyer a New Agreement in accordance with the following terms:
 - (i) Upon receipt of the written request of the Secured Lender within thirty (30) days after the date on which it received the Buyer Statement, the Buyer shall enter into a New Agreement.

- (ii) Such New Agreement shall be effective as of the Termination Date and shall be for the remainder of the Term at the time this Agreement was terminated and otherwise upon the terms contained in this Agreement. The Buyer's obligation to enter into a New Agreement is conditional upon the Secured Lender (A) paying all sums that would, at the time of the execution and delivery thereof, be due under this Agreement but for such termination, (B) otherwise fully curing any defaults under this Agreement existing immediately prior to termination of this Agreement that are capable of being cured, and (C) paying all reasonable costs and expenses, including legal fees, so as to provide a full indemnity (and not only substantial indemnity), incurred by the Buyer in connection with such default and termination, and the preparation, execution and delivery of such New Agreement and related agreements and documents, provided, however, that with respect to any default that could not be cured by such Secured Lender until it obtains possession, such Secured Lender or its transferee approved by the Buyer pursuant to Section 12.2(f) hereof, as the case may be, shall have the applicable cure period commencing on the date that it obtains possession to cure such default.

When the Secured Lender has appointed an agent, a receiver or a receiver and manager or has obtained a court-appointed receiver or receiver and manager for the purpose of enforcing the Secured Lender's security, that Person may exercise any of the Secured Lender's rights under this Section 12.2(g).

- (h) Despite anything to the contrary contained in this Agreement, the provisions of this Article 12 shall enure only to the benefit of the holders of a Secured Lender's Security Agreement. If the holders of more than one such Secured Lender's Security Agreement who are at Arm's Length with the Supplier make written requests to the Buyer in accordance with this Section 12.2 to obtain a New Agreement, the Buyer shall accept the request of the holder whose Secured Lender's Security Agreement had priority immediately prior to the termination of this Agreement over the Secured Lender's Security Agreements of the other Secured Lenders making such requests and thereupon the written request of each other Secured Lender shall be deemed to be void. In the event of any dispute or disagreement as to the respective priorities of any such Secured Lender's Security Agreement, the Buyer may rely upon the opinion as to such priorities of any law firm qualified to practise law in the Province of Ontario retained by the Buyer in its unqualified subjective discretion or may apply to a court of competent jurisdiction for a declaration as to such priorities, which opinion or declaration shall be conclusively binding upon all parties concerned.

12.3 Cooperation

The Buyer and the Supplier shall enter into an agreement with any Secured Lender for the purpose of implementing the Secured Lender's Security Agreement protection provisions contained in this Agreement. The Buyer, acting reasonably, shall consider any request jointly made by the Supplier and a Secured Lender or proposed Secured Lender to facilitate a provision

of a Secured Lender's Security Agreement or proposed Secured Lender's Security Agreement that may require an amendment to this Agreement, provided that the rights of the Buyer are not adversely affected thereby, the obligations of the Supplier to the Buyer are not altered thereby and the consent of any other Secured Lender to such amendment has been obtained by the Supplier or the Secured Lender making the request for the amendment.

ARTICLE 13 DISCRIMINATORY ACTION

13.1 Discriminatory Action

A "Discriminatory Action" shall occur if:

- (a)
 - (i) the Legislative Assembly of Ontario causes to come into force any statute that was introduced as a government bill in the Legislative Assembly of Ontario or causes to come into force or makes any order-in-council or regulation first having legal effect on or after the date of the submission of the Proposal in response to the 2,500 MW RFP; or
 - (ii) the Legislative Assembly of Ontario directly or indirectly amends this Agreement without the agreement of the Supplier;
- (b) the effect of the action referred to in Section 13.1(a):
 - (i) is borne principally by the Supplier; or
 - (ii) is borne principally by the Supplier and one or more Other Suppliers who have a CES Contract or another bilateral arrangement with the Buyer similar in nature to this Agreement; and
- (c) such action increases the costs that the Supplier would reasonably be expected to incur under this Agreement in the delivery of the Electricity and Related Products from the Contract Facility or the availability of the Contract Capacity or adversely affects the revenues of the Supplier from the Contract Facility, except where such action is in response to any act or omission on the part of the Supplier that is contrary to Laws and Regulations (other than an act or omission rendered illegal by virtue of such action) or such action is permitted under this Agreement. Despite the preceding sentence, none of the following shall be a Discriminatory Action:
 - (i) Laws and Regulations of general application, including an increase of Taxes of general application, or any action of the Government of Ontario pursuant thereto;
 - (ii) any such statute that prior to five (5) Business Days prior to the date of submission of the Proposal in response to the 2,500 MW RFP;

- (A) has been introduced as a bill in the Legislative Assembly of Ontario in a similar form as such statute takes when it has legal effect, provided that any amendments made to such bill in becoming such statute do not have a Material Adverse Effect on the Supplier; or
 - (B) has been made public in a discussion or consultation paper, press release or announcement issued by the Ontario Power Authority, the Government of Ontario, and/or the Ministry of Energy that appeared on the website of the Ontario Power Authority, the Government of Ontario and/or the Ministry of Energy, provided that any amendments made to such public form, in becoming such statute, do not have a Material Adverse Effect on the Supplier; and
- (iii) any of such regulations that prior to five (5) Business Days prior to the date of submission of the Proposal in response to the 2,500 MW RFP:
- (A) have been published in the Ontario Gazette but by the terms of such regulations come into force on or after five (5) Business Days prior to the date of execution of this Agreement, or
 - (B) have been referred to in a press release issued by the Ontario Power Authority, the Government of Ontario and/or the Ministry of Energy that appeared on the website of the Government of Ontario or the Ministry of Energy, provided that any amendments made to such regulations in coming into force do not have a Material Adverse Effect on the Supplier.

13.2 Consequences of Discriminatory Action

If a Discriminatory Action occurs, the Supplier shall have the right to obtain, without duplication, compensation (the "Discriminatory Action Compensation") from the Buyer for:

- (a) the amount of the increase in the costs that the Supplier would reasonably be expected to incur in the delivery of the Electricity and Related Products from the Contract Facility as a result of the occurrence of such Discriminatory Action, commencing on the first day of the first calendar month following the date of the Discriminatory Action and ending at the expiry of the Term, but excluding the portion of any costs charged by a Person who does not deal at Arm's Length with the Supplier that is in excess of the costs that would have been charged had such Person been at Arm's Length with the Supplier; and
- (b) the amount by which (i) the net present value of the net revenues from the Contract Facility that are forecast to be earned by the Supplier during the period of time commencing on the first day of the first calendar month following the date of the Discriminatory Action and ending at the expiry of the Term, exceeds (ii) the net present value of the net revenues from the Contract Facility that are forecast to be earned by the Supplier during the period of time commencing on

the first day of the first calendar month following the date of the Discriminatory Action and ending on the expiry of the Term, taking into account the occurrence of the Discriminatory Action and any actions that the Supplier should reasonably be expected to take to mitigate the effect of the Discriminatory Action, such as by mitigating operating expenses and normal capital expenditures of the business of the generation and delivery of the Electricity and Related Products by the Contract Facility.

13.3 Notice of Discriminatory Action

- (a) In order to exercise its rights in the event of the occurrence of a Discriminatory Action, the Supplier must give a notice (the "Preliminary Notice") to the Buyer within sixty (60) days after the date on which the Supplier first became aware (or should have been aware, using reasonable due diligence) of the Discriminatory Action stating that a Discriminatory Action has occurred. Within sixty (60) days after the date of receipt of the Preliminary Notice, the Supplier must give another notice (the "Notice of Discriminatory Action"). A Notice of Discriminatory Action must include:
 - (i) a statement of the Discriminatory Action that has occurred;
 - (ii) details of the effect of the said occurrence that is borne by the Supplier;
 - (iii) details of the manner in which the Discriminatory Action increases the costs that the Supplier would reasonably be expected to incur in the delivery of the Electricity and Related Products from the Contract Facility or making the Contract Capacity available and adversely affects the revenues of the Supplier; and
 - (iv) the amount claimed as Discriminatory Action Compensation and details of the computation thereof.

The Buyer shall, after receipt of a Notice of Discriminatory Action, be entitled, by notice given within thirty (30) days after the date of receipt of the Notice of Discriminatory Action, to require the Supplier to provide such further supporting particulars as the Buyer considers necessary, acting reasonably.

- (b) If the Buyer wishes to dispute the occurrence of a Discriminatory Action, the Buyer shall give a notice of dispute (the "Notice of Dispute") to the Supplier, stating the grounds for such dispute, within thirty (30) days after the date of receipt of the Notice of Discriminatory Action or within thirty (30) days after the date of receipt of the further supporting particulars, as applicable.
- (c) If neither the Notice of Discriminatory Action nor the Notice of Dispute has been withdrawn within thirty (30) days after the date of receipt of the Notice of Dispute by the Supplier, the dispute of the occurrence of a Discriminatory Action shall be submitted to mandatory and binding arbitration in accordance with Section 16.2 without first having to comply with Section 16.1.

- (d) If the Buyer does not dispute the occurrence of a Discriminatory Action or the amount of Discriminatory Action Compensation claimed in the Notice of Discriminatory Action, the Buyer shall pay to the Supplier the amount of Discriminatory Action Compensation claimed within sixty (60) days after the date of receipt of the Notice of Discriminatory Action. If a Notice of Dispute has been given, the Buyer shall pay to the Supplier the Discriminatory Action Compensation Amount determined in accordance with Section 13.3(e) not later than sixty (60) days after the later of the date on which the dispute with respect to the occurrence of a Discriminatory Action is resolved and the date on which the Discriminatory Action Compensation Amount is determined.
- (e)
 - (i) If the Buyer wishes to dispute the amount of the Discriminatory Action Compensation, the Buyer shall give to the Supplier a notice (the "Discriminatory Action Compensation Notice") setting out an amount that the Buyer proposes as the Discriminatory Action Compensation (the "Discriminatory Action Compensation Amount"), if any, together with details of the computation. If the Supplier does not give notice (the "Supplier Non-acceptance Notice") to the Buyer stating that it does not accept the Discriminatory Action Compensation Amount proposed within thirty (30) days after the date of receipt of the Discriminatory Action Compensation Notice, the Supplier shall be deemed to have accepted the Discriminatory Action Compensation Amount so proposed. If the Supplier Non-acceptance Notice is given, the Buyer and the Supplier shall attempt to determine the Discriminatory Action Compensation Amount through negotiation, and any amount so agreed in writing shall be the Discriminatory Action Compensation Amount. If the Buyer and the Supplier do not agree in writing upon the Discriminatory Action Compensation Amount within sixty (60) days after the date of receipt of the Supplier Non-acceptance Notice, the Discriminatory Action Compensation Amount shall be determined in accordance with the procedure set forth in Section 13.3(e)(ii) and Sections 16.1 and 16.2 shall not apply to such determination.
 - (ii) If the negotiation described in Section 13.3(e)(i) does not result in an agreement in writing on the Discriminatory Action Compensation Amount, either the Buyer or the Supplier may, after the later of (A) the date on which a dispute with respect to the occurrence of a Discriminatory Action is resolved and (B) the date of the expiry of a period of thirty (30) days after the date of receipt of the Supplier Non-acceptance Notice, by notice to the other require the dispute to be resolved by arbitration as set out below. The Buyer and the Supplier shall, within thirty (30) days after the date of receipt of such notice of arbitration, jointly appoint a valuator to determine the Discriminatory Action Compensation Amount. The valuator so appointed shall be a duly qualified business valuator where the individual responsible for the valuation has not less than ten (10) years'

experience in the field of business valuation. If the Buyer and the Supplier are unable to agree upon a valuator within such period, the Buyer and the Supplier shall jointly make application (provided that if a party does not participate in such application, the other party may make application alone) under the *Arbitration Act, 1991* (Ontario) to a judge of the Superior Court of Justice to appoint a valuator, and the provisions of the *Arbitration Act, 1991* (Ontario) shall govern such appointment. The valuator shall determine the Discriminatory Action Compensation Amount within sixty (60) Business Days after the date of his or her appointment. Pending a decision by the valuator, the Buyer and the Supplier shall share equally, and be responsible for their respective shares of, all fees and expenses of the valuator. The fees and expenses of the valuator shall be paid by the non-prevailing party. "Prevailing party" means the Party whose determination of the Discriminatory Action Compensation Amount is most nearly equal to that of the valuator's determination. The Supplier's and the Buyer's respective determinations of the Discriminatory Action Compensation Amount shall be based upon the Notice of Discriminatory Action and the Discriminatory Action Compensation Notice, as applicable.

- (iii) In order to facilitate the determination of the Discriminatory Action Compensation Amount by the valuator, each of the Buyer and the Supplier shall provide to the valuator such information as may be requested by the valuator, acting reasonably, and the Supplier shall permit the valuator and the valuator's representatives to have reasonable access during normal business hours to such information and to take extracts therefrom and to make copies thereof.
- (iv) The Discriminatory Action Compensation Amount as determined by the valuator shall be final and conclusive and not subject to any appeal.
- (f) Any amount to be paid under Section 13.3(d) shall bear interest at a variable nominal rate per annum equal on each day to the Interest Rate then in effect from the date of receipt of the Notice of Discriminatory Action to the date of payment.
- (g) Payment of the Discriminatory Action Compensation and interest thereon by the Buyer to the Supplier shall constitute full and final satisfaction of all amounts that may be claimed by the Supplier for and in respect of the occurrence of the Discriminatory Action and, upon such payment, the Buyer shall be released and forever discharged by the Supplier from any and all liability in respect of such Discriminatory Action.

13.4 Right of the Buyer to Remedy or Cause to be Remedied a Discriminatory Action

If the Buyer wishes to remedy or cause to be remedied the occurrence of a Discriminatory Action, the Buyer must give notice to the Supplier within thirty (30) days after the later of the date of receipt of the Notice of Discriminatory Action and the date of the receipt by the Buyer of

the further supporting particulars referred to in Section 13.3(b). If the Buyer gives such notice, the Buyer must remedy or cause to be remedied the Discriminatory Action within one hundred and eighty (180) days after the date of receipt of the Notice of Discriminatory Action or, if a Notice of Dispute has been given, within one hundred and eighty (180) days after the date of the final award pursuant to Section 16.2 to the effect that a Discriminatory Action occurred. If the Buyer remedies or causes to be remedied the Discriminatory Action in accordance with the preceding sentence, the Supplier shall have the right to obtain, without duplication, the amount that the Supplier would have the right to claim in respect of that Discriminatory Action pursuant to Section 13.2, adjusted to apply only to the period commencing on the first day of the first calendar month following the date of the Discriminatory Action and expiring on the day preceding the day on which the Discriminatory Action was remedied.

ARTICLE 14

LIABILITY AND INDEMNIFICATION

14.1 Exclusion of Consequential Damages

Notwithstanding anything contained herein to the contrary, neither Party will be liable under this Agreement or under any cause of action relating to the subject matter of this Agreement for any special, indirect, incidental, punitive, exemplary or consequential damages, including loss of profits (save and except as provided in Section 13.2), loss of use of any property or claims of customers or contractors of the Parties for any such damages.

14.2 Liquidated Damages

Nothing in this Article shall reduce a Party's claim for liquidated damages pursuant to Sections 2.3(a)(vi), 2.5, 6.3(c), 10.2(b) and 10.2(e). The Supplier acknowledges and agrees with the Buyer that the actual damages incurred by the Buyer and Electricity consumers as a result of a failure by the Supplier to meet its obligations under this Agreement are impossible to definitively quantify and the Supplier further agrees that the payment of the liquidated damages set forth in this Agreement constitutes a fair and reasonable means of compensating the Buyer for damages likely to be incurred as a result of such delays and does not constitute a penalty.

14.3 Buyer Indemnification

In addition to the indemnity provided by the Supplier in Section 2.8(b), the Supplier shall indemnify, defend and hold the Buyer, the Ontario Power Authority (to the extent that it is no longer the Buyer), the Government of Ontario, the members of the Government of Ontario's Executive Council, and their respective Affiliates, and each of the foregoing Persons' respective directors, officers, employees, shareholders, advisors, and agents (including contractors and their employees) (collectively, the "Indemnitees") harmless from and against any and all claims, demands, suits, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including the costs and expenses of, and accrued interest on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers' fees and reasonable disbursements in connection therewith) (each, an "Indemnifiable Loss"), asserted against or suffered by the Indemnitees relating to, in connection with, resulting from, or

arising out of (i) any occurrence or event relating to the Contract Facility, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees or the failure of the Indemnitees to comply with Laws and Regulations and (ii) any breach by the Supplier of any representations, warranties, and covenants contained in this Agreement, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees. For greater certainty, in the event of contributory negligence or other fault of the Indemnitees, then such Indemnitees shall not be indemnified hereunder in the proportion that the Indemnitees' negligence or other fault contributed to any Indemnifiable Loss.

14.4 Defence of Claims

- (a) Promptly after receipt by the Indemnitees of any Claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity provided for in Section 14.3 may apply, the Buyer shall notify the Supplier in writing of such fact. The Supplier shall assume the defence thereof with counsel designated by the Supplier and satisfactory to the affected Indemnitees, acting reasonably; provided, however, that if the defendants in any such action include both the Indemnitees and the Supplier and the Indemnitees shall have reasonably concluded that there may be legal defences available to them which are different from or additional to, or inconsistent with, those available to the Supplier, the Indemnitees shall have the right to select separate counsel satisfactory to the Supplier acting reasonably (at no additional cost to the Indemnitees) to participate in the defence of such action on behalf of the Indemnitees. The Supplier shall promptly confirm that it is assuming the defence of the Indemnitees by providing written notice to the Indemnitees. Such notice shall be provided no later than five (5) days prior to the deadline for responding to any Claim relating to any Indemnifiable Loss.
- (b) Should any of the Indemnitees be entitled to indemnification under Section 14.3 as a result of a Claim by a third party, and the Supplier fails to assume the defence of such Claim (which failure shall be assumed if the Supplier fails to provide the notice prescribed by Section 14.4(a)), the Indemnitees shall, at the expense of the Supplier, contest (or, with the prior written consent of the Supplier, settle) such Claim, provided that no such contest need be made and settlement or full payment of any such Claim may be made without consent of the Supplier (with the Supplier remaining obligated to indemnify the Indemnitees under Section 14.3), if, in the written opinion of an independent third party counsel chosen by the Company Representatives, such Claim is meritorious. If the Supplier is obligated to indemnify any Indemnitees under Section 14.3, the amount owing to the Indemnitees will be the amount of such Indemnitees' actual out-of-pocket loss net of any insurance proceeds received or other recovery.

14.5 Joint and Several Liability

If the Supplier is not a single legal entity (for example, an unincorporated joint venture), then all such entities set out in the definition of the term "Supplier" shall be jointly and severally liable to

the Buyer for all representations, warranties, obligations, covenants and liabilities of the Supplier hereunder.

14.6 Release of Prior Claims

- (a) The Supplier agrees to hereby release, remise and forever discharge the Indemnitees or any of them from all Claims or other obligations of any kind or nature, which against the Indemnitees or any of them the Supplier had, now has, or may hereafter have with respect to any delay caused as a result of or relating to the provincial permitting and approval process for the Facility, whether under the *Environmental Assessment Act* (Ontario), the *Planning Act* (Ontario), the *Building Code Act* (Ontario), the *Electricity Act* (Ontario), the *Environmental Protection Act* (Ontario), the *Technical Standards and Safety Act* (Ontario), or common law or constitutional obligations or duties of the Crown relating to or arising out of any permitting or approval, or process relating thereto, or the development, construction or operation of the Facility, or with respect to any delay caused for any other reason, existing up to the Amendment and Restatement Date. For clarity, this paragraph shall not operate so as to release, remise or discharge any Indemnatee in respect of Claims or other obligations with respect to delays arising after the date of this Agreement.
- (b) Further, the Supplier hereby agrees to take no action and to make no Claim and to initiate no proceeding against any other person or party who in turn may claim contribution, indemnity or any other relief over, either at common law or in equity, against the Indemnitees in respect of Claims based on events occurring or circumstances existing up to the date of this Agreement and relating to or arising out of any delays described in the previous paragraph.
- (c) The Buyer agrees to hereby release, remise and forever discharge the Supplier, its directors, officers, employees, shareholders, advisors, and agents (including contractors and their employees) (collectively, the "Supplier Indemnitees") or any of them from all Claims or other obligations of any kind or nature, which against the Supplier Indemnitees or any of them the Buyer had, now has, or may hereafter have with respect to any delay caused as a result of or relating to the provincial permitting and approval process for the Facility, whether under the *Environmental Assessment Act* (Ontario), the *Planning Act* (Ontario), the *Building Code Act* (Ontario), the *Electricity Act* (Ontario), the *Environmental Protection Act* (Ontario), the *Technical Standards and Safety Act* (Ontario), or the development, construction or operation of the Facility, or with respect to any delay caused for any other reason, existing up to the date of this Agreement. For clarity, this paragraph shall not operate so as to release, remise or discharge any Supplier Indemnatee in respect of Claims or other obligations with respect to delays arising after the date of this Agreement.
- (d) Further, the Buyer hereby agrees to take no action and to make no Claim and to initiate no proceeding against any other person or party who in turn may claim contribution, indemnity or any other relief over, either at common law or in

equity, against the Supplier Indemnitees in respect of Claims based on events occurring or circumstances existing up to the date of this Agreement and relating to or arising out of any delays described in the previous paragraph.

- (e) Each of the Parties represents and warrants to the other that it is not aware of any event or circumstances which, with any reasonable likelihood, would have given rise to a Claim or other obligation nor was it in material default or breach of any of its obligations under the Original CES Contract prior to the termination thereof, and there existed no state of facts which, after notice or lapse of time or both, would have constituted such a default or breach if the Original CES Contract had not been terminated.

ARTICLE 15

CONTRACT OPERATION AND ADMINISTRATION

15.1 Company Representative

The Supplier and the Buyer shall each appoint, by notice in writing in the form of Exhibit V, from time to time, a representative (a "Company Representative"), who shall be duly authorized to act on behalf of the Party that has made the appointment, and with whom the other Party may consult at all reasonable times, and whose instructions, requests, and decisions, provided the same are in writing signed by the respective Company Representative, shall be binding on the appointing Party as to all matters pertaining to this Agreement. The Company Representatives shall not have the power or authority to amend this Agreement.

Where the Company Representative of the Supplier is not:

- (a) an individual that signed this Agreement on behalf of the Supplier, or
- (b) an individual appointed by a notice signed by an individual that signed this Agreement on behalf of the Supplier;

the Supplier shall provide the Buyer with an incumbency certificate, in a form satisfactory to the Buyer acting reasonably, in respect of the individual signing the notice by which the Company Representative has been appointed.

The initial Company Representatives shall consist of the respective persons set out as recipients of notices pursuant to Section 15.7.

15.2 Record Retention; Audit Rights

The Supplier and the Buyer shall both keep complete and accurate records and all other data required by either of them for the purpose of proper administration of this Agreement. All such records shall be maintained as required by Laws and Regulations but for no less than for seven (7) years after the creation of the record or data. The Supplier and the Buyer, on a confidential basis as provided for in Article 8 of this Agreement, shall provide reasonable access to the relevant and appropriate financial and operating records and data kept by it relating to this Agreement reasonably required for the other Party to comply with its obligations to

Governmental Authorities or to verify or audit billings or to verify or audit information provided in accordance with this Agreement. A Party may use its own employees for purposes of any such review of records provided that those employees are bound by the confidentiality requirements provided for in Article 8. Alternatively, a Party may at its own expense appoint an auditor to conduct its audit. The Party seeking access to such records in this manner shall pay the fees and expenses associated with use of the third party auditor.

15.3 Reports to the Buyer

- (a) The Supplier shall deliver to the Buyer a copy of all reports, plans and notices that the Supplier is required to provide to the IESO with respect to Outages, at the same time or within one (1) Business Day after such reports, plans and notices are delivered by the Supplier to the IESO.
- (b) In addition to the documentation provided in Section 15.3(a), the Supplier shall deliver at the times specified below the following documents, reports, plans and notices to the Buyer:
 - (i) no later than sixty (60) days before the Commercial Operation Date, the Supplier shall provide to the Buyer an operating plan for the Contract Facility for the Term, including a long term major maintenance schedule, in the form set out in Exhibit Q (the "Long Term Operating Plan"). The Supplier shall provide the Buyer with copies of any amendments or modifications to the Long Term Operating Plan within ten (10) Business Days of such amendments or modifications being made. The Long Term Operating Plan shall be consistent with Good Engineering and Operating Practices and is not a guarantee of the timing of Planned Outages;
 - (ii) no later than:
 - (A) the date that the Long Term Operating Plan is to be provided to the Buyer in accordance with Section 15.3(b)(i), and
 - (B) in respect of the second Contract Year and each Contract Year thereafter, sixty (60) days prior to each Contract Year,

the Supplier shall provide to the Buyer an operating plan for the Facility for the succeeding Contract Year, in the form set out in Exhibit R (the "Annual Operating Plan"). The Annual Operating Plan shall include a schedule of Planned Outages for that twelve (12) month period (together with the Supplier's estimate of the expected duration of each Planned Outage) which shall be consistent with Good Engineering and Operating Practices, consistent with the Long Term Operating Plan and, to the extent the Supplier is required to do so by the IESO Market Rules, coordinated with and approved by the IESO. The Supplier may, on not less than ten (10) Business Days' prior notice to the Buyer, amend the Annual Operating Plan;

- (iii) prompt notice to the Buyer of any Outage other than a Planned Outage, or any anticipated Outage other than a Planned Outage. Any notice under this subsection shall include a statement of the cause of such Outage, the proposed corrective action and the Supplier's estimate of the expected duration of such Outage. The Supplier shall use Commercially Reasonable Efforts to promptly end or reduce the length of such Outage;
 - (iv) thirty (30) days prior written notice (or such lesser number of days as is possible in the circumstances) to the Buyer of any Planned Outage of the Contract Facility.
- (c) All Outages shall take place in accordance with the notices of Outages provided by the Supplier to the Buyer under this Section 15.3.

15.4 Inspection of Contract Facility

- (a) The Buyer and its authorized agents and representatives shall, at all times upon two (2) Business Days' prior notice, at any time after execution of this Agreement, have access to the Contract Facility and every part thereof during regular business hours and the Supplier shall, and shall cause all personnel operating and managing the Contract Facility, to furnish the Buyer with all reasonable assistance in inspecting the Contract Facility for the purpose of ascertaining compliance with this Agreement; provided that such access and assistance shall be carried out in accordance with and subject to the reasonable safety and security requirements of the Supplier and all personnel operating and managing the Contract Facility, as applicable, and shall not interfere with the operation of the Contract Facility.
- (b) The inspection of the Contract Facility by or on behalf of the Buyer shall not relieve the Supplier of any of its obligations to comply with the terms of this Agreement. No Supplier Event of Default by the Supplier will be waived or deemed to have been waived by any inspection by or on behalf of the Buyer. In no event will any inspection by the Buyer hereunder be a representation that there has been or will be compliance with this Agreement and Laws and Regulations.

15.5 Inspection Not Waiver

- (a) Failure by the Buyer to inspect the Contract Facility or any part thereof under Section 15.4, or to exercise its audit rights under Section 15.2, shall not constitute a waiver of any of the rights of the Buyer hereunder. An inspection or audit not followed by a notice of a Supplier Event of Default shall not constitute or be deemed to constitute a waiver of any Supplier Event of Default, nor shall it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by the Supplier with this Agreement.
- (b) Failure by the Supplier to exercise its audit rights under Section 15.2 shall not constitute or be deemed to constitute a waiver of any of the rights of the Supplier hereunder. An audit not followed by a notice of a Buyer Event of Default shall

not constitute or be deemed to constitute a waiver of any Buyer Event of Default, nor shall it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by the Buyer with this Agreement.

15.6 Capacity Check Tests

- (a) The Buyer shall have the option, exercisable on no more than two (2) occasions per Contract Year, to require the Supplier, within ten (10) Business Days after written notice has been delivered to the Supplier, provided it is not during an Outage, to conduct a test (the "Capacity Check Test"), at the Supplier's sole cost and expense, that may be witnessed by the Buyer or its Representative, to confirm the ability of the Contract Facility to produce the Contract Capacity, as described below. For purposes of Section 16.7, the Supplier shall be entitled, without the consent of the Buyer, to schedule and conduct, at its sole cost and expense, Capacity Check Tests to demonstrate compliance with the test conditions set out in Exhibit M. If the Buyer has consented to a Contract Facility Amendment pursuant to Section 2.1(c), the Supplier may request, within ten (10) Business Days after written notice has been delivered to the Buyer, a Capacity Check Test. The Capacity Check Test will be carried out in accordance with a test protocol (the "Test Protocol") which will include the format of the report to be prepared in respect of the Capacity Check Test and which Test Protocol is to be prepared by the Supplier and submitted in writing to the Buyer for approval within three (3) months after the Contract Facility has attained Commercial Operation. The measurements of the Capacity Check Test shall be made using high accuracy calibrated instruments and recording systems or Facility instrumentation, including tariff meters for Electricity acceptable to the Buyer, acting reasonably. Each Capacity Check Test consists of the Contract Facility generating Electricity for four (4) continuous hours during a period designated by the Supplier on prior written notice to the Buyer in advance as a test period, subject to coordination and approval of the IESO, and shall be evaluated based on calculation of the generator output at the Delivery Point net of any Station Service Loads in accordance with the Metering Plan. The Supplier acknowledges and agrees that the Contract Capacity, the Electricity output of the Contract Facility and the Station Service Loads, as may be measured by the Capacity Check Test, shall not be adjusted for ambient weather conditions. For greater certainty, the Capacity Check Test shall be based on either the Summer Contract Capacity or the Winter Contract Capacity depending on the calendar month during which the Capacity Check Test is conducted.
- (b) If the Capacity Check Test is interrupted by an event of Force Majeure, or if at any point during the Capacity Check Test the air temperature, as reported at the Environment Canada weather station that is physically nearest to the Facility, exceeded (i) in respect of a Capacity Check Test conducted in the months of May through October, inclusive, 30.0 degrees Celsius or (ii) in respect of a Capacity Check Test conducted in the months of November through April, inclusive, 15.0 degrees Celsius, then the Supplier may, at the Supplier's sole cost and expense, re-perform the Capacity Check Test within ten (10) Business Days after the

receipt by the Supplier of the Capacity Confirmation relating to such Capacity Check Test from the Buyer.

- (c) The Supplier shall at the Supplier's sole cost and expense and within ten (10) Business Days, or as provided in the Test Protocol, after completion of the Capacity Check Test prepare and submit to the Buyer a written Capacity Check Test report that includes the data collected during the test period, computation of test data and the test results. The Buyer shall provide to the Supplier within ten (10) Business Days after receipt of the Capacity Check Test report from the Supplier, written confirmation of the Electricity output for each hour during the Capacity Check Test (the "Capacity Confirmation").
- (d) To pass the Capacity Check Test, the Electricity output (in MWh) for each hour of the Capacity Check Test, divided by one hour, must be equal to or greater than the Contract Capacity, in which case the Capacity Reduction Factor shall, for the purposes of Exhibit J, be an amount equal to 1.0, effective from the date of the Capacity Confirmation in relation to the Capacity Check Test. If the Supplier has not passed the Capacity Check Test for each one of the four (4) continuous hours, then the Supplier shall, at the Supplier's cost and expense, perform a further Capacity Check Test (the "Further Capacity Check Test") within thirty (30) Business Days after the receipt by the Supplier of the Capacity Confirmation from the Buyer, on the same terms and conditions as the Capacity Check Test described in Section 15.6(a). If the total Electricity output of the Contract Facility for the four (4) continuous hours of each of the Capacity Check Test and the Further Capacity Check Test, as stated in their respective Capacity Confirmations, divided by the number of hours in each of the respective check tests (each an "Average Test Capacity"), are both less than eighty percent (80%) of the Contract Capacity, then this shall be considered a Supplier Event of Default. For purposes of calculating the Average Test Capacity in this Section 15.6, the Electricity output from each hour shall not exceed a maximum amount equal to the Contract Capacity multiplied by one hour.
- (e) If the Further Capacity Check Test shows that the Average Test Capacity was between eighty percent (80%) and one hundred percent (100%) of the Contract Capacity then the Capacity Reduction Factor for purposes of Exhibit J shall be reduced as set out below, effective on the date of the Capacity Confirmation in relation to the Further Capacity Check Test. The Capacity Reduction Factor shall be an amount equal to a fraction, the numerator of which is (i) the greater of the Average Test Capacities resulting from the Capacity Check Test and the Further Capacity Check Test, and the denominator of which is (ii) the Contract Capacity set out in Exhibit B.
- (f) If Section 15.6(e) is applicable, then the Supplier shall perform a further Capacity Check Test (the "Final Capacity Check Test") at the Supplier's cost and expense within ten (10) Business Days after written notice has been delivered by the Supplier to the Buyer, no earlier than one month and no later than one year after the date of the Capacity Confirmation with respect to the Further Capacity Check

Test, failing which this shall be considered to be a Supplier Event of Default. The Final Capacity Check Test shall take place on the same terms and conditions as the Capacity Check Test described in Section 15.6(a) and including the delivery of the Capacity Confirmation in relation to the Final Capacity Check Test. If the total Electricity output of the Contract Facility for the four (4) continuous hours of the Final Capacity Check Test, as stated in the Capacity Confirmation with respect to the Final Capacity Check Test, divided by the number of hours in such check test (which result shall also be an "Average Test Capacity" as calculated pursuant to Section 15.6(d)):

- (i) is less than ninety-five percent (95%) of the Contract Capacity, then this shall be considered a Supplier Event of Default;
- (ii) is equal or greater to ninety-five percent (95%) and less than one hundred percent (100%) of the Contract Capacity, then the Capacity Reduction Factor shall, for the purposes of Exhibit J, be an amount equal to a fraction, the numerator of which is (i) the Average Test Capacity in relation to the Final Capacity Check Test, and the denominator of which is (ii) the Contract Capacity set out in Exhibit B; and
- (iii) is equal to one hundred percent (100%) of the Contract Capacity, then the Capacity Reduction Factor shall, for the purposes of Exhibit J, be an amount equal to 1.0, effective from the date of the Capacity Confirmation in relation to the Final Capacity Check Test.

15.7 Notices

- (a) All notices pertaining to this Agreement not explicitly permitted to be in a form other than writing shall be in writing and shall be addressed to the other Party as follows:

If to the Supplier: Greenfield South Power Corporation
2275 Lakeshore Blvd. West
Suite 400
Toronto, Ontario M8V 3Y3

Attention: Gregory M. Vogt,
President
Facsimile: (416) 234-8336
E-mail: gvogt@easternpower.on.ca

and to: Lang Michener LLP
Brookfield Place
181 Bay Street, Suite 2500
Toronto, Ontario M5J 2T7

Attention: Carl DeVuono
Facsimile: (416) 304-3755
Email: cdevuono@langmichner.ca

If to the Buyer: Ontario Power Authority
120 Adelaide Street West
Suite 1600
Toronto, Ontario
M5H 1T1

Attention: Guy Raffaele,
Director, Contract Management
Facsimile: (416) 969-6071
E-mail: contract.management@powerauthority.on.ca

and to: Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1

Attention: Michael Lyle, General Counsel
Facsimile: (416) 969-6071
Email: Michael.Lyle@powerauthority.on.ca

Either Party may, by written notice to the other, change its respective Company Representative or the address to which notices are to be sent.

- (b) Notices shall be delivered or transmitted as set out below, and shall be considered to have been received by the other Party:
- (i) on the date of delivery if delivered by hand or by courier prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the next following Business Day;
 - (ii) in those circumstances where electronic transmission (other than transmission by facsimile) is expressly permitted under this Agreement, on the date of delivery if delivered prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the next following Business Day, provided that a copy of such notice is also delivered by regular post within a reasonable time thereafter; and
 - (iii) on the third (3rd) Business Day following the date of transmission by facsimile, if transmitted prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the fourth (4th) following Business Day, provided that a copy of such notice is also delivered by regular post within a reasonable time thereafter.
- (c) Notwithstanding Section 15.7(b):
- (i) any notices of an Event of Default and termination of this Agreement shall only be given by hand or courier delivery; and
 - (ii) if regular post service, facsimile, or other form of electronic communication is interrupted by strike, slowdown, a Force Majeure event

or other cause, a notice, direction or other instrument sent by the impaired means of communication will not be deemed to be received until actually received, and the Party sending the notice shall utilize any other such service which has not been so interrupted to deliver such notice.

ARTICLE 16 MISCELLANEOUS

16.1 Informal Dispute Resolution

If either Party considers that a dispute has arisen under or in connection with this Agreement that the Parties cannot resolve, then such Party may deliver a notice to the other Party describing the nature and the particulars of such dispute. Within ten (10) Business Days following delivery of such notice to the other Party, a senior executive (Senior Vice-President or higher) from each Party shall meet, either in person or by telephone (the "Senior Conference"), to attempt to resolve the dispute. Each senior executive shall be prepared to propose a solution to the dispute. If, following the Senior Conference, the dispute is not resolved, the dispute may be settled by arbitration pursuant to Section 16.2, if agreed to by both Parties.

16.2 Arbitration

Except as otherwise specifically provided for in this Agreement, any matter in issue between the Parties as to their rights under this Agreement may be decided by arbitration provided, however, that the Parties have first completed a Senior Conference pursuant to Section 16.1. Any dispute to be decided by arbitration will be decided by a single arbitrator appointed by the Parties or, if such Parties fail to appoint an arbitrator within fifteen (15) days following the agreement to refer the dispute to arbitration, upon the application of either of the Parties, the arbitrator shall be appointed by a Judge of the Superior Court of Justice (Ontario) sitting in the Judicial District of Toronto Region. The arbitrator shall not have any current or past business or financial relationships with any Party (except prior arbitration). The arbitrator shall provide each of the Parties an opportunity to be heard and shall conduct the arbitration hearing in accordance with the provisions of the *Arbitration Act, 1991* (Ontario). Unless otherwise agreed by the Parties, the arbitrator shall render a decision within ninety (90) days after the end of the arbitration hearing and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change this Agreement in any manner. The decision of the arbitrator shall be conclusive, final and binding upon the Parties. The decision of the arbitrator may be appealed solely on the grounds that the conduct of the arbitrator, or the decision itself, violated the provisions of the *Arbitration Act, 1991* (Ontario) or solely on a question of law as provided for in the *Arbitration Act, 1991* (Ontario). The *Arbitration Act, 1991* (Ontario) shall govern the procedures to apply in the enforcement of any award made. If it is necessary to enforce such award, all costs of enforcement shall be payable and paid by the Party against whom such award is enforced. Unless otherwise provided in the arbitral award to the contrary, each Party shall bear (and be solely responsible for) its own costs incurred during the arbitration process, and each Party shall bear (and be solely responsible for) its equal share of the costs of the arbitrator. Each Party shall be otherwise responsible for its own costs incurred during the arbitration process.

16.3 Business Relationship

Each Party shall be solely liable for the payment of all wages, taxes, and other costs related to the employment by such Party of Persons who perform this Agreement, including all federal, provincial, and local income, social insurance, health, payroll and employment taxes and statutorily-mandated workers' compensation coverage. None of the Persons employed by either Party shall be considered employees of the other Party for any purpose. Nothing in this Agreement shall create or be deemed to create a relationship of partners, joint venturers, fiduciary, principal and agent or any other relationship between the Parties.

16.4 Binding Agreement

Except as otherwise set out in this Agreement, this Agreement shall not confer upon any other Person, except the Parties and their respective successors and permitted assigns, any rights, interests, obligations or remedies under this Agreement. This Agreement and all of the provisions of this Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

16.5 Assignment

- (a) Except as set out below and as provided in Article 12, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by either Party, including by operation of Laws and Regulations, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- (b) The Supplier may, subject to compliance with Laws and Regulations and provided that there is not a Supplier Event of Default that has not been remedied, assign this Agreement without the consent of the Buyer to an Affiliate acquiring the Contract Facility; provided, however, that no such assignment by the Supplier or any of its successors or permitted assigns hereunder shall be valid or effective unless and until such Affiliate agrees with the Buyer in writing to assume all of the Supplier's obligations and be bound by the terms of this Agreement, and the arrangements and obligations of the Supplier set forth in Article 6 have been met in accordance with the terms of Article 6. If a valid assignment of this Agreement is made by the Supplier in accordance with this Section 16.5, the Buyer acknowledges and agrees that, upon such assignment and assumption and notice thereof by the assignor to the Buyer, the assignor shall be relieved of all its duties, obligations and liabilities hereunder.
- (c) If the Supplier assigns this Agreement to a non-resident of Canada (the "Assignee"), as that term is defined in the ITA, and the Buyer incurs any additional Taxes, at any time thereafter, solely as the result of such assignment, then payments under this Agreement by the Buyer shall be reduced by the amount of such additional or withholding Taxes and the Buyer shall remit such additional or withholding Taxes to the applicable taxing authorities. The Buyer shall within sixty (60) days after remitting such Taxes, notify the Assignee in writing, providing reasonable detail of such payment so that the Assignee may claim any

applicable rebates, refunds or credits from the applicable taxing authorities. If after the Buyer has paid such amounts, the Buyer receives a refund, rebate or credit on account of such Taxes, then the Buyer shall promptly remit such refund, rebate or credit amount to the Assignee.

- (d) The Ontario Power Authority shall have the right to assign this Agreement and all benefits and obligations hereunder for the balance of the Term without the consent of the Supplier to an assignee with a Credit Rating no lower than that set forth in the fourth (4th) row of the table in Section 6.4(b)(i), which such assignee shall assume the obligations and liability of the Ontario Power Authority under this Agreement and be novated into this Agreement in the place and stead of the Ontario Power Authority (except for the Ontario Power Authority's obligation in Section 16.5(d)(iii) which will remain in force), provided that the assignee agrees in writing to assume and be bound by the terms and conditions of this Agreement, and further agrees to provide the Secured Lender with a written acknowledgement of the Secured Lender's rights in relation to this Agreement in the form set out in Exhibit N, whereupon:
 - (i) the representation set forth in Section 7.2(a) shall apply to the assignee with all necessary amendments to reflect the form and the manner in which the assignee was established;
 - (ii) all of the representations set forth in Section 7.2 shall be deemed to be made by the assignee to the Supplier at the time of such assignment and assumption; and
 - (iii) the Ontario Power Authority shall be relieved of all obligations and liability arising pursuant to this Agreement; notwithstanding the foregoing, the Ontario Power Authority shall remain liable to the Supplier for remedying any payment defaults under Section 10.3(a) before any such payment default becomes a Buyer Event of Default, and shall remain liable for any obligations and liabilities of the assignee arising from any Buyer Event of Default. Any notice required to be given under Sections 10.3 and 10.4(a) shall be given to the Assignee and to the Ontario Power Authority. The time periods in Section 10.3 shall not begin to run until both the Assignee and the Ontario Power Authority have been so notified.
- (e) The Ontario Power Authority shall have the right to assign this Agreement and all benefits and obligations hereunder from time to time throughout the Term for a period less than the balance of the Term (the "Assignment Period") without the consent of the Supplier to an assignee with a Credit Rating no lower than that set forth in the fourth (4th) row of the table in Section 6.4(b)(i), which such Assignee shall assume the obligations of the Ontario Power Authority under this Agreement and be novated into this Agreement in the place and stead of the Ontario Power Authority (except for the Ontario Power Authority's obligation in Section 16.5(e)(iii) which will remain in force), provided that the assignee agrees in writing to assume and be bound by the terms and conditions of this Agreement, and further agrees to provide the Secured Lender with a written acknowledgement

of the Secured Lender's rights in relation to this Agreement in the form set out in Exhibit N, whereupon:

- (i) the representation set forth in Section 7.2(a) shall apply to the Assignee with all necessary amendments to reflect the form and the manner in which the assignee was established;
- (ii) all of the representations set forth in Section 7.2 shall be deemed to be made by the Assignee to the Supplier at the time of such assignment and assumption;
- (iii) the Ontario Power Authority shall be relieved of all obligations and liability arising pursuant to this Agreement; notwithstanding the foregoing, the Ontario Power Authority shall remain liable to the Supplier for remedying any payment defaults under Section 10.3(a) before any such payment default becomes a Buyer Event of Default, and shall remain liable to the Supplier for any obligations and liabilities of the assignee arising from any Buyer Event of Default. Any notice required to be given under Sections 10.3 and 10.4(a) shall be given to the assignee and to the Ontario Power Authority. The time periods in Section 10.3 shall not begin to run until both the Assignee and the Ontario Power Authority have been so notified; and
- (iv) upon the expiry of the Assignment Period:
 - (A) this Agreement, without requiring the execution of any assignment, consent or other documentation of any nature, shall automatically revert and be assigned back to the Ontario Power Authority;
 - (B) the Assignee shall remain responsible to the Supplier for all obligations and liabilities incurred or accrued by the assignee during the Assignment Period; and
 - (C) the Ontario Power Authority, as Buyer pursuant to the automatic assignment back to it, shall be deemed to be in good standing under this Agreement, provided that such good standing shall not relieve the Ontario Power Authority from any obligation to the Supplier pursuant to Section 16.5(e)(iii) that arose prior to the expiry of the Assignment Period.

16.6 No Change of Control

- (a) The Supplier shall not permit or allow a change of Control of the Supplier, except with the prior written consent of the Buyer, which consent may not be unreasonably withheld. It shall not be unreasonable to withhold such consent if the change of Control will have or is likely to have, as determined by the Buyer acting reasonably, a Material Adverse Effect on the Supplier's ability to perform

its obligations under this Agreement, in which case such consent may be withheld by the Buyer.

- (b) For the purposes of Sections 16.6(a) and 16.7(a), a change of Control shall exclude a change in ownership of any shares or units of ownership that are listed on a recognized stock exchange, provided that such shares or units of ownership are not those of an entity that directly owns the Contract Facility whose special or sole purpose is the ownership of the Facility or the Contract Facility and other generation facilities under a CES Contract or other bilateral arrangements with the Buyer similar in nature to this Agreement.

16.7 No Assignment or Change of Control for Specified Period

Notwithstanding the provisions of Sections 16.5(a), 16.5(b), 16.5(c), and 16.6(a) to the contrary, and except as provided in Article 12, under no circumstances shall:

- (a) any assignment of this Agreement by the Supplier;
- (b) any change of Control in respect of the Supplier;
- (c) fifty (50%) or more of securities or ownership interests carrying votes or ownership interests in respect of the Supplier be directly or indirectly held, whether as owner or other beneficiary and other than solely as the beneficiary of an unrealized security interest, individually or collectively by any Person or Persons who, as of the date of this Agreement, did not directly or indirectly hold any of such securities or ownership interests in respect of the Supplier, whether as owner or other beneficiary and other than solely as the beneficiary of an unrealized security interest,

be permitted until the earlier of: (i) the third (3rd) anniversary of the Term Commencement Date; and (ii) the date that the Contract Facility has achieved the test conditions set out in Exhibit M. For greater certainty, a change of Control in respect of the Supplier referenced in Section 16.7(b) shall include a change from no Person having Control of the Supplier to any Person having Control of the Supplier.

Notwithstanding the foregoing, for a period commencing on the date of this Agreement and ending the earlier of (i) six (6) months following the date of this Agreement and (ii) Financial Closing, the Supplier may, without the Buyer's further consent, assign all (but not less than all) of the Supplier's interest in this Agreement to a partnership in which the Supplier holds not less than a fifty percent (50%) interest, provided that: (1) the Supplier shall provide the Buyer with written notice of any such assignment; and (2) all partners of such partnership agree with the Buyer in writing to be jointly and severally liable to the Buyer for all the obligations and liabilities of the Supplier hereunder.

16.8 Survival

The provisions of Sections 2.8(b), 4.4, 4.5, 4.6, Article 5, Article 8, Sections 10.2, 10.4, 10.5, and 12.2(g), Article 14, Sections 15.2, 16.1, 16.2, and 16.5(c) shall survive the expiration of the Term

or earlier termination of this Agreement. The expiration of the Term or a termination of this Agreement shall not affect or prejudice any rights or obligations that have accrued or arisen under this Agreement prior to the time of expiration or termination and such rights and obligations shall survive the expiration of the Term or the termination of this Agreement for a period of time equal to the applicable statute of limitations.

16.9 Counterparts

This Agreement may be executed in two or more counterparts, and all such counterparts shall together constitute one and the same Agreement. It shall not be necessary in making proof of the contents of this Agreement to produce or account for more than one such counterpart. Any Party may deliver an executed copy of this Agreement by facsimile or electronic mail but such Party shall, within ten (10) Business Days of such delivery by facsimile or electronic mail, promptly deliver to the other Party an originally executed copy of this Agreement.

16.10 Additional Rights of Set-Off

- (a) In addition to its other rights of set-off under this Agreement or otherwise arising in law or equity, the Buyer may set off any amounts owing by the Supplier to the Buyer in connection with Sections 1.7(e), 1.8(e), 1.9(d), 1.10(c), 2.3, 2.5, 2.8(b), 2.10, 4.2, 4.4, 5.3, 10.2, 10.5, and 14.3 against any monies owed by the Buyer to the Supplier in connection with Sections 1.7(e), 1.8(e), 1.9(d), 1.10(c), 2.3, 4.2, 4.5, 4.6, 5.3, 10.5, and 13.3(d).
- (b) In addition to its other rights of set-off under this Agreement or otherwise arising in law or equity, the Supplier may set-off any amounts owing by the Buyer to the Supplier in connection with Sections 1.7(e), 1.8(e), 1.9(d), 1.10(c), 2.3, 4.2, 4.5, 4.6, 5.3, 10.5, and 13.3(d) against any monies owed by the Supplier to the Buyer in connection with Sections 1.7(e), 1.8(e), 1.9(d), 1.10(c), 2.3, 2.5, 2.8(b), 2.10, 4.2, 4.4, 5.3, 10.2, 10.5, and 14.3.

16.11 Rights and Remedies Not Limited to Contract

Unless expressly provided in this Agreement, the express rights and remedies of the Buyer or the Supplier set out in this Agreement are in addition to and shall not limit any other rights and remedies available to the Buyer or the Supplier, respectively, at law or in equity.

16.12 Time of Essence

Time is of the essence in the performance of the Parties' respective obligations under this Agreement.

16.13 Further Assurances

Each of the Parties shall, from time to time on written request of the other Party, do all such further acts and execute and deliver or cause to be done, executed or delivered all such further acts, deeds, documents, assurances and things as may be required, acting reasonably, in order to fully perform and to more effectively implement and carry out the terms of this Agreement. The

Parties agree to promptly execute and deliver any documentation required by any Governmental Authority in connection with any termination of this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have executed this Agreement by the undersigned duly authorized representatives as of the date first stated above.

**GREENFIELD SOUTH POWER
CORPORATION**

By: _____

Name: Gregory M. Vogt

Title: President

I have authority to bind the corporation

ONTARIO POWER AUTHORITY

By: _____

Name: Colin Andersen

Title: Chief Executive Officer

I have authority to bind the corporation.

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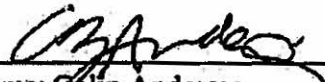
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I have authority to bind the corporation

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Name: Colin Andersen
Title: Chief Executive Officer

I have authority to bind the corporation.

Perun, Halyna N. (ENERGY)

From: Slater, Craig (JUS)
Sent: October 11, 2011 1:49 PM
To: Perun, Halyna N. (ENERGY)
Cc: Salim, Fateh (JUS); Kendik, James (JUS); Scarfone, Janet (JUS)
Subject: FW: Mississauga Gas Plant

For your information.

John Kelly spoke to Mike Lyle, who indicated, as you had earlier indicated, the Colin Andersen and Deputy Lindsey will be part of the meeting tomorrow to discuss options.

The view at the OPA is that there has been nothing done here that would prevent the OPA from relying on the limitation of damages clause that is in this agreement with Eastern Power, as it was in the TCE agreement – but which (given the Oct 2010 letter) we could not rely on. However, Mike indicated that Eastern Power is very litigious. Mike also mentioned that the hope is to negotiate an alternative site, perhaps in Nanticoke, as part of any settlement of the termination of the agreement, if the decision is made to terminate. The OPA's view is that given the experience in Oakville and Mississauga that the location of such plants in populated areas is now not advisable. The OPA is trending to the same option as in TCE – negotiation of an alternate site and arbitration of the damages, which may be less than TCE because of our reliance on the limitation of damages clause. However, Mike confirmed that Eastern Power has all approvals in place and is constructing the plant in full compliance with its agreement with the OPA.

In terms of NAFTA, we may need to do a little more digging. Bloomberg lists the proponent Greenfield South Power Corporation and Eastern Power as private corporations. The Greenfield South Power Corporation website lists Eastern Power as an affiliate. There may be foreign investors, but since both companies appear to not make public filings, it is difficult to ascertain.

Perun, Halyna N. (ENERGY)

From: Perun, Halyna N. (ENERGY)
Sent: October 11, 2011 1:57 PM
To: Calwell, Carolyn (ENERGY); Rehob, James (ENERGY)
Subject: FW: Mississauga Gas Plant

Halyna

Halyna N. Perun
A/Director
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From: Slater, Craig (JUS)
Sent: October 11, 2011 1:49 PM
To: Perun, Halyna N. (ENERGY)
Cc: Salim, Fateh (JUS); Kendik, James (JUS); Scarfone, Janet (JUS)
Subject: FW: Mississauga Gas Plant

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Perun, Halyna N. (ENERGY)

From: Perun, Halyna N. (ENERGY)
Sent: October 11, 2011 1:59 PM
To: Wong, Taia (JUS); Slater, Craig (JUS); Scarfone, Janet (JUS); Salim, Fateh (JUS)
Cc: Calwell, Carolyn (ENERGY); Rehob, James (ENERGY)
Subject: FW: Mississauga
Attachments: Amended and Restated CES Contract with Greenfield South dated March 16 2009.pdf

Privileged and Confidential

Just received - There appears to have been some reluctance in sharing this...

Halyna

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From: Michael Lyle [mailto:Michael.Lyle@powerauthority.on.ca]
Sent: October 11, 2011 1:49 PM
To: Perun, Halyna N. (ENERGY)
Subject: RE: Mississauga

See attached copy of the contract.

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario, M5H 1T1
Direct: 416-969-6035
Fax: 416.969.6383
Email: michael.lyle@powerauthority.on.ca

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From: Perun, Halyna N. (ENERGY) [mailto:Halyna.Perun2@ontario.ca]
Sent: October 11, 2011 12:43 PM
To: Michael Lyle
Subject: RE: Missisauga

I am on a conference call now – will call you shortly?

Halyna

Halyna N. Perun
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From: Perun, Halyna N. (ENERGY)
Sent: October 11, 2011 12:03 PM
To: 'Michael Lyle'
Subject: RE: Missisauga

Privileged and Confidential

I should tell you that I also left a message for Susan Kennedy (that was before I heard your two vms - as I thought you hadn't responded) asking her for the contract. At this point I need to know if you would be prepared to provide the contract to me – if not, then I need to let my Deputy know this as he had asked me to follow up with you to obtain it. Thank you

Halyna

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From: Perun, Halyna N. (ENERGY)
Sent: October 11, 2011 11:58 AM
To: 'Michael Lyle'
Subject: RE: Mississauga

Hi – I missed your replies – I do need to speak with you – are you around now?

Halyna

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From: Perun, Halyna N. (ENERGY)
Sent: October 11, 2011 9:34 AM
To: 'Michael Lyle'
Subject: Mississauga

Privileged and Confidential

Hi Mike – Do you have the contract for me please? Also – I understand that Rick reviewed the issues with you and is putting together a deck (not sure if it's a joint deck – with the OPA) – would like to touch base with you about all this this morning sooner than later - thanks

Halyna

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From: Perun, Halyna N. (ENERGY)

Sent: October 7, 2011 3:28 PM

To: Michael Lyle

Subject: Please call

Hi Mike – I hope to talk to you before the weekend – Please call me when you can - Thank you

Halyna

Halyna N. Perun

A/Director

Legal Services Branch

Ministries of Energy & Infrastructure

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• **Perun, Halyna N. (ENERGY)**

From: Calwell, Carolyn (ENERGY)
Sent: October 11, 2011 2:04 PM
To: Perun, Halyna N. (ENERGY)
Subject: FW: Greenfield South Contract Deck
Attachments: Gas Plant Considerations 2 (2) (JPR Comments 2A).ppt

I was only able to get to slide 5

From: Reheb, James (ENERGY)
Sent: October 11, 2011 1:59 PM
To: Calwell, Carolyn (ENERGY)
Subject: Greenfield South Contract Deck

Hi, Carolyn – my comments are attached. Please note that I'd be very happy to go over the deck again, but I thought I'd better get these comments to you now and we could work our way through them or proceed in any way that seems best.
Kindly,
James

James P. H. Reheb
Senior Counsel
Ministry of Energy and
Ministry of Infrastructure
Legal Services Branch
777 Bay Street, 4th Floor, Suite 425
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Tel: 416-325-6676
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james.reheb@ontario.ca

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Ontario

MINISTRY OF ENERGY

Gas Plant Considerations

Date: October 11, 2011

Key Facts About the Greenfield South Plant

- Successful applicant in Ministry of Energy run **Clean Energy Supply (CES)** RFP, contract signed with the OPA in April 2005.
- Eastern Power, the project developer **based in Ontario**, has received all required provincial approvals, including Environmental Assessment and Certificates of Approval;
- Eastern Power has received all required municipal approvals, including building site approval from the City of Mississauga issued in May 2011;
- Eastern Power has **recently** secured financing (confirmed by the OPA).

MINISTRY OF ENERGY

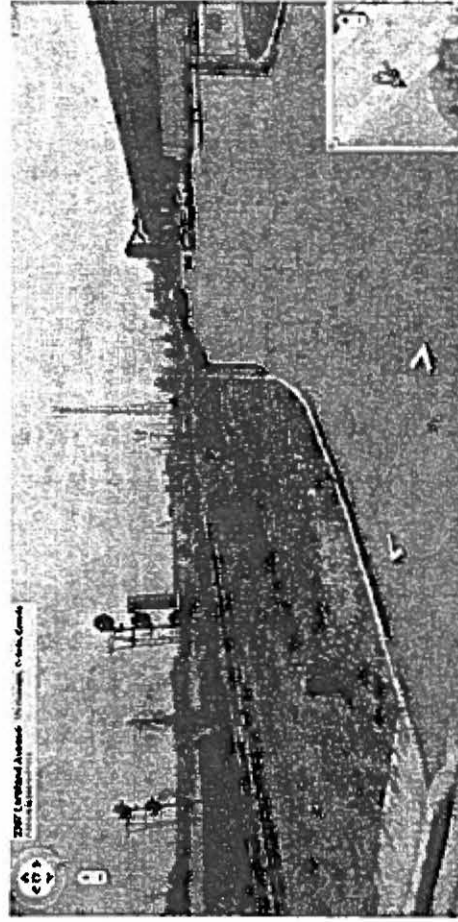
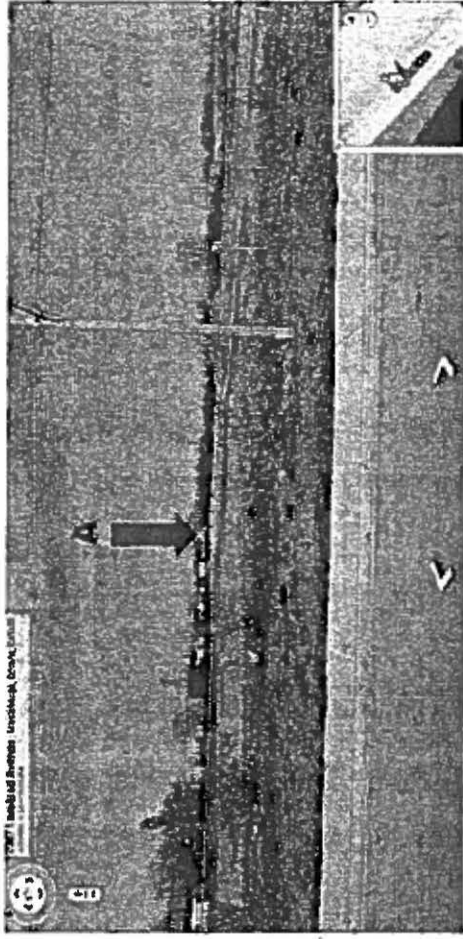
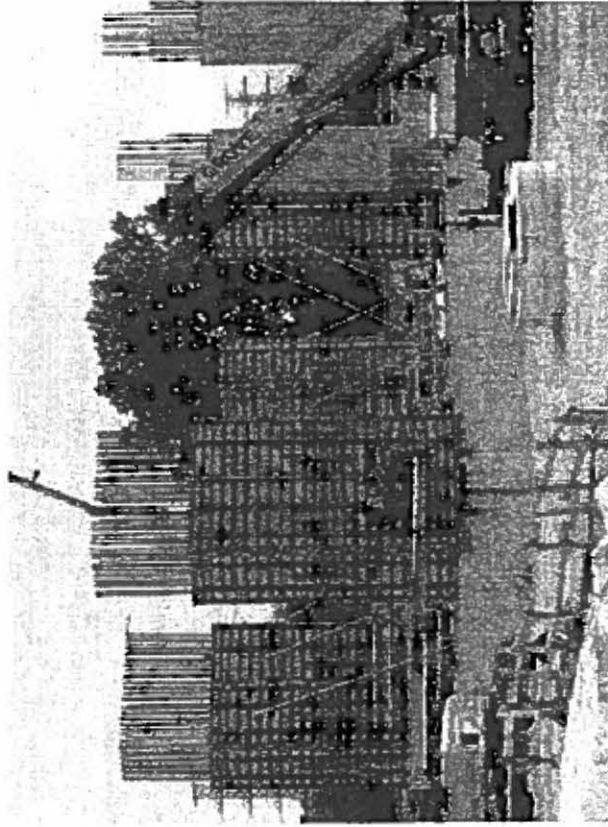


Legend:

- A – Proposed Greenfield Site
- B – Closest House
- C – Closest Subdivision (North)
- D – Closest Subdivision (South)
- E – Trillium Heath Centre
- F – Sherway Gardens Mall

Distance:

- A to B: 220 Meters
- A to C: 270 Meters
- A to D: 500 Meters
- A to E: 740 Meters
- A to F: 910 Meters



Recent Events

- On September 24, in Mississauga, local Liberal party candidates announced that “construction on the project would be halted” and that “if elected the Government would work with Eastern to choose a new site.” The Mayor of Mississauga attended the announcement and endorsed the decision.
- On September 28, the media carried pictures of the plant with construction well underway.
- On October 6, media reported Liberal insiders as saying that Eastern Power was warned back in May that any work they did was at their own risk. **Currently, according to the OPA, Eastern is contractually entitled and obliged continue construction.**

Issues

- Construction continues at the Greenfield South site.
- The project has all applicable approvals. **A regulatory mechanism for stopping construction could be challenged under the contract terms as well as in the courts, in the absence of a breach of approval conditions. A legislative solution, where carefully drafted, is less vulnerable to a successful suit.**
- Legal interaction with Eastern Power is through the **OPA** which **currently** holds and administers the contract.
- Statements have been made by local politicians that the plant would not be relocated to a site in Mississauga or Toronto. Alternative site options and alternative ways to supply Mississauga have not been identified. Alternative sites would require new provincial and municipal approvals processes to be undertaken **involving appreciable delay and expense.**

Options For Stopping the Plant

- **Legislative/Regulatory** – would have to **nullify** approvals already received
 - Legislation seen as more durable solution but requires time to enact and pass.
 - Developer could bring suit in interim, though legislation would ultimately trump
 - Legislation could provide for compensation, no compensation, manner of establishing compensation, arbitration/settlement process, etc.
 - There is some provincial precedent re. *Adams Mine* for a legislative approach.
- **Contractual** – unilateral cancellation would lead to legal action.
 - OPA contract includes limitation clauses.
 - OPA is vulnerable to damages which have to be recovered from the rate-base;
 - Government could be sued though likelihood of success may be limited since it is not a party.
- **Negotiations/arbitration/settlement** – in return for ceasing construction, coverage of expenses to date (e.g. sunk costs) and a new contract for a [ntd-jpr: similar-sized plant at a] new [ntd-jpr: and comparable?] site.

Next Steps

- OPA be could be requested to approach Eastern Power about negotiating settlement, could include covering costs to date (sunk costs), covering foregone revenue, as well as establishing a contract for a new site. [
- Could require a Ministerial direction to the OPA to renegotiate the contract or cancel the contract. The Government could agree to cover some or all of the settlement costs.
 - There are some interpretive risks, including the argument that once the contract (initiative) is passed to it, the Minister is limited in his authority to further direct the OPA about the same initiative. May have to refocus "direction" in terms of "expectations"
- Cambridge is a potential alternate site: *[ntd-jpr: OPA mentioend KW and Lennox as well.]*
 - The project would have to be reconfigured (450 MW peaking plant versus 280 MW combined cycle plant);
 - the developer would likely ask the OPA to take approval risk; and,
 - TransCanada has been in discussions about this site although nothing has been agreed to.
 - Does not directly address supply needs in Mississauga and Toronto
- Proponent may be willing to settle for a large cash settlement representing foregone net revenue or may view its financial prospects as being better through the courts.

Perun, Halyna N. (ENERGY)

From: Perun, Halyna N. (ENERGY)
Sent: October 11, 2011 2:04 PM
To: Lindsay, David (ENERGY); Kuiendran, Jesse (ENERGY)
Cc: Jennings, Rick (ENERGY)
Subject: FW: Greenfield South Contract Deck
Attachments: Gas Plant Considerations 2 (2) (JPR Comments 2A).ppt

These are in progress – we'll have them in shape in about 15 min – but in any event – as far as we got

Halyna

Halyna N. Perun
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777 Bay Street, 4th Floor, Suite 425
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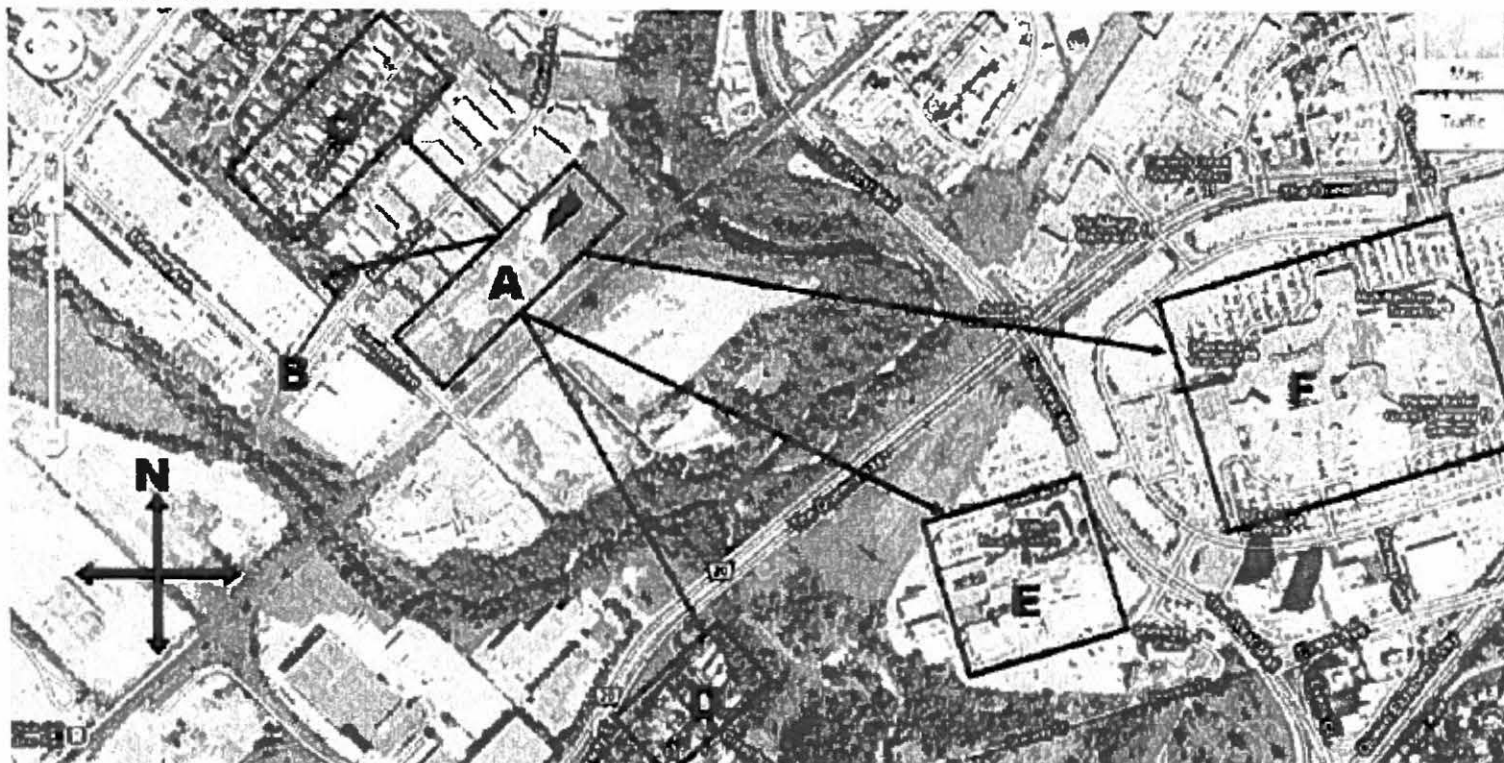
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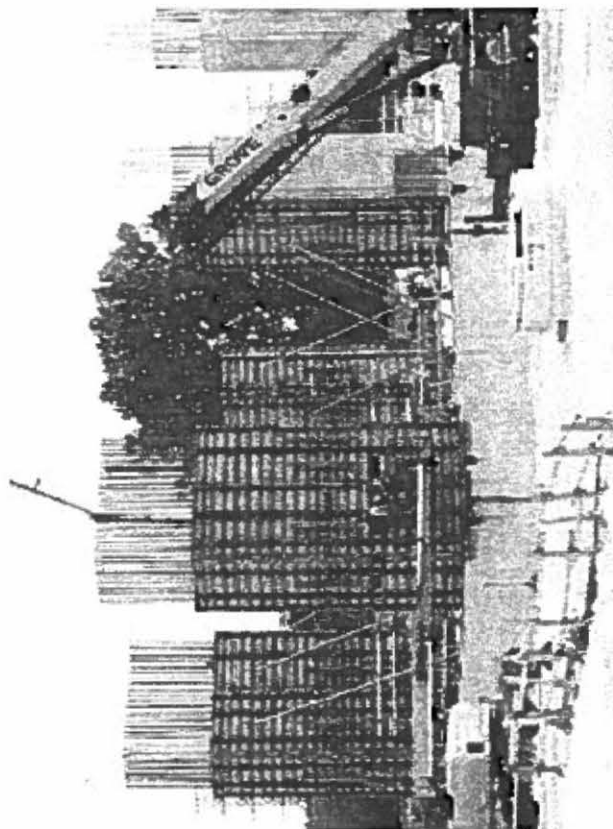
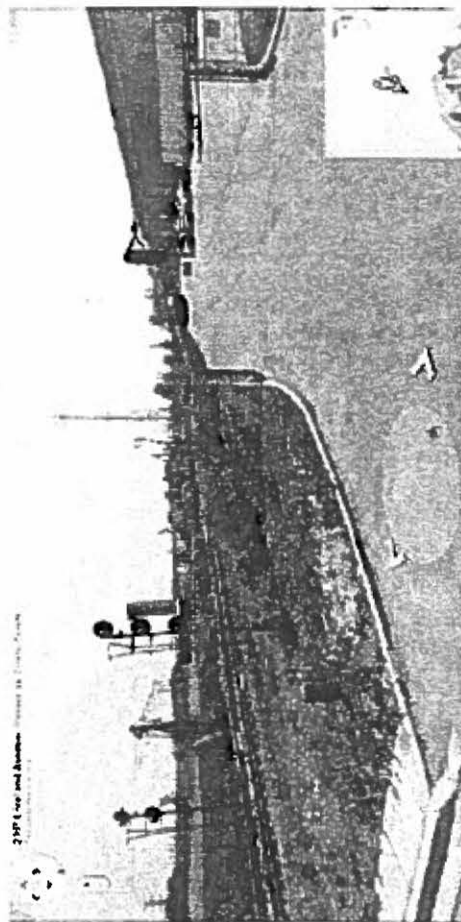
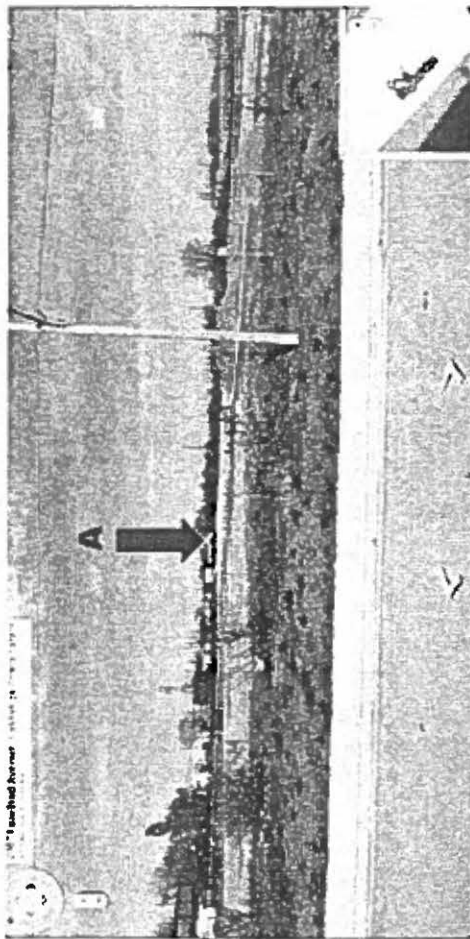


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 - Developer could bring suit in interim, though legislation would ultimately trump
 - Legislation could provide for compensation, no compensation, manner of establishing compensation, arbitration/settlement process, etc.
 - There is some provincial precedent re. *Adams Mine* for a legislative approach.
- **Contractual** – unilateral cancellation would lead to legal action.
 - OPA contract includes limitation clauses.
 - OPA is vulnerable to damages which have to be recovered from the rate-base;
 - Government could be sued though likelihood of success may be limited since it is not a party.
- **Negotiations/arbitration/settlement** – in return for ceasing construction, coverage of expenses to date (e.g. sunk costs) and a new contract for a *[ntd-jpr: similar-sized plant at a] new [ntd-jpr: and comparable?] site.*

Next Steps

- OPA be could be **requested** to approach Eastern Power about negotiating settlement, could include covering costs to date (**sunk costs**) , covering foregone revenue, **as well as establishing a contract for a new site.** [
- Could require a Ministerial direction to the OPA to renegotiate the contract or cancel the contract. The Government could agree to cover some or all of the settlement costs.
 - There are some interpretive risks, including the argument that once the contract (initiative) is passed to it, the Minister is limited in his authority to further direct the OPA about the same initiative. May have to refocus "direction" in terms of "expectations"
- Cambridge is a potential alternate site: *[ntd-jpr: OPA mentioend KW and Lennox as well.]*
 - The project would have to be reconfigured (450 MW peaking plant versus 280 MW combined cycle plant);
 - the developer would likely ask the OPA to take approval risk; and,
 - TransCanada has been in discussions about this site although nothing has been agreed to.
 - Does not directly address supply needs in Mississauga and Toronto
- Proponent may be willing to settle for a large cash settlement representing foregone net revenue or may view its financial prospects as being better through the courts.

Perun, Halyna N. (ENERGY)

From: King, Ryan (ENERGY)
Sent: October 11, 2011 2:38 PM
To: Perun, Halyna N. (ENERGY)
Subject: Re: Mississauga

Hi Halyna,

Can you let us know where edits are at? We have a revised deck and want to incorporate to send up to DM

From: Perun, Halyna N. (ENERGY)
To: King, Ryan (ENERGY); Jennings, Rick (ENERGY)
Cc: Calwell, Carolyn (ENERGY); Rehob, James (ENERGY)
Sent: Tue Oct 11 13:18:30 2011
Subject: Mississauga

Privileged and Confidential

Mike Lyle is meeting with Colin now – he said he'd be in a position to let us know whether or not the contract will be shared with legal post that meeting.

In meantime, we'll be adding to the deck you sent – and should have something to you in the next hour or so.

Halyna

Halyna N. Perun
A/Director
Legal Services Branch
Ministries of Energy & Infrastructure
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Ph: (416) 325-6681 / Fax: (416) 325-1781
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From: King, Ryan (ENERGY)
Sent: October 11, 2011 12:05 PM
To: Perun, Halyna N. (ENERGY)
Cc: Jennings, Rick (ENERGY)
Subject: FW:

Halyna,
This is a draft deck we're working on for the meeting tomorrow.

From: Jenkins, Allan (ENERGY)
Sent: October 11, 2011 12:05 PM
To: Jennings, Rick (ENERGY); McKeever, Garry (ENERGY)

Cc: King, Ryan (ENERGY)

Subject: RE:

Formatted the presentation and made some additions of text and images.

From: Jennings, Rick (ENERGY)

Sent: October 11, 2011 10:31 AM

To: Jenkins, Allan (ENERGY); McKeever, Garry (ENERGY)

Cc: King, Ryan (ENERGY)

Subject:

See attached per our discussion

Perun, Halyna N. (ENERGY)

From: Calwell, Carolyn (ENERGY)
Sent: October 11, 2011 2:42 PM
To: Perun, Halyna N. (ENERGY)
Cc: Rehob, James (ENERGY)
Subject: Gas Plant
Attachments: Gas Plant Considerations (LSB).ppt

As discussed – reflects James' changes and my review. Doesn't yet deal with possibility of injunction.

Carolyn

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Ontario

MINISTRY OF ENERGY

Gas Plant Considerations

Date: October 11, 2011

Key Facts About the Greenfield South Plant

- Successful applicant in Ministry of Energy run **Clean Energy Supply (CES)** RFP, contract signed with the OPA in April 2005.
- Eastern Power, the project developer **based in Ontario**, has received all required provincial approvals, including Environmental Assessment and Certificates of Approval;
- Eastern Power has received all required municipal approvals, including building site approval from the City of Mississauga issued in May 2011;
- Eastern Power has **recently** secured financing (confirmed by the OPA).

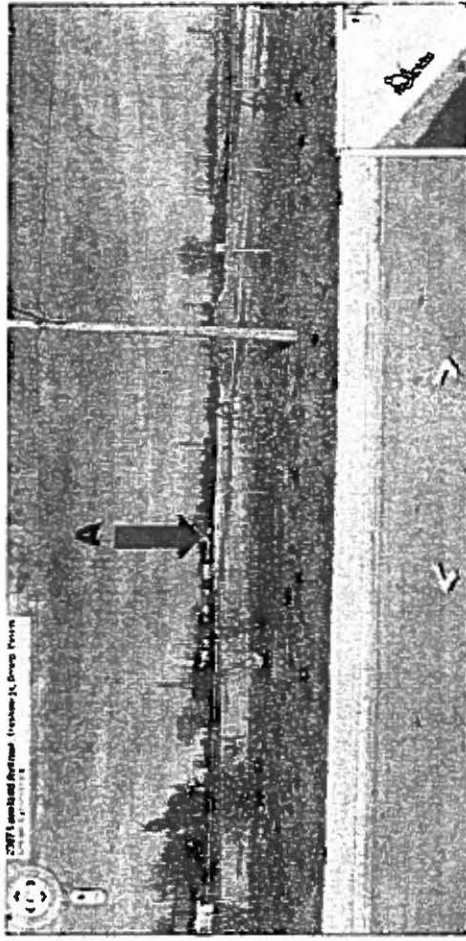


Legend:

- A – Proposed Greenfield Site
- B – Closest House
- C – Closest Subdivision (North)
- D – Closest Subdivision (South)
- E – Trillium Heath Centre
- F – Sherway Gardens Mall

Distance:

- A to B: 220 Meters
- A to C: 270 Meters
- A to D: 500 Meters
- A to E: 740 Meters
- A to F: 910 Meters



Recent Events

- On September 24, in Mississauga, local Liberal party candidates announced that “construction on the project would be halted” and that “if elected the Government would work with Eastern to choose a new site.” The Mayor of Mississauga attended the announcement and endorsed the decision.
- On September 28, the media carried pictures of the plant with construction well underway.
- On October 6, media reported Liberal insiders as saying that Eastern Power was warned back in May that any work they did was at their own risk.

Issues

- Construction continues at the Greenfield South site. **According to the OPA, Eastern is contractually entitled and obliged continue construction.**
- The project has all applicable approvals.
- **The OPA is party to and administers the contract with Eastern Power. The Province is not a party to the contract.**
- **Local politicians have stated** the plant would not be relocated to a site in Mississauga or Toronto. Alternative ways to supply Mississauga have not been identified. Alternative sites, **including, potentially, KWC, Nanticoke or Lennox**, would require new provincial and municipal approvals processes to be undertaken.

Options For Stopping the Plant

- **Legislative** – requires time to enact and pass
 - Developer could bring law suit in interim, though legislation if passed could ultimately preclude liability and damages
 - Legislation could provide for compensation (or not) or could establish process to determine compensation
 - Legislation could not avoid potential exposure under international agreements (e.g. NAFTA)
 - Provincial precedent: *Adams Mine Lake Act, 2004*
- **Regulatory** - would have to **nullify** approvals already received
 - Likely to lead to financial exposure for province or OPA
- **Contractual** – unilateral termination **can be expected** to lead to legal action
 - Both OPA and Government could be included as parties
 - OPA contract includes limitation of liability clause, which could limit damages.
 - Damages payable by the OPA would be recovered from the rate-base.
- **Negotiations/arbitration/settlement** – in return for ceasing construction and terminating Greenfield contract, OPA or Government could offer to pay for expenses to date (e.g. sunk costs) or to enter into a new contract for a new site.

Next Steps

- OPA could be asked to approach Eastern Power about negotiating a settlement, which could include payment for costs to date (**sunk costs**) , payment for foregone revenue, or **negotiations for a contract at a new site**.
- Could require a Ministerial direction to the OPA to renegotiate the contract or cancel the contract. The Government could agree to pay some or all of the settlement costs.
 - The authority of the Minister to issue such a direction is debatable.
- Cambridge is a potential alternate site:
 - The project would have to be reconfigured (450 MW peaking plant versus 280 MW combined cycle plant);
 - The developer would likely ask the OPA to take approval risk; and,
 - TransCanada has been in discussions about this site although nothing has been agreed to.
 - This alternative does not directly address supply needs in Mississauga and Toronto
- Other alternatives include Nanticoke or Lennox.
- Proponent may be willing to settle for a large cash settlement representing foregone net revenue or may view its financial prospects as being better through the courts.

Perun, Halyna N. (ENERGY)

From: King, Ryan (ENERGY)
Sent: October 11, 2011 2:50 PM
To: Perun, Halyna N. (ENERGY)
Cc: Calwell, Carolyn (ENERGY); Rehob, James (ENERGY)
Subject: Re: Gas Plant

Ok, I will incorporate and note your caveats as well.
Many thanks

From: Perun, Halyna N. (ENERGY)
To: King, Ryan (ENERGY)
Cc: Calwell, Carolyn (ENERGY); Rehob, James (ENERGY)
Sent: Tue Oct 11 14:47:31 2011
Subject: FW: Gas Plant

Hi Ryan

This is as far as we've gotten so far. It does not deal with possibility of injunction. Further, MOE legal wanted us to include information about MOE options, but they are only meeting with their client at 3.

Further, the info in this deck re legal options still require a review/approval by MAG central.

Thanks

Halyna

Halyna N. Perun
A/Director
Legal Services Branch
Ministries of Energy & Infrastructure
777 Bay Street, 4th Floor, Suite 425
Toronto, ON M5G 2E5
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Perun, Halyna N. (ENERGY)

From: King, Ryan (ENERGY)
Sent: October 11, 2011 3:06 PM
To: Calwell, Carolyn (ENERGY); Rehob, James (ENERGY); Perun, Halyna N. (ENERGY)
Subject: Gas Plant Considerations (v2).ppt
Attachments: Gas Plant Considerations (v2).ppt

Per my discussion with James, can you please add the bullet on an injunction. I'll then put to Rick

Perun, Halyna N. (ENERGY)

From: Rehob, James (ENERGY)
Sent: October 11, 2011 3:32 PM
To: King, Ryan (ENERGY)
Cc: Perun, Halyna N. (ENERGY); Calwell, Carolyn (ENERGY)
Subject: FW: Updated Greenfield South Deck
Attachments: Gas Plant Considerations (v2) (JPR Comments).ppt

Privileged & Confidential Legal Advice / Solicitor & Client Privileged

October 11, 2011

Hi, Ryan – I've updated the deck just now to add a point on injunctions – the injunction would likely be unavailable in our circumstances since the developer has not been and would not be violating existing law. When we discussed the potential of changing the regulatory status (e.g. MOE revoking or further conditionalizing their C of A), it should be noted that such action carries the risk of founding the basis for a misfeasance in public office (abuse of power/public office) suit.

In light of this comment, I was considering adding the following language to "Regulatory" on Options slide: **"Attempts to direct the regulators to change regulatory status, permits, etc. could be seen as misfeasance in public office"**. Please consider.

Thanks,

James

James P. H. Rehob
Senior Counsel
Ministry of Energy and
Ministry of Infrastructure
Legal Services Branch
777 Bay Street, 4th Floor, Suite 425
Toronto, ON M5G 2E5
Tel: 416-325-6676
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james.rehob@ontario.ca

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MINISTRY OF ENERGY

Gas Plant Considerations

Date: October 11, 2011

Key Facts About the Greenfield South Plant

- Successful applicant in Ministry of Energy run **Clean Energy Supply (CES)** RFP, contract signed with the OPA in April 2005.
- Eastern Power, the project developer **based in Ontario**, has received all required provincial approvals, including Environmental Assessment and Certificates of Approval;
- Eastern Power has received all required municipal approvals, including building site approval from the City of Mississauga issued in May 2011;
- Eastern Power has **recently** secured financing (confirmed by the OPA).



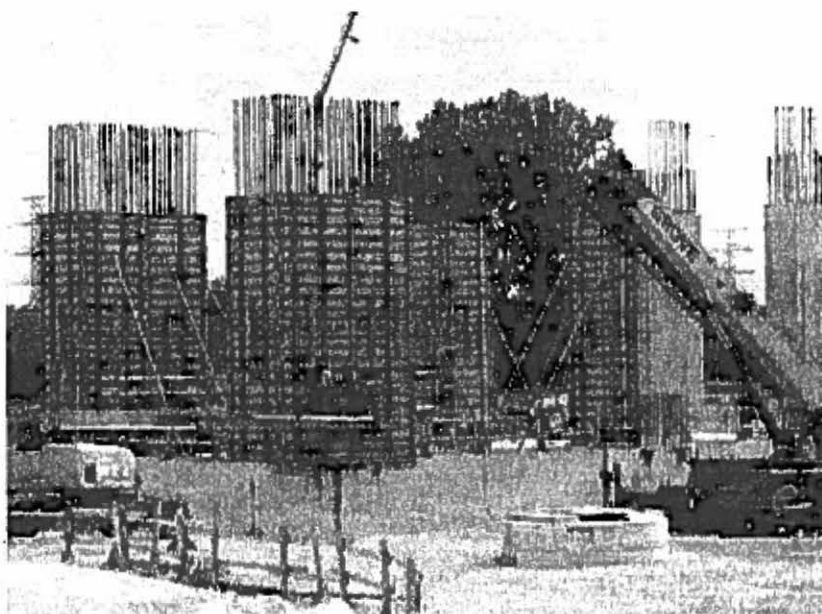
Legend:

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B – Closest House
C – Closest Subdivision (North)
D – Closest Subdivision (South)
E – Trillium Heath Centre
F – Sherway Gardens Mall

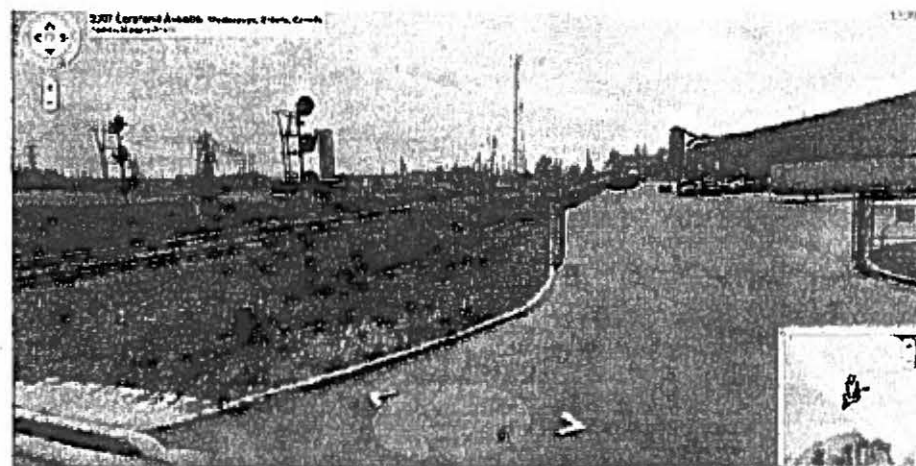
Distance:

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MINISTRY OF **ENERGY**



*Plant construction as of 28 September 2011



Recent Events

- On September 24, in Mississauga, local Liberal party candidates announced that “construction on the project would be halted” and that “if elected the Government would work with Eastern to choose a new site.” The Mayor of Mississauga attended the announcement and endorsed the decision.
- On September 28, the media carried pictures of the plant with construction well underway.
- On October 6, media reported Liberal insiders as saying that Eastern Power was warned back in May that any work they did was at their own risk.

Issues

- Construction continues at the Greenfield South site.
- The project has all applicable approvals, a regulatory mechanism for stopping construction could be challenged in the absence of a breach of approval conditions.
- **The OPA is party to and administers the contract with Eastern Power. The Province is not a party to the contract.**
- Statements have been made by local politicians that the plant would not be relocated to a site in Mississauga or Toronto.
- Alternative site options and alternative ways to supply Mississauga have not been identified. Alternative sites would require new provincial and municipal approvals processes to be undertaken.

Options For Stopping the Plant

- **Legislative** – requires time to enact and pass
 - Developer could bring law suit in interim, though legislation if passed could ultimately preclude liability and damages
 - Legislation could provide for compensation (or not) or could establish process to determine compensation
 - Legislation could not avoid potential exposure under international agreements (e.g. NAFTA)
 - Provincial precedent: *Adams Mine Lake Act, 2004*
- **Regulatory** - would have to nullify approvals already received
 - Likely to lead to financial exposure for province or OPA. Contractual – unilateral termination can be expected to lead to legal action
 - Both OPA and Government could be included as parties
 - OPA contract includes limitation of liability clause, which could limit damages.
 - Damages payable by the OPA would be recovered from the rate-base.
- **Negotiations/arbitration/settlement** – in return for ceasing construction and terminating Greenfield contract, OPA or Government could offer to pay for expenses to date (e.g. sunk costs) or to enter into a new contract for a new site.
- **Injunction: explored but would not be a live option since Developer is not violating the law.**

Next Steps

- OPA could be asked to approach Eastern Power about negotiating a settlement, which could include payment for costs to date (**sunk costs**), payment for foregone revenue, or **negotiations for a contract at a new site**.
- Could require a Ministerial direction to the OPA to renegotiate the contract or cancel the contract. The Government could agree to cover some or all of the settlement costs.
- Cambridge is a potential alternate site, key considerations:
 - The project would have to be reconfigured (450 MW peaking plant versus 280 MW combined cycle plant);
 - the developer would likely ask the OPA to take approval risk;
 - TransCanada has been in discussions about this site although nothing has been agreed to; and,
 - Does not directly address supply needs in Mississauga and Toronto.
- Proponent may be willing to settle for a large cash settlement representing foregone net revenue or may view its financial prospects as being better through the courts.

Perun, Halyna N. (ENERGY)

From: Rehob, James (ENERGY)
Sent: October 11, 2011 4:05 PM
To: King, Ryan (ENERGY)
Cc: Perun, Halyna N. (ENERGY); Calwell, Carolyn (ENERGY)
Subject: RE: Updated Greenfield South Deck

Ryan, I appologize but I'm having significant issues with the combination of power point and outlook just now – its crashed my system (twice) - To the Options slide, please add the following language under "Regulatory":

- Risk that regulatory solution(s) designed to change developer's approval status could attract misfeasance in public option suit.

Thanks and sorry for the delay- James

From: Rehob, James (ENERGY)
Sent: October-11-11 3:32 PM
To: King, Ryan (ENERGY)
Cc: Perun, Halyna N. (ENERGY); Calwell, Carolyn (ENERGY)
Subject: FW: Updated Greenfield South Deck

Privileged & Confidential Legal Advice / Solicitor & Client Privileged

October 11, 2011

Hi, Ryan – I've updated the deck just now to add a point on injunctions – the injunction would likely be unavailable in our circumstances since the developer has not been and would not be violating existing law. When we discussed the potential of changing the regulatory status (e.g. MOE revoking or further conditionalizing their C of A), it should be noted that such action carries the risk of founding the basis for a misfeasance in public office (abuse of power/public office) suit.

In light of this comment, I was considering adding the following language to "Regulatory" on Options slide: "Attempts to direct the regulators to change regulatory status, permits, etc. could be seen as misfeasance in public office". Please consider.

Thanks,

James

James P. H. Rehob
Senior Counsel
Ministry of Energy and
Ministry of Infrastructure
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Perun, Halyna N. (ENERGY)

From: King, Ryan (ENERGY)
Sent: October 11, 2011 4:55 PM
To: Silva, Joseph (ENERGY)
Cc: Jennings, Rick (ENERGY); Perun, Halyna N. (ENERGY)
Subject: RE: Gas Plant Considerations (v3) (Oct 11).ppt

Hi Joseph,

Please hold before printing. LSB may have a couple of tweaks regarding an OPA direction. They will be providing a revised deck from the version I sent up.

From: Silva, Joseph (ENERGY)
Sent: October 11, 2011 4:50 PM
To: King, Ryan (ENERGY)
Cc: Jennings, Rick (ENERGY); Perun, Halyna N. (ENERGY); McKeever, Garry (ENERGY); MacCallum, Doug (ENERGY); Jenkins, Allan (ENERGY); Rehob, James (ENERGY); Calwell, Carolyn (ENERGY)
Subject: RE: Gas Plant Considerations (v3) (Oct 11).ppt

Hi Ryan – sure, we'll print here.

From: King, Ryan (ENERGY)
Sent: October 11, 2011 4:47 PM
To: Silva, Joseph (ENERGY)
Cc: Jennings, Rick (ENERGY); Perun, Halyna N. (ENERGY); McKeever, Garry (ENERGY); MacCallum, Doug (ENERGY); Jenkins, Allan (ENERGY); Rehob, James (ENERGY); Calwell, Carolyn (ENERGY)
Subject: Gas Plant Considerations (v3) (Oct 11).ppt

Hi Joseph,

Approved Deck attached. Are you able to print off colour copies for the meeting? Need about 10 or so.

Perun, Halyna N. (ENERGY)

From: Rehob, James (ENERGY)
Sent: October 11, 2011 5:32 PM
To: Calwell, Carolyn (ENERGY); Perun, Halyna N. (ENERGY)
Subject: FW: Gas Plant Considerations (v3) (Oct 11).ppt
Attachments: Gas Plant Considerations (v3) (Oct 11).ppt

Hi, I've had Martina print the latest deck received from Ryan and left same on your chairs – My assessment - the deck does not include all of the detail we had provided, including the latest info (which Ryan has received) on misfeasance in public office, etc. There was also a bullet I had added relating to the risk that the direction itself could be challenged based on alternative interpretations of the direction authority (whether the Minister can direct again on the same initiative already passed to the OPA). At any rate, the gist of our advice is certainly there minus a few of the details. Thanks!

James

I'm leaving for home so please do feel free to reach me on my cell -647-218-3964. I'm assuming that I am not required for tomorrow's meeting, but let me know if that assumption is not correct and I would be delighted to join. Once I know the time, I'll certainly be available by telephone.

Kindly,
James

From: King, Ryan (ENERGY)
Sent: October 11, 2011 4:47 PM
To: Silva, Joseph (ENERGY)
Cc: Jennings, Rick (ENERGY); Perun, Halyna N. (ENERGY); McKeever, Garry (ENERGY); MacCallum, Doug (ENERGY); Jenkins, Allan (ENERGY); Rehob, James (ENERGY); Calwell, Carolyn (ENERGY)
Subject: Gas Plant Considerations (v3) (Oct 11).ppt

Hi Joseph,
Approved Deck attached. Are you able to print off colour copies for the meeting? Need about 10 or so.

Gas Plant Considerations

Date: October 11, 2011

Key Facts About the Greenfield South Plant

- Successful applicant in Ministry of Energy run Clean Energy Supply (CES) RFP, contract signed with the OPA in April 2005.
- Eastern Power, the project developer based in Ontario, has received all required provincial approvals, including Environmental Assessment and Certificates of Approval;
- Eastern Power has received all required municipal approvals, including building site approval from the City of Mississauga issued in May 2011;
- Eastern Power has recently secured financing (confirmed by the OPA).



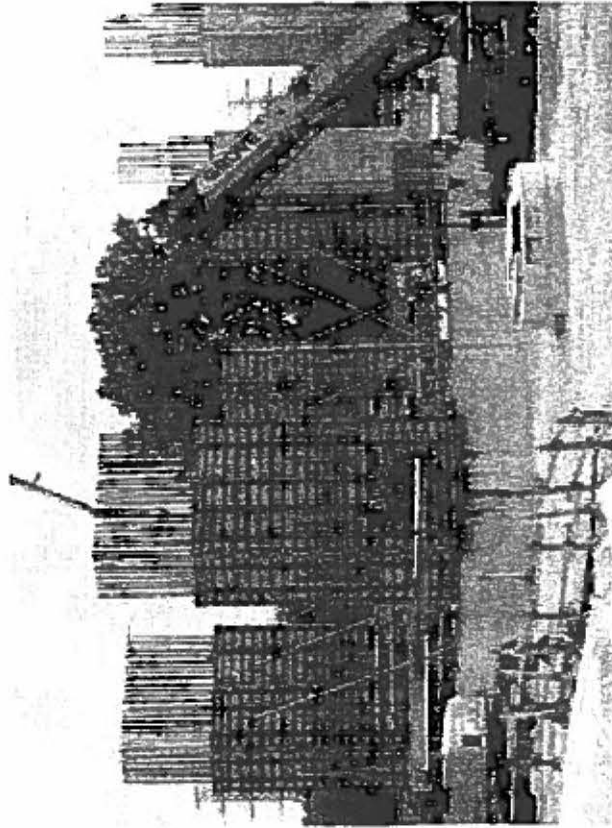
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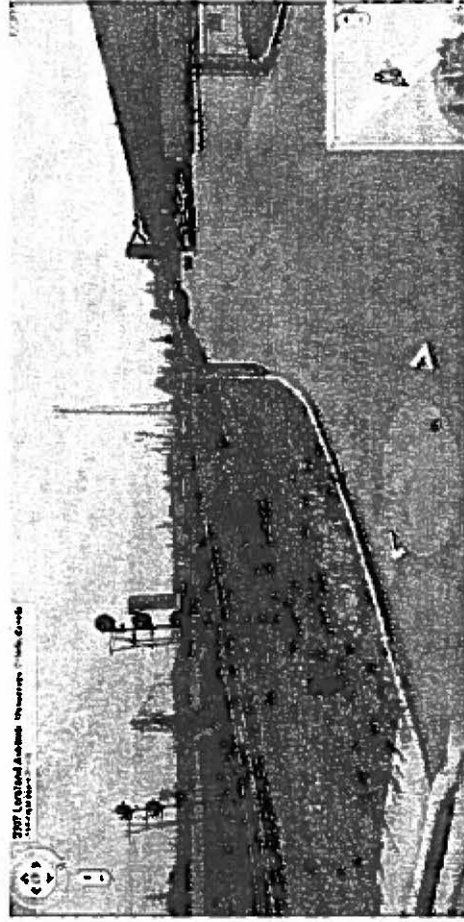
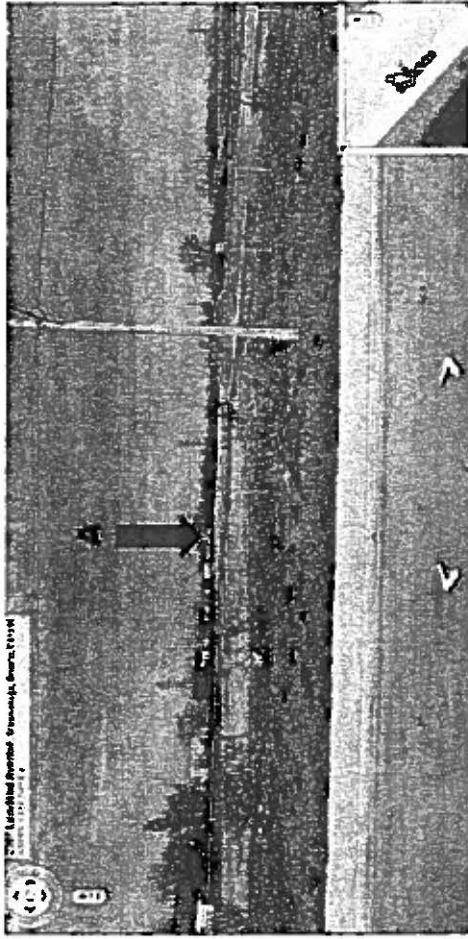
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MINISTRY OF ENERGY



*Plant construction as of 28 September 2011



Recent Events

- On September 24, in Mississauga, local Liberal party candidates announced that “construction on the project would be halted” and that “if elected the Government would work with Eastern to choose a new site.” The Mayor of Mississauga attended the announcement and endorsed the decision.
- On September 28, the media carried pictures of the plant with construction well underway.
- On October 6, media reported Liberal insiders as saying that Eastern Power was warned back in May that any work they did was at their own risk.

Issues

- Construction continues at the Greenfield South site.
- The project has all applicable approvals, a regulatory mechanism for stopping construction could be challenged in the absence of a breach of approval conditions.
- The OPA is party to and administers the contract with Eastern Power. The Province is not a party to the contract.
- Statements have been made by local politicians that the plant would not be relocated to a site in Mississauga or Toronto.
- Alternative site options and alternative ways to supply Mississauga have not been identified. Alternative sites would require new provincial and municipal approvals processes to be undertaken.

Options For Proceeding

- Legislative – requires time to enact and pass
 - Developer could bring law suit in interim, though legislation if passed could ultimately preclude liability and damages
 - Legislation could provide for compensation (or not) or could establish process to determine compensation
 - Legislation could not avoid potential exposure under international agreements (e.g. NAFTA)
 - Provincial precedent: *Adams Mine Lake Act, 2004*
- Regulatory - would have to nullify approvals already received
 - Likely to lead to financial exposure for province or OPA. Contractual – unilateral termination can be expected to lead to legal action
 - Both OPA and Government could be included as parties
 - OPA contract includes limitation of liability clause, which could limit damages.
 - Damages payable by the OPA could be recovered from the rate-base and/or the tax base.
- Negotiations/arbitration/settlement – in return for ceasing construction and terminating Greenfield contract, OPA or Government could offer to pay for expenses to date (e.g. sunk costs) and to enter into a new contract for a new site.
- Injunction: explored but would not be a live option since Developer is not violating the law.

Next Steps

- OPA could be asked to approach Eastern Power about negotiating a settlement, which could include payment for costs to date (sunk costs), payment for foregone revenue, or negotiations for a contract at a new site. An incentive may be required. The project's lenders would need to be included in negotiations.
- Could require a Ministerial direction to the OPA to renegotiate the contract or cancel the contract. The Government could agree to cover some or all of the settlement costs.
- Potential alternate sites would need to be explored, for example Cambridge. Key considerations:
 - The project may have to be reconfigured (e.g. 450 MW peaking plant versus 280 MW combined cycle plant);
 - A quick relocation option with limited approval risk may be required;
 - TransCanada has been in discussions about certain sites although nothing has been agreed to; and,
 - Does not directly address supply needs in Mississauga and Toronto.
- Proponent may be willing to settle for a financial cash settlement representing foregone net revenue or may view its prospects as being better through the courts.

Perun, Halyna N. (ENERGY)

From: Intrator, Daphne (JUS)
Sent: October 11, 2011 9:55 PM
To: Perun, Halyna N. (ENERGY); Lipman, Jay (ENE)
Cc: Wilson, Malliha (JUS); Roszell, Rand (ENE); Scarfone, Janet (JUS); Feltman, Scott (JUS); Slater, Craig (JUS); Wong, Tala (JUS); Salim, Fateh (JUS); Calwell, Carolyn (ENERGY)
Subject: Re: Gas Plant

Halyna

Scott and I are on the phone with each other and are drafting a few comments for you which we hope to provide to you shortly.

Daphne

Sent from my BlackBerry Wireless Device

From: Perun, Halyna N. (ENERGY)
To: Lipman, Jay (ENE)
Cc: Wilson, Malliha (JUS); Roszell, Rand (ENE); Scarfone, Janet (JUS); Feltman, Scott (JUS); Slater, Craig (JUS); Wong, Tala (JUS); Salim, Fateh (JUS); Intrator, Daphne (JUS); Calwell, Carolyn (ENERGY)
Sent: Tue Oct 11 21:51:23 2011
Subject: Re: Gas Plant

Thanks Jay - Malliha's email went to my MOH account -

Scott or Daphne - may I contact you this evening about adding reference to discriminatory clause -

Re the other comments from DAG - will incorporate most but we have no further info about sunk costs or loss of profits and expect that the OPA will speak to this; re reference to payment for foregone revenue in next steps - is possible outcome/possible asks but we can re-phrase

Re long term energy plan - have asked client to advise - may not hear further on this til the morning -

If anyone else has further suggestions for edits based on Dep's email please let me know asap - thank you

Halyna Perun
A\Director
Ph: 416 325 6681
BB: 416 671 2607

Sent using BlackBerry

From: Lipman, Jay (ENE)
To: Perun, Halyna N. (ENERGY); Calwell, Carolyn (ENERGY)
Cc: Scarfone, Janet (JUS); Intrator, Daphne (JUS); Feltman, Scott (JUS); Roszell, Rand (ENE)
Sent: Tue Oct 11 21:21:24 2011
Subject: Fw: Gas Plant

Halyna, here is language re the regulatory option to address the comment below.

In the third bullet, after the sentence ending with "...defend the challenge." add the following sentence:
"No apparent environmental basis for action at this point".

Jay

From: Wilson, Malliha (JUS)
To: Lipman, Jay (ENE)
Sent: Tue Oct 11 20:30:55 2011
Subject: Fw: Gas Plant

Sent from my BlackBerry Wireless Device

From: Wilson, Malliha (JUS)
To: 'Halyna.Perun@ontario.ca' <Halyna.Perun@ontario.ca>; Scarfone, Janet (JUS); Intrator, Daphne (JUS); Calwell, Carolyn (ENERGY); 'SOMT.Jay.Lipman@ontario.ca' <SOMT.Jay.Lipman@ontario.ca>; Feltman, Scott (JUS)
Cc: Slater, Craig (JUS); Salim, Fateh (JUS); Wong, Tala (JUS); Roszell, Rand (ENE)
Sent: Tue Oct 11 20:29:11 2011
Subject: Fw: Gas Plant

Sent from my BlackBerry Wireless Device

From: Di Ciano, Sandra (JUS)
To: Wilson, Malliha (JUS)
Cc: Wong, Tala (JUS)
Sent: Tue Oct 11 20:12:04 2011
Subject: Re: Gas Plant

These are the DAG's suggestions:

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Under contractual, needs reference to discrimination.

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Would not be so explicit re where payment coming from re rate or tax base

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Why are we serving up foregone revenue

Last two pages not tight

Is it so clear opa could force a ministerial direction?

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From: Perun, Halyna N. (ENERGY)
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Perun, Halyna N. (ENERGY)

From: Jennings, Rick (ENERGY)
Sent: October 11, 2011 10:15 PM
To: Perun, Halyna N. (ENERGY)
Cc: Calwell, Carolyn (ENERGY)
Subject: Re: Mississauga

The inclusion of "foregone revenue" in the deck isn't to offer it up but to note that this will be the expectation of the developer. Eastern Power will also be expecting to develop a project at another site as part of any settlement.

Re the LTEP, the Greenfield South project is implicitly part of the LTEP. It is not mentioned explicitly in the document but is assumed as part of the approved gas capacity.

Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: Perun, Halyna N. (ENERGY)
To: Jennings, Rick (ENERGY)
Cc: Calwell, Carolyn (ENERGY)
Sent: Tue Oct 11 21:38:37 2011
Subject: Mississauga

Hi Rick - the Deputy AG has some questions on the slides - in "next steps" - re payment for foregone revenue - I assume that is possible but not a starting position - he is wondering why we are "serving up" the foregone revenue

Also - is the miss gas plant part of the ltep? Can we say - we thought we needed this plant but we don't now?

Thanks for clarifying Rick

Halyna Perun
A\Director
Ph: 416 325 6681
BB: 416 671 2607

Sent using BlackBerry

Perun, Halyna N. (ENERGY)

From: Intrator, Daphne (JUS)
Sent: October 11, 2011 10:39 PM
To: Perun, Halyna N. (ENERGY); Scarfone, Janet (JUS); Slater, Craig (JUS); Wilson, Malliha (JUS); Calwell, Carolyn (ENERGY); Lipman, Jay (ENE); Sallm, Fateh (JUS); Wong, Tala (JUS); Roszell, Rand (ENE); Feltman, Scott (JUS)
Subject: Fw: Gas Plant: Comments on DAG Questions
Attachments: insert.docx

Follow Up Flag: Follow up
Flag Status: Flagged

See attached insert from Scott and me.

Daphne

Sent from my BlackBerry Wireless Device

----- Original Message -----

From: Daphne Intrator <dintrator@rogers.com>
To: Intrator, Daphne (JUS)
Sent: Tue Oct 11 22:36:13 2011
Subject: Gas Plant: Comments on DAG Questions

Scott and I thought it might assist you if we gave you some thoughts, where we can about revisions to the slides to address the DAG's comments. We set out his comments and our thoughts below. Feel free to revise as you think best.

Should say solicitor client privileged on each page and cover

- We assume you will add this.

Under legislative option, should first say what can be done with legislation eg give statutory authority to terminate, cap damages, set out process...

- The contract could be cancelled by legislation that would include provisions such as:
 - A provision expressly terminating the agreement;
 - A provision immunizing the Crown and the OPA from any and all lawsuits arising from the cancellation of the agreement
 - If desired, a provision addressing the types of compensation that will be provided and a mechanism (such as arbitration) for determining compensation, or alternatively stipulating that no compensation at all will be provided.
- As the courts interpret these types of provisions very restrictively, the legislation would have to be drafted very carefully and be very clear and explicit.

Under regulatory, say may require change in circumstances re environmental impact since, given approval and unaware of environmental impediment at this stage

Jay has provided language to address this point

Under contractual, needs reference to discrimination.

- Article 13 of the contract contains a "discrimination clause". This clause gives Eastern a right to damages if there is legislation, regulations or an OIC that affects Eastern's rights under the contract and gives them a right to damages.
 - If a statute were passed it could void the discrimination clause. Thus, if the entire contract were voided by statute, the discrimination clause would also be voided and would therefore not apply.
 - Even if a statute does not invalidate the contract and the discrimination clause, there is a legal argument that the discrimination clause is not enforceable. Some courts have held that this type of clause cannot be applied to the provincial government because it amounts to an indirect fetter on the power of the Legislature to legislate. However, the contract is with the OPA,

not the Crown, and therefore there is a reasonable argument that the discrimination clause does not fetter the Legislature and would therefore be upheld by a court.

Crown not liable for contract seems a bit bold, at least need to be clear OPA could be and there could be some exposure to Crown

- The contract is between the OPA and Eastern Power and accordingly the Crown is not a party to the contract. Accordingly, if the Crown were breached, it would be the OPA that would be liable for such a breach.
- The Crown, however, could be liable in tort if it induced a breach of contract by OPA.

Would not be so explicit re where payment coming from re rate or tax base

- We don't have any comments on this and assume you will address it.

What are heads of damages sunk; loss of profits where are we on latter

- If a court found that the contract was breached, the main heads of damage would be:
 - **sunk costs:** these are past costs that have already been incurred under the contract (for example costs related to the winning of the contract, initial design, legal and other professional fees, items purchased for the facility and costs of construction to date.)
 - **lost profits:** generally speaking these would be based upon the anticipated profit over the life of the contract. However, Article 14 of the contract excludes compensation for "consequential loss" which is defined to include "loss of profits". However, it is not clear how a court would interpret Article 14. It is possible that not all lost profits would fall within the scope of this clause.

We have no comments on the remaining questions set out below

Next steps-depends if opa sees slides

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Last two pages not tight

Is it so clear opa could force a ministerial direction?

What does the energy plan to say about this need and any replacement need? Can it be said that 'we thought we needed this plant but we don't now'?

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From: Wilson, Malliha (JUS)
Sent: October 12, 2011 7:44 AM
To: Calwell, Carolyn (ENERGY)
Cc: Perun, Halyna N. (ENERGY)
Subject: RE: Gas Plant

ok

From: Calwell, Carolyn (ENERGY)
Sent: October 12, 2011 7:22 AM
To: Wilson, Malliha (JUS)
Cc: Perun, Halyna N. (ENERGY)
Subject: Re: Gas Plant

Halyna is going into meeting at 9:30. By then please.

Carolyn

From: Wilson, Malliha (JUS)
To: Calwell, Carolyn (ENERGY)
Sent: Wed Oct 12 07:18:54 2011
Subject: Re: Gas Plant

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Cc: Slater, Craig (JUS); Salim, Fateh (JUS); Wong, Tala (JUS); Roszell, Rand (ENE)
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To: Wilson, Malliha (JUS)

Cc: Wong, Tala (JUS)

Sent: Tue Oct 11 20:12:04 2011

Subject: Re: Gas Plant

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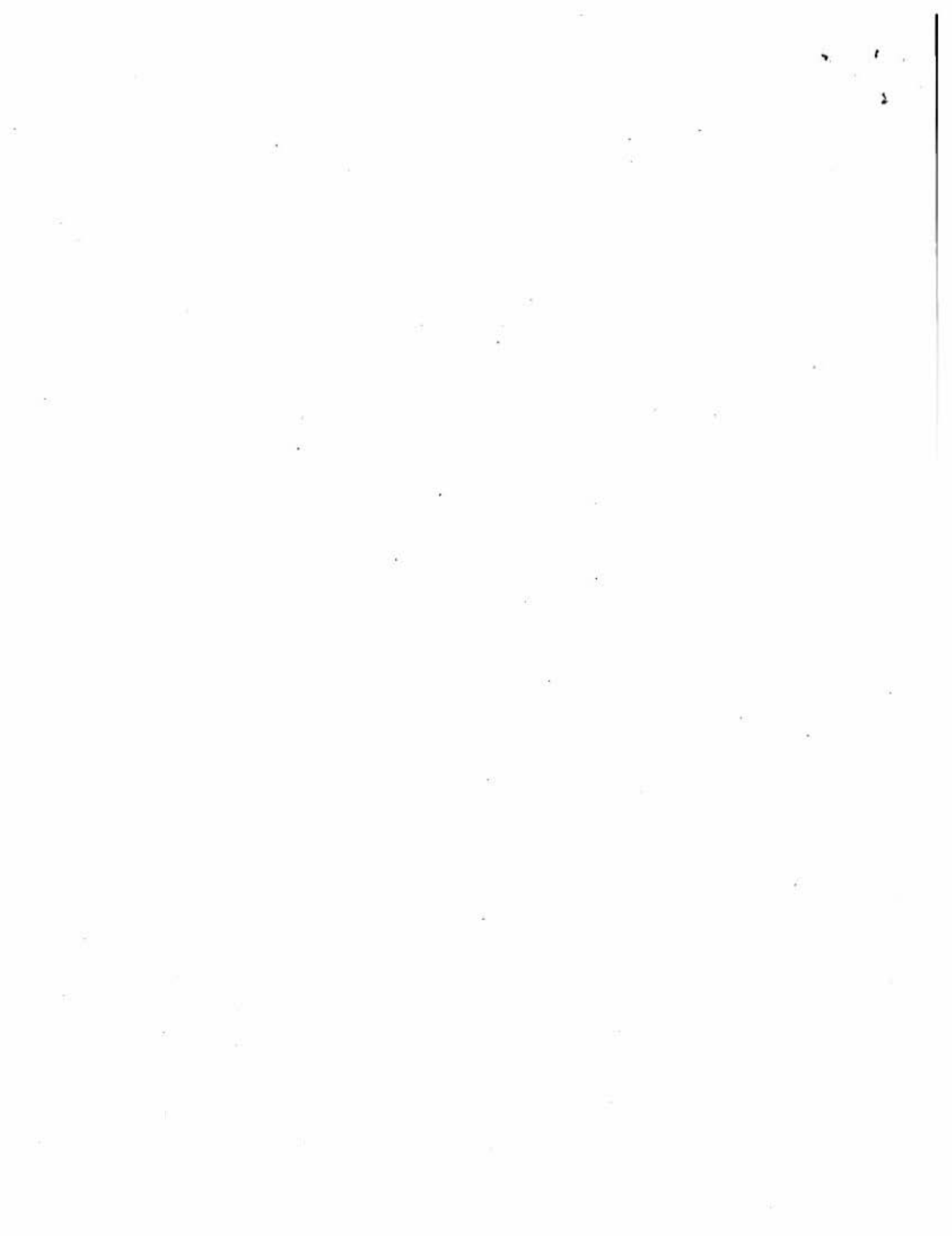
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Perun, Halyna N. (ENERGY)

From: Jennings, Rick (ENERGY)
Sent: October 12, 2011 8:56 AM
To: Silva, Joseph (ENERGY); Perun, Halyna N. (ENERGY)
Cc: King, Ryan (ENERGY)
Subject: RE: meeting earlier with Dep?

Okay

From: Silva, Joseph (ENERGY)
Sent: October 12, 2011 8:52 AM
To: Jennings, Rick (ENERGY); Perun, Halyna N. (ENERGY)
Cc: King, Ryan (ENERGY)
Subject: RE: meeting earlier with Dep?

Thanks everyone.

Was just speaking with Rebecca, and she said maybe 930 is fine. The Dep is at a function and may not be in until after 915 anyway, but let's do target as close to 930 as possible.

From: Jennings, Rick (ENERGY)
Sent: October 12, 2011 8:48 AM
To: Perun, Halyna N. (ENERGY)
Cc: King, Ryan (ENERGY); Silva, Joseph (ENERGY)
Subject: RE: meeting earlier with Dep?

Yes, that's okay.

From: Perun, Halyna N. (ENERGY)
Sent: October 12, 2011 8:47 AM
To: Jennings, Rick (ENERGY)
Cc: King, Ryan (ENERGY); Silva, Joseph (ENERGY)
Subject: meeting earlier with Dep?

Hi Rick -- Joseph suggests that we meet with the Deputy before 9:30 -- are you free about 9:15?

Halyna

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Yes on phone

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To: Wilson, Malliha (JUS)
Cc: Calwell, Carolyn (ENERGY)
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If you are on the phone with Carolyn – great – I am in my office and call you otherwise - thanks
Halyna

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Cc: Perun, Halyna N. (ENERGY)
Subject: Re: Gas Plant

Halyna is going into meeting at 9:30. By then please.

10/20/2011

Carolyn

From: Wilson, Malliha (JUS)
To: Calwell, Carolyn (ENERGY)
Sent: Wed Oct 12 07:18:54 2011
Subject: Re: Gas Plant

When do u have to finalize carolyn. I am on my way into the office now

Sent from my BlackBerry Wireless Device

From: Calwell, Carolyn (ENERGY)
To: Scarfone, Janet (JUS); Intrator, Daphne (JUS); Lipman, Jay (ENE); Feltman, Scott (JUS); Perun, Halyna N. (ENERGY); Wilson, Malliha (JUS)
Cc: Slater, Craig (JUS); Salim, Fateh (JUS); Wong, Taia (JUS); Roszell, Rand (ENE)
Sent: Wed Oct 12 06:59:08 2011
Subject: FW: Gas Plant

I have had some transmission problems with my message below. Apologies if you have it twice.

Carolyn

From: Calwell, Carolyn (ENERGY)
Sent: Tue 11/10/2011 11:29 PM
To: Wilson, Malliha (JUS); Scarfone, Janet (JUS); Intrator, Daphne (JUS); Jay.Lipman@ontario.ca; Feltman, Scott (JUS); Perun, Halyna N. (ENERGY)
Cc: Slater, Craig (JUS); Salim, Fateh (JUS); Wong, Taia (JUS); Roszell, Rand (ENE)
Subject: RE: Gas Plant

Thank you Daphne, Scott and Jay for proposed wording to address the comments below. Halyna and I have tried to incorporate the suggestions while preserving the clients' format and style. To the extent that additional detail that Daphne and Scott provided is not incorporated into the slides, that detail will be spoken to. The revised deck is attached.

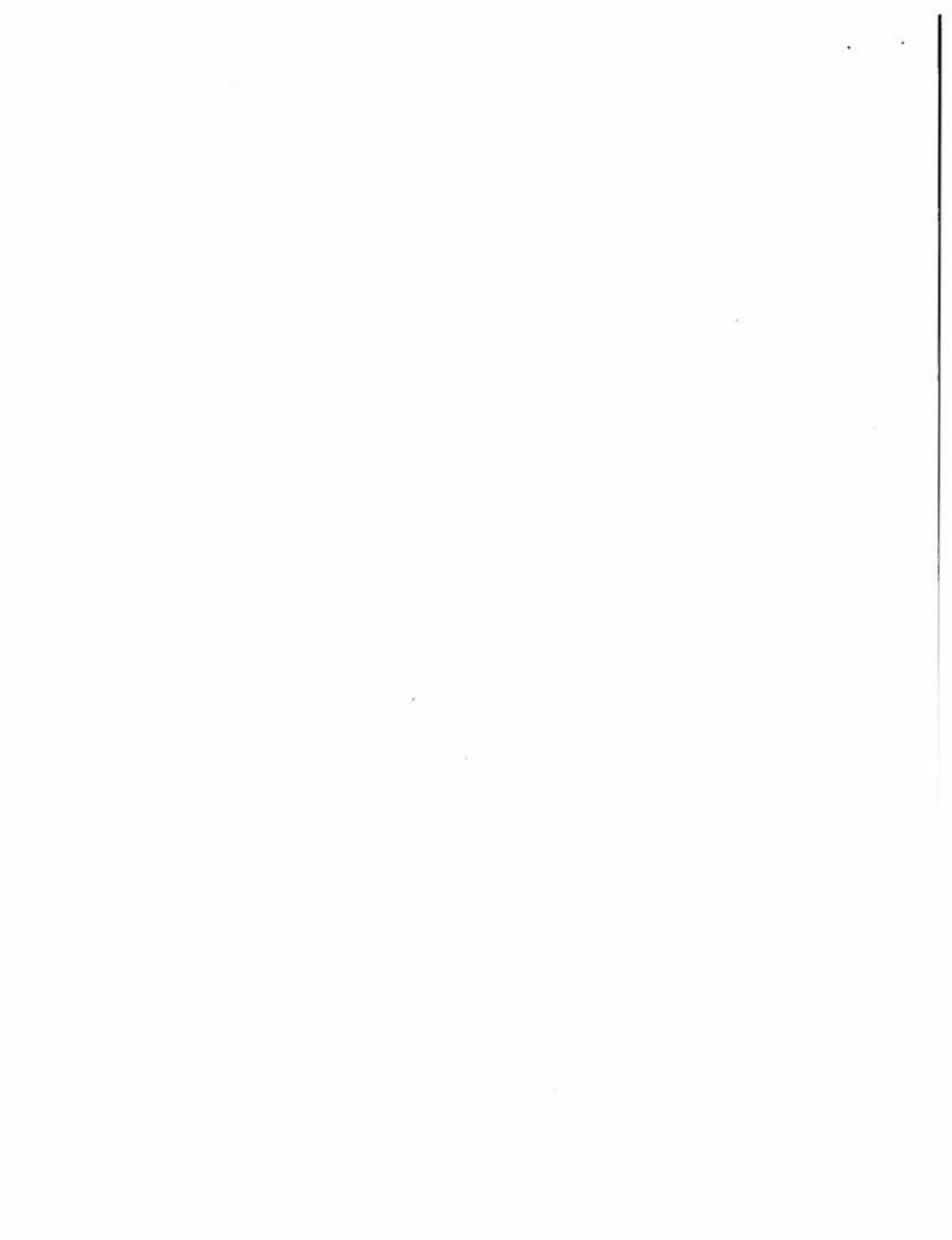
We also had the opportunity to follow up on with the clients on the connection between the Long Term Energy Plan and this plant. This project was not named, but the electricity capacity that this plant is expected to provide was included in the electricity from gas forecasts, so the project is implicitly part of the LTEP. It will be difficult to say we don't need this plant now.

Carolyn

From: Wilson, Malliha (JUS)
Sent: Tue 11/10/2011 8:29 PM
To: Perun, Halyna (MOH); Scarfone, Janet (JUS); Intrator, Daphne (JUS); Calwell, Carolyn (ENERGY); 'SOMT.Jay.Lipman@ontario.ca'; Feltman, Scott (JUS)
Cc: Slater, Craig (JUS); Salim, Fateh (JUS); Wong, Taia (JUS); Roszell, Rand (ENE)
Subject: Fw: Gas Plant

Sent from my BlackBerry Wireless Device

10/20/2011



From: Di Ciano, Sandra (JUS)
To: Wilson, Malliha (JUS)
Cc: Wong, Tala (JUS)
Sent: Tue Oct 11 20:12:04 2011
Subject: Re: Gas Plant

These are the DAG's suggestions:

Should say solicitor client privileged on each page and cover

Under legislative option, should first say what can be done with legislation eg give statutory authority to terminate, cap damages, set out process...

Under regulatory, say may require change in circumstances re environmental impact since, given approval and unaware of environmental impediment at this stage

Under contractual, needs reference to discrimination.

Crown not liable for contract seems a bit bold, at least need to be clear OPA could be and there could be some exposure to Crown

Would not be so explicit re where payment coming from re rate or tax base

What are heads of damages sunk; loss of profits where are we on latter

Next steps - depends if opa sees slides

Why are we serving up foregone revenue

Last two pages not tight

Is it so clear opa could force a ministerial direction?

What does the energy plan to say about this need and any replacement need? Can it be said that 'we thought we needed this plant but we don't now'?

From: Wilson, Malliha (JUS)
To: Di Ciano, Sandra (JUS)
Cc: Wong, Tala (JUS)
Sent: Tue Oct 11 18:59:07 2011
Subject: FW: Gas Plant

We have not reviewed yet – but thought I would pass on

From: Perun, Halyna N. (ENERGY)
Sent: October 11, 2011 6:46 PM
To: Wilson, Malliha (JUS)
Cc: Slater, Craig (JUS); Intrator, Daphne (JUS); Feltman, Scott (JUS); Scarfone, Janet (JUS); Lipman, Jay (ENE); Calwell, Carolyn (ENERGY); Salim, Fateh (JUS); Roszell, Rand (ENE)
Subject: Gas Plant

Privileged and Confidential

10/20/2011

Helio Malliha – this version reflects discussion with Scott and Daphne post briefing with DAG and has inserts from MOE which Jay also worked up with Scott and Daphne.

We took a less is more approach re legal comments in the deck but I'll be prepared to speak to the matters raised at that DAG's briefing today at tomorrow morning's briefing.

Ps. Though the Contract is between the OPA and "Greenfield South Power Corporation" both the client and the OPA refer to it the developer as "Eastern Power" – so I did not change this throughout the slides at this point – something that I will speak to tomorrow as well to clarify if necessary.

Halyna

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Perun, Halyna N. (ENERGY)

From: Wilson, Malliha (JUS)
Sent: October 12, 2011 9:07 AM
To: Perun, Halyna N. (ENERGY)
Cc: Wong, Taia (JUS)
Subject: FW: Transcript: 2011 Ontario Election Debate
Attachments: Leaders' Debate - September 27, 2011.doc

fyi

From: Di Ciano, Sandra (JUS)
Sent: October 12, 2011 9:06 AM
To: Wilson, Malliha (JUS)
Subject: FW: Transcript: 2011 Ontario Election Debate

Note in the transcript premier says no cancellation, just relocation and he suggests the power needs and authorisations have changed

From: Summers, Marianne (JUS)
Sent: October 11, 2011 5:00 PM
To: Di Ciano, Sandra (JUS)
Subject: FW: Transcript: 2011 Ontario Election Debate

2011 Ontario election debate
Source: Global
Sep 27, 2011 6:30 PM (1)

>> Steve Paikin - moderator: Good evening everybody from Toronto. I'm Steve Paikin. In just 9 days we'll be voting in an Ontario election. Tonight we're hoping to get a clear view of where the major party leaders stand on some of the important issues by debating those issues. Let me introduce you to the leaders, Dalton McGuinty is the leader of the Ontario Liberals, Andrea Horwath is the leader of Ontario's New Democratic Party, and Tim Hudak is the leader of Ontario's Progressive Conservatives. The leaders know the rules of the debate; they have agreed to them and they have asked me to enforce them. We asked Ontarians to send us questions over the last few weeks and we got about a thousand of them. We chose six and the six we picked reflected those issues you wanted to see debated the most. The leaders will hear and see them for the first time, at the same time you do. The first one one-on-one debate will be between Mr. Hudak and Mr. McGuinty. Mr. Hudak will respond to the question first, which is about jobs. Roll tape, please.

>> Question: My name is Catherine Bellefore (sp) and I'm from Pickering, Ontario. My question is about college and university grads who are forced to take minimum wage part-time jobs or even leave Ontario and Canada to find full-time employment. How would you help these grads find full-time, gainful employment in Ontario?

>> Steve: Okay, Tim Hudak you're up first.

>> PC leader Tim Hudak: It's tough being a young student today. You have significant debts when you're coming out of college or university, and entering one of the worst job markets in memory. I was at Conestoga College just the other day, and I asked the students there who are in an apprenticeship training program how many of their friends were heading out west to Alberta and Saskatchewan to get a job, and you know what, almost every one of them raised their hands. I want to be Premier to make sure that Ontario is the best place in all of Canada to get a good job, the kind of job that will be the

ticket to the middle class where you can raise a family and buy a home, not the part-time, low wage jobs that Mr. McGuinty is taking credit for. We have a five-points jobs plan to make Ontario number one in Canada for jobs, particularly for our young graduates.

>> Steve: Mr. McGuinty, you want in?

>> Liberal leader Dalton McGuinty: Sure, by all means. I want thank you very much for that question. These are very uncertain times in the global economy, and the truth is, though, that Canada fares pretty well, and within Canada, Ontario is doing quite well, as well. Since January we've created more jobs in Ontario than the rest of the country combined. You know, it's been said we can't build the future for our young people, but we can build our young people for the future. That's why we're putting such a heavy emphasis on educating our young people. That's why one important part of our plan is to reduce tuition by 30 percent; that means \$1,600 less for university tuition and \$730 less for college tuition. The fact of the matter is we continue to create jobs in Ontario and we've got some great plans to get us there, and I look forward to talking about that more in the evening.

>> Tim Hudak: You know, the problem though, is I'm here in the office when I'm talking to students who are saying it's awfully difficult to get a job no matter what the tuition may be. 300,000 manufacturing jobs have been lost under your watch. In July, Ontario lost more jobs than all the other provinces combined. So we need a change of course, one that says to young people at Conestoga, at Confederation, at Brock, or U of T, that Ontario would be the best place again to get a good job. So our plan: a five-point job plan in Changebook and you can see it at changebook.ca. But here is the bottom line; one: to treat energy policy as economic policy, not a social program. So businesses will have the incentives to hire and expand again. Number two: to drain this swamp of red tape that bogs down any small business leader trying to get things done in the economy. Third: we're going to create 200,000 skilled trades positions by modernizing our apprenticeship system. Four: we're going to lower business taxes down to 10% to encourage business to hire and create jobs in Ontario. And fifth and finally, unlike my opponents, we'll give families relief, the confidence to spend in the economy again. That's why we'll take the HST off heat, off your hydro bill, and bring in an income tax cut targeted particularly at middle class families who are being squeezed.

>> Dalton McGuinty: You may not be surprised to learn that we have a jobs plan as well, but it's a little different from yours. Coincidentally, it does consist of five points as well. It starts by creating the most competitive workforce in the world. We're already very close to that right now. We've got the highest educated workforce among the 34 OECD countries. We're 20% higher for example in the US, and twice as high in the U.K., in terms of the number of our adults who have achieved a college, university, or apprenticeship certification. Beyond that, of course, we do want to have competitive taxes here and we continued to lower them. In fact, we've recently lowered them for families by \$355. Here is where I part company in a decided way with my colleague Mr. Hudak. I think it's very important for us to invest in the clean energy sector. It's a great opportunity. I think we need to seize that opportunity. We're number one in North America now when it comes to producing cars. I want us to be number one in North America when it comes to producing clean energy technologies. That's where the world is going. I want Ontario to be there first in North America.

>> Tim Hudak: You know, Mr. McGuinty, your jobs plan has been a failure. 300,000 lost manufacturing jobs; our resource sector has been decimated. It's the most difficult job market for young people leaving school today to find a good job, and you're boasting about low wage, part-time jobs trying to take credit for that. Sir, your green energy jobs are nothing more than a shell game. You promised us we'd pay hydro rates and we'd get all these jobs and new power. Well, we got the higher bills all right, but the jobs never came, and the power is only one quarter of 1 percent, despite the billions of dollars that you sunk into it. We all know, Mr. McGuinty, higher energy bills cost jobs.

>> Dalton McGuinty: I part company with my colleague in this as well. The fact of the matter is that when it comes to our electricity system and our hydro bills, we have begun

a major rebuild of the system. We just scraped by in the summer of 2003 because the previous government had not made new investment in new generation. So we're making massive investment in new generation, transmission lines. And of course there's a cost associated with that; there's no escaping that. But when this comes to building a stronger economy, and ensuring that we get international investment coming into Ontario and creating jobs here for our young people, it's very important that we have a healthy, vital, electricity system in place. And to help families with that cost, we're taking 10% off our electricity bills.

>> Steve: That's the end of the one-on-one segment. We now bring Ms. Horwath into the mix as well. Anything you've heard here want to pick up on?

>> NDP leader Andrea Horwath: Well, I actually want to go back to what Catherine was saying in her question, and I'm so glad Catherine brought this question forward because it's the exact same conversation that I had about two months ago at the YWCA in Hamilton when a couple of women and I were in the change room, and they were talking about the fact that their adult children had been to university; they got their degree, couldn't get a job in their field. So they went to college, got their diploma; still couldn't get a job. And in both cases of these women, their kids were working in hospitality, waiting tables, trying to pay off mountainous student debt. This is not the way that it should be in Ontario. Students deserve a chance, after university, after college, and they deserve a chance without a mountain of debt on their backs. And that's why our plan is not about the tax giveaways that these guys talk about; the blank cheques to companies that don't create jobs; jobs have not worked. In the last ten years we've given \$20 billion away. Our plan? Give a tax cut to the companies that create jobs; give a tax break to the companies that train their workers on the workforce; give a tax break to the companies that are investing in their plant and machinery and you'll create the kinds of jobs that will be there not just for new Canadians, but for young people and people that have been laid off.

>> Dalton McGuinty: I'm not saying it's all sunshine and apple pie. But I think it's important to take a look at the facts. And the fact is we are the best job creator in the country right now. Since January --

>> Andrea Horwath: Mr. McGuinty, the fact is --

>> Dalton McGuinty: Since January, we've created more jobs in Ontario than the rest of the country combined. June was so good --

>> Andrea Horwath: Mr. McGuinty, the fact is that young people --

>> Dalton McGuinty: -- that we created more jobs in Ontario than the entire United States. So we are making some progress.

>> Andrea Horwath: The fact is, Mr. McGuinty, that your plan is actually failing because the biggest issue on the minds of students these days is jobs. Young people don't have jobs; that is the problem. And you've had 8 years in office and those jobs are not coming to Ontario. So the question I think that Catherine asked about was how are our young people going to get jobs? Your plan has failed so far. What we need is a change in direction, the kind of change that puts young people first and that puts jobs first.

>> Steve: Mr. Hudak and then Mr. McGuinty.

>> Tim Hudak: I'm sorry, I just don't know how you can say that things are going well in Ontario today. In July we lost more jobs in Ontario than the rest of the provinces combined. August, we lost more. I was down in Cornwall the other day; met with a young man named Ryan. And Ryan desperately wants to be an electrician. That's what he wants to be in life. He's working at Wal-mart. He's got a part-time job. At least he's paying bills, but it's not what he wants to do. He wants to be an electrician. And that's why our plan will create 200,000 more skilled trade positions for young apprentices like Ryan. He even has an employer, but he can't get the job with the employer because you're keeping an old apprenticeship system from the 1970s. We'll take it to the 21 century,

move to one-to-one ratio and create 200,000 more skilled jobs for people like young Ryan.

>> Dalton McGuinty: If you want to get a job for Ryan who's an electrician then you should do what David Suzuki is doing and support my clean energy plan. It's creating thousands and thousands of jobs, and I would invite you, go visit those people working in those industries, whether you're going to London, or Fort Erie, or Cambridge, or Cornwall, or Ottawa, or Mississauga, or Scarborough, or Sault Ste Marie, or Thunder Bay, all kinds of jobs popping up --

>> Tim Hudak: But this plant that you went to for your photo op - When the media went there the next day.

>> Dalton McGuinty: There's a really good opportunity here. I want us to be the best in North America when it comes to producing clean air technologies. That's what's in our grasp right now. That's where the world is going. Last year for the first time, for the very first time, more money was spent globally in clean energy technologies than in fossil fuels. The world is going there. I want to be there first.

>> Andrea Horwath: Mr. McGuinty, it's good to know you've actually been to Thunder Bay recently. In fact, Mr. Hudak and I were there not long ago and we missed you, we missed you when we were in Thunder Bay having that debate a week ago. But I have to say when I go there, people aren't talking about the good jobs. People are talking about the fact that 40,000 direct and indirect forestry jobs are now gone from Ontario; that you've allowed the industry to collapse. In fact, I met a gentleman in Dubreuilville. I don't know if you know where Dubreuilville is. It's not too far from Wawa. And that fellow told me that his family is now three generations in Dubreuilville, and because the mill is closed because of your forestry tenure process, the mill is not going to re-open, and there is not going to be a 4th generation of his family in that town because there's nothing there for his kids. That's what northerners are saying; that's what northwesterners are saying, about what you've done and that's why we want to make sure that our natural resources are processed here in Ontario, giving jobs to Ontarians. That's part of our job plan.

>> Tim Hudak: Mr. McGuinty, you know the plant in Fort Erie recently laid people off. You got into a bit of controversy because of a solar plant you went to to claim was your flagship, when the media went there the next day, nobody was working. You promised us more jobs for higher and higher hydro bills. Well, we got the higher hydro bills but the jobs never came. You have a failed course. You've chased jobs out of the province. We can't afford Dalton McGuinty anymore. And that's why we brought in a five-points jobs plan to make Ontario the best place to get a good job, a ticket to the middle class. Lowering taxes for businesses, more skilled trades in our apprenticeship system. Peeling back this regulatory burden that handcuffs businesses large and small. I want to get out of their way. I want to get behind them; help them create jobs, not fill out useless paperwork.

>> Dalton McGuinty: Well, you know, Mr. Hudak says he wants to create jobs. Samsung - I mean, the great news about Ontario -- and there's all kinds of great news about Ontario, notwithstanding what you're saying -- is that after California we're the second most favoured place in North America for the world to invest. So we're working really hard to draw that investment in here. Samsung is one of those companies. They're saying they want to invest \$7 billion in Ontario, and create four manufacturing plants, and 16,000 jobs over the course of six years.

>> Andrea Horwath: But Mr. McGuinty -

>> Dalton McGuinty: That's something that we've got here right now.

[all talking]

>> Steve: Let him finish his sentence, please, and then we'll get the other two.

>> Dalton McGuinty: You would tear up that contract and you would kill those jobs. That's something we've got happening here right now. One of the responsibilities of leadership is to find an opening and run through it. We know the world is going to clean energy. We know the price of oil and gas is going up. We know the price of technology always comes down, think flat screen TVs and computers. Why can't we be first at this in Ontario?

>> Tim Hudak: But when flat screen TVs were several thousand dollars a year, people didn't buy them, they waited for the price to come down. It should be an affordable, competitive process, and here is the problem. You think higher energy bills create jobs. Higher energy jobs that actually kills jobs in Ontario - Other jurisdictions have done this --

>> Andrea Horwath: I would agree with you on that point.

>> Tim Hudak: For every job that's created as subsidized job, three, four, or five jobs are left elsewhere. And that's why we have 500,000 women and men who will be out on the pavement tomorrow looking for a job in Ontario.

>> Andrea Horwath: And I would agree with Mr. Hudak that Mr. McGuinty's private power deals have caused us a problem in Ontario in terms of the lack of competitiveness in the electricity system. But I disagree with both of these gentlemen when they talk about blank cheques to companies that ship jobs out of Ontario. That's not going to help Catherine's child get a job, that's not going to create jobs and hasn't done so for the past ten years where \$20 billion has gone in blank cheques. That's why tax credits for the companies that are creating jobs, investing in their plant and machinery, training their workers. Reward the companies that are doing those things. Don't give blank cheques to companies that are shipping jobs somewhere else.

>> Steve: Okay, that's the last word for question one. We now move onto question two. That segment was about jobs. We now have our second question. Let's roll tape, please.

>> Question: Hi. My name is Majab (inaudible), I am from Guelph, Ontario. My question is, how each political leader will cut government spending, by how much, and in which areas. Thank you.

>> Steve: Okay, this segment will feature offer the top, Andree Horwath against Tim Hudak. Then Mr. McGuinty comes in later. Ms Horwath.

>> Andrea Horwath: Majab raises a question that's on everybody's mind these days and I think it's important to recognize that, as a mom and as a person who has to balance her chequebook every single month, I know how important it is to make sure that we get rid of the deficit in Ontario. And I have a plan to do that. In fact, my plan is very up front, very well costed, and it very clearly shows that, in rolling back the wrong-headed, blank cheques that these two gentlemen prefer, we're going to be able to switch that investment in different ways. We're going to give families a break, because I believe that the family budget is extremely important, and we're going to only reward the companies that are creating jobs and getting Ontario back to work. We will be balancing the budget by 2017-18, but will be doing it in a very reasonable way, a way that's prudent, a way that's practical, but in a way that makes sure that we're changing the priorities to put jobs first, to put people first, and get our economy back on track.

>> Steve: Tim Hudak?

>> Tim Hudak: Well Majab, you know, the problem is that we have a government today that has not set priorities and they're trying to be all things to all people. You know, in the last eight years under Dalton McGuinty, the economy has grown by a total of 10%. That's not a great record. Those are the facts. And government spending has increased by 80%. And I'll ask you, Majab, is your health care system 80% better? Are your roads 80% better? So much of that has been wasted and hasn't gone into the front line. So here's what we need to do. You can't run your house like that, you can't run a business like that, and you cannot continue to run the province of Ontario like that. So we'll set

priorities. Health and education. We'll invest more in those areas. It's the right thing to do, and find savings of two cents on every dollar outside of those areas. And the other thing we need to do, the other thing we need to do -

>> Andrea Horwath: What Ontarians need to know is where that two cent savings in coming from. I think it is important that Ontarians get an understanding from this leadership debate of exactly how you are going to achieve those savings, because it's easy to put that down on paper, but unless you are prepared to show them where the money is; they're not going to believe it. And so the idea is, you know, give them something that they can trust in, not just promises that don't have anything to back them up. That's why our plan is costed. It's very clear. We show very clearly how we're going to not only achieve the savings, but change the priorities to put people first, to put jobs first, to take the pressure off small business by reducing the small business tax, to make sure families have money in their pockets again. And we do it by rolling back those wrong-headed tax cuts that both of you guys prefer. Instead what, we're going to do is reward companies that create jobs. We think that's the better way to go.

>> Tim Hudak: Here's the reality. It's a matter of setting priorities. Health and education will be ours. (Inaudible) increase in those areas, we'll find savings of two cents on every dollar just like families and businesses have been doing. The other thing, if we want to get out of this hole, we need the economy firing on all cylinders. We need people working again in the province of Ontario. And with half a million unemployed women and men sending their resumes out today, we need them working in good private sector jobs. The more people are working, the more revenue will come into the treasury. And that's why I object to Ms Horwath's plan that's going to increase taxes on businesses. That doesn't help. Higher taxes under Ms Horwath, higher personal taxes under Mr. McGuinty, they'll kill jobs. I am the only party - leader of a party, that will actually create jobs for relief.

>> Andrea Horwath: Let's be clear. Mr. Harper is already reducing taxes, corporate taxes, significantly. And with our rolling back of the tax cut that Mr. McGuinty and you favour, we are still going to be in a very competitive position. We are going to be lower than the Great Lake state average. We're going to be lower than Japan. We are already in a very competitive state and by taking the tax rate back to 14%, we are still going to be very competitive with our jurisdictions that are abutting us. And we don't need to give that blank cheque to those companies because, for 10 years; that \$20 billion in blank cheques has not brought us the jobs. So let's focus and reward the companies that are creating jobs, that are investing in Ontario, that are training their work force. And then we'll have the kind of economy, and the kind of province that puts the priority on people and jobs.

>> Tim Hudak: Here's a difference. We were just in northern Ontario, as you said, for the leaders' debate - you and I - Mr. McGuinty chose not to join us in the north. I just don't understand why increasing taxes on Abitibi Bowater, on Weyerhaeuser in northern Ontario, on Vale Inco, how that's going to be helpful in creating the jobs that we need in the province. I think we need relief.

>> Andrea Horwath: Mr. Hudak, it's not the tax rate that's the problem. You said it at the beginning of the debate. It's the electricity rates that are the problem and I think we heard that loud and clear.

>> Steve: He needs to be allowed to finish his statement.

>> Tim Hudak: That's why we brought forward a jobs plan to get energy rates under control, to lower taxes for businesses, and to clear aside the regulatory burden that holds businesses back large and small. And a big difference: we need people to have the confidence to spend again to create jobs. And that's why the Ontario PC Party in Changebook will give average families relief. We'll take the HST off heat, we'll take it off hydro and the debt retirement charge as well.

>> Andrea Horwath: I'm glad you borrowed it.

>> Tim Hudak: And an income tax cut for middle class families who are really getting squeezed. If they have the ability to spend on hockey skates for the kids, home repair, that will create jobs in Brampton and Niagara and in northern Ontario.

>> Steve: Okay, that is the end of the one-on-one segment. As I invite Dalton McGuinty to join us, I am reminded that the question said, "What government spending are you going to cut, by how much and in which areas?" That was the very specific question. Not sure we have heard an answer to that yet. Go ahead, Mr. McGuinty.

>> Dalton McGuinty: Thank you, Steve. I want to thank Madjad for that very important question. And I think it's something that weighs heavily on the minds of many people around the world. In fact, the instability that's in the global economy today is not because of a lack of confidence in financial institutions; it's because of a lack of confidence in governments and their abilities to manage the money. Here in Canada, we have a stellar reputation globally. And within Canada, here in Ontario, as I say, we are the biggest job producer in the country. Here are some specifics. We are reducing the size of the Ontario public service by 7%. That's nearly 5,000 positions. We're a little more than halfway there already. That will save us \$500 million. Beyond that, we're going to find another \$200 million in savings inside our government agencies, boards, and commissions. We're also very much aware that in health care, there are better ways for us to deliver health care. And that takes me to part of our plan: Going Forward. Instead of having our seniors, our parents and grandparents, go into long-term care homes or in a hospital setting, we should do, and what we want to do, is what they want us to do: we're going to provide more home care in the home; we're going to bring house calls back; and we're going to provide a new tax credit. \$1,500 for a senior to make renovations to their home, to make it friendlier for them, safer, accessible. It might mean a ramp instead of stairs, or one of those stair lifts that takes you up to the second floor or a walk --

>> Andrea Horwath: Well, Mr. McGuinty, you actually had 8 years to try to implement those kinds of programs and it's kind of frustrating when we have seniors right now in Ontario who have been living together 65 years of marriage and are being told they have to go into separate long-term care homes. That's not the kind of health care, that's not the kind of long-term care solution that we need in Ontario. But I think I did answer Madjad's question by saying what we're going to do is make sure that the wasteful spending of money towards giving these -- these blank cheques to corporation is going to be rolled back. That's a significant amount of room that that gives us in terms of the budget. We are also going to change the priority in health care. Unfortunately, Mr. Hudak and Mr. McGuinty didn't support a bill that I put forward to cap the CEO salaries in the public sector. There's no way that we should have a priority being the CEO of a hospital getting his 6-figure raise every single year while a woman like Maria Devries in London loses the nurses that helped her through her breast cancer treatment. That is the wrong priority in health care. That's your record, Mr. McGuinty. We're going to put patients first in the health care system.

>> Tim Hudak: Back to Mr. McGuinty on this. I just don't believe, Sir, that the man that brought us the eHealth scandal, where a billion dollars went down the drain, one of the biggest scandals in the history of the province, and a Premier who is on track to doubling our provincial debt. What took 35 Premiers 142 years to do, you, sir, will do during your time in office. We just cannot afford that runaway spending. So let me address the question. First I am going to reduce the size of my Cabinet. I am going to actually start leadership at the top. My Cabinet will be at least 20% smaller and more focused on the priorities of families today. I will also review every one of the 630 agencies, boards and commissions in our province. Believe it or not, 630. My little girl, those of you that have a little one at home, my little girl, Miller, could take the fridge magnets with the letters on them, put any three letters in the fridge in any order she wants to, and she will get some government agency that you've never heard of, but you are paying millions and millions a year to sustain. We'll go through every one with a very simple test: if it works, keep it; it's broken, then you fix it; but if it can no longer justify its value to the families who pay the bills, you have to close it down.

>> Dalton McGuinty: My friend, Mr. Hudak, references government spending and the deficit. The deficit is significant and I would not deny that. But we have done a few good things working together during the course of the past 8 years. We have built 400 new schools. We have built 18 new hospitals. Six of those are in the north. We have invested in thousands of kilometres of new transmission lines, thousands of mega watts of new generation. We have hired 11,500 more nurse, 2900 doctors, 10,000 more teachers and the likes. So that's where the money has gone. Then we were hit by a terrible recession. And we did - we joined in concert with the federal government and governments around the world. We borrowed money and stimulated the economy. We created thousands of jobs. We supported the auto sector. You referred to that as "corporate welfare," but there were 400,000 jobs hanging in the balance, so we thought it was important to help those families. And we support retraining programs. Now we have got a great plan to lower that deficit over time. We eliminated your deficit that you bequeathed to us back in 2003, (inaudible), so we know how to get it done.

>> Andrea Horwath: For all of the stats that you roll off your tongue, the people of Ontario feel like they've been ignored by you for the last number of years. Every where I go in Ontario, people are saying they feel that the government's taking them for granted and has not taken care of some of the basic concerns. The biggest one is the affordability of every day life. So during that recession, what you decided to do was hit families with a new, unfair tax that made life less and less affordable. You know what, I was in North Bay not too long ago and I had the opportunity to pour a few drafts for some of my friends. And as I approached the other side of the bar where the general public was, three women about my age were at the bar and we started chatting. And this woman said to me, she said, "You know, Andrea, I am a mom - average mom. I'm a working woman, I've got three kids, and I cannot make ends me. My pay cheque is staying the same, my bills are going up, and there's something wrong that I feel insecure at this point in my life." And she's right. And that's your record, Mr. McGuinty. Most people feel that way.

>> Tim Hudak: You know, there's a very clear choice tonight. You ever two parties that are high tax parties. Ms Horwath will increase taxes on businesses. Mr. McGuinty -

>> Andrea Horwath: On the contrary, on the contrary, Mr. Hudak. Mr. Hudak, that's not true.

>> Tim Hudak: And you have one party who will actually control run away spending and focus on what's important: health and education. And if you want to get the books back in order, we surely can't stick with the government that increased spending by 80% when the economy only grew by 10%. We'll set priorities; we'll give families relief, like taking the HST off heat and hydro so they can spend again; and I will focus like a laser on private sector job creation, good jobs to get us moving.

>> Steve: One more comment for each of you.

>> Dalton McGuinty: Great. I want to just reinforce the notion of the support that we're providing for families. We got rid of that \$5.6 billion deficit and now we've been focused on providing relief for families. So we started by cutting electricity bills by 10%. We provided \$355 by way of income tax cuts to the average Ontario family. Moving forward, we want to reduce tuition by 30%. That's \$1,600 a year for a family, in -- for a student in university. That's \$6,400 less for a university degree. And finally there's a \$1,500 tax credit for seniors to help them make renovations to their homes. So that's real, solid support to help families deal with their costs in the homes, where it's really important to them.

>> Steve: Andrea Horwath?

>> Andrea Horwath: Mr. Hudak knows I'm not raising taxes on families. In fact, he borrowed some of my tax reduction issues off of my agenda, which is the HST-off home heating and hydro. Although I am taking it off gas and I will cap gas prices in Ontario. But, you know what, I am going to follow in the footsteps of NDP Premiers around the country who actually have the best record - better than the Conservatives, better than the Liberals - in terms of the way they've dealt with their budgets. We have been in the

deficit position fewer times than each these parties and in fact when we have run deficits, they have been a lower deficit to GDP ratio. That's the footsteps that I am going to follow in when it comes to the way I operate this province when I get the opportunity.

>> Steve: And that's the last word in this segment. We go on now to Question 3.

>> Steve: We go on now to question three. Question three again on video tape. Let's watch, if we could.

>> Question: My name is Norma Jurss from Freelon, Ontario. At the age of 69, my husband has returned to work part-time so that we can afford to remain in our home. Some of our neighbours have had to sell their homes. My question is this: what specific steps would you take to assist Ontarians like myself, living on fixed incomes, who are facing financial difficulties due to the rising costs and taxes on essential goods and services?

>> Steve: Okay, our one-on-one this time features Dalton McGuinty and Andrea Horwath and Mr. McGuinty, you get the first word.

>> Dalton McGuinty: Norma, thanks very much for a really important question that weighs heavily on the minds, I know, of a lot of Ontario seniors. What we want everybody to do, myself included, when it comes to my own mom to have the where with all to be able to stay in that place which is really important to her which is her home. So, you've heard me reference this a few times already, but I think it's important to repeat it. We have got a are brand new tax go transit credit, \$1,500 to help seniors renovate their homes in order to make them more friendly, accessible and safe for them as they get on in years. We've also been rebuilding our electricity system. There are costs associated with that. There's no getting around that. We've just got to get it done. So in order to help all of our families deal with that, we are reducing the costs of electricity bills by 10 percent. We also have an energy and property tax credit specifically for seniors. It goes up to \$1,100. Beyond that, we've increased -- we've decreased taxes by \$355 for the average Ontario family. My concern is that Mr. Hudak is going to be increasing property taxes by \$500 million. We've made an agreement with the municipalities to at that take that off property taxes, he wants to put that back on. Back home in my hometown of Ottawa, that means a 6 percent property tax hike. I don't think we can afford that.

>> Steve: He's going to have to wait five minutes to answer that, but in the meantime, Ms. Horwath, over to you.

>> Andrea Horwath: Well, Norma, you've raised an issue that seniors all over Ontario have been talking to me about. Because on a fixed income, as the unfair HST, for example, was put on your bills, there is no way that you can make that up except for, as you say, your husband taking another job in his golden years, which is really unfair for seniors who have worked so hard to build our communities and have contributed so much already. So we are going to take the HST off home heating, we're going to take it off hydro, we're going to start taking it off of gas. We are going to make sure that we cap gas prices so that there's no unfair gouging at the pumps. But we're also going to provide extra help for seniors around the home. We have a new program that's going to provide 7.5 million hours of extra help around the home to help you do the kinds of chores that maybe aren't so easy anymore. Things like shovelling your walk, cutting your grass. I know my own mom started to feel insecure about staying in her own home because she could no longer bend into the laundry machine to do her laundry. These are the kind of supports that will help seniors to stay in your home. But you can't stay there if it's not affordable. So we are also uploading the download of services, the bills that are being paid off the property tax that are really provincial bills and we're going to get rid of those off municipalities but we're going to do more than that. We are going to offer municipalities to take 50 percent of the operating costs of their transit systems offer of their shoulders, freeze transit fares, lots of seniors are taking transit, this makes transit more affordable and also helps with the property taxes as well.

>> Dalton McGuinty: Just to be more specific to the question and to seniors. One of the things that seniors keep telling us again is they like to spend as much time as they

possibly can to live out as much of their lives as they possibly can at home. We're going to bring back something that never should have been taken away. And that's home care. We're going to have doctors and nurses come to your home to see you when you can't get out of the house. We're also going to invest in a major way in more home care. Nurses coming into the home and providing care on a regular basis when you need that. That's not just great for seniors but it's great for taxpayers. It's just so much less expensive to care for our moms and dads and our grandparents in their homes than it is to have them go into long-term care homes or into a hospital setting. Now, that's a smart plan. It's a sensible plan and it's a serious plan suited to the times.

>> Andrea Horwath: Well, unfortunately the status quo has not been the implementation that are plan and we have also made a commitment to bump up the hours of home care because we see what's happening every year. I hear it in my constituency office. People phone me up usually between January and the end of March and say, we've run out of - the agency has run out of funding. So seniors really need to see improvement inside healthcare.

>> Dalton McGuinty: We didn't even measure wait times before. Now not only are we measuring them, we've got the shortest wait times in the country. We've got doctors for 1.3 million more Ontarians. So we've come a long way. We've built, as I said before, 18 hospitals. Mr. Hudak, when he was in government with his party, they closed 20 hospitals. And they fired some 6,000 nurses. So we've turned things around. The next thing we want to do in healthcare, in addition to what I have talked about already, is to ensure that when it comes to children, because I know seniors are very concerned about their grandchildren too, we're going to ensure that we provide a healthy snacks program in our schools because we're going to ensure that we provide a healthy snacks program in our schools because we're concerned about obesity levels and we have a new program for 6 to 12-year-olds after school to keep our kids active instead of at home, passive --

>> Steve: I've got to give Ms. Horwath the last word on this segment and then we'll open it up.

>> Andrea Horwath: Steve, really, I just want to share with Mr. McGuinty and Mr. Hudak a letter that I received from a man who was telling me that his mom was taking care of his father at the last stages of his life. He was palliative and they brought him home and he was on a number life saving devices. When she opened her hydro bill, she cried, she was in tears because she could not afford to pay the hydro bill that had come through her mail because of the extra costs of HST on hydro that this government put on people's back when they could have least afforded. You know what is in store with you with a government that hits with you an unfair tax at a time when you are already feeling the pinch from a recession. That's not the kind of Ontario we want.

>> Steve: Mr. Hudak, come on in.

>> Tim Hudak: Thank you and I want to thank Norma very much for the question. Norma, I spoke with a woman in a similar circumstances. Her name was Betty. I met her in Richmond Hill. And Betty said, Tim, I paid off the mortgage on my home but I can't pay the hydro bill. I am worried about making ends meet and Tim I might have to actually sell my home. That's wrong. That's not the kind of Ontario we want to see and that's why we can't afford four more years of Dalton McGuinty who will increase your taxes and put your hydro bill through the roof. Here's what we'll do in our Change Book plan. We'll take the HST off of your heat, we'll take it off your hydro bill and we'll take that debt retirement charge off your hydro bill as well because families have paid more than their fair share. And here's the second thing, Norma. These time-of-use smart meters are really nothing more than tax machines on a lot of families. The only thing that seems to be smart about them is no matter how much you change your behaviour, they still hit you with some kind of tax grab. We will unplug the mandatory time-of-use smart meters and we'll give every family the choice. Because it doesn't work for seniors home during the day and not every senior can get up late at night to do laundry, not every family can have all of the kids showered and fed and ready for school before 7 a.m. when the higher rates kick in.

>> Dalton McGuinty: Well, you know, Mr. Hudak has said this three times now and he's probably several thousand times in the recent years. He keeps saying that I am going to be raising taxes. I am not raising taxes and you shouldn't keep saying that. Hang on a second.

>> Tim Hudak: With all due respect, we've heard that time and time again.

>> Dalton McGuinty: I have asked a lot of families, and I know it wasn't easy for them, but the fact of the matter is we laid a solid foundation for prosperity and growth. The fact of the matter is we are reducing income taxes for families by \$355. The fact of the matter is we are reducing the electricity bills by 10 percent and moving forward we're going to do more to provide --

>> Tim Hudak: With all due respect, sir, nobody believes you anymore. I can't believe you are actually saying that.

>> Dalton McGuinty: But beyond, beyond that, again we're going to provide a tax credit for seniors in their homes. You are saying that you are going to take a little bit off the HST. You said you were against the HST. Ms. Horwath says she's against the HST. Then why are you keeping the HST? I'll tell you why you're keeping it. Because it's essential for our competitiveness. When the recession hit us, I asked businesses and economists what's the single most important thing that we can do to ensure that we grow, keep jobs, and create more jobs, and they said in unison, we have got to adopt a single value added tax --

>> Tim Hudak. Progressive Conservative Leader: Mr. McGuinty, you've said you've lowered taxes, you have said that hydro bills are coming down. Sir, with all due respect, nobody believes you anymore. And for good reason. You are saying tonight that you are not going to increase taxes but with all due respect we've heard you say that not once, but twice. And you broke your promises over and over again. You brought in the HST. You brought in the sneaky eco tax. You brought in the health tax increase. Hydro bills have gone throughout roof and now you plan a smart meter tax as well. Sir, why should anybody believe you when you've broken your word time and time again?

>> Steve: I have to give Ms. Horwath equal time and then you can come back.

>> Andrea Horwath: It's interesting they talk about the HST because everybody knows that Mr. McGuinty teamed up with Mr. Harper to bring in the HST and although Mr. Hudak made a lot of noise in the house, I think he was pretty quiet when he could have had a chance to talk to his federal leader about making sure that the HST wasn't implemented in Ontario. And I think we see the results of it. And it's kind of sad that Mr. McGuinty actually admits today that instead of listening to the needs of every day people, to the 80 percent or more of Ontarians who said they don't want the HST, he listened to his friends on Bay Street, the same friends that Mr. Hudak's leader listened to. I think it's time we started paying attention to the people this province, put their pocketbook first, put their budget first, put their interests at the top of the agenda. That's what New Democrats will do.

>> Steve: Mr. McGuinty?

>> Dalton McGuinty: I know that adopting the HST was not easy but it was absolutely essential to growing a stronger Ontario economy. And since we have adopted the HST, we've created some 90,000 new full-time jobs Ontario, according to Stats Canada. I want to return to the issue of the smart meter, something that Mr. Hudak has talked about regularly. The fact of the matter is we are moving as hard as we can in Ontario to put those smart meters in all our homes and all our businesses because they help us practice better conservation. They shift our patterns so we're using electricity after seven in the evening and before seven in the morning and the fact of the matter is that's where most families have already gone. That's when we use the most of our electricity, after seven in the evening and before seven in the morning and that's the discount period and it applies to 48 hours during the weekend as well. That means two-thirds of the week has a discount period for electricity. Why have we done this? Because it means we don't have

to build as much new generation. And when we don't have to build as much new generation, it lowers our fees overall. That's why we are doing it.

>> Steve: Mr. Hudak?

>> Tim Hudak: Listen, these smart meters are no more than a tax grab and I think you know that. Seniors are --

>> Dalton McGuinty: Hang on a second.

>> Tim Hudak: Let me respond to the question.

>> Dalton McGuinty: How much money is going to the government? You call it a tax grab, there's not a penny of this going to the government.

>> Tim Hudak: When people are getting dinged by high rates because they dare to live a normal life, it's a tax grab, sir. I don't think seniors should be punished for doing the chores during the day. And what's a shift worker supposed to do? Take a day off so they can do the chores at home? I don't think families should be hit because they are trying to do chores during the day. I will end the mandatory program that's a tax grab. Let me ask you this, too. Families simply cannot afford another Dalton McGuinty tax grab. You have done it over and over again. And you say it wasn't easy. Sir, the easy choice is to increase taxes. You keep doing that because you can't set priorities. The challenge for leadership is setting priorities. Ours are health and education and relief for families.

>> Steve: Ms. Horwath, and then you'll get the last word.

>> Andrea Horwath: I actually believe that people want to do right thing and want to conserve energy. They want to reduce their carbon footprint. They want to do the right thing by the environment. But the smart meter program didn't help them do that. People weren't able to conserve in large numbers and they weren't able to reduce their bills. What New Democrats are going to do is we're going to take almost a billion dollars of money that's sitting in a planning for new nuclear build and we're going to shift that to give people the tools to make green choices. Retrofit their homes, a program which you cancelled, Mr. McGuinty, make sure that there's loans and grants available for those households that are not able to make those investments because we know lots of people are having a challenge with their finances. Rebate programs to get rid of those old appliances. If we give people the tools to go green, they will. We don't believe in the stick approach that you do. We believe in the care-it approach. That's the change that New Democrats want.

>> Steve: Last word on this segment.

>> Dalton McGuinty: I can't figure out from one day to the next where Ms. Horwath stands when it comes to clean electricity and why she doesn't put forward a plan that's being supported by Dr. Suzuki instead of our plan being supported by Dr. Suzuki. We're shutting down coal, we're shutting down coal which I think is so important. We reduced its usage by 90 percent. They told us that when we were burning coal to the max, it was the equivalent of \$3 billion in annual costs to our healthcare system. Beyond that, we're creating an exciting, new, clean energy sector. Again, I think we should be at the front of the curve on this, not at the back. We know the world is going towards clean energy. I want us to be the best in North America and build clean energy technology.

>> Tim Hudak: You are going to bring in a carbon tax. Mr. Suzuki is a big champion, your caucus are big champions. Families cannot afford your carbon tax, that's \$500 for a typical family.

>> Steve: If you're going to say that, I have got to give him another word. Go ahead. You want to come back on that?

>> Dalton McGuinty: Just read my plan. Just read my plan. Just read my plan.

>> Tim Hudak: I did read your plan and you didn't carry through with it.

>> Dalton McGuinty: My concern again, when it comes to taxation, there are only two people here who are absolutely committed to increasing taxes. Property taxes, \$500 million, and \$9 billion in business taxes. There are the two.

>> Andrea Horwath: Wrong, Mr. McGuinty. Wrong, Mr. McGuinty.

>> Steve: Okay. That's the end of this segment here. We're halfway there.

>>Question: Good evening. My name is Mike and I am from Toronto. This is a question for all of the leaders. We live in difficult times. Times that require leadership that is unafraid to talk about bold ideas tell important truths and ask something of the people of Ontario. I think it's fair to say that this has not happened in this campaign. So my question is this. Why not? Why not talk about some bold ideas? Tell some important truths, and mostly, why not ask the people of Ontario for the kind of shared sacrifice that will be necessary to take us through this difficult time.

>> Steve: Okay, Dalton McGuinty and Tim Hudak start this one-on-one debate. Mr. McGuinty you have the first word.

>> Dalton McGuinty: Mike, I appreciate the question. I am not sure I have ever been accused of not asking people to do some hard things from time to time. And we have done a couple of hard things in particular. And they are so important for us to keep doing. We are rebuilding our electricity system. There are some big costs associated that. I'll give you one example. Putting a new tunnel underneath Niagara Falls. It's 10.2 Kilometres long, will deliver clean electricity for 100 years. It cost \$1.5 Billion and it happens to fall to our generation to get that done. We have also adopted the hst. Not an easy thing to do. But the fact of the matter is helping us to catch up to 140 other countries around the world that had that kind of a tax. So our businesses when they compete in a very competitive global economy aren't doing so with one hand tied behind their back. Again, my colleagues say they are against the hst but they are going to keep the hst. And of course we could not have done this without Mr. Hudak's support based in Ottawa for the federal conservative government. Those are hard things, we've done them, we are doing them and it's really important that we keep moving forward because the global economy is looking for a place that is safe, secure and stable. That's what we have here in Ontario.

>> Tim Hudak: Here's where Mr. McGuinty and I strongly disagree. It's not a hard thing to increase taxes. It's the easy route. And one that Dalton McGuinty has taken time and time again. And why is it that your big ideas always end up costing average families? Your big idea for the hst was a big tax grab. You put 8% more on the basics like heat and hydro. Your big idea for the smart meters has made it very difficult for seniors, for shift workers, for small businesses. Mr. McGuinty always says that we need to tighten our belts. But he never tightens his own. Government spending has gone up by 80%. He's trying to run a government that tries to be all things to all people. What does leadership mean in Ontario today? It means setting priorities. It means focusing on job creation so we are the best place in all of Canada to find a good job. And I am proud to say I am the son of immigrants who came to Ontario barely speaking a word of the language. Only a few dollars in their pockets. But they believed in this province. It was a place of hope and opportunity. As the father of a little girl today, I will make Ontario the best place again in Canada to get a good job, a ticket to the middle class and raise a family.

>> Dalton McGuinty: First of all, I am with Bill Davis on this. He says, it's unbecoming to run down our province. He says we're the best in Canada in terms of our economy. Our health care and education. And I agree with that completely. Now, the question was about bold ideas. Well, you can't get much bolder than saying we are going to be the first in North America when it comes to producing clean energy technologies. Think about what we want to leave to our children. Do we really want them to say 20 or 30 years from now, why can't anybody do anything about those international oil and gas price? We can't. Every time we buy oil and gas here in Ontario we are creating jobs elsewhere. Every time that we deal -- we invest in clean energy technologies here, and buy energy from renewables, the wind and the sun, we are creating jobs here in Ontario for our kids. We know the

world is going there. Let's get there first. At some point in time, American moms and dads are saying, we've got to stop burning coal, we've got to start buying clean electricity. We will have the technologies and manufacturing capacity in place. That's my vision. I think it's a bold one and I think it's within our grasp and I want to keep moving towards that.

>>Steve: Mr. Hudak.

>> Tim Hudak: The problem is it's a borrowed vision that has failed elsewhere. When other jurisdictions tried the green energy act of increasing hydro bills for everybody and handing out subsidies for a few, they found that for every job created, a subsidized job, it costs a million dollars in subsidies to create that job. Then the jobs disappeared when the subsidies dry up. And for every so-called subsidized job you create you lose three or five jobs in the broader economy. Let me ask you this Mr. McGuinty. You've said to Ms. Horwath, you've criticized Horwath's plan to increase business tax. I agree I think that will kill jobs. But if you think it's such a bad thing why did you do it? Why in your first term did you increase business taxes just as much as Ms. Horwath wants to do today if you think it's wrong.

>> Dalton McGuinty: The fact is, we are reducing business taxes.

>>Tim Hudak: No, no you increased business taxes. Sir, you're increasing business taxes in this province.

>> Dalton McGuinty: We are taking one step further, one step further in fact. Let's talk about small business because they are the -- the champions when it comes to creating jobs here in Ontario. We start of with a small business tax of 5.5%. We have got it down to 4.5% And now our plan is to take it down to 4%. The fact of the matter is there is tremendous instability in the global economy and after California, we're the second most preferred destination in all of North America to receive foreign investment. I am not sure how, after Mr. Hudak cancels the Sampson contract he can go to Asia for example as Premier, and say I want to do business with you people. How can he look them in the eye after he cancelled a \$7 billion contract creating four new manufacturing plants and 16 thousand jobs at the forefront of an exciting new clean energy industry?

>> Tim Hudak: You know is this a billion dollar sweetheart give away that will drive up hydro bills to one of the biggest multi national corporations in the world. I want to say this. You side stepped my question. You tried to slip away. You didn't answer what I asked you. If you think it's bad that Ms. Horwath increases business taxes in her plan why, sir, did you do so? In fact, you increased them to 14%, costing us jobs.

>> Andrea Horwath: I actually want to get back to what Mike asked. That's what I would like to do.

>> Tim Hudak: Well, I'd like to know why the Premier thinks it's bad for you but okay for him.

>> Andrea Horwath: I think it's time to get back to what Mike asked, and that is about leadership and how do you make the big decision that take the bold actions? And I have to say that sometimes it's about acknowledging when you have done something wrong and changing gears to do something differently. This is the situation that both of these gentlemen continue to desire, the reduction of corporate taxes, the idea that blank cheques to companies that just ship jobs somewhere else is the right track. I disagree so I think a bold thing to do is say it hasn't worked for the last ten years. We have given away \$20 billion and not have the jobs to come with that. So we're going to do things differently. I think it's also acknowledging that municipalities like Toronto and others, I think Mike said he was from Toronto, are struggling with the ability to pay for their transit systems, and yet we know that getting more people on to transit is a good thing. So one of the bold ideas maybe, in fact it's something that used to be done in the past, is we're going to take 50% of the operating costs off of the backs of municipalities and freeze transit rates. That way municipalities can increase their transit systems, they can put more trains and buses and increase their routes and people don't have to carry

the burden on increased fares. Those are a couple of ideas I think that are change. Change for the better. Change that puts people first.

>> Dalton McGuinty: To speak directly to Mike, again, a couple of other bold ideas. We worked long and hard to secure Toyota's new auto assembly plant here in Ontario. Brought it here in about 2006. We got a couple of thousand jobs there and just recently they announced they are going to build their first electric car here.

>> Andrea Horwath: My brother works there.

>> Dalton McGuinty: I'm very happy for him. Beyond that as well we are going to provide two-way all day go service in the GTA and all of the way to Hamilton. That's going to be great for Thunder Bay, for example, because that's where we're going to make those --

>> Andrea Horwath: Do you have a buy Ontario policy to make sure all of those trains are built in Ontario?

>> Dalton McGuinty: Those cars are already being made by Bombardier. So that's great news for folks up in Thunder Bay but also a way of improving the productivity and efficiency of our economy. They tell me it's like taking 71 million car trips annually off Ontario roads. That's a big, bold idea. It's a multi year plan. A multi billion dollar investment. It's bold and it's essential that we keep moving.

>> Andrea Horwath: And it's also something that is in our platform. We are committed to the same plan.

>> Tim Hudak: It's disappointing that Mr. McGuinty won't answer my question about why he criticizes Ms Horwath for business tax increases when he increases the exact same tax at a time of a recession. Let me tell you this. Every time that you talk about any kind of jobs, there's always some big cheque attached. That meant that you taxed every other business, you taxed families because you have to bribe businesses to come to Ontario. I see a very different approach. I want all businesses to have the chance to succeed, to hire jobs, hire people again in our province. Half a million, 500,000 unemployed women and men. And that's where we have a five point jobs plan to create more skilled trades positions, to clear aside this maze of red tape that frustrates all kinds of business leaders and treat energy policy as economic policy, not a social program, and we're the only party that will lower taxes to encourage spending in our economy again to create jobs.

>> Steve: Miss Horwath.

>> Andrea Horwath: But Mr. Hudak, it was your failed experiment in the electricity system that we are dealing with right now. The mess in the electricity system is because of the deregulation and privatization; I think you were maybe around the Cabinet table when that took place in Ontario. And I have to say I am quite disappointed that Mr. McGuinty has followed on the same route. The big expense that we have in bringing renewables into our grid is that they are all very expensive private power deals. How ironic is it that we actually have a company that's owned by the public in Korea running our renewable energy system. That should be Ontario-owned energy, that should be renewables that's in the public interest, not with private sector deals that are costing us a fortune.

>> Steve: Mr. McGuinty?

>> Dalton McGuinty: The facts are always helpful. This is what we are doing here in Ontario with our green energy plan. We have got 2,000 large and medium size energy projects being sponsored by Ontario investors. We have 30,000 what we call micro projects being sponsored by Ontario investors. These are families; these are farmers, who have decided to participate in this exciting new clean energy revolution in Ontario. They want to help subsidize a little bit of the work that's taking place on the farm or help support some modest family income. And it's this very buzz of activity that is attracting big companies like Samsung who want to come here, they are bringing, notwithstanding what Mr. Hudak is saying, they are bringing \$7 billion into Ontario, creating 40 manufacturing

plants in Ontario, creating 16 thousand jobs over 6 years in Ontario. That's what it's all about.

>> Steve: Mr. Hudak.

>> Tim Hudak: There's a fundamental disagreement here. Ms. Horwath and Mr. McGuinty believe in handing out these expensive contracts for wind and solar power, up to 80 cents per kilowatt, when the price of power is 5 cents on the marketplace. But any kid who runs a lemonade stand knows you can't pay 80 cents for the lemons and charge a nickel for the lemonade. Somebody has to pay that difference. And the problem is, it's seniors seeing their hydro bills increase, small businesses are seeing hydro go through the roof and families. We cannot continue on this path. That's why it will end that expensive energy experiment. And make sure that when energy is added it's a competitive transparent basis no, sweetheart giveaways driving up your hydro bill.

>> Andrea Horwath: And the most expensive energy experiment is one that your government brought in, in the 90's. The reality is we still have over 2,000 private sector deals being managed by five hydro bureaucracies that it's costing us a fortune. I am very committed to making sure we continue along the path of renewable energy but I think it needs to be done in the public interest. We are going to take those five bureaucracies, take those over 11,000, six-figure salaries and pair that back down and put an electricity system back together that's in the public interest. That will get our rates down and make Ontario competitive again.

>> Steve: Mr. McGuinty.

>> Dalton McGuinty: A couple of points if I might. Number one. I'm not saying that the hydro companies are perfect but in fact they have one of the best histories in the world in ensuring that over the progress of time, during the course of our history, we always had a reliable supply of electricity. And I am very, very proud of that. Beyond that, I want to say once again there's a lot of instability in the global economy. After California, we're the second most favoured place in North America that's drawing in foreign investment. So you can't go around, as Mr. Hudak is proposing, and cancel these big international contracts. That's going to send a shock wave through the international investment community. We've got to make sure that --

>> Tim Hudak: Didn't you just cancel a contract in Mississauga on the weekend.

>> Dalton McGuinty: -- So that we can expand our economy, enjoy more prosperity and create more jobs.

>> Steve: Do you want to try that again?

>> Tim Hudak: I'll try that again. You say you can't tear apart contracts. Sir you just cancelled an energy contract in Mississauga.

>> Dalton McGuinty: No, we didn't.

>> Tim Hudak: One that you said was a champion for 6 years and 11 days before Election Day, you said all of a sudden you are against it. This looks like a government that's run out of ideas, and is on the run. So how much exactly, let me ask you. How much money are you going to throw into that pit in Mississauga for your last-minute flip-flop?

>> Dalton McGuinty: We said that we would relocate. And I said that a moment ago.

>> Tim Hudak: Where will it go? Where will it go?

>> Dalton McGuinty: We have 2 thousand big and medium sized project and some 30 thousand small projects. You put these in place and try to anticipate to the best of your ability where you're going to need new electricity and when you are going to need it. In Mississauga, this is a specific case where, during the course of the past 6 years, things

have changed. So we listen to the community. Right beside that location, there are now three --

>> Andrea Horwath: What's changed is that there's an election on the horizon.

>> Dalton McGuinty: We have a new rule in place that says we couldn't even locate one single emissions free wind turbine in that site. So it doesn't make sense to me, if we can't even put up one wind turbine to put up a gas plant. I think that's important.

>> Tim Hudak: So what exactly has changed?

>> Dalton McGuinty: And now we're going to relocate it to a place that makes sense.

>> Tim Hudak: So suddenly something changed 11 days ago. I think Miss Horwath had a great line there. The only thing that's changed sir is there's an election campaign and you abandoned a policy that you championed for 6 years. I will ask you again, where are you going to move it to, how much is it going to cost Ontario families and what aside from the election campaign, changed in the last week and a half?

>> Dalton McGuinty: Mr. Hudak sees it as a failing to listen to people. I don't. Leadership in part consists of listening and learning. We've made an adjustment. A lot has happened in the past 6 years. Three condominium towers have grown up around the site. You couldn't put a single wind turbine.

>> Steve: Time to move on. Question five on video tape and then Tim Hudak gets the first answer debating this one on one with Andrea Horwath. Roll tape please.

>> Question: My name is Muhammad and I live in Ottawa. Post secondary education is one of the most important milestones in a person's life. This year, close to 90,000 undergraduate students are heading towards this path despite the enormous financial commitment required. Many students find it difficult to pay for the cost of their education, never mind their cost of living. My question to the leaders tonight is what will your party do to help post secondary students throughout this critical, but expensive academic endeavour?

>> Steve: Tim Hudak, you are up first.

>> Tim Hudak: Thank you for the question, Muhammad. There's no doubt that post secondary education is the great equalizer in our society. It helped my dad who is the son of immigrant's escape a low income family became a high school principal in the catholic system. My mom came from a very modest background as well and became a teacher. Therefore I came from the middle class. We need to make sure that every student who has the grades to qualify can get post secondary education because you know, a university degree, a college diploma, a trade will be the ticket to a good job in the middle class. And the second thing I will say, Muhammad, we need to make sure that there are good jobs out there when you graduate. I have been hearing from young people all across the province, the jobs just aren't there.

>> Steve: Andrea Horwath?

>> Andrea Horwath: Well Muhammad I am happy this question came up. I was just in Ottawa not too long ago and had a strange thing happen to me. I was about to get into my OPP vehicle and this young woman, approached me on the street, I was quite surprised. She gave me a big hug and said thank you. I said what for? And she said well I am a part-time student and your plan to freeze tuition fees and to take the interest, the Ontario interest offer the OSAP loan is going to make a big difference me. As a part-time student, freezing those tuition fees will make a difference in terms of how much I will be paying to get my education because I can't afford go full-time. I have to work and go part-time so that freeze is going to make a big difference and taking that interest off is going to mean that I am not going to be paying as much over time. New Democrats have been listening to students. Right now we have the highest undergraduate student debt in all of Canada. We have the second highest debt for graduate students. This is not a province

that puts students first. In fact we actually have the least per capita investment in post secondary education. That's not the way that students are going to earn their degrees in a way that doesn't leave them with debts the size of mortgages when they graduate. We are very committed to making sure that post secondary education is achievable for more people and it's not a financial barrier.

>> Tim Hudak: Here's another thing, Muhammad, we're going to do to help out young people trying to get into post secondary education. So many middle class families are being squeezed out all together. Under the current system of Mr. McGuinty, if you are 60 to 70 thousand dollars in income, they say you are too rich and your parents are too well off and you don't get any assistance. I think that's wrong. In fact, I am going to increase assistance through OSAP to help more and more middle class families. It's not a grant. It's a loan. You have to pay it back. But it opens up access. And let me tell you how I am going to pay for it as well. In a time that students are facing big debts in a tough job market, Dalton McGuinty chose to create a \$30 million foreign scholarship program. \$40,000 scholarships only for foreign students. So, Muhammad, if you applied for that you had an Ontario driver's license, you would be disqualified. I think that's wrong. I will put Ontario's best and brightest first; I will cancel that program and put it towards OSAP for Ontario families.

>> Andrea Horwath: But the problem; Mr. Hudak that encouraging people to take more and more and more debt load on doesn't address Muhammad's issue which is tuition fees are already too expensive. Freezing tuition fees will stop that climb. Instead of a rebate program which Mr. McGuinty favours, we're going to freeze fees. That means everybody is able to gain from having lower tuition fees over time. I think that students need a break, they need hope for the future and I know that there are lots of people in my own riding who are actually choosing not to go to post secondary because the debt load is daunting. Our plan is one that responds very much to what students like you, Muhammad, have said, which is that something needs to be done to reduce the amount of debt that students are facing, to help give them a bit of a break, and to make sure that jobs are there for them when they graduate and that's the other part of our plan. We're going to reward the companies that create jobs for everyone, for new Canadians, for students, for people who have lost their jobs in the economy. These are the kinds of priorities that will help students, not only with their debt loads but to get jobs as well when they graduate.

>> Steve: Okay, that's the end of the one-on-one here. We can now open it up to all three. Mr. McGuinty?

>> Dalton McGuinty: Ms. Horwath, just so we're clear, is offering a freeze. Our plan calls for a 30% reduction for families with incomes of \$160,000 or less, again, that's \$1,600 off university tuition, \$730 off college. Mr. Hudak is suddenly interested in education. It may be that at some point in time along the way -- and I have been at many question periods that Mr. Hudak -- that he asked me a question about education, but I can't recall a single one. We have a great record here in Ontario when it comes to post secondary education. We have created 200,000 more spaces. Our plan now calls for 60,000 more. We've going to build three new exciting, innovative undergraduate university campuses. If you compare Ontario to the rest of Canada, the enrolment in Ontario universities and colleges has gone up since 2003 by 26%. That's twice the pace it's gone up in the rest of the country. So families are making heroic measures -- making heroic efforts in order to get young people into college and university. That's why I am going to help them with our 30% tuition reduction.

>> Steve: Mr. Hudak.

>> Tim Hudak: Dalton, you know that's not true. I have asked you many times about education. One in particular was why at a time that the students facing significant debt, they are having trouble finding a good job in Ontario today, that you would choose to spend \$30 million on a foreign scholarship program that would tell to young men and women here in the province of Ontario they need not apply simply because they are Ontario residents. I disagree, and I will put that money into OSAP assistance for families instead. And here's another difference between myself and my two opponents. We're going

to focus on modernizing our trades in the province. We're going to create 200,000 more skilled trade positions. If you want to be an electrician, a carpenter, a welder, a plumber, right now you are heading down road to Saskatchewan, to Alberta, because Dalton McGuinty is clinging to an old 1970's-based apprenticeship system. We will help the colleges identify young apprentices, put them in jobs, and create 200,000 more skilled trade positions.

>> Steve: Ms. Horwath.

>> Andrea Horwath: So Mr. Hudak simply favours giving more loans out and increasing student debt. Mr. McGuinty says that he's going to allow tuition fees to continue to climb, so that after a couple of years that 30% is going to be wiped out anyways. New Democrats think both of these are the wrong ways to go. We need to make sure that students in Ontario are able to afford a post secondary education and you can only do that over time by freezing tuition fees and making sure that opportunities are there for all students. That's our commitment. That's the kind of thing that changes the way these two people are talking and puts students first in Ontario.

>> Steve: Mr. McGuinty.

>> Dalton McGuinty: I just want to come back to something that Mr. Hudak referenced. He says he doesn't believe that we should provide any scholarship support to foreign students. The fact of the matter is that foreign students who are coming to Ontario today are spending a billion dollars annually. They are helping subsidize university and college education for all Ontarians. He says he doesn't like Samsung in part because it's a foreign multinational. During the course of the campaign he said that -- he called Canadian citizens 'foreigners.'

>> Tim Hudak: Hold on a second, Dalton, you know that's not true. You know that's not true.

>> Dalton McGuinty: I've got a different approach. I think it's really important for us here in Ontario to embrace globalization and to understand who we are. We are together. We're in this. We're tight. We have found success over the course of our history by moving forward together remember so I just -- I am not comfortable. I have got to tell you, I am not comfortable --

>> Tim Hudak: Hold on a second here. The reality was --

>> Dalton McGuinty: Foreign students, foreign multinationals and foreigners.

>> Steve: Point made. Let's go.

>> Tim Hudak: Here's the reality and I know you want to say anything to not talk about your record in lost jobs, your record in raising taxes on families. The reality was I never said that. The reality is you brought in an affirmative action subsidy of \$10,000. Initially, your campaign chairman, the president of the Liberal party, your Finance Minister, said that was to attract foreign workers. Then you backtracked and said, 'Well, it's for people who have lived in Ontario for five years or less. Here's where I stand.'

>> Dalton McGuinty: We're talking about Canadian citizens.

>> Tim Hudak: It doesn't matter how long you've lived in Ontario, whether it's 6 months, 6 years, 20 years or for your entire life, we should all be treated equally, an equal chance at a job based on how hard you want to work, your skills and your experience, not a \$10,000 affirmative action cheque for a select few. Give everybody a chance to compete. And the Premier's job, with all due respect to Mr. McGuinty, is to create jobs for everyone, to move our economy forward so we all have a good shot at a good job, not a special \$10,000 handout.

>> Steve: Ms. Horwath.

>> Andrea Horwath: And I think when the tenor of the discussion sinks to this level, we lose sight of what Muhammad was talking about. That's the most unfortunate thing that I think I have seen in this campaign this far, is the hurling of accusations and insults when we should be focusing on how to make Ontario a better place, where people come first, where students come first, where jobs come first. And I'm saying Muhammad and to all of the other students who I have talked to over the years who have said to me, 'We have to get a handle on tuition fees.' Ontario should not be 10th out of 10 when it comes to per capita investment. We shouldn't have the highest undergraduate debt load. We shouldn't have the second highest graduate cost. That is the wrong way for the province to go. So if you want the kind of change that puts us in a different direction, choose New Democrats because we believe students should come first.

>> Steve: Mr. McGuinty.

>> Dalton McGuinty: Well, just again to relate a few facts. When it comes to post secondary education in Ontario, as I mentioned a moment ago, we have the highest growth that's been experienced across the country. But in addition to that we now have the lowest student loan default rate ever recorded in Ontario. We brought back grants. Miss Horwath's party, when they were in power, they eliminated grants. They also capped student indebtedness at \$7,300 per year.

>> Andrea Horwath: Isn't that guy your leader now?

>> Dalton McGuinty: That means that if you borrow money from OSAP, doesn't matter how much you borrow, you are not going to owe more than \$7,300 every year. So we have done a lot to ensure that there's more affordability and more accessibility. You know, this is personal to me. My grandmother was married at the age of 16. She didn't even go to high school. The reason that I am standing here this evening as Premier of the greatest province in the best country in the world is because of educational opportunity. That's why I am so committed to ensuring that all our young people have equal opportunity to an affordable, good quality Ontario post secondary education.

>> Tim Hudak: Here's the bottom line for Muhammad, for students across our province. There's no doubt it's expense in the post secondary system. That's why I am going to increase access to OSAP to help make sure that we all have that opportunity, that great equalizer, that's a degree, a diploma or a trade. Here's the difference between the Ontario PC's and our Changebook plan and my opponents. We have an unrelenting focus on job creation, to make Ontario the best place in Canada when you graduate to get a job. You know what, Muhammad, I have been there. I remember coming out to the economy with my university degree. I was stacking beer at the duty free store. It was a job. I was paying the bills. It wasn't what I wanted to do. I will fight each and every day for our young people like yourself, Muhammad, to have a good job, to keep that talent here in Ontario.

>> Steve: Okay, leaders, that is the end of the fifth question. This is the last question of our debate this evening. The polls tell us all the time the number one issue out there is health care and that's what this question is about. Roll tape, please.

>> Unidentified speaker: I am (inaudible). I'm from Burlington, Ontario. I am also a student at Ryerson University. My question is: there is already limited privatization in our health care system. Would any of the party leaders consider a larger role for the private sector in health care delivery?

>> Steve: Okay, the one-on-one this time features Andrea Horwath and Dalton McGuinty. Ms Horwath, you go first.

>> Andrea Horwath: Well, Belal (sp), I think that the health care system needs a lot of improvement. I think by changing the priorities that we have now, we can bring back to Ontario the kind of health care that people expect, the kind of health care that makes sure that when a mom goes to an emergency ward on a Friday night, she's still not there sometime Saturday afternoon with her child. We need to change the priorities. We need to make sure that we are putting investment into long-term care because, you know what? It costs \$1,200 for a person to stay in hospital when they could be in long-term care for

about \$160 a day. And in fact with home care services, it only costs \$60 a day. So we think that there's a lot of work to be done to change our priorities. Do I think the priority is to add extra profits into the system? No, I do not believe that that's the way to go. I do believe that we need to cap the salaries of CEOs in hospitals. Unfortunately right now, the priority is that those CEOs get their 6 figure salaries while we see nurses being laid off and emergency wards being closed. So the combination of changing priorities and investing in programs like long-term care, like home care, like our new house keeping assistance program for seniors will make a big difference.

>> Steve: Mr. McGuinty.

>> Dalton McGuinty: I want to thank Belal (sp) for that question. I think it's a very, very important one. It has to do with the future of our public health care system, medicare. And there's going to be an important event coming in the not too distant future. The Premier of Ontario is going to have to sit down with the Prime Minister of Canada and 12 counterparts from across the country, and hammer out a new health accord. I was there back in 2004 when I hammered out that accord with then Prime Minister Paul Martin. It wasn't easy. There was some pushing and some shoving, but in the end we succeed on behalf of Canadians and, indeed, Ontarians. The plan at that time was to ensure that we worked within medicare and to ensure that we reduced wait times and provided more access to more doctors. Here in Ontario, we have been -- we have enjoyed the greatest success of all. We now have the shortest wait times in the country. Hips and knees and MRIs and CTs and cancer and cataract care, we have the shortest wait times in the country. We also ensured that 1.3 million more Ontarians now have a family doctor. But this is the important point. I want Ontarians to ask themselves, who do you want sitting at the table with Prime Minister Harper when it comes to standing up for public health care in Ontario? I am not saying that public health care is perfect, but I think there's all kinds of room for exciting innovation inside public health care and that's my -- that's where I intend to be.

>> Andrea Horwath: Well, I think -- I think that it's clear that Mr. McGuinty's not talking to the same Ontarians I am talking to. Everywhere I go, Ontarians are telling me that they are watching their health care system erode before their eyes. And whether it's the Anzevino (sp) family in Fort Erie who had a daughter in a car accident and that woman had to travel past two closed emergency wards before she could get treatment and she didn't make it. This is the kind of health care system that people in Fort Erie and Port Colborne are dealing with along with a number of other smaller communities that are having their access to emergency wards closed. We see women who are taking breast cancer treatments, who are losing their nurses. The CEO in the London hospital got his raise that year, but the nurses got cut out from helping women cope with their breast cancer treatment. The kind of health care that we have in Ontario is not the rosy picture painted by Mr. McGuinty. What people are telling me very clearly is there needs to be a lot of improvement. We have wait times in emergency rooms that are beyond the pale. This is a promise that Mr. McGuinty's made in the past. My own son ended up with a skateboard accident several weeks ago. He went to an emergency ward in my community. They didn't do anything for his fractured elbow. They sent him home, said, "It doesn't really need anything. They can't afford a cast and go home and somebody will help you figure out how to put a sling on it." That's not the kind of health care Ontarians deserve. We need to improve our health care system and we have the plan to do that. The question is, who do you trust to actually start making the changes that put people first and put patients first?

>> Dalton McGuinty: First of all, I hope your son is well. Secondly, I don't --

>> Andrea Horwath: He's getting over it.

>> Dalton McGuinty: Good. I don't think that's a fair representation of the quality of health care services provided by our hard-working doctors and nurses and technicians.

>> Andrea Horwath: They are trying their best.

>> Dalton McGuinty: And administrators across the province. The fact of the matter is we put a lot more money into health care. We have built 18 new hospitals. We have expanded some 100 others. We have got more doctors and nurses. We have got a great new collection of doctors and nurse practitioners and nurses and dietitians that is we bring together, called family health teams. We didn't have any before. Now we have 200. And they are caring for 3 million patients. We also have the first nurse practitioner led clinics in North America. We are putting 25 in place here in Ontario. So we are doing everything we can to reach further into our communities and provide still better, better quality health care. The next challenge for us is emergency room wait times. We are at the forefront of Canada. National experts have said Ontario's right up front, leading on this score. It's not an easy thing to do, but we are in fact getting those wait times down at emergency rooms right now.

>> Steve: Okay that brings the one-on-one to an end. We now open it up to include Mr. Hudak. And I remind everybody that the question was about whether there's a larger role for the private sector in health care. Mr. Hudak.

>> Tim Hudak: I want to thank Belal (sp) for the question. And, you know, when it comes to healthcare, for me, it's personal. I am 43 years old. I am lucky. I have good health. My little girl, Miller, not so much. She was born early, spent some time - a lot of time - at Women's College and then recently this summer she was in the hospital for 26 days at Sick Kids. And I saw how hard our nurses are working. I saw how hard our doctors are working. And they're run off their feet. And they say, "Can't there be a better way?" And that's why in our Changebook plan, we'll invest \$6.1 billion into our health care system. It will be our number one priority to support our nurses, to recruit more doctors to our province and encourage them to go to under-serviced areas, to build more long-term care beds - in fact, 40,000 long-term care beds in our province - and to make sure that we invest in home care and put the patient - not the bureaucrat, not the fancy consultant that got rich off of eHealth - we will put the patient at the centre our health care system.

>> Steve: Ms Horwath.

>> Andrea Horwath: I think the thing that frustrates Ontarians, and it certainly frustrates me, is when the Premier talks his game about all the investments. The problem is that people are not experiencing improvements in their health care system. So you have to ask yourself: what is going wrong? If all of this new money is being poured in, then there's obviously a problem because it's not reflecting in people's confidence that their health care system's going to be there for them when they need it. That's certainly the experience of Maria Devries (sp). That was the experience of the Anzevino family. That was the experience of my own son. That's the experience of the couple from Sudbury who, after 65 years of marriage, are being told they have to go into separate long-term care homes. Look, the more profit you build in - I am going to be really frank with Belal (sp) - I don't believe building more profit in is the right way to go. And unfortunately, both of these fellows have a -- seem to have that kind of a preference. I don't. I think we need to make sure that we are investing in the kinds of services like long-term care, home care, keeping seniors safe at home, front line services, not CEO salaries at the hospital.

>> Steve: Mr. McGuinty's turn.

>> Dalton McGuinty: First of all, with our respect to commitment to medicare, you will know that we are the only province that on our watch put in a specific piece of law which commits Ontarians to the future the medicare. That's the name of the very bill itself.

>> Andrea Horwath: What about home care, Mr. McGuinty?

>> Dalton McGuinty: Well, when it comes to homecare, Mr. Horwath, you will know that our commitment, our plan, calls for an investment (inaudible)-

>> Andrea Horwath: You changed home care into largely a private sector delivery model and you know that when it used to be largely not-for-profit and public.

>> Dalton McGuinty: Mr. Hudak says that health care is his number one priority. A moment ago he said education was his number one priority. But here's my real concern. Mr. Hudak has not had his plan costed by an economist. He's had no independent verification brought to bear on his numbers. Well, we've looked at his numbers. In fact, there's a \$14 billion shortfall.

>> Tim Hudak: Now, hold on a second. You know that that -- you know that \$14 billion number isn't accurate.

>> Dalton McGuinty: That's twice the size of the previous (inaudible). And remember what happened back then? They closed 28 hospitals. There was war in our schools. We have moved beyond that. We haven't had a single strike in our schools in 8 years. Class sizes are down. Test scores are up. Graduation rates are up. Our kids are doing better than ever before. And when it comes to health care, again I say to Ms Horwath, I know the system is not perfect, but the fact of the matter is, we are making real progress.

>> Tim Hudak: Dalton, you know that your allegations about this hole have been discredited and, if you disagree with it, then why did you adopt the exact same numbers we have for revenues, for health, for education? And if your numbers are so great, why did you have two sets of numbers in the last three weeks? Here's our plan when it comes to health care. We'll strengthen our public universally accessible health care system with an initial investment \$6.1 billion through our mandate. It will be our number one investment priority. And, you know, we see these ads from Mr. McGuinty on TV where he claims that things are going so well in health care. I just didn't hear that from nurse, from doctors. I don't hear it from patients. And there's really one word we need to remember, "eHealth." A billion dollars that went down the drain. That went into the pockets of fancy consultants who then chose to bill taxpayers for their chocolate bites and their tea. Sir, the billion dollars in eHealth could have built four hospitals by now.

>> Steve: Response from Mr. McGuinty and then Ms Horwath.

>> Dalton McGuinty: By all means. I appreciate the opportunity to speak to the whole issue of eHealth because my colleague, Mr. Hudak, has been engaging in a fanciful fiction. I just want to quote back to him the words of the auditor general, because I think they're pretty important when it comes to these things. He talked about the \$1 billion. In fact, he was once asked at a press conference about -- that \$1 billion all kind of evaporated, as Mr. Hudak would have us believe? He said that money is going to turn out to benefit taxpayers. The facts of the matter is this investment in eHealth is very important to all of us. So far, we have electronic health records for 7 million Ontarians. By the end of next year, we will have those records for 10 million Ontarians. We are getting rid -- in fact we've gotten rid of all of the film that used to be used in our hospitals so that when they move information from one department to another, it's now done digitally. More than that, we are now ensuring that we can move that information from one hospital to another, one part of the province to another. So notwithstanding Mr. Hudak's disparaging commentary about our electronic health system, we are in fact getting good value for -- it's really important that we are moving forward with it.

>> Andrea Horwath: I am going to go back to the question and state very clearly that I am 100% behind a public health care system, one that puts patients first. And Ontarians, I think, are with me on that. And they have to ask themselves a simple question in about 8 or 9 days time: Who do you trust to keep our public health care system in shape and there for you when you need it.

>> Steve: Mr. Hudak.

>> Tim Hudak: Mr. McGuinty seems to think that eHealth was a big success. I just don't think families believe Dalton McGuinty anymore. A billion dollars. They could have built four hospitals. We had consultants charging \$2,800 a day and then billing for their tea on top of that. And then Mr. McGuinty's government wanted to give the eHealth bureaucrats a merit pay increase for one of the biggest scandals in the history of our program. Let

me tell you one more thing too, Belal (sp) where I disagree with Mr. McGuinty. He's created these regional health bureaucracies called the LHINs, basically, a bloated layer of middle management that gets between the Ministry of Health and doctors and nurses and the patients they are trying to care for. \$300 million to date sucked into this bureaucracy. (Inaudible) people don't spend a single minute with patients. They don't do any surgeries. As Premier, I will close the doors on those wasteful LHINs and put every penny into patient care instead.

>> Steve: We've got a minute left, so 30 to each of you.

>> Dalton McGuinty: On the matter of LHINs, I just want to simply quote Conservative senator Dr. Willie Koen, one of the foremost cardiologists in Canada. And he said this with respect to Mr. Hudak's proposal to eliminate our local champions in LHINs. And I quote: "This would be the stupidest move I've ever heard in my life. It would undo years of progress." LHINs manage healthcare within the community. They establish priorities. That's why they're so important to all of us in our hometowns.

>> Andrea Horwath: New Democrats, I - if I become the Premier this province, will make sure that CEO salaries are capped and that money is invested in patient care. I am going to cut -- get rid of the wait lists for long-term care and home care. I am going to add a new program to help seniors stay safe in their homes so they can stay their homes longer. And I am going to cut emergency wait times in half. And I am going to proudly do that in the context of a public health care system.

>> Steve: Okay leaders, that is our time for the official debate tonight, but according to rules, you each get to make a closing statement. And we have drawn lots and Dalton McGuinty, you get to go first.

>> Dalton McGuinty: Thank you, sir. When a global recession hit Ontario, it hit us hard. So we rolled up our sleeves and we got working together. We invested in new jobs. We invested in job retraining. We came to the support of the auto sector because there were 400,000 jobs at stake and we helped them. We helped those people. The fact of the matter is the economy is turning around. We are on track. We are headed in the right direction. We're now the number one producer of cars in North America. We are the number one producer of jobs in Canada. But there's still a lot of uncertainty in the global economy. The last thing we need to do is raise taxes on our job creators by \$9 billion. And the last thing we want to do is start cancelling international contracts when we are trying to secure new international investment here. We have got a smart plan. It's a sensible plan. It's a serious plan. It's suited to the times. I hope you'll see it that way. I ask for your support and I thank you for tuning in tonight.

>> Steve: Tim Hudak.

>> Tim Hudak: I want to you ask yourself - and first, thank you, Steve, and to my two colleagues and folks for listening and watching tonight. Ask yourself, can you afford four more years of Dalton McGuinty - particularly if there are storm clouds on the horizon? We saw what he did last time. He increased taxes on families despite promising he wouldn't. He increased taxes on businesses and drove hydro bills through the roof. That weakened Ontario at our time of need and we lost 300,000 manufacturing jobs as a result. We need to chart a different course. I want to see an Ontario that is the best place to find a good job. Our plan will create jobs in our province, will give families relief and get government focused on the basics: health and education. If you want that kind of change in Ontario, I ask for your support for your Ontario PC candidate on October the 6th. Thank you.

>> Steve: Andrea Horwath.

>> Andrea Horwath: I want to thank the 6 people that we heard from today, as well as the thousand or so that submitted their questions. You really hit on what's on the mind of most Ontarians and I appreciate that. I think that it's important to acknowledge that there's a big choice to make on election day. You can choose the status quo that hasn't been working or you can choose a party that's going to put patients first, that's going to put jobs first, that's going to put the affordability of every day life at the top of

the agenda. New Democrats are offering the kind of change that does exactly that. So your choice is a very important one, but it really is a simple one. You can choose one of the same old suits or you can put - or you can choose the kind of change that puts people first. I ask for your support on October the 6th, to change this province. Thank you.

>> Steve:: And that ends our time in this debate. I want to thank the leaders for taking part. I want to thank you for watching and we hope that you will go out to vote on the 6th of October. I am Steve Paikin. Good night, everyone.

Transcript captured directly from source. Some typographical errors or omissions are to be expected.



Perun, Halyna N. (ENERGY)

From: Wilson, Malliha (JUS)
Sent: October 12, 2011 1:42 PM
To: Lipman, Jay (ENE)
Cc: Perun, Halyna N. (ENERGY); Wong, Taia (JUS)
Subject: FW: Transcript: 2011 Ontario Election Debate
Attachments: Leaders' Debate - September 27, 2011.doc

Was asked to check if this assists MOE in showing a changed circumstance

From: Di Ciano, Sandra (JUS)
Sent: October 12, 2011 9:06 AM
To: Wilson, Malliha (JUS)
Subject: FW: Transcript: 2011 Ontario Election Debate

Note in the transcript premier says no cancellation, just relocation and he suggests the power needs and authorisations have changed

From: Summers, Marianne (JUS)
Sent: October 11, 2011 5:00 PM
To: Di Ciano, Sandra (JUS)
Subject: FW: Transcript: 2011 Ontario Election Debate

2011 Ontario election debate
Source: Global
Sep 27, 2011 6:30 PM (1)

>> Steve Paikin - moderator: Good evening everybody from Toronto. I'm Steve Paikin. In just 9 days we'll be voting in an Ontario election. Tonight we're hoping to get a clear view of where the major party leaders stand on some of the important issues by debating those issues. Let me introduce you to the leaders, Dalton McGuinty is the leader of the Ontario Liberals, Andrea Horwath is the leader of Ontario's New Democratic Party, and Tim Hudak is the leader of Ontario's Progressive Conservatives. The leaders know the rules of the debate; they have agreed to them and they have asked me to enforce them. We asked Ontarians to send us questions over the last few weeks and we got about a thousand of them. We chose six and the six we picked reflected those issues you wanted to see debated the most. The leaders will hear and see them for the first time, at the same time you do. The first one one-on-one debate will be between Mr. Hudak and Mr. McGuinty. Mr. Hudak will respond to the question first, which is about jobs. Roll tape, please.

>> Question: My name is Catherine Bellefore (sp) and I'm from Pickering, Ontario. My question is about college and university grads who are forced to take minimum wage part-time jobs or even leave Ontario and Canada to find full-time employment. How would you help these grads find full-time, gainful employment in Ontario?

>> Steve: Okay, Tim Hudak you're up first.

>> PC leader Tim Hudak: It's tough being a young student today. You have significant debts when you're coming out of college or university, and entering one of the worst job markets in memory. I was at Conestoga College just the other day, and I asked the students there who are in an apprenticeship training program how many of their friends were heading out west to Alberta and Saskatchewan to get a job, and you know what, almost every one of them raised their hands. I want to be Premier to make sure that Ontario is the best place in all of Canada to get a good job, the kind of job that will be the

ticket to the middle class where you can raise a family and buy a home, not the part-time, low wage jobs that Mr. McGuinty is taking credit for. We have a five-points jobs plan to make Ontario number one in Canada for jobs, particularly for our young graduates.

>> Steve: Mr. McGuinty, you want in?

>> Liberal leader Dalton McGuinty: Sure, by all means. I want thank you very much for that question. These are very uncertain times in the global economy, and the truth is, though, that Canada fares pretty well, and within Canada, Ontario is doing quite well, as well. Since January we've created more jobs in Ontario than the rest of the country combined. You know, it's been said we can't build the future for our young people, but we can build our young people for the future. That's why we're putting such a heavy emphasis on educating our young people. That's why one important part of our plan is to reduce tuition by 30 percent; that means \$1,600 less for university tuition and \$730 less for college tuition. The fact of the matter is we continue to create jobs in Ontario and we've got some great plans to get us there, and I look forward to talking about that more in the evening.

>> Tim Hudak: You know, the problem though, is I'm here in the office when I'm talking to students who are saying it's awfully difficult to get a job no matter what the tuition may be. 300,000 manufacturing jobs have been lost under your watch. In July, Ontario lost more jobs than all the other provinces combined. So we need a change of course, one that says to young people at Conestoga, at Confederation, at Brock, or U of T, that Ontario would be the best place again to get a good job. So our plan: a five-point job plan in Changebook and you can see it at changebook.ca. But here is the bottom line; one: to treat energy policy as economic policy, not a social program. So businesses will have the incentives to hire and expand again. Number two: to drain this swamp of red tape that bogs down any small business leader trying to get things done in the economy. Third: we're going to create 200,000 skilled trades positions by modernizing our apprenticeship system. Four: we're going to lower business taxes down to 10% to encourage business to hire and create jobs in Ontario. And fifth and finally, unlike my opponents, we'll give families relief, the confidence to spend in the economy again. That's why we'll take the HST off heat, off your hydro bill, and bring in an income tax cut targeted particularly at middle class families who are being squeezed.

>> Dalton McGuinty: You may not be surprised to learn that we have a jobs plan as well, but it's a little different from yours. Coincidentally, it does consist of five points as well. It starts by creating the most competitive workforce in the world. We're already very close to that right now. We've got the highest educated workforce among the 34 OECD countries. We're 20% higher for example in the US, and twice as high in the U.K., in terms of the number of our adults who have achieved a college, university, or apprenticeship certification. Beyond that, of course, we do want to have competitive taxes here and we continued to lower them. In fact, we've recently lowered them for families by \$355. Here is where I part company in a decided way with my colleague Mr. Hudak. I think it's very important for us to invest in the clean energy sector. It's a great opportunity. I think we need to seize that opportunity. We're number one in North America now when it comes to producing cars. I want us to be number one in North America when it comes to producing clean energy technologies. That's where the world is going. I want Ontario to be there first in North America.

>> Tim Hudak: You know, Mr. McGuinty, your jobs plan has been a failure. 300,000 lost manufacturing jobs; our resource sector has been decimated. It's the most difficult job market for young people leaving school today to find a good job, and you're boasting about low wage, part-time jobs trying to take credit for that. Sir, your green energy jobs are nothing more than a shell game. You promised us we'd pay hydro rates and we'd get all these jobs and new power. Well, we got the higher bills all right, but the jobs never came, and the power is only one quarter of 1 percent, despite the billions of dollars that you sunk into it. We all know, Mr. McGuinty, higher energy bills cost jobs.

>> Dalton McGuinty: I part company with my colleague in this as well. The fact of the matter is that when it comes to our electricity system and our hydro bills, we have begun

Perun, Halyna N. (ENERGY)

From: Wilson, Malliha (JUS)
Sent: October 13, 2011 8:03 AM
To: Perun, Halyna N. (ENERGY)
Cc: Wong, Tala (JUS); Lipman, Jay (ENE)
Subject: Re: Transcript: 2011 Ontario Election Debate

Thx very much

Sent from my BlackBerry Wireless Device

From: Perun, Halyna N. (ENERGY)
To: Wilson, Malliha (JUS)
Cc: Wong, Tala (JUS); Lipman, Jay (ENE)
Sent: Wed Oct 12 18:19:26 2011
Subject: RE: Transcript: 2011 Ontario Election Debate

To add to Jay's response – re power needs: it was made clear at today's briefing that there is indeed a need for a power supply in that area. If no plant, then more transmission needs to be built to bring power into the area (and transmission lines have their own unique controversies and costs).

Halyna

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From: Lipman, Jay (ENE)
Sent: October 12, 2011 3:48 PM
To: Wilson, Malliha (JUS)
Cc: Perun, Halyna N. (ENERGY); Wong, Tala (JUS)
Subject: RE: Transcript: 2011 Ontario Election Debate

Malliha, I think the issue is that the changes referred to in the debate – the increase in residential development – are not likely to affect the environmental analysis for the project.

As a result of the increased development, the proponent has been asked by the MOE to do further studies relating to the impact of air emissions from the plant. As discussed at the meeting today, the expectation is that the studies will demonstrate no real change from an environmental perspective.

In terms of power needs, I think that is more for Halyna to speak to. It was discussed at the meeting today, and I'm not sure there has been a real change relating to the "need" for this plant.

Jay

From: Wilson, Malliha (JUS)
Sent: October 12, 2011 1:42 PM
To: Lipman, Jay (ENE)
Cc: Perun, Halyna N. (ENERGY); Wong, Tala (JUS)
Subject: FW: Transcript: 2011 Ontario Election Debate

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Sent: October 12, 2011 9:06 AM
To: Wilson, Malliha (JUS)
Subject: FW: Transcript: 2011 Ontario Election Debate

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To: Di Ciano, Sandra (JUS)
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2011 Ontario election debate
Source: Global
Sep 27, 2011 6:30 PM (1)

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Perun, Halyna N. (ENERGY)

From: Wilson, Malliha (JUS) .
Sent: October 13, 2011 8:06 AM
To: Perun, Halyna N. (ENERGY)
Cc: Calwell, Carolyn (ENERGY); Roszell, Rand (ENE); Lipman, Jay (ENE); Slater, Craig (JUS); Scarfone, Janet (JUS); Salim, Fateh (JUS)
Subject: Re: Final slides - used at briefing

Thx very much. This is a very helpful report. Everyone worked as a team and I want to thank everyone involved. We will wait to see what happens next

Sent from my BlackBerry Wireless Device

From: Perun, Halyna N. (ENERGY)
To: Wilson, Malliha (JUS)
Cc: Calwell, Carolyn (ENERGY); Roszell, Rand (ENE); Lipman, Jay (ENE); Slater, Craig (JUS); Scarfone, Janet (JUS); Salim, Fateh (JUS)
Sent: Wed Oct 12 17:26:34 2011
Subject: Final slides - used at briefing

Privileged and Confidential

Malliha:

Jay and I thought that you'd like to know how things went at the briefing this morning. (I am re-sending to you the slides that were used at the briefing).

The SOC was quite familiar with this matter and it was apparent that she had been briefed on the Mississauga Gas Plant matter before the writ dropped.

Colin Anderson (OPA CEO) provided most of the details about the plant.

I spoke to the option of proceeding with legislation. SOC asked my view as to the feasibility of this option in a minority government and I replied that while legislation would provide certainty it is a very public way of proceeding and will likely need buy-in from other parties in opposition which could be brokered (given that the other two parties also said that they do not support a plant in that location).

Kevin French for MOE addressed the regulatory option (Jay was there in support). The discussion was brief on this point as it was apparent that there was not appetite on the part of the SOC for using the MOE regulatory tools.

OPA General Counsel Mike Lyle addressed the consequences of terminating the contract without cause.

Ultimately, the discussion centered on moving forward with negotiating with the Developer to stop building at the Mississauga location and moving to another location. A number of possible locations were discussed – but it was noted that moving to another location may also have challenges - community support and various approvals would be required.

Eastern Power has not contacted the OPA – to follow up on statements made by the politicians. Nor has OPA reached out to Eastern. SOC advised that politicians and their staff have been told not to communicate with Eastern.

Colin asked that communications lines be developed for the OPA to use (1) should Eastern call and for (2) media calls.

Similarly, government should have media lines in place. Deputy Lindsay was going to follow up with Energy Communications director (they will fly by legal)

Deputy Lindsay spoke of a "negotiating mandate". SOC wanted folks to begin working on material to take to Cabinet to scope out a mandate. The materials would detail the sunk costs and lost profits. Deputy Lindsay asked what would be

the back pocket "hammer" - and if it's legislation - that should be addressed in the material for Cabinet's consideration. He also thought the mandate should include a "firm cap". Direction would be sought as to who would be negotiating.

Similarly, the OPA would seek a mandate from its board.

SOC asked for more information about who the Developers are: who are their lenders and who is affiliated with the project. Apparently, Eastern Power is in litigation with the Ontario Electricity Financial Corporation and she asked for more information about that.

Finally, the issue about a going-forward plan for the regulation of gas-fired electricity facilities was discussed. This would address future plants. The primary concern to be addressed was whether siting (eg. set-back limitations) should be regulated by the Province and how any regulatory framework would ensure community involvement.

I should also note that in the pre-brief with Deputy Lindsay and ADM Rick Jennings this morning the Deputy commented on how helpful the deck was. I also want to convey my sincere thanks to the work of CLOC in support of our offices (MOE and Energy LSB) in this briefing and for your support as well.

Please let us know if you'd like anything further.

Hafyna

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Perun, Halyna N. (ENERGY)

From: Perun, Halyna N. (ENERGY)
Sent: October 18, 2011 4:01 PM
To: Wilson, Maliha (JUS); Slater, Craig (JUS); Lung, Ken (JUS)
Cc: Calwell, Carolyn (ENERGY); Wong, Taia (JUS)
Subject: mississauga gas plant

Privileged and Confidential

The Deputy has just been advised that the Mississauga gas plant issue is the first order of business for the new Cabinet Thursday afternoon.

Client is working on a Cab sub now (short deck really) and will be sending to me shortly.

The OPA has just delivered to legal a slide deck with their options – which I will have scanned and emailed to you and clients shortly. This deck could inform what's in the cab sub.

SOC has indicated that AG will need to opine on the cab deck – expectation is that we work on providing advice on the deck (as we had on the deck that went to SOC last week).

We'll need CLOC on board again on this – thank you!!

Turn around is very short as SOC has asked for cab deck by mid day tomorrow.

Perhaps we can convene end of day once we have a deck from the client?

Thank you

Halyna

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Perun, Halyna N. (ENERGY)

From: Khatri, Anupa (ENERGY)
Sent: October 18, 2011 4:11 PM
To: Perun, Halyna N. (ENERGY)
Subject: Greenfield South
Attachments: Greenfield South Options.pdf

Hi Halyna,

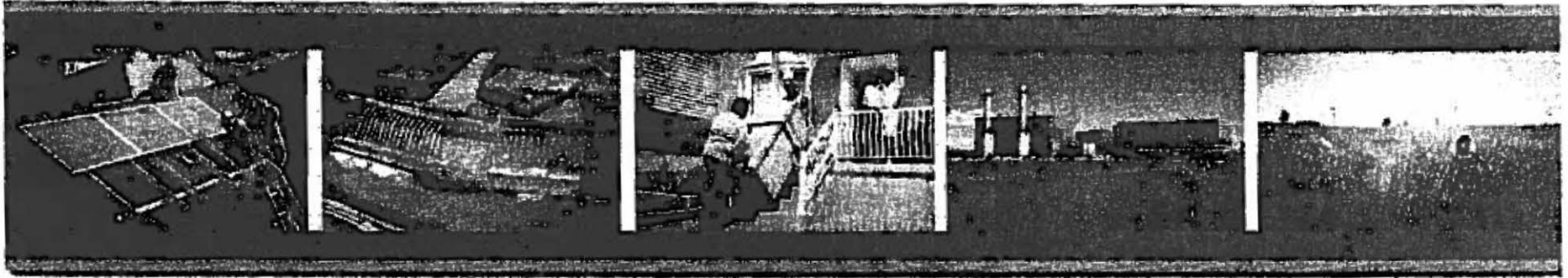
The scanned version is attached, as requested.

Regards,
Anupa Khatri
Director's Secretary
Ministries of Energy & Infrastructure
Legal Services Branch
777 Bay Street, 4th Floor, Suite 425
Toronto, ON M5G 2E5
Ph: 416-325-1841

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Greenfield South Options

October 20, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

Background

- Greenfield South Power Corporation ("Greenfield") and the OPA entered into a contract on 12 April 2005
- Greenfield is controlled by Eastern Power Corporation
- Contract was amended on 16 March 2009
- Reason for amendment was long delays project suffered in securing necessary approvals to construct the project and to do away with the oil-fired option for fuelling the plant
- OPA and Province also motivated in part to keep project alive by low cost to ratepayers of project established in the competitive RFP process in 2004/2005
- In May 2011 Greenfield achieved financial close, securing debt financing from Credit Suisse and EIG for \$550 million

Contract Facility

- The Contract Facility is an approximately 300 MW combined cycle gas-fired generation station
- Major components of facility include a GE 7FA gas turbine ("GT") a heat recovery steam generator ("HRSG") and a steam turbine
- All major items for the project are completed
- Construction began in June 2011 and is approximately x% complete now
- The Milestone Date for Commercial Operation is September 1, 2014

Contract Facility

- The total dollar value of capital expenditures ("CAPEX") for the facility are between \$250 - \$350 million
- Gas and electrical interconnection work has not yet commenced
- Total estimated sunk and committed costs are on the neighbourhood of \$x million
- We estimate the profits from the contract, excluding any residual value, are approximately \$x million

Moving Greenfield South does not result in immediate unreliability, but accelerates the need for Tx solutions

- Planning studies indicate that transmission reinforcement in west GTA could be required 2 years earlier, as early as 2018, if Greenfield South is not located within west GTA
- These need dates are based on assumptions associated with the LTEP and current reliability criteria, which are likely to evolve
- The transmission reinforcements are extensive in scope and require the immediate initiation of planning and development work with local utilities, the IESO and transmitters

Siting Options - There are several alternative site options

Some deliver more value than others with different levels of complexity

- Considerations
 - Value of Location, Gas Availability, Transmission, Counterparty
- There may be a system need starting in 2016 to 2018
- Regional needs include:
 - Northwest System
 - Cambridge
 - GTA
- Some sites have gas available in varying quantities
- Examples of potential sites :
 - OPG (Lennox, Nanticoke (some gas there now), Thunder Bay (pipeline required))
 - NUGs (TCPL compressor sites, Trans Alta Pearson Airport, Whitby, Fort Frances(was on gas now on BIO))
 - Portlands, Goreway
- Some arrangements could be more straight forward or more complicated depending on the counterparty.

Key Contractual Provisions

- Grounds for termination of contract limited to certain types of breach and extended force majeure (none of which applicable here)
- Contract excludes liability for certain types of damages including loss of profits
- Contract provides right to damages including lost profits for discriminatory action (legislation or regulation passed) where impact focused on contract counter-party
- Damages for discriminatory action determined through arbitration process
- All other disputes only go to arbitration if both parties agree

Payment Under Contract

- Once plant in commercial operation, generator is paid monthly capacity payment to cover its costs and profit
- Monthly payment reduced by amount generator is deemed to earn in the market selling electricity
- This reduction is calculated using formula to determine when it is economic for generator to be generating electricity
- OPA may also direct the plant operator to dispatch or not dispatch its facility at specified dates and times

Option 1- Contract Termination

- Unilateral termination of contract – OPA informs contract counter-party that it will not perform its obligations under the contract
 - Pros:
 - » Greenfield South will be required to begin to mitigate its damages which means they should stop construction (or at the very least, the OPA will not likely be liable for those additional costs that could have been avoided after date of termination of contract)
 - Cons:
 - » Does not provide opportunity to explore options for relocating project
 - » Sends negative message to other OPA counter-parties

Option 2 - Legislation

- Legislation passed to terminate the contract, set compensation or provide a process and methodology for determining compensation
 - Pros:
 - » Allows Government to control level of compensation to be paid
 - » Government can specify that no compensation will be paid for costs incurred past certain date (e.g. announcement of Government's policy or date of first reading)
 - Cons:
 - » Will be controversial
 - » Potential impact on investment climate

Option 3 - Negotiation

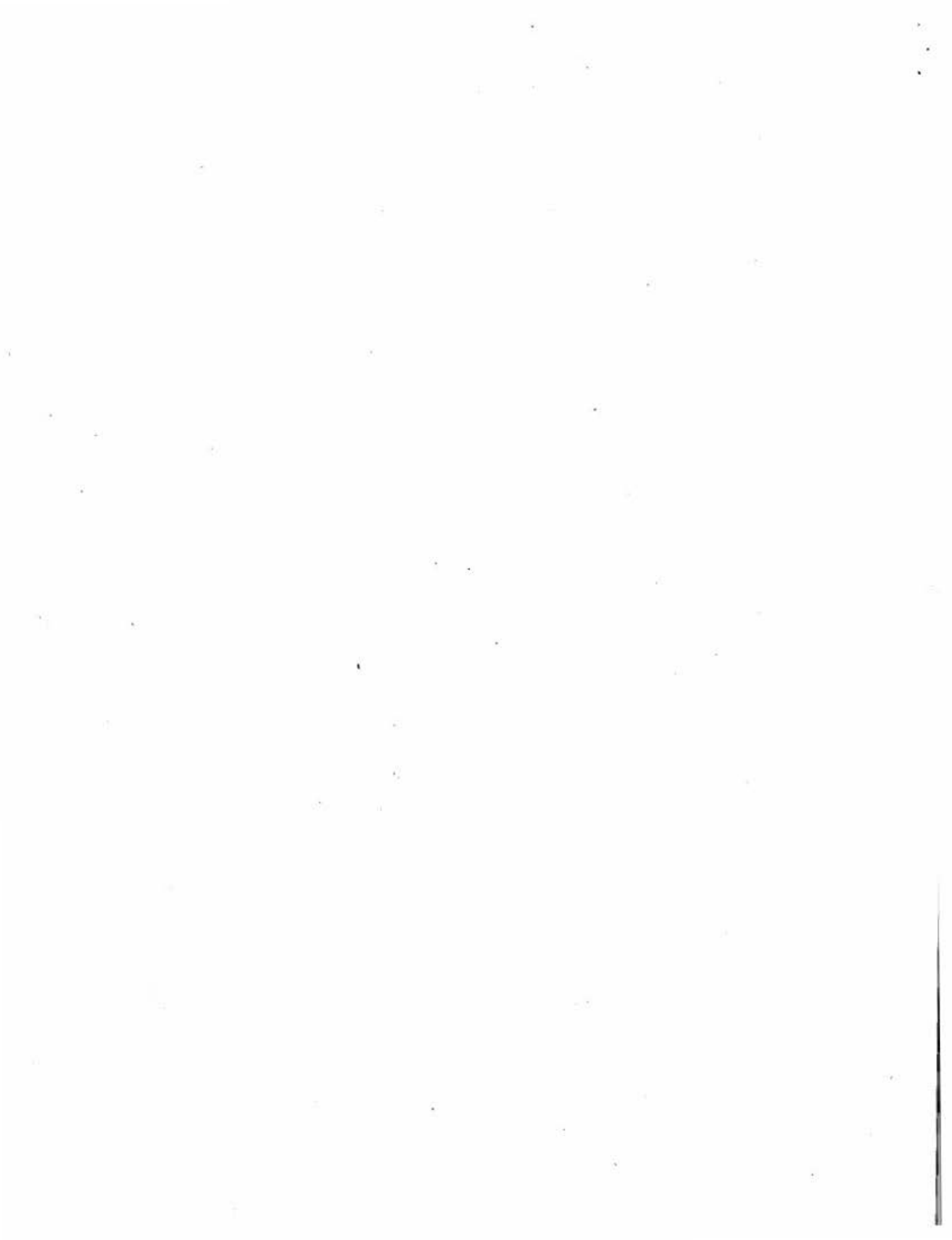
- OPA attempts to commence negotiations with Greenfield South re stopping construction and new location for facility
 - Pros:
 - » OPA has opportunity to assess position of Greenfield South and what they are seeking to agree to stop construction
 - » OPA can begin discussion of alternative sites
 - Cons:
 - » Greenfield South may refuse to commence discussions or seek to drag discussions on while it continues to construct plant
 - » May need to revert at some stage to other options

Option 4 - Pay Plant Not to Run

- Allow plant to be constructed but ensure it does not operate using directed dispatch mechanism in contract
 - Pros:
 - » OPA obligations to make monthly payments are low based on outcome of 2005 RFP process and paying plant to not operate over 20 years may be cheaper than paying for sunk costs, remediation of the site and potentially some lost profits
 - Cons:
 - » Will be difficult to convince community that plant will not operate

Recommendation

- OPA to commence negotiations with Greenfield South (Option 3)
- If negotiations do not succeed in stopping construction of plant, will likely need to revert to one of the other options



Perun, Halyna N. (ENERGY)

From: Perun, Halyna N. (ENERGY)
Sent: October 18, 2011 4:15 PM
To: Wilson, Malliha (JUS); Slater, Craig (JUS); Lung, Ken (JUS)
Cc: Calwell, Carolyn (ENERGY); Wong, Taia (JUS)
Subject: Fw: Greenfield South
Attachments: Greenfield South Options.pdf

Privileged and Confidential

As per last email - Info from Ontario Power Authority

Halyna Perun
A\Director
Ph: 416 325 6681
BB: 416 671 2607

Sent using BlackBerry

From: Khatri, Anupa (ENERGY)
To: Perun, Halyna N. (ENERGY)
Sent: Tue Oct 18 16:11:24 2011
Subject: Greenfield South

Hi Halyna,

The scanned version is attached, as requested.

Regards,
Anupa Khatri
Director's Secretary
Ministries of Energy & Infrastructure
Legal Services Branch
777 Bay Street, 4th Floor, Suite 425
Toronto, ON M5G 2E5
Ph: 416-325-1841

Notice

This communication may be solicitor/client privileged and contain confidential information only intended for the person(s) to whom it is addressed. Any dissemination or use of this information by others than the intended recipient(s) is prohibited. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

Perun, Halyna N. (ENERGY)

From: Perun, Halyna N. (ENERGY)
Sent: October 18, 2011 4:33 PM
To: Calwell, Carolyn (ENERGY)
Subject: Fw:
Attachments: Greenfield South Construction Oct 20 2011.ppt

Halyna Perun
A\Director
Ph: 416 325 6681
BB: 416 671 2607

Sent using BlackBerry

From: Jennings, Rick (ENERGY)
To: Lindsay, David (ENERGY); Silva, Joseph (ENERGY); Perun, Halyna N. (ENERGY)
Cc: King, Ryan (ENERGY)
Sent: Tue Oct 18 16:30:52 2011
Subject:

Attached is a draft slide deck with a minute.

Greenfield South Generating Station

Next Steps

Date: October 20, 2011

Stopping Construction

- On September 24, in Mississauga, local Liberal party candidates announced that “construction on the project would be halted” and that “if elected the Government would work with Eastern to choose a new site.”
- The Mayor of Mississauga attended the announcement and endorsed the decision. On October 12 the Mississauga Council passed a motion requesting that the Government and the Premier take immediate action to cancel the contract, stop construction and return the site to pre-construction condition
- On September 28, the media carried pictures of the plant with construction well underway.

Issues

- Construction continues at the Greenfield South site. The developer has requested formal notice from the government before ceasing construction.
- The project has a valid contract with the Ontario Power Authority and all applicable approvals, and is operating without breach so that any regulatory mechanism for stopping construction could be challenged.
- The OPA is party to and administers the contract with Eastern Power. The Province is not a party to the contract.
- The OPA would require instruction from government to approach the developer to begin procedures to negotiate a change or to terminate the contract.
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Next Steps Involve the OPA

- The OPA to be asked to approach Eastern Power to discuss a settlement with Eastern Power. The discussion would include potential treatment of costs incurred to date (sunk costs), treatment of equipment costs and contracts, estimates and treatment of foregone revenue, and options and interest with respect to relocating to an alternative site. The discussions could include the project's lenders assuming that Eastern Power is agreeable.
- The OPA has made some preliminary analysis of costs and foregone revenue and has identified several sites that would require government review before being shared with Eastern Power. Each of these alternative sites have various issues associated with them.
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Cabinet Minute (Continued)

- The Ministry of Energy to work with Premier's Office/Cabinet Office on a stakeholder management and communications strategy.

DRAFT

Appendix

Greenfield South Background

Key Facts About the Greenfield South Plant

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MINISTRY OF ENERGY



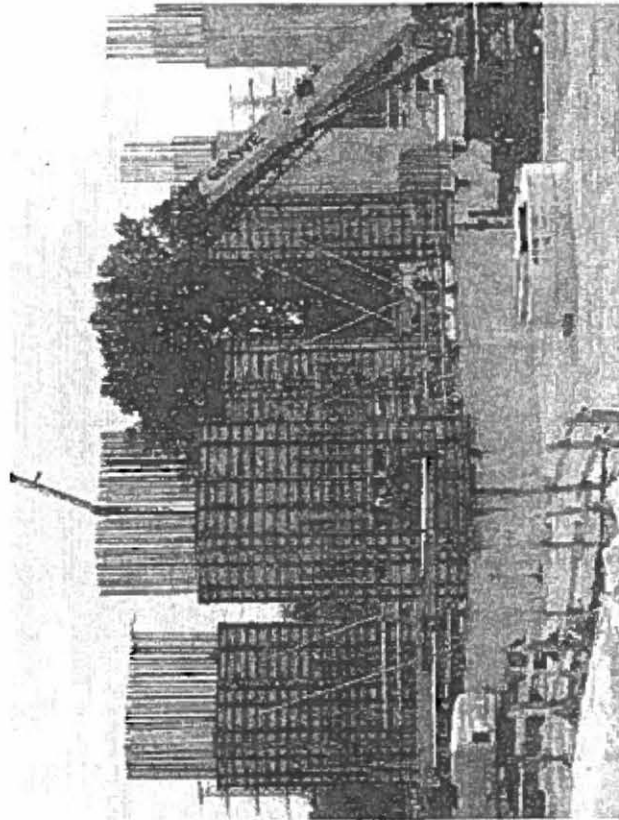
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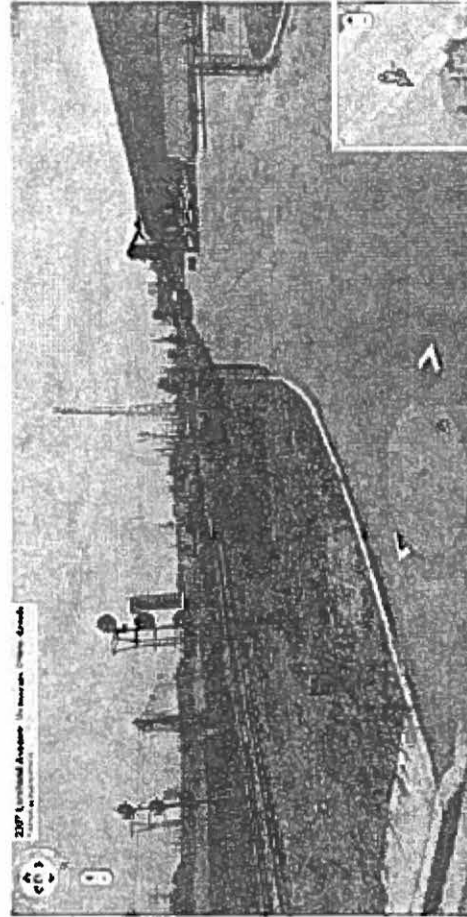
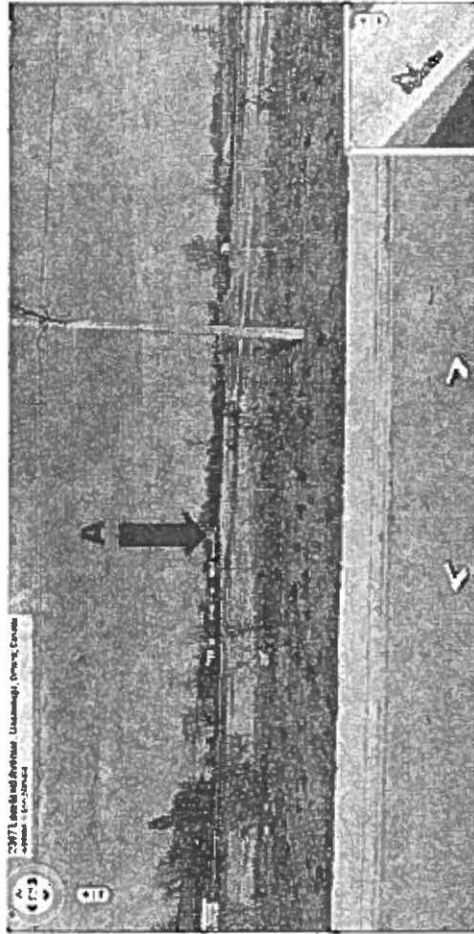
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MINISTRY OF ENERGY



*Plant construction as of 28 September 2011



Perun, Halyna N. (ENERGY)

From: Calwell, Carolyn (ENERGY)
Sent: October 18, 2011 5:29 PM
To: Perun, Halyna N. (ENERGY)
Subject: FW:
Attachments: Greenfield South Construction Oct 20 2011.LSB.ppt

Proposed changes in the attached – I had the opportunity to speak to Ryan and Rick. They're considering whether the OPA deck should accompany this deck or whether they should speak to the OPA options. Let's chat further.

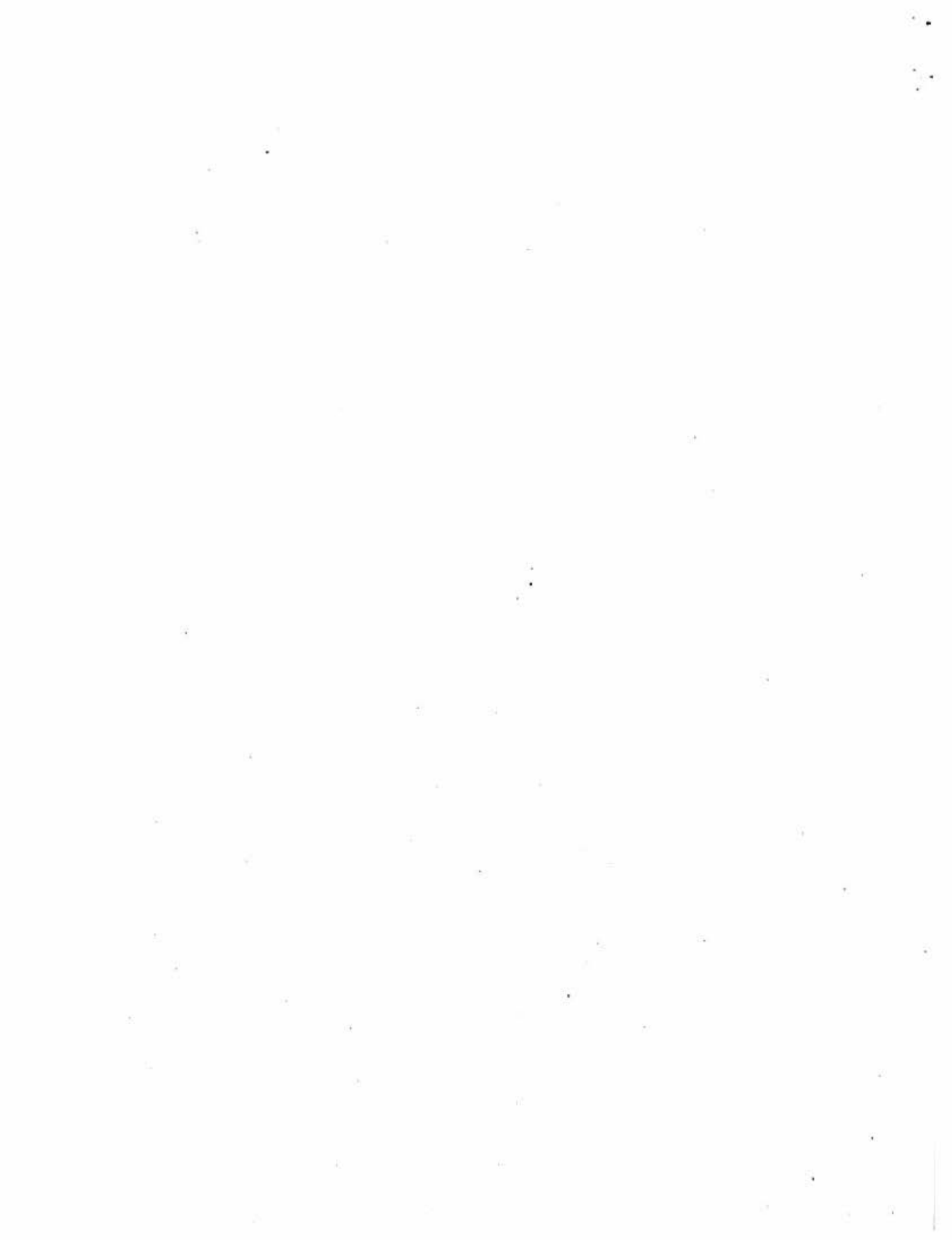
From: Perun, Halyna N. (ENERGY)
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To: Calwell, Carolyn (ENERGY)
Subject: Fw:

Halyna Perun
A\Director
Ph: 416 325 6681
BB: 416 671 2607

Sent using BlackBerry

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To: Lindsay, David (ENERGY); Silva, Joseph (ENERGY); Perun, Halyna N. (ENERGY)
Cc: King, Ryan (ENERGY)
Sent: Tue Oct 18 16:30:52 2011
Subject:

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Greenfield South Generating Station

Next Steps

Date: October 20, 2011

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Cabinet Minute (Continued)

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DRAFT

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MINISTRY OF ENERGY



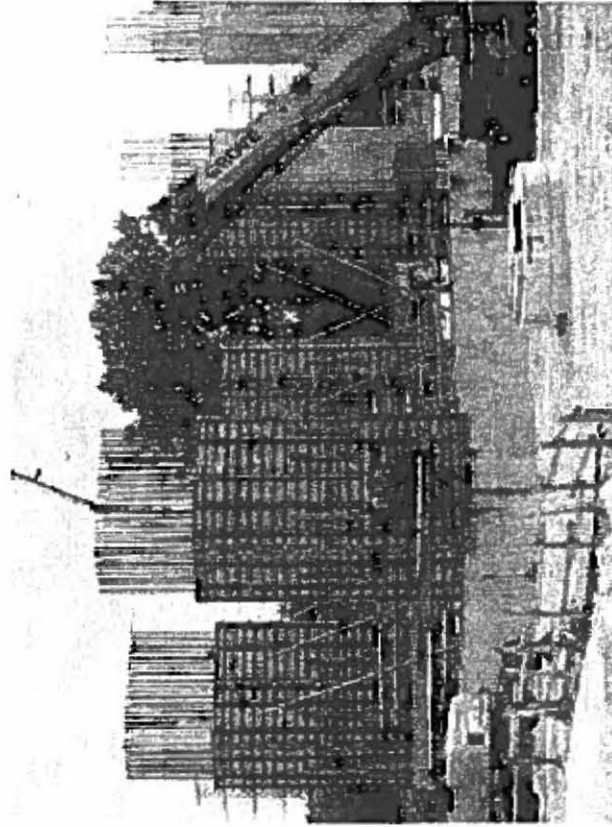
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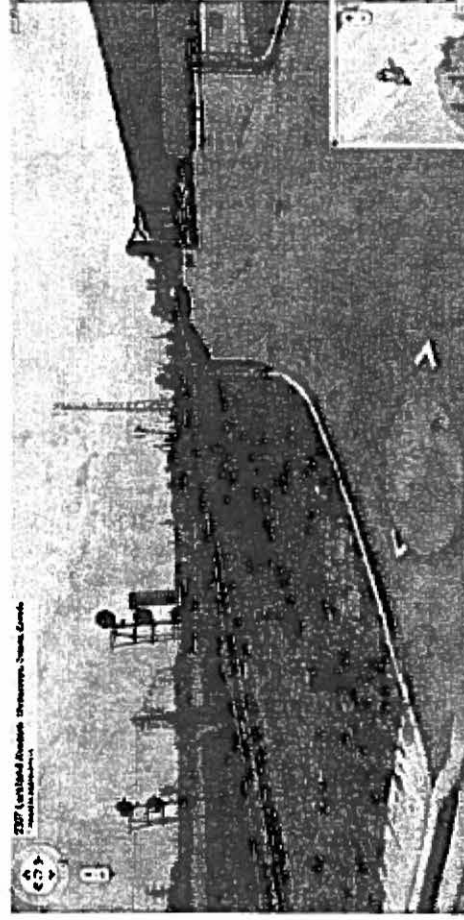
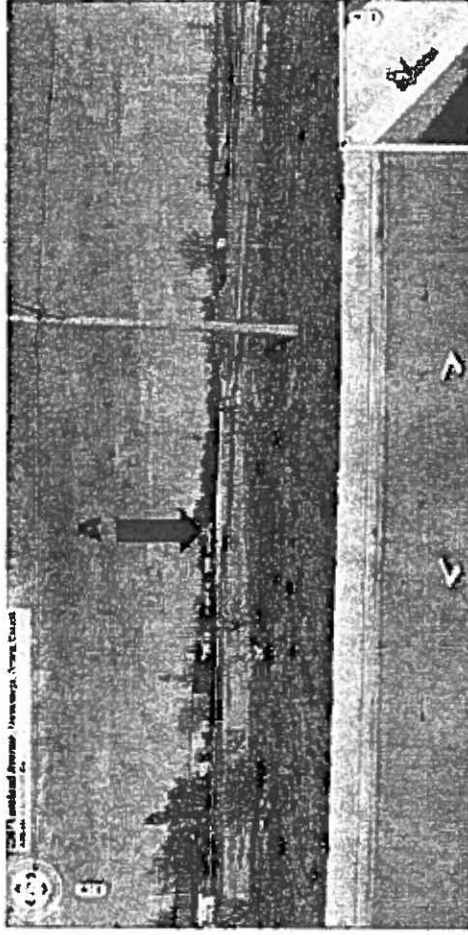
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MINISTRY OF ENERGY



*Plant construction as of 28 September 2011



Perun, Halyna N. (ENERGY)

From: Calwell, Carolyn (ENERGY)
Sent: October 18, 2011 6:00 PM
To: Jennings, Rick (ENERGY); King, Ryan (ENERGY); Silva, Joseph (ENERGY)
Cc: Perun, Halyna N. (ENERGY)
Subject: RE:
Attachments: Greenfield South Construction Oct 20 2011.LSB.2.ppt

Confidential/Solicitor-Client Privileged

Please see recommendations in the attached. We propose to send a clean version of this draft to MAG for their review and input. We will get back to you once we've worked through this with MAG. They are well aware of the tight timelines.

Carolyn

From: Perun, Halyna N. (ENERGY)
Sent: October 18, 2011 4:33 PM
To: Calwell, Carolyn (ENERGY)
Subject: Fw:

Halyna Perun
A\Director
Ph: 416 325 6681
BB: 416 671 2607

Sent using BlackBerry

From: Jennings, Rick (ENERGY)
To: Lindsay, David (ENERGY); Silva, Joseph (ENERGY); Perun, Halyna N. (ENERGY)
Cc: King, Ryan (ENERGY)
Sent: Tue Oct 18 16:30:52 2011
Subject:

Attached is a draft slide deck with a minute.



Greenfield South Generating Station

Next Steps

Date: October 20, 2011

Stopping Construction

- On September 24, in Mississauga, local Liberal party candidates announced that “construction on the project would be halted” and that “if elected the Government would work with Eastern to choose a new site.” The Mayor of Mississauga attended the announcement and endorsed the decision.
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- On October 12 the Mississauga Council passed a motion requesting that the Government and the Premier take immediate action to cancel the contract, stop construction and return the site to pre-construction condition

Issues

- Construction continues at the Greenfield South site. The developer has requested formal notice [from the government – DELETE: could be from OPA] before ceasing construction.
- The project has an enforceable [valid-DELETE] contract with the Ontario Power Authority and all applicable approvals. The developer's work is in compliance with the contract and current approvals. [is operating without breach so that any regulatory mechanism for stopping construction could be challenged.-DELETE]
- The OPA is party to and administers the contract with Eastern Power. The Province is not a party to the contract. Current circumstances give the OPA no right under the contract to terminate.
- The OPA [would require-DELETE] has asked for instruction from government to approach the developer to begin [procedures to-DELETE] negotiations to change or to terminate the contract.
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Next Steps Involve the OPA

- The OPA to be asked to approach Eastern Power to initiate discussions. [discuss a settlement with Eastern Power-DELETE]. The discussion would likely include potential treatment of costs incurred to date (sunk costs – including equipment costs) , treatment of [equipment costs and-DELETE] construction and equipment related contracts, estimates and treatment of foregone revenue, and options and Eastern's interest with respect to relocating to an alternative site. [The discussions could include the project's lenders assuming that Eastern Power is agreeable – DELETE: not clear we would want this].
- The OPA has made some preliminary analysis of costs and foregone revenue and has identified several sites that would require government review before being shared with Eastern Power. Each of these alternative sites have various issues associated with them.
- Eastern Power may or may not be interested in developing the proposed alternative sites, [and-DELETE] may be willing to walk away [settle-DELETE] for a financial cash settlement or may view its prospects as being better through the courts.
- The Government could agree to cover some or all of [the settlement costs with-DELETE] Eastern Power's price to walk away from the Mississauga plant to reduce the burden on the electricity consumer.

Immediate Legal Risks

- Eastern Power could refuse to negotiate requiring the Government to consider other options (e.g. legislation).
- Initiating discussions to relocate or otherwise cancel the Mississauga plant may immediately cause Eastern Power to launch a law suit against either or both of the OPA and the Government.
- The Minister's request of the OPA may be contractual interference and may attract liability to the Province.
- The OPA may ask for a "direction" from the Minister under the *Electricity Act, 1998* before undertaking any discussions with Eastern Power. The Minister's authority to direct the OPA in this way is unclear.
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Cabinet Minute

Cabinet agreed that:

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Cabinet Minute (Continued)

- The Ministry of Energy to work with Premier's Office/Cabinet Office on a stakeholder management and communications strategy.

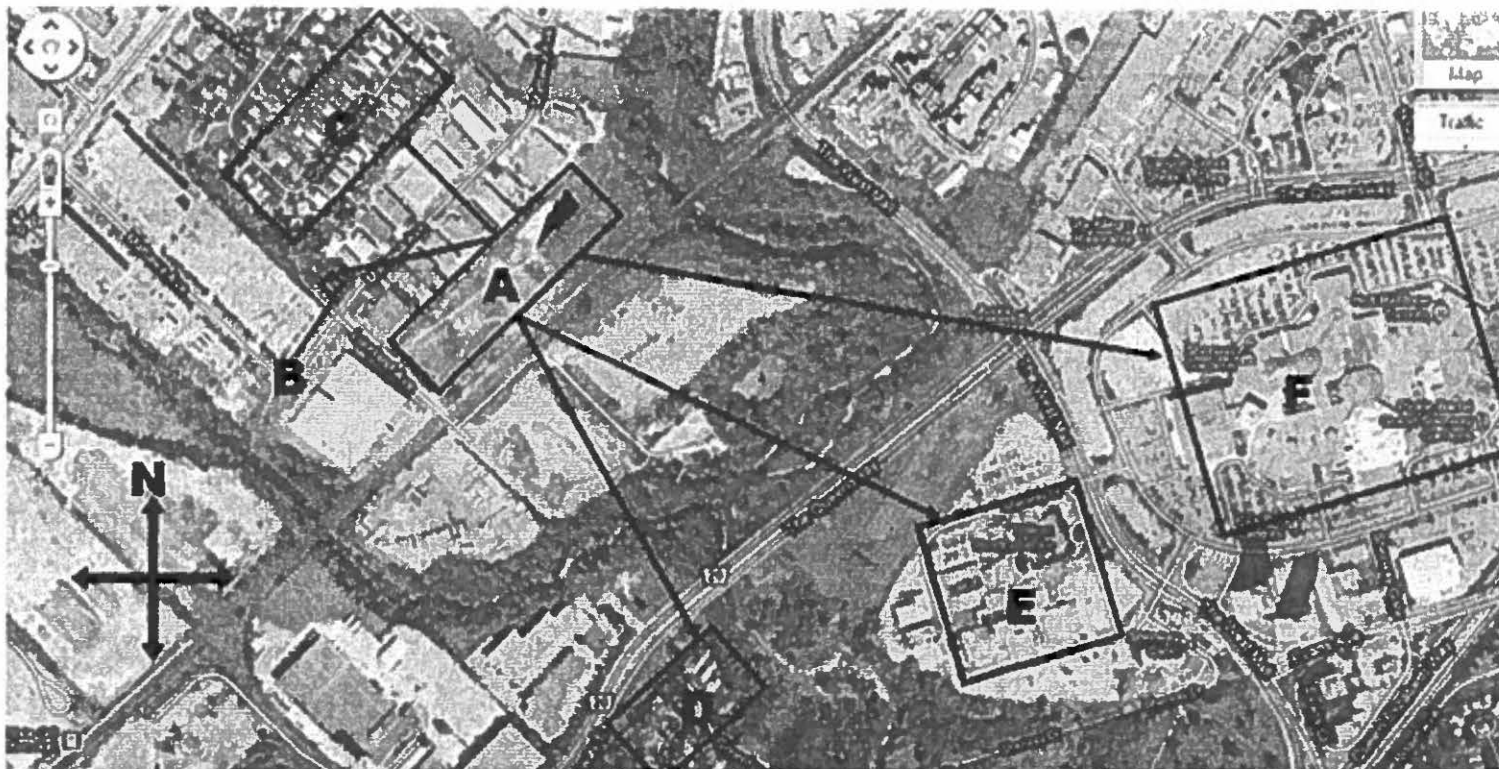
DRAFT

Appendix

Greenfield South Background

Key Facts About the Greenfield South Plant

- Greenfield South Power Corporation (controlled by Eastern Power Corporation) was the successful applicant in Ministry of Energy run Clean Energy Supply (CES) RFP and signed a contract [signed-DELETE] with the OPA in April 2005.
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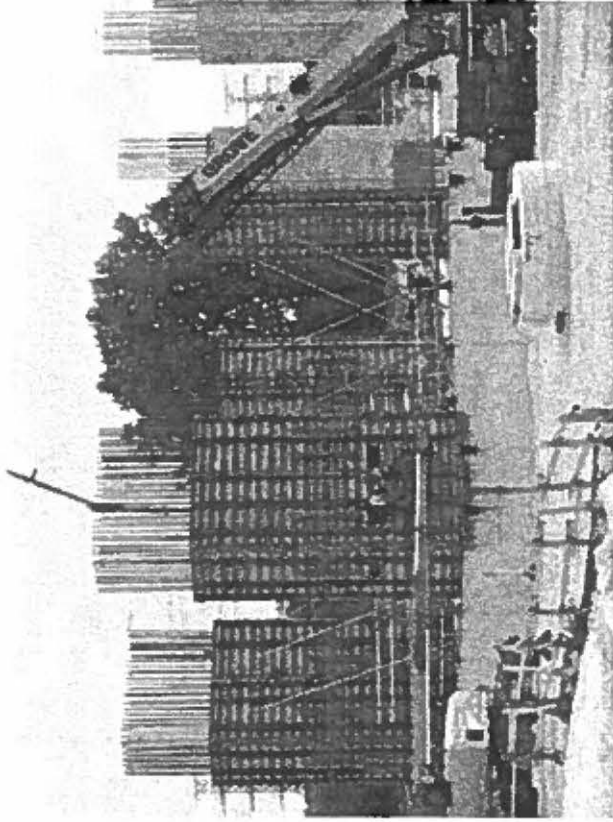


Legend:

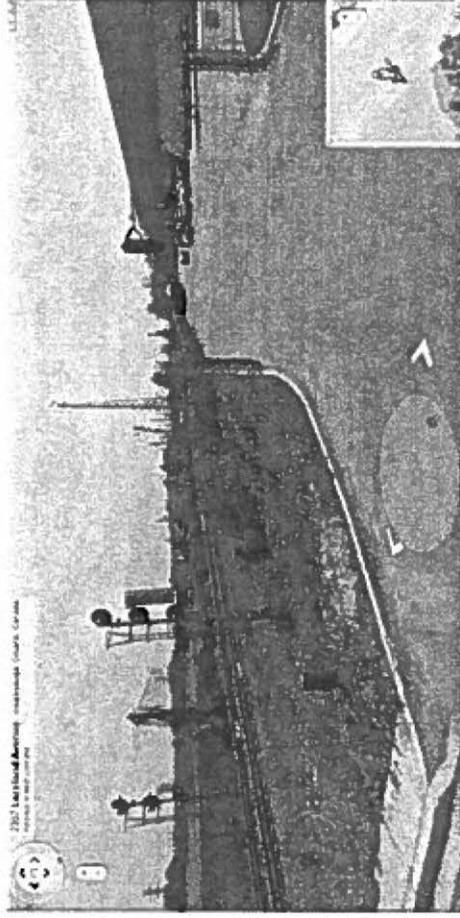
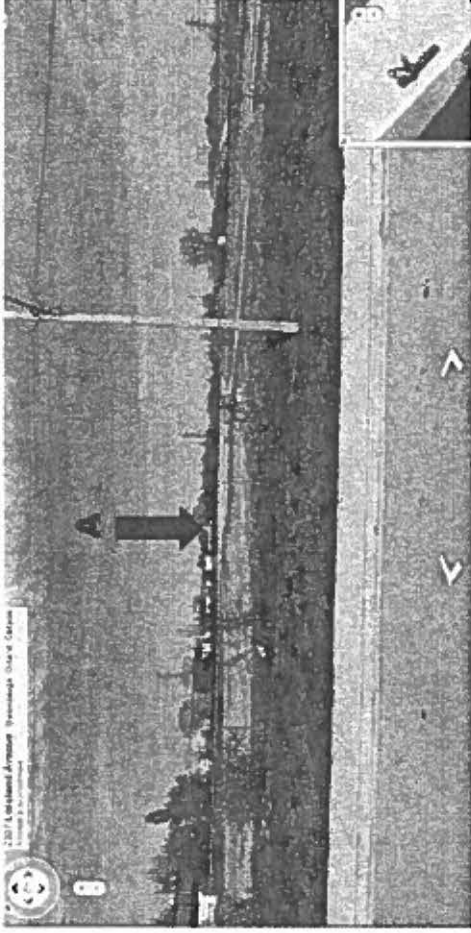
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Sent: October 18, 2011 6:27 PM
To: Slater, Craig (JUS)
Cc: Wilson, Malliha (JUS); Lung, Ken (JUS); Calwell, Carolyn (ENERGY)
Subject: Proposed cab deck
Attachments: Greenfield South Construction Oct 20 2011.LSB.3.clean.ppt

Privileged and confidential

For your review and input.

Deputy Lindsay has requested a "final" deck by mid day tomorrow.

We'd be happy to meet to discuss if this would help.

Thank you

Halyna

Halyna N. Perun
A/Director
Legal Services Branch
Ministries of Energy & Infrastructure
777 Bay Street, 4th Floor, Suite 425
Toronto, ON M5G 2E5
Ph: (416) 325-6681 / Fax: (416) 325-1781
BB: (416) 671-2607
E-mail: Halyna.Perun2@ontario.ca

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This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. Any dissemination or use of this information by others than the intended recipient(s) is prohibited. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.



Ontario

MINISTRY OF ENERGY

Greenfield South Generating Station Next Steps – Advice to Cabinet

Date: October 20, 2011

MINISTRY OF ENERGY

Stopping Construction

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PRIVILEGED

Ontario

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Cabinet Minute (Continued)

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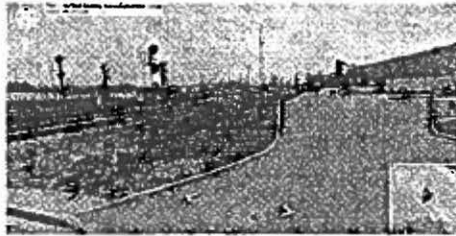
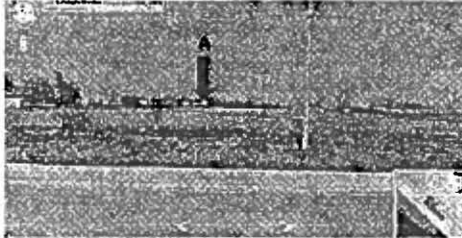
CONFIDENTIAL / SOLICITOR-CLIENT
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MINISTRY OF ENERGY



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Subject: Proposed cab deck
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Privileged and Confidential

FYI - this is the clean version that went to MAG for review and input -

Halyna

Halyna N. Perun
A/Director
Legal Services Branch
Ministries of Energy & Infrastructure
777 Bay Street, 4th Floor, Suite 425
Toronto, ON M5G 2E5
Ph: (416) 325-6681 / Fax: (416) 325-1781
BB: (416) 671-2607
E-mail: Halyna.Perun2@ontario.ca

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Greenfield South Generating Station

Next Steps – Advice to Cabinet

Date: October 20, 2011

Stopping Construction

- On September 24, in Mississauga, local Liberal party candidates announced that “construction on the project would be halted” and that “if elected the Government would work with Eastern to choose a new site.” The Mayor of Mississauga attended the announcement and endorsed the decision.
- On September 28, the media carried pictures of the plant with construction well underway.
- On October 12 the Mississauga Council passed a motion requesting that the Government and the Premier take immediate action to cancel the contract, stop construction and return the site to pre-construction condition

Issues

- Construction continues at the Greenfield South site. The developer has requested formal notice before ceasing construction.
- The project has an enforceable contract with the Ontario Power Authority and all applicable approvals. The developer's work is in compliance with the contract and current approvals.
- The OPA is party to and administers the contract with Eastern Power. The Province is not a party to the contract. Current circumstances give the OPA no right under the contract to terminate.
- The OPA has asked for instruction from government to approach the developer to begin negotiations to change or to terminate the contract.
- Construction at the site is proceeding. Eastern Power has informed the OPA that it will not 'down tools' until it receives formal notification that the contract has been cancelled.
- Alternative site options and alternative ways to supply Mississauga have not been adequately identified at this time. Alternative sites would require new provincial and municipal approvals processes to be undertaken and are likely to raise new issues.
- Local politicians have stated that the plant would not be relocated to a site in Mississauga or Toronto.

Next Steps Involve the OPA

- The OPA to be asked to approach Eastern Power to initiate discussions. The discussion would likely include potential treatment of costs incurred to date (sunk costs – including equipment costs), treatment of construction and equipment related contracts, estimates and treatment of foregone revenue, and options and Eastern's interest with respect to relocating to an alternative site.
- The OPA has made some preliminary analysis of costs and foregone revenue and has identified several sites that would require government review before being shared with Eastern Power. Each of these alternative sites have various issues associated with them.
- Eastern Power may or may not be interested in developing the proposed alternative sites, may be willing to walk away from the Mississauga plant for a financial cash settlement or may view its prospects as being better through the courts.
- The Government could agree to cover some or all of Eastern Power's price to walk away from the Mississauga plant to reduce the burden on the electricity consumer.

Immediate Legal Risks

- Eastern Power could refuse to negotiate, requiring the Government to consider other options (e.g. legislation).
- Initiating discussions to relocate or otherwise cancel the Mississauga plant may immediately cause Eastern Power to launch a law suit against either or both of the OPA and the Government.
- The Minister's request of the OPA may be contractual interference and may attract liability to the Province.
- The OPA may ask for a "direction" from the Minister under the *Electricity Act, 1998* before undertaking any discussions with Eastern Power. The Minister's authority to direct the OPA in this way is unclear.
- Eastern Power's financiers may have a claim under NAFTA if this project does not proceed.

Cabinet Minute

Cabinet agreed that:

- The Minister of Energy will ask the Ontario Power Authority to immediately begin discussions with Eastern Power with a view to reaching an agreement by December 2011 on: halting all construction at the Greenfield South site; treatment of and verification of project development and construction costs incurred by Eastern Power to date; treatment and verification of equipment costs and construction and equipment contracts; treatment and measurement of expected value of the plant; and, Eastern Power's interest in and feasibility of relocating to an alternative site.
- The Ontario Power Authority be asked to report back to the Minister of Energy on the outcomes of its discussions with Eastern Power by the end of November 2011.
- The Minister of Energy to report back to Cabinet by December 2011 with the details of the discussions with Eastern Power. This report back would include recommendations as to what share, if any, of the cost would be appropriately borne by the Government through the Consolidated Revenue Fund.

Cabinet Minute (Continued)

- The Ministry of Energy to work with Premier's Office/Cabinet Office on a stakeholder management and communications strategy.

DRAFT

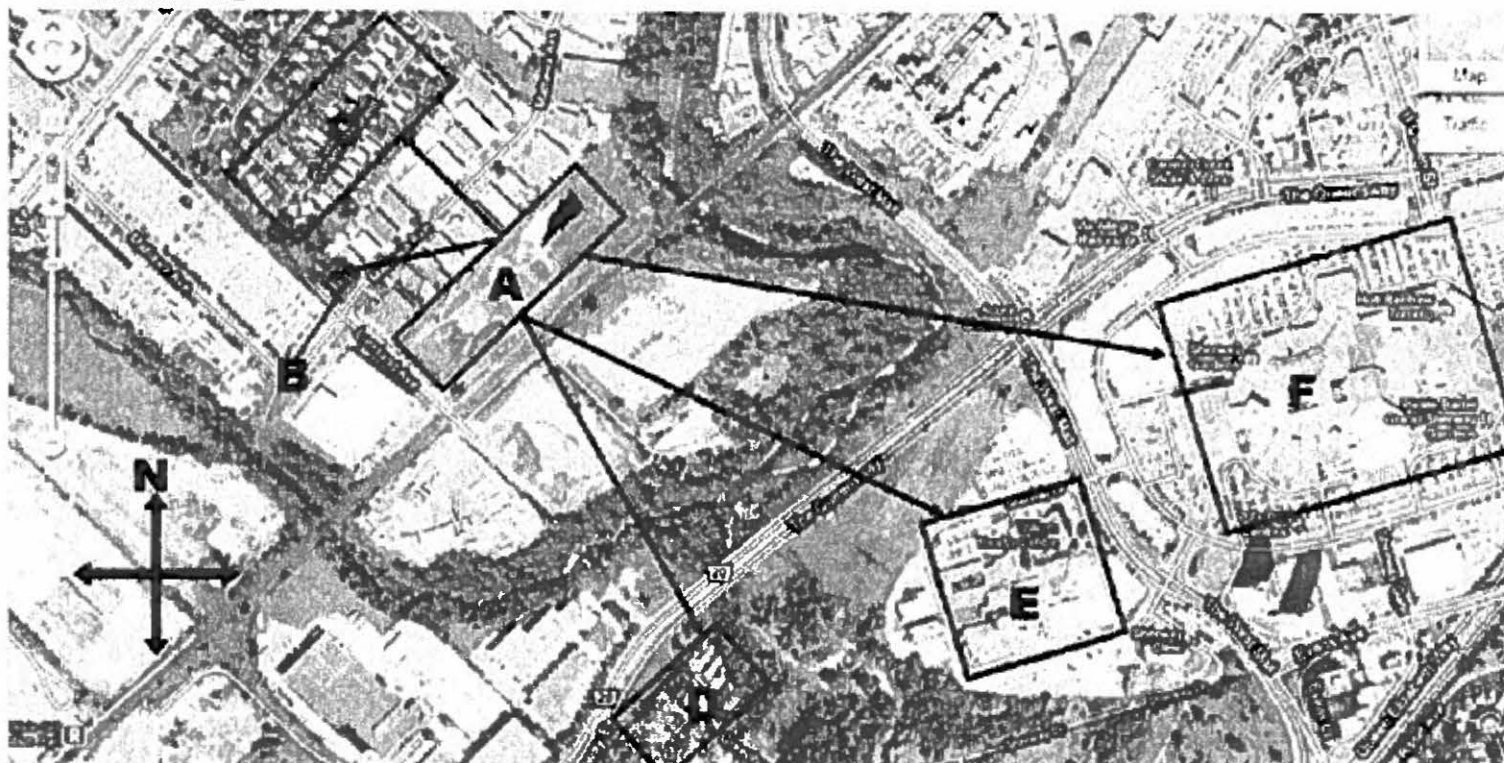
Appendix

Greenfield South Background

Key Facts About the Greenfield South Plant

- Greenfield South Power Corporation (controlled by Eastern Power Corporation) was the successful applicant in Ministry of Energy run Clean Energy Supply (CES) RFP and signed a contract with the OPA in April 2005.
- Eastern Power, based in Ontario, has received all required provincial approvals, including Environmental Assessment and Certificates of Approval.
- Eastern Power has received all required municipal approvals, including building site approval from the City of Mississauga issued in May 2011.
- Eastern Power has secured debt financing from Credit Suisse and EIG (confirmed by the OPA).

MINISTRY OF **ENERGY**



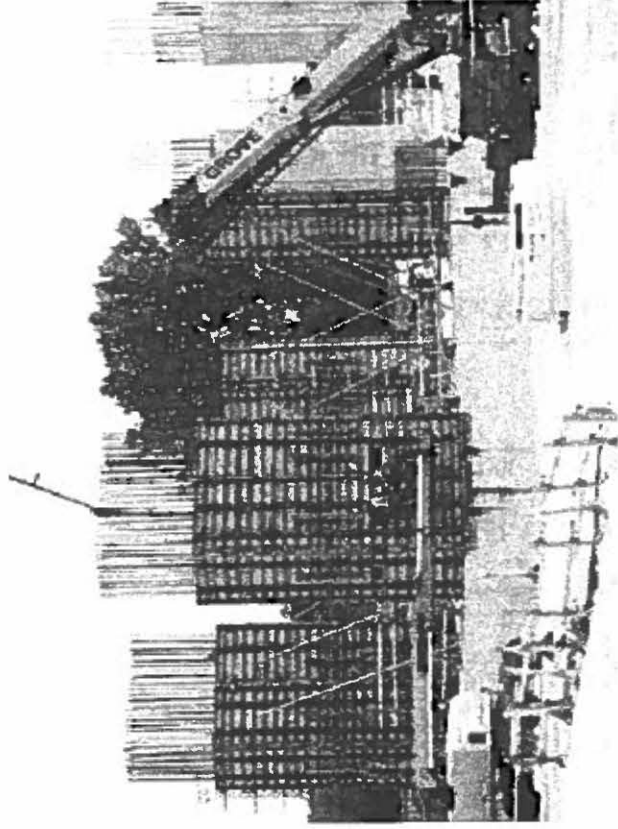
Legend:

- A – Proposed Greenfield Site
- B – Closest House
- C – Closest Subdivision (North)
- D – Closest Subdivision (South)
- E – Trillium Heath Centre
- F – Sherway Gardens Mall

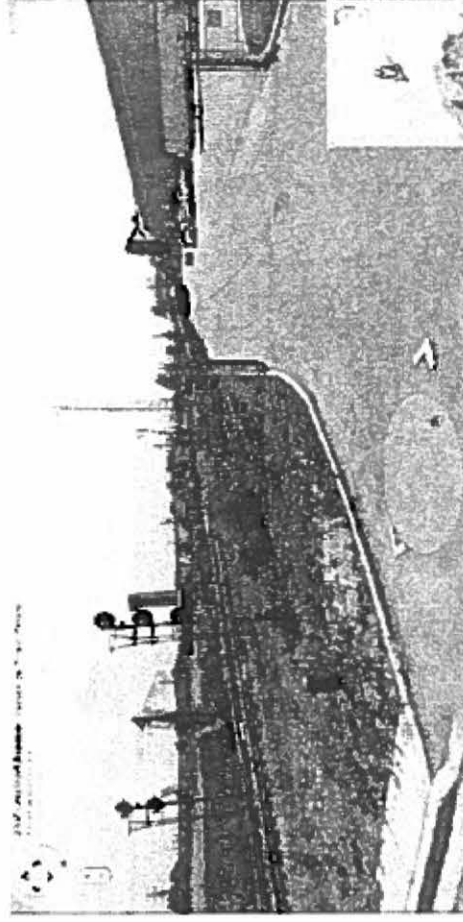
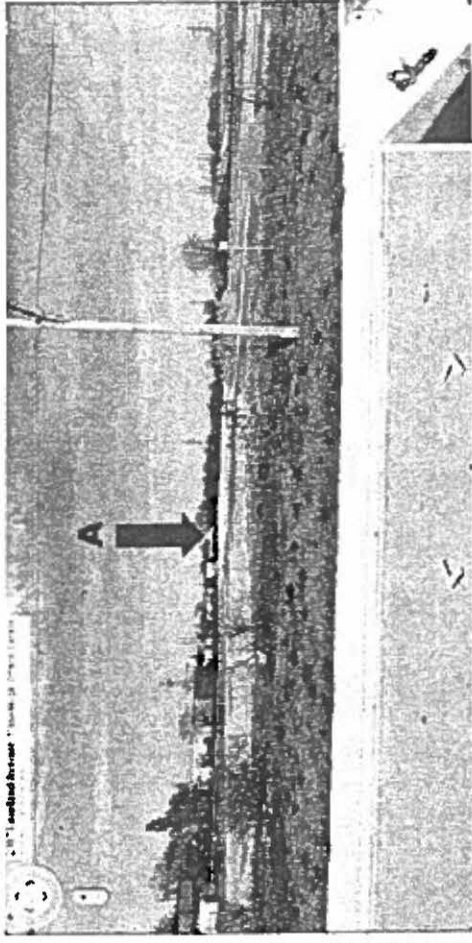
Distance:

- A to B: 220 Meters
- A to C: 270 Meters
- A to D: 500 Meters
- A to E: 740 Meters
- A to F: 910 Meters

CONFIDENTIAL / SOLICITOR-CLIENT
PRIVILEGED



*Plant construction as of 28 September 2011



Perun, Halyna N. (ENERGY)

From: Wilson, Malliha (JUS)
Sent: October 19, 2011 7:50 AM
To: Perun, Halyna N. (ENERGY)
Cc: Lung, Ken (JUS); Calwell, Carolyn (ENERGY); Slater, Craig (JUS)
Subject: Re: Proposed cab deck

Halyna,

Assume when I say AG - I mean mag civil service as we do not know who will be AG

Sent from my BlackBerry Wireless Device

From: Perun, Halyna N. (ENERGY)
To: Wilson, Malliha (JUS)
Cc: Lung, Ken (JUS); Calwell, Carolyn (ENERGY); Slater, Craig (JUS)
Sent: Wed Oct 19 07:43:15 2011
Subject: Re: Proposed cab deck

So - as the Cab deck is expected to be quite pithy we propose to produce a briefing note setting out more details and legal analysis to support the AG at the Cab mtg on Thurs - will work with Craig's folks -

Halyna Perun
Director
T: 416 325 6681
F: 416 671 2607

Sent using BlackBerry

From: Perun, Halyna N. (ENERGY)
To: Wilson, Malliha (JUS)
Cc: Lung, Ken (JUS); Calwell, Carolyn (ENERGY); Slater, Craig (JUS)
Sent: Tue Oct 18 18:47:10 2011
Subject: RE: Proposed cab deck

Privileged and Confidential

Lindsay said the SOC would like to see a deck by mid afternoon tomorrow (Wed). The expectation is that the deck would be the first item of business for the new Cabinet post swearing in - sometime Thursday afternoon.

Halyna

Halyna N. Perun
Director
Legal Services Branch
Ministries of Energy & Infrastructure
7 Bay Street, 4th Floor, Suite 425
Toronto, ON M5G 2E6
T: (416) 325 6681 / Fax: (416) 325 1751
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From: Wilson, Maliha (JUS)
Sent: October 18, 2011 6:45 PM
To: Perun, Halyna N. (ENERGY); Slater, Craig (JUS)
Cc: Lung, Ken (JUS); Calwell, Carolyn (ENERGY)
Subject: Re: Proposed cab deck

What is time line on this Halyna

Sent from my BlackBerry Wireless Device

From: Perun, Halyna N. (ENERGY)
To: Slater, Craig (JUS)
Cc: Wilson, Maliha (JUS); Lung, Ken (JUS); Calwell, Carolyn (ENERGY)
Sent: Tue Oct 18 18:27:23 2011
Subject: Proposed cab deck

Privileged and confidential.

For your review and input.

Deputy Lindsay has requested a "final" deck by mid day tomorrow

We'd be happy to meet to discuss if this would help.

Thank you

Halyna

Halyna N Perun
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Perun, Halyna N. (ENERGY)

From: Perun, Halyna N. (ENERGY)
Sent: October 19, 2011 8:48 AM
To: Wilson, Malliha (JUS)
Subject: FW: Greenfield South
Attachments: Greenfield South Options.pdf

Hi -- this is the deck we received from the OPA

Halyna

Halyna N. Perun
A/Director
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From: Perun, Halyna N. (ENERGY)
Sent: October 18, 2011 4:15 PM
To: Wilson, Malliha (JUS); Slater, Craig (JUS); Lung, Ken (JUS)
Cc: Calwell, Carolyn (ENERGY); Wong, Tala (JUS)
Subject: Fw: Greenfield South

Privileged and Confidential

As per last email - Info from Ontario Power Authority

Halyna Perun
A/Director
Ph: 416 325 6681
BB: 416 671 2607

Sent using BlackBerry

From: Khatri, Anupa (ENERGY)
To: Perun, Halyna N. (ENERGY)
Sent: Tue Oct 18 16:11:24 2011
Subject: Greenfield South

Hi Halyna,

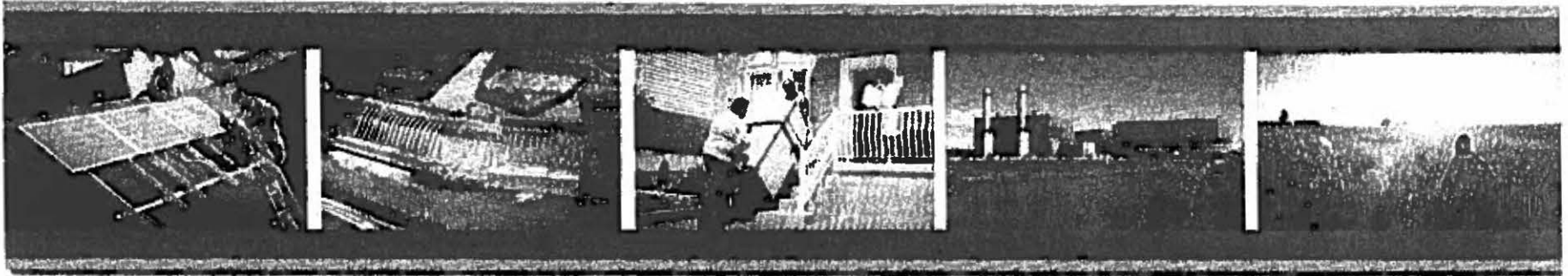
The scanned version is attached, as requested.

Regards,

*Anupa Khatri
Director's Secretary
Ministries of Energy & Infrastructure
Legal Services Branch
777 Bay Street, 4th Floor, Suite 425
Toronto, ON M5G 2E5
Ph: 416-325-1841*

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Greenfield South Options

October 20, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

Background

- Greenfield South Power Corporation (“Greenfield”) and the OPA entered into a contract on 12 April 2005
- Greenfield is controlled by Eastern Power Corporation
- Contract was amended on 16 March 2009
- Reason for amendment was long delays project suffered in securing necessary approvals to construct the project and to do away with the oil-fired option for fuelling the plant
- OPA and Province also motivated in part to keep project alive by low cost to ratepayers of project established in the competitive RFP process in 2004/2005
- In May 2011 Greenfield achieved financial close, securing debt financing from Credit Suisse and EIG for \$550 million

Contract Facility

- The Contract Facility is an approximately 300 MW combined cycle gas-fired generation station
- Major components of facility include a GE 7FA gas turbine ("GT") a heat recovery steam generator ("HRSG") and a steam turbine
- All major items for the project are completed
- Construction began in June 2011 and is approximately x% complete now
- The Milestone Date for Commercial Operation is September 1, 2014

Contract Facility

- The total dollar value of capital expenditures ("CAPEX") for the facility are between \$250 - \$350 million
- Gas and electrical interconnection work has not yet commenced
- Total estimated sunk and committed costs are on the neighbourhood of \$x million
- We estimate the profits from the contract, excluding any residual value, are approximately \$x million

Moving Greenfield South does not result in immediate unreliability, but accelerates the need for Tx solutions

- Planning studies indicate that transmission reinforcement in west GTA could be required 2 years earlier, as early as 2018, if Greenfield South is not located within west GTA
- These need dates are based on assumptions associated with the LTEP and current reliability criteria, which are likely to evolve
- The transmission reinforcements are extensive in scope and require the immediate initiation of planning and development work with local utilities, the IESO and transmitters

Siting Options - There are several alternative site options

Some deliver more value than others with different levels of complexity

- **Considerations**
 - Value of Location, Gas Availability, Transmission, Counterparty
- **There may be a system need starting in 2016 to 2018**
- **Regional needs include:**
 - Northwest System
 - Cambridge
 - GTA
- **Some sites have gas available in varying quantities**
- **Examples of potential sites :**
 - OPG (Lennox, Nanticoke (some gas there now), Thunder Bay (pipeline required))
 - NUGs (TCPL compressor sites, Trans Alta Pearson Airport, Whitby, Fort Frances(was on gas now on BIO))
 - Portlands, Goreway
- **Some arrangements could be more straight forward or more complicated depending on the counterparty.**

Key Contractual Provisions

- Grounds for termination of contract limited to certain types of breach and extended force majeure (none of which applicable here)
- Contract excludes liability for certain types of damages including loss of profits
- Contract provides right to damages including lost profits for discriminatory action (legislation or regulation passed) where impact focused on contract counter-party
- Damages for discriminatory action determined through arbitration process
- All other disputes only go to arbitration if both parties agree

Payment Under Contract

- Once plant in commercial operation, generator is paid monthly capacity payment to cover its costs and profit
- Monthly payment reduced by amount generator is deemed to earn in the market selling electricity
- This reduction is calculated using formula to determine when it is economic for generator to be generating electricity
- OPA may also direct the plant operator to dispatch or not dispatch its facility at specified dates and times

Option 1- Contract Termination

- **Unilateral termination of contract – OPA informs contract counter-party that it will not perform its obligations under the contract**
 - **Pros:**
 - » Greenfield South will be required to begin to mitigate its damages which means they should stop construction (or at the very least, the OPA will not likely be liable for those additional costs that could have been avoided after date of termination of contract)
 - **Cons:**
 - » Does not provide opportunity to explore options for relocating project
 - » Sends negative message to other OPA counter-parties

Option 2 - Legislation

- Legislation passed to terminate the contract, set compensation or provide a process and methodology for determining compensation
 - Pros:
 - » Allows Government to control level of compensation to be paid
 - » Government can specify that no compensation will be paid for costs incurred past certain date (e.g. announcement of Government's policy or date of first reading)
 - Cons:
 - » Will be controversial
 - » Potential impact on investment climate

Option 3 - Negotiation

- OPA attempts to commence negotiations with Greenfield South re stopping construction and new location for facility
 - Pros:
 - » OPA has opportunity to assess position of Greenfield South and what they are seeking to agree to stop construction
 - » OPA can begin discussion of alternative sites
 - Cons:
 - » Greenfield South may refuse to commence discussions or seek to drag discussions on while it continues to construct plant
 - » May need to revert at some stage to other options

Option 4 - Pay Plant Not to Run

- Allow plant to be constructed but ensure it does not operate using directed dispatch mechanism in contract
 - Pros:
 - » OPA obligations to make monthly payments are low based on outcome of 2005 RFP process and paying plant to not operate over 20 years may be cheaper than paying for sunk costs, remediation of the site and potentially some lost profits
 - Cons:
 - » Will be difficult to convince community that plant will not operate

Recommendation

- OPA to commence negotiations with Greenfield South (Option 3)
- If negotiations do not succeed in stopping construction of plant, will likely need to revert to one of the other options

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Perun, Halyna N. (ENERGY)

From: Perun, Halyna N. (ENERGY)
Sent: October 19, 2011 8:54 PM
To: Wilson, Malliha (JUS); Lung, Ken (JUS); Slater, Craig (JUS)
Cc: Calwell, Carolyn (ENERGY)
Subject: Plant

Privileged and Confidential

You may already know this but it doesn't hurt to compare notes! Deputy Lindsay's EA has advised the following:

Two take aways from the meeting today with SOC, DAG and DM:

1) We (EA was referring to Energy client and legal here but has equal application to MAG) are to think about what a joint OPA/OPS negotiating team would look like - policy, operational, legal folks to be included

2) Energy legal to hold the pen in developing a draft letter from Minister of Energy to OPA that would address an ask that OPA enter into discussions with Eastern Power for a resolution of the Mississauga site. (We'd work with Energy ADM client in coming up with a draft and I have advised that this draft would require MAG review).

EA was not clear on timelines but has indicated that Deputy Lindsay wants a de-brief to be scheduled tomorrow morning to discuss further.

Also, I understand that no deck going to Cabinet is what might have resulted from this aft's meeting but will know more tomorrow.

Will keep you posted.

Halyna Perun
A\Director
Ph: 416 325 6681
BB: 416 671 2607

Sent using BlackBerry

Perun, Halyna N. (ENERGY)

From: Perun, Halyna N. (ENERGY)
Sent: October 19, 2011 10:22 AM
To: Calwell, Carolyn (ENERGY)
Subject: BN
Attachments: Greenfield South BN LSB Oct 19-11.doc

This is not even a beginning – my apologies for sending to you in this form – can you please continue working on this? If you think it's useful to engage James – please go ahead. I still think we need to work on this note to set out the legal advice.

DM Lindsay has called a meeting now at 11:00 so I'll see what next steps are from his point of view then

Thanks Carolyn

Halyna

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Ministry of the Attorney General

Briefing Note

Legal Services Division

Legal Services Branch – ENE/MOI

ISSUE:

- Greenfield South Gas Generating Plant in Mississauga.

SUMMARY OF PROPOSAL:

Discussion about location of the Greenfield South Generating Station under construction in the City of Mississauga.

MAG POSITION:

-

STATUS:

- Item to proceed to Cabinet for discussion on Thursday October 20, 2011.

BACKGROUND

- There is contract between Greenfield Co. and Ontario Power Authority (OPA) relating to the power station. Construction has already commenced.
- Cancellation of the project at this stage would involve the termination of the contract by the parties.
-
- Greenfield South Generating Station, is a 280 MW combined cycle natural gas plant under construction in the City of Mississauga on a 4.5 hectare property at 2315 Loreland Avenue (the "Greenfield project").
- The Greenfield project arose out of a Ministry of Energy Clean Energy Supply (CES) procurement process in 2004. This contract, with Greenfield South Power Corporation ("Greenfield Co."), was eventually assumed by the OPA.
- The project was undertaken to meet local reliability needs for the Southwest and Western GTA and has been positioned as part of the coal closure strategy.

- The plant is 200 metres from the nearest residence, 700 metres from the nearest hospital and 1.1 km from the nearest school.
- On September 24, 2011, the government announced that construction of the generating station would stop and that the station would be relocated.
- In 2007, the Ontario Municipal Board reviewed and approved of the zoning of the project site after a lengthy and protracted process.
- In 2008, MOE granted all necessary environmental approvals.
- In March 2011, OPA renegotiated the initial Commercial Operation Date (C.O.D.) with Greenfield Co., in recognition of lengthy regulatory approvals and financing delays experienced by Greenfield Co. The new C.O.D. is the third quarter (Q3) of 2014.
- In May 2011, Greenfield Co. finalized its financing arrangements and the City of Mississauga issued Building Permits for the building housing the generation equipment.
- In June 2011, MOE announced that it will conduct an updated review of the approval for the gas plant to assess recent developments. No end-date was set for this process.
- In July 2011, Greenfield Co. reported that it had laid foundations for the steam and gas turbine halls and placed orders for the major equipment (generators, turbines, etc.).

FINANCIAL IMPLICATIONS:

There are no financial implications for MAG.

DISCUSSION:

Date: October 19, 2011

Prepared by: Halyna Perun, A/Director
And Carolyn Calwell Deputy Director

Legal Service Branch
Ministry of Energy/Ministry of Infrastructure
5-6681

In consultation with:

Perun, Halyna N. (ENERGY)

From: Silva, Joseph (ENERGY)
Sent: October 19, 2011 12:50 PM
To: Calwell, Carolyn (ENERGY)
Cc: Perun, Halyna N. (ENERGY)
Subject: FW: Deck
Attachments: Greenfield South Construction Oct 20 2011 LSB ESTDP (v5).ppt

Importance: High

Hi Carolyn – here's the product from Ryan. Can you take another look please... not sure if the bolds have been removed...

Thanks
Joseph

From: King, Ryan (ENERGY)
Sent: October 19, 2011 12:49 PM
To: Silva, Joseph (ENERGY); Lindsay, David (ENERGY)
Cc: McKeever, Garry (ENERGY); MacCallum, Doug (ENERGY); Jenkins, Allan (ENERGY); Jennings, Rick (ENERGY); Cayley, Daniel (ENERGY); Perun, Halyna N. (ENERGY)
Subject: RE: Deck

Hi Joseph,
Updated deck attached.

From: Jennings, Rick (ENERGY)
Sent: October 19, 2011 12:29 PM
To: King, Ryan (ENERGY)
Cc: McKeever, Garry (ENERGY); MacCallum, Doug (ENERGY); Jenkins, Allan (ENERGY)
Subject: FW: Deck

Ryan this is the latest edited version from Legal. An addition to the Appendix per the Deputy's request is to add the other options proposed by the OPA. The list is in the deck now but please insert the description and pros and cons for each of the 3 other options from the OPA deck. I have left a copy on your desk.

Send to Joseph when this has been done. Thanks.

From: Calwell, Carolyn (ENERGY)
Sent: October 19, 2011 11:55 AM
To: Lindsay, David (ENERGY); Jennings, Rick (ENERGY); Silva, Joseph (ENERGY); Perun, Halyna N. (ENERGY)
Subject: Deck

Revised as discussed.

Carolyn

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Greenfield South Generating Station

Next Steps – Advice to Cabinet

Date: October 20, 2011

Local Context

- Local residents do not support the Greenfield South gas plant in Mississauga, which is currently under construction.
- On October 12 the Mississauga Council passed a motion requesting that the Government and the Premier take immediate action to cancel the contract, stop construction and return the site to pre-construction condition

Issues

- Construction continues at the Greenfield South site.
 - The project has an enforceable contract with the Ontario Power Authority and all applicable approvals. The developer's work appears to be in compliance with the contract and current approvals.
 - The OPA is party to and administers the contract with Eastern Power. The Province is not a party to the contract. The OPA has advised that it has no right under the contract to terminate in the current circumstances.
 - The OPA has asked for instruction from government to approach the developer to begin negotiations to change or to terminate the contract.
 - Eastern Power has informed the OPA that it will not 'down tools' until it receives formal notification of next steps.
 - The identification of potential alternative site options has not yet been completed.
- Some local politicians have stated that the plant would not be relocated to a site in Mississauga or Toronto.

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Next Steps Involve the OPA

- The OPA to be asked to approach Eastern Power to initiate discussions. The discussion would likely include potential treatment of costs incurred to date (sunk costs - including equipment costs), treatment of construction and equipment related contracts, estimates and treatment of foregone revenue, and options and Eastern's interest with respect to relocating to an alternative site.
- The OPA has made some preliminary analysis of costs and foregone revenue. Further analysis of these costs is required and their allocation between the tax base and the rate base is required.

The OPA has also confirmed that it is not a party to the contract and OPA will be required to negotiate with Eastern Power to determine alternative sites and the costs associated with relocation.

Eastern Power has indicated that it is not a party to the contract and that it is not a party to the contract and that it is not a party to the contract.

Immediate Legal Issues

- Discussion with Eastern Power may not be successful and could require the Government to consider other options (e.g. legislation).
- Initiating discussions to relocate or otherwise cancel the Mississauga plant may immediately cause Eastern Power to launch a law suit against either or both of the OPA and the Government.
- The Minister's request of the OPA may be found to be contractual interference and may attract liability to the Province.
- The OPA may ask for a "direction" from the Minister under the Electricity Act, 1998 before undertaking any discussions with Eastern Power. The Minister's authority to direct the OPA in this way is unclear.
- Eastern Power's financiers may have a claim under NAFTA if this project does not proceed.

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Cabinet Minute

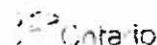
Cabinet agreed that:

- The Ministry of Energy to work with the Ontario Power Authority to enter into discussions with Eastern Power toward a satisfactory resolution of the Mississauga site.
- The Ministry of Energy to work with the Ontario Power Authority, the Ministry of Finance and the Ministry of the Attorney General to develop strategies to reach an agreement with Eastern Power.

The Minister of Energy to report back to Cabinet by December 20, 2011 with the details of the discussions with Eastern Power.

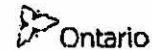
The Ministry of Energy to work with the Premier's Office/Cabinet Office on a stakeholder management and communication strategy.

2011-12-20 10:00 AM
11/20



Appendix 1

Greenfield South Background



Key Facts About the Greenfield South Plant

- Greenfield South Power Corporation (controlled by Eastern Power Corporation) was the successful applicant in Ministry of Energy run Clean Energy Supply (CES) RFP and signed a contract with the OPA in April 2005
- Eastern Power, based in Ontario, has received all required provincial approvals, including Environmental Assessment and Certificates of Approval

Eastern Power has received a required provincial Certificate of Approval for the site from the City of Mississauga issued in May 2005

Eastern Power has received a required provincial Certificate of Approval for the site from the City of Mississauga issued in May 2005

MINISTRY OF ENERGY



Legend:

- A - Proposed Greenfield Site
- B - Closest House
- C - Closest Subdivision (North)
- D - Closest Subdivision (South)
- E - Trillium Health Centre
- F - Sherway Gardens Mall

Distance:

- A to B: 120 Meters
- A to C: 170 Meters
- A to D: 500 Meters
- A to E: 740 Meters
- A to F: 910 Meters

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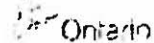
MINISTRY OF ENERGY



Photograph of site on 12 Dec 2009



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Appendix 2

Greenfield South Background



Options Considered by the OPA

- **Unilateral termination of contract**

- **Pros**

- Greenfield South will be required to bring to mitigate its damages which means they should stop construction (or at the very least, the OPA will not likely be liable for those additional costs that could have been avoided after date of termination of contract)

- **Cons**

- Does not provide opportunity to explore options for relocating project
 - Sends negative message to other OPA counter-parties

Other Options Considered by the OPA Con'd

- **Legislation**

- **Pros**

- Allows Government to control level of compensation to be paid
 - Government can specify that no compensation will be paid for costs incurred past certain date (e.g. announcement of Government's policy or date of first reading)

- **Cons**

- Will be controversial
 - Potential impact on investment climate

Other Options Considered by the OPA Con'd

- **Pay the plant not to run**

- **Pros**

- OPA obligations to make monthly payments are low based on outcome of 2005 RFP process and paying plant not to operate over 20 years may be cheaper than paying for sunk costs, remediation of the site and potentially some lost profits

- **Cons**

- Will be difficult to convince community that plant will not operate



Perun, Halyna N. (ENERGY)

From: Perun, Halyna N. (ENERGY)
Sent: October 19, 2011 2:25 PM
To: Jennings, Rick (ENERGY); Silva, Joseph (ENERGY); King, Ryan (ENERGY); Calwell, Carolyn (ENERGY)
Subject: FW: Greenfield South Options OPA
Attachments: doc20111019141522.pdf

Privileged and Confidential

Hi - just received a new deck from the OPA:

What's different from the previous version:

Page 2 - First two bullets and fourth bullet - new

Page 6-10 - pictures added of construction

Page 13 - bullet re siting discussions complicated by ongoing discussion with Trans Canada is new as is the last part of the last bullet which notes that some arrangements could be more straightforward or more complicated (the part', the willingness of the host community..." to the end of the bullet is new)

Page 16 - Option 1 - Contract termination - precedent: Oakville gas plant - added

Page 17 - Option 2 new "con" in legislation option - "requires time to put in place" plus reference to Adams Mine Lake Act, 2004 added

Page 18 - Option 3 Negotiations option - revised second con; i.e. Greenfield South likely to continue construction while discussions ongoing unless incentive provided to them to stop

Page 19 - Option 4 "pros" is revised and new second "con" added; plus reference to Quebec facility as precedent

Lastly, in previous version on page 3 under "contract facility" there was a reference to statement that "all major items fro the project are completed" - and this has been removed from the new version

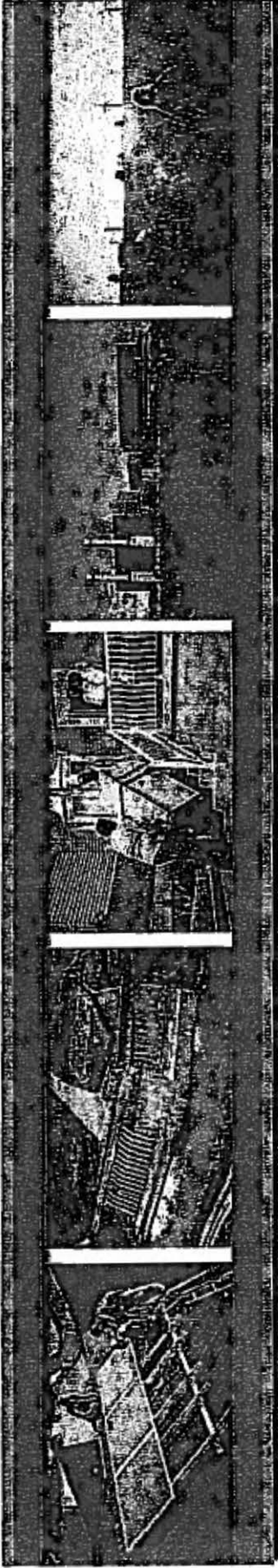
Halyna

Halyna N. Perun
A/Director
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updated version
Oct 20/11 1:50 pm



Greenfield South Options

October 20, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

Background

- RFP initiated and proponent selected by Ministry of Energy
- OPA directed by Minister of Energy to enter into contract
- Greenfield South Power Corporation ("Greenfield") and the OPA entered into a contract on 12 April 2005
- Government is not a party to the contract
- Greenfield is controlled by Eastern Power Corporation

Contract Amendment

- Contract was amended on 16 March 2009
- Reason for amendment was long delays project suffered in securing necessary approvals to construct the project and to do away with the oil-fired option for fuelling the plant
- OPA and Province also motivated in part to keep project alive by low cost to ratepayers of project established in the competitive RFP process in 2004/2005
- In May 2011 Greenfield achieved financial close, securing debt financing from Credit Suisse and EIG for \$550 million

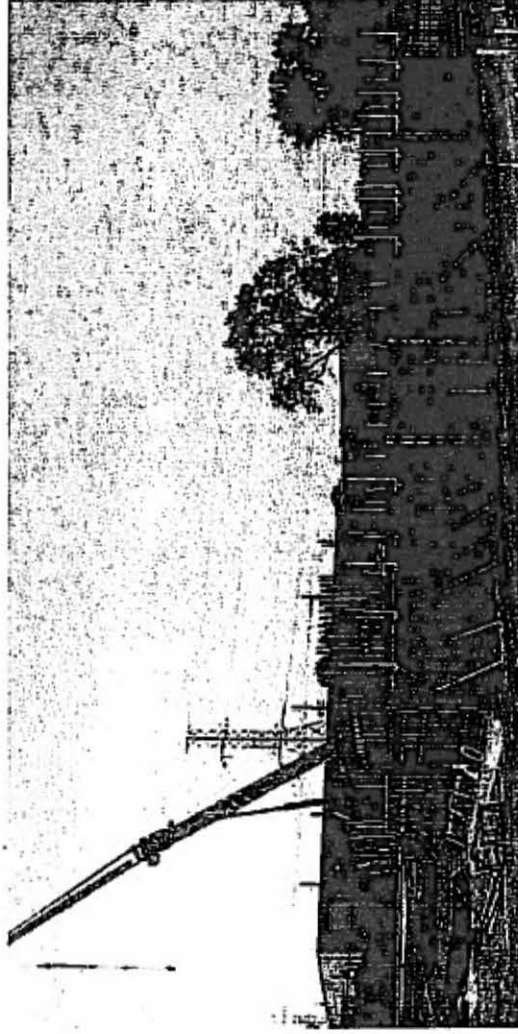
Contract Facility

- The Contract Facility is an approximately 300 MW combined cycle gas-fired generation station
- Major components of facility include a GE 7FA gas turbine ("GT") a heat recovery steam generator ("HRSG") and a steam turbine
- Construction began in June 2011 and is approximately x% complete now
- The Milestone Date for Commercial Operation is September 1, 2014

Contract Facility

- The total dollar value of capital expenditures (“CAPEX”) for the facility are between \$250 - \$350 million
- Gas and electrical interconnection work has not yet commenced
- Total estimated sunk and committed costs are on the neighbourhood of \$x million
- We estimate the profits from the contract, excluding any residual value, are approximately \$x million

Contract Facility



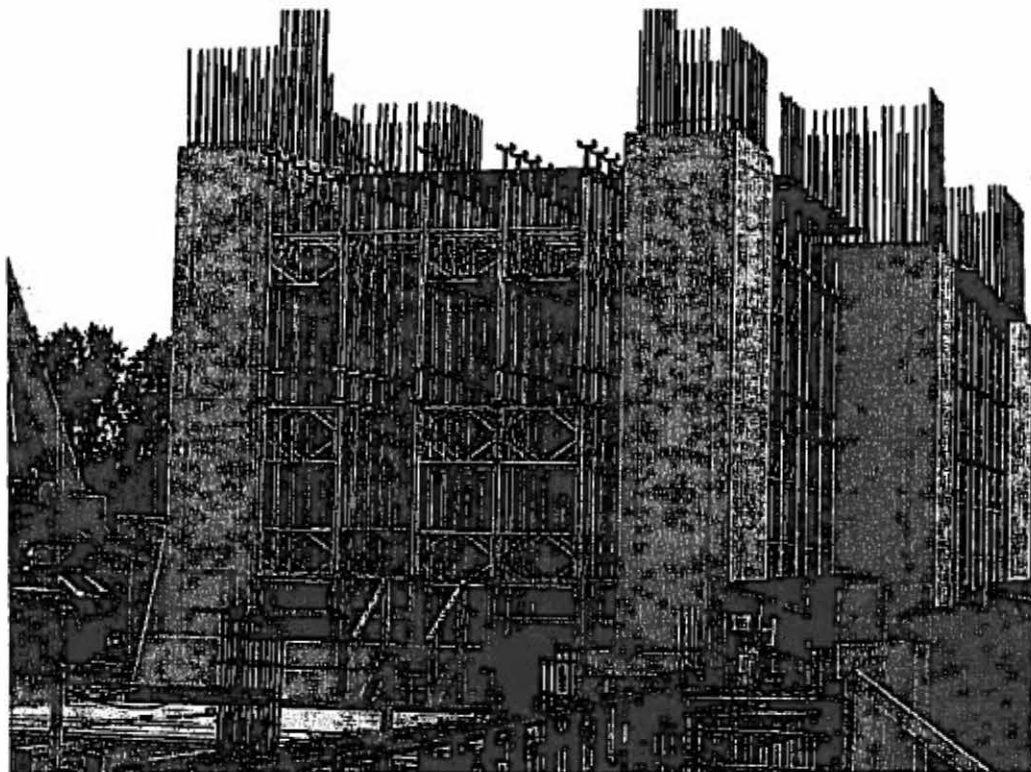
Steam Turbine Pedestal Mat Being Formed

Contract Facility



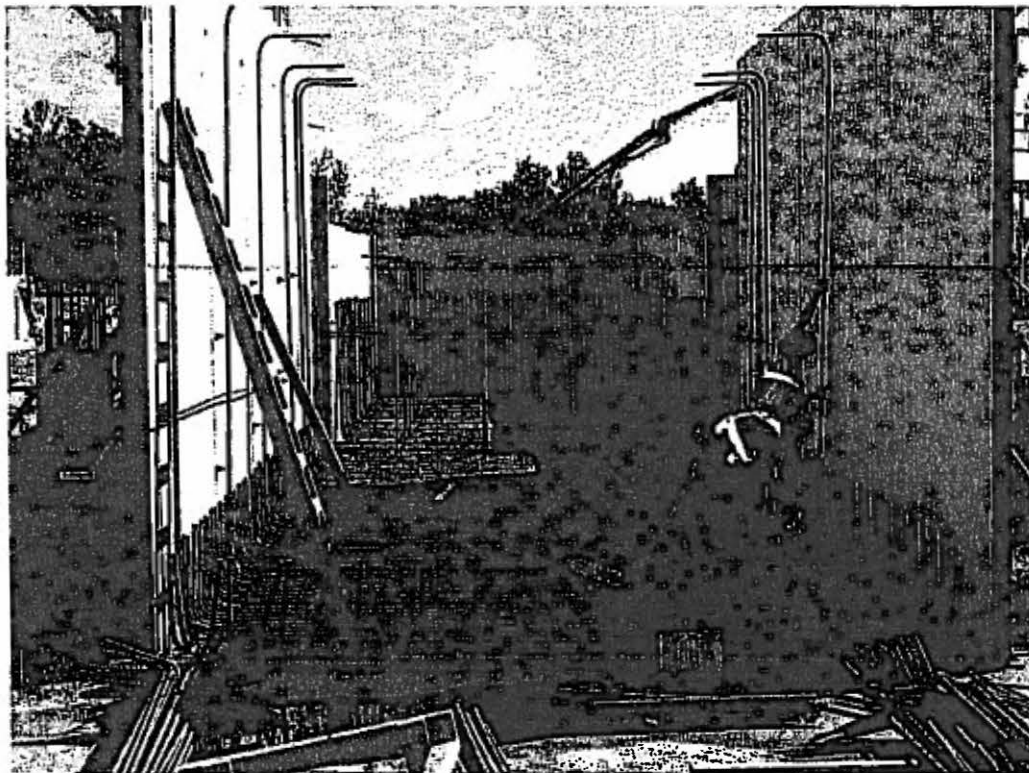
Steam Turbine Pedestal Mat Forms Stripped

Contract Facility



Steam Turbine Table Top

Contract Facility



Gas Turbine Pedestal Reinforcing Steel

Contract Facility



Unloading Steam Turbine

Moving Greenfield South does not result in immediate unreliability, but accelerates the need for Tx solutions

- Planning studies indicate that transmission reinforcement in west GTA could be required 2 years earlier, as early as 2018, if Greenfield South is not located within west GTA
- These need dates are based on assumptions associated with the LTEP and current reliability criteria, which are likely to evolve
- The transmission reinforcements are extensive in scope and require the immediate initiation of planning and development work with local utilities, the IESO and transmitters

Siting Options - There are several alternative site options

Some deliver more system value than others with different levels of complexity

- Considerations:
 - System value of Location, Gas Availability, Community Support, Transmission, Counterparty
- There may be a system need starting in 2016 to 2018
- Regional needs include:
 - Northwest System
 - Cambridge
 - GTA
- Some sites have gas available in varying quantities
- Examples of potential sites :
 - OPG (Lennox, Nanticoke (some gas there now), Thunder Bay (pipeline required))
 - NUGs (TCPL compressor sites, Trans Alta Pearson Airport, Whitby, Fort Frances(was on gas now on BIO))
 - Portlands, Goreway

(continued next slide)

Siting Options - There are several alternative site options (continued)

- Siting discussions complicated by ongoing discussion with Trans Canada re a new site for a gas project
- Some arrangements could be more straight forward or more complicated depending on the counterparty, the willingness of the host community, the Government's statements re siting of gas plants in GTA and urban areas and any issues related to First Nations concerns

Key Contractual Provisions

- Grounds for termination of contract limited to certain types of breach and extended force majeure (none of which applicable here)
- Contract excludes liability for certain types of damages including loss of profits
- Contract provides right to damages including lost profits for discriminatory action (legislation or regulation passed) where impact focused on contract counter-party
- Damages for discriminatory action determined through arbitration process
- All other disputes only go to arbitration if both parties agree

Payment Under Contract

- Once plant in commercial operation, generator is paid monthly capacity payment to cover its costs and profit
- Monthly payment reduced by amount generator is deemed to earn in the market selling electricity
- This reduction is calculated using formula to determine when it is economic for generator to be generating electricity
- OPA may also direct the plant operator to dispatch or not dispatch its facility at specified dates and times

Option 1- Contract Termination

- Unilateral termination of contract – OPA informs contract counter-party that it will not perform its obligations under the contract
 - Pros:
 - » Greenfield South will be required to begin to mitigate its damages which means they should stop construction (or at the very least, the OPA will not likely be liable for those additional costs that could have been avoided after date of termination of contract)
 - Cons:
 - » Does not provide opportunity to explore options for relocating project
 - » Sends negative message to other OPA counter-parties
- Precedent: Oakville Gas Plant

Option 2 - Legislation

- Legislation passed to terminate the contract, set compensation or provide a process and methodology for determining compensation
 - Pros:
 - » Allows Government to control level of compensation to be paid
 - » Government can specify that no compensation will be paid for costs incurred past certain date (e.g. announcement of Government's policy or date of first reading) and take away right under contract re discriminatory action
 - Cons:
 - » Will be controversial
 - » Potential impact on investment climate
 - » Requires time to put in place
- Precedent: *Adams Mine Lake Act, 2004*

Option 3 - Negotiation

- OPA attempts to commence negotiations with Greenfield South re stopping construction and new location for facility
 - Pros:
 - » OPA has opportunity to assess position of Greenfield South and what they are seeking to agree to stop construction
 - » OPA can begin discussion of alternative sites
 - Cons:
 - » Greenfield South may refuse to commence discussions
 - » Greenfield South likely to continue construction while discussions ongoing unless incentive provided to them to stop
 - » May need to revert at some stage to other options

Option 4 - Pay Plant Not to Run

- Allow plant to be constructed but ensure it does not operate using directed dispatch mechanism in contract
 - Pros:
 - » May be cheapest option given low cost outcome of original RFP and alternative of paying for sunk costs, remediation of the site and potentially some lost profits
 - Cons:
 - » Will be difficult to convince community that plant will not operate
 - » Will be seen as having paid “money for nothing”
- Precedent: No Ontario precedent but has happened in Quebec with Bécancour facility

Recommendation

- OPA to commence negotiations with Greenfield South (Option 3)
- If negotiations do not succeed in stopping construction of plant, will likely need to revert to one of the other options

Perun, Halyna N. (ENERGY)

From: Perun, Halyna N. (ENERGY)
Sent: October 19, 2011 3:15 PM
To: Calwell, Carolyn (ENERGY)
Subject: RE: Greenfield South Construction Oct 20 2011 LSB 4.ppt

Talked to Joseph – am reviewing now

Halyna

Halyna N. Perun
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Ministries of Energy & Infrastructure
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From: Silva, Joseph (ENERGY)
Sent: October 19, 2011 3:00 PM
To: Perun, Halyna N. (ENERGY); Calwell, Carolyn (ENERGY); Jennings, Rick (ENERGY); King, Ryan (ENERGY)
Subject: FW: Greenfield South Construction Oct 20 2011 LSB 4.ppt
Importance: High

Hi – for review please. Thanks.

From: Brown, Meredith (JUS)
Sent: October 19, 2011 3:00 PM
To: Silva, Joseph (ENERGY)
Subject: Greenfield South Construction Oct 20 2011 LSB 4.ppt

Please find attached the DAG approved slides.

Perun, Halyna N. (ENERGY)

From: Perun, Halyna N. (ENERGY)
Sent: October 19, 2011 3:46 PM
To: Calwell, Carolyn (ENERGY)
Subject: your bn
Attachments: Greenfield South BN LSB Oct 19-11(2).doc

May I take two minutes of your time to explain what I did (very minimal) – in addition to the two highlighted bits - would like to send to CLOC - thanks

Halyna

Halyna N. Perun
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Ministry of the Attorney General

Briefing Note

Legal Services Division

Legal Services Branch – ENE/MOI

ISSUE:

- Greenfield South Gas Generating Plant in Mississauga.

SUMMARY OF PROPOSAL:

Ministry of Energy to work with Ontario Power Authority (OPA) to enter into discussions with Greenfield South Power Corporation (controlled by Eastern Power Corporation, referred to as "Eastern Power") towards a satisfactory resolution of the Mississauga site.

MAG POSITION:

- **There is a high risk that asking the OPA to enter into discussions with Eastern Power provides grounds for Eastern Power to pursue a claim in tort against the Government for inducing a breach of contract.**

STATUS:

- Item to proceed to Cabinet for discussion on Thursday October 20, 2011.

BACKGROUND

- Greenfield South Power Corporation (controlled by Eastern Power Corporation, referred to as "Eastern Power") is developing the Greenfield South Generating Station, a 280 MW combined cycle natural gas plant under construction in the City of Mississauga on a 4.5 hectare property at 2315 Loreland Avenue.
- The project arose out of a Ministry of Energy Clean Energy Supply (CES) procurement process in 2004. This contract was eventually assumed by the OPA.
- The project was undertaken to meet local reliability needs for the Southwest and Western GTA and has been positioned as part of the coal closure strategy.
- The plant is 200 metres from the nearest residence, 700 metres from the nearest hospital and 1.1 km from the nearest school.
- The project is strongly opposed by local residents. On October 12, 2011, the Mississauga Council passed a motion requesting that the government and the

Premier take immediate action to cancel the contract, stop construction and return the site to pre-construction condition.

- In 2007, the Ontario Municipal Board reviewed and approved of the zoning of the project site after a lengthy and protracted process.
- In 2008, MOE granted all necessary environmental approvals.
- In March 2011, OPA renegotiated the initial Commercial Operation Date (C.O.D.) with Eastern Power, in recognition of lengthy regulatory approvals and financing delays experienced by Eastern Power. The new Milestone Date for Commercial Operation, when the plant is required to be fully operational, is September 1, 2014.
- In May 2011, Eastern Power finalized its financing arrangements with Credit Suisse and EIG. Around that time, the City of Mississauga issued building permits for the construction at the site.
- In June 2011, MOE announced that it will conduct an updated review of the approval for the gas plant to assess recent developments. No end-date was set for this process.
- In July 2011, Eastern Power reported that it had laid foundations for the steam and gas turbine halls and placed orders for the major equipment (generators, turbines, etc.).
- Construction continues at the site. Eastern Power has informed the OPA that it will not "down tools" until it receives formal notification of next steps.
- Next steps would require the OPA to be asked to approach Eastern Power to initiate discussions.
 - The discussion would likely include potential treatment of costs incurred to date (sunk costs – including equipment costs), treatment of construction and equipment related contracts, estimates and treatment of foregone revenue, and options and Eastern's interest with respect to relocating to an alternative site.

FINANCIAL IMPLICATIONS:

There are no financial implications for MAG.

DISCUSSION:

- Discussion with Eastern Power may not be successful and could require the Government to consider other options (e.g. legislation).
- Initiating discussions to relocate or otherwise cancel the Mississauga plant may immediately cause Eastern Power to launch a law suit against either or both of the OPA and the Government.

- Such a discussion will signal repudiation of the contract, which gives Eastern Power the right to sue the OPA.
- The Minister's request of the OPA may be found to be contractual interference and may attract liability to the Province.
 - Eastern Power could claim that the Crown induced the OPA's breach of contract where Eastern Power can show: 1) that the Crown knew about the contract; 2) the Crown's action was intended to cause the OPA to breach the contract; 3) the Crown's action caused the OPA to breach the contract; and 4) Eastern Power suffered damages as a result.
- The OPA may ask for a "direction" from the Minister under the *Electricity Act, 1998* before undertaking any discussions with Eastern Power. The Minister's authority to direct the OPA in this way is unclear.
 - The *Electricity Act, 1998* gives the Minister of Energy the authority to issue directions and directives to the OPA, which the OPA must follow.
 - Under s.25.30(2), the Minister may issue, and the OPA shall follow in preparing its integrated power system plans, directives that have been approved by the Lieutenant Governor in Council that set out the goals to be achieved during the period to be covered by an integrated power system plan, including goals relating to,
 - (a) the production of electricity from particular combinations of energy sources and generation technologies;
 - (b) Increases in generation capacity from alternative energy sources, renewable energy sources or other energy sources;
 - (c) the phasing-out of coal-fired generation facilities; and
 - (d) the development and implementation of conservation measures, programs and targets on a system-wide basis or in particular service areas.
 - Under s.25.32(4.1), the Minister may direct the OPA to undertake any request for proposal, any other form of procurement solicitation or any other initiative or activity that relates to,
 - (a) the procurement of electricity supply or capacity derived from renewable energy sources;
 - (b) reductions in electricity demand; or
 - (c) measures related to conservation or the management of electricity demand.
 - Under s.25.32(7), the OPA shall enter into any contract following a procurement solicitation or other initiative referred to in clause (4)
 - (a) [transition provision] if directed to do so by the Minister of

Energy, and that contract shall be deemed to be a procurement contract that was entered into in accordance with any integrated power system plan and procurement process approved by the [Ontario Energy] Board.

- The Minister could rely on certain of these authorities to direct the OPA to enter into *negotiations* with Eastern Power but if the result is termination of the contract then none of these authorities unambiguously allows the Minister to direct the OPA to terminate a contract.
- Eastern Power's financiers may have a trade-related (e.g. NAFTA) claim if this project does not proceed.
 - An investor could allege treatment less favourable than that accorded to investments of other investors or could allege arbitrary and unfair application of government (including OPA) measures.

ALTERNATIVES CONSIDERED

Option 1 – Legislation

- The contract could be cancelled by legislation that would include provisions such as:
 - A provision expressly terminating the agreement;
 - A provision immunizing the Crown and the OPA from any and all lawsuits arising from the cancellation of the agreement
 - If desired, a provision addressing the types of compensation that will be provided and a mechanism (such as arbitration) for determining compensation, or alternatively stipulating that no compensation at all will be provided.
 - As the courts interpret these types of provisions very restrictively, the legislation would have to be drafted very carefully and be very clear and explicit.
 - Precedent: *Adams Mine Lake Act, 2004*
 - Pros
 - Allows Government to control level of compensation to be paid
 - Government can specify that no compensation will be paid for costs incurred past certain date (e.g. announcement of Government's policy or date of first reading)
 - Cons
 - Will be controversial and requires time to enact
 - Developer could bring law suit in the interim, though legislation could ultimately preclude liability and damages and address other issues under the contract, such as the discriminatory action clause
 - Potential impact on investment climate

Option 2 – Regulatory

- Existing regulatory approvals could be revoked or other regulatory steps could be taken to terminate the project
 - Pros
 - Eastern Power is subject to a Certificate of Approval under the *Environmental Protection Act*. Technically, approvals can be amended or revoked if legally justified.
 - Cons
 - Any revocation or other regulatory actions would be subject to appeal or judicial review. The Ministry of Environment would be required to demonstrate an environmental justification for the action in order to successfully defend the challenge. No apparent environmental basis for action at this point.
 - If such a challenge was successful, Eastern Power may initiate a civil action in tort against the Crown.
 - Eastern Power may also seek a remedy against the OPA under the terms of the contract under the discriminatory action clause.

Option 3 – Negotiation (recommended)

- The OPA could attempt to commence negotiations with Eastern Power regarding stopping construction and developing a new location for a different facility.
 - Pros
 - OPA has the opportunity to assess position of Eastern Power and its interests in stopping construction.
 - OPA can begin discussion of a new site.
 - Cons
 - Eastern Power may refuse to commence discussions or seek to drag on discussions while it continues to construct the plant.

Option 4 – Unilateral termination of contract

- The OPA would inform Eastern Power that it will not perform its obligations under the contract
 - Pros
 - Eastern Power will be required to begin to mitigate its damages which means it should stop construction and the OPA will avoid damages for Eastern Power's additional costs that could have been avoided after the date of termination of contract
 - Cons
 - Does not provide opportunity to explore options for relocating project
 - Sends negative message to other OPA counterparties

Option 5 – Pay the plant not to run

- Allow plant to be constructed but ensure that it does not operate using contractual provisions related to directed dispatch.
 - Pros
 - OPA obligations to make monthly payments are low based on outcome of 2005 RFP process and paying plant not to operate over 20 years may be cheaper than paying for sunk costs, remediation of the site and potentially some lost profits
 - Cons
 - Will be difficult to convince community that plant will not operate

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