

WHO SAYS WHAT – General Guidelines

	MINISTER	OPA
Key Messages	<p>SCENARIO A – OPA advises Greenfield that it will not proceed with the contract <u>and construction does not stop</u></p> <p><u>We made a specific commitment to residents in Mississauga and Etobicoke to relocate the gas generating plant currently under construction.</u></p> <p><u>We listened to local concerns from all residents, taking into consideration the changes in the area, including residential development since the plant was proposed.</u></p> <p><u>We heard that the current process to locate gas plants needed to improve. We committed to relocating the plant and are reviewing the process of how gas plants are located in communities – this will guide our future plans.</u></p> <p><u>After several weeks of discussions between the Ontario Power Authority and the owners of the plant, no agreement has been reached to stop construction and relocate.</u></p> <p><u>The Ontario Power Authority has informed the corporation that it is taking the next step in this process and is not proceeding with its contract.</u></p> <p><u>Ontario families and businesses need a reliable supply of clean power for our homes and businesses.</u></p> <p><u>We intend to honour our commitment to relocate the gas generation plant as quickly as possible.</u></p> <p><u>The OPA has advised us that after several weeks of discussions between the Ontario Power Authority and the owners of the plant, no agreement has been reached to stop construction and relocate.</u></p>	<p><i>Despite best efforts to work with Greenfield South Power Corporation, OPA will not bwe are not proceeding with the contract for Greenfield's Mississauga power plant.</i></p> <p><i>After several weeks of discussions it has become clear that Greenfield South has no intent to consider relocation and continues construction, no agreement has been reached to stop construction and relocate. In light of this, we have notified Greenfield that we are not proceeding with the contract. Greenfield is financially liable for any further investments in the project.</i></p> <p><i>The OPA will continue to work with the government to identify another site for the gas plant based on local generation needs and transmission and distribution support to ensure a long-term reliable supply of electricity.</i></p>

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	<p>The Ontario Power Authority has informed Greenfield South that it is taking the next step in this process and will not proceed with its contract.</p> <p>Ontario families and businesses need a reliable supply of clean power for our homes and businesses.</p> <p>The government intends to honour our commitment to relocate the gas generation plant.</p> <p>The best interests of Ontarians and their communities are our number one priority.</p> <p><u>SCENARIO B – OPA advised Greenfield that it will not proceed with the contract and agreement is reached to stop construction</u></p> <p>The OPA continues to negotiate with Greenfield South.</p> <p>While negotiations continue, Greenfield South has agreed to stop construction immediately.</p> <p>We are pleased with this progress and look forward to a satisfactory resolution.</p>	<p><i>(this section requires OPA input)</i></p> <p><i>We are continuing to negotiate with Greenfield South.</i></p> <p><i>While negotiations continue, Greenfield South has agreed to stop construction immediately.</i></p> <p><i>We are continuing our discussions with Greenfield South and hope to reach a satisfactory resolution.</i></p>
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	<p>The government will continue to ensure that the best interests of Ontario's communities and ratepayers remain the primary priority.</p>	
	<p><u>SCENARIO C – If letter/letters become public</u></p> <p>Despite OPA's best efforts, negotiations were not successful.</p> <p>OPA has decided that the contract will come to an end and we support their decision.</p> <p>The government is committed to relocating this plant. It is in the ratepayer's interest to stop construction of this plant as soon as possible.</p> <p>It is also in the interest of Ontario's economy to resolve this as quickly as possible. We need to reassure electricity developers and investors that Ontario remains a good place to make energy investments.</p> <p>Gas-fired generation has an important and cost-effective role in building a cleaner, more modern electricity system that meets Ontario's energy needs.</p> <p>To ensure Ontario is following best practices, the government will look at the gas plant siting process. It has already started to investigate how siting is dealt with in other jurisdictions and this investigation will continue.</p> <p>The government remains committed to providing a strong, stable supply of electricity for Ontario. We also remain committed to those making investments in Ontario's electricity system.</p>	<p>Despite our best efforts, negotiations were not successful.</p> <p><i>We have decided that the contract will come to an end and appreciate the government's support.</i></p> <p><i>The government is committed to relocating this plant. It is in the ratepayer's interest to stop construction of this plant as soon as possible.</i></p> <p><i>It is also in the interest of Ontario's economy to resolve this as quickly as possible. We need to reassure electricity developers and investors that Ontario remains a good place to make energy investments.</i></p> <p><i>Gas-fired generation has an important and cost-effective role in building a cleaner, more modern electricity system that meets Ontario's energy needs.</i></p> <p><i>We share the government's commitment to ratepayer value.</i></p>

Comment [C1]: This scenario doesn't require this statement.

	<p>The developer will not be able to recover its costs of ongoing construction. We expect Greenfield to stop construction. Not proceeding with the contract means Greenfield is financially liable for any further investments in the project. This next step will protect Ontario ratepayers from any future. The OPA has notified the corporation that it is taking the next step in this process and will not proceed with its contract.</p> <p>costs.</p>	<p>We could not reach an agreement <i>with the plant owners.</i></p>
<p>How long did the OPA give it? How extensive have the discussions been?</p>	<p>For several weeks, the Ontario Power Authority has been in discussions with the owners of the plant. They have been unable to come to a resolution on this issue.</p> <p>The OPA has notified the corporation that it is taking the next step in this process and will not proceed with its contract.</p>	
<p>There's been strong and persistent opposition in other communities – Northern York Region for example, yet those plants are proceeding. Why are you stopping this one?</p>	<p>Ontario families and businesses need a reliable supply of clean power for our homes and businesses. We intend to honour our commitment to relocate the gas generation plant. The best interests of Ontarians and their communities are our primary priority. The OPA and the developer could not reach an agreement.</p> <p>I understand the OPA and developer have been speaking frequently for the past month. There have been several weeks of discussion between the OPA and Greenfield but the parties have been unable to come to a resolution on the issue.</p>	<p>We have been speaking frequently with the developer for the past month.</p> <p>This is a unique case and these circumstances do not apply to other contracts or issues.</p>
<p>What does “most appropriate way to allocate compensation between the OPA and Crown” mean?</p>	<p>The OPA has informed the corporation that it is taking the next step in this process and will not proceed with its contract.</p>	
<p>Exactly how much is it</p>	<p>We made a specific commitment to residents in Mississauga and Etobicoke to relocate the gas generating plant currently under</p>	

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going to cost to cancel this contract?	<u>construction. There have been significant changes to the area since the plant was originally approved in 2004, including the construction of several residential buildings. We listened to local concerns from all residents. We heard concerns about the location of the plant. We committed to relocating the plant and are reviewing the process of how gas plants are located in communities – this will guide our future plans.</u>	<i>It me</i>
How long will settlement negotiations take? Is there a drop-dead date?	This is a unique case and these circumstances do not apply to other contracts or issues.	<i>It means that we will sit down together to determine how to share the cost of not proceeding with the contract, giving full recognition to ratepayer value and contractual obligations.</i>
Are these letters precedent-setting? Has the Ministry or OPA sent similar letters before?		<i>We are committed to finding a fair resolution that upholds ratepayer value.</i>
<u>Contract Termination</u>	It means that we will sit down together to determine how to share the cost of not proceeding with the contract, giving full recognition to ratepayer value and contractual obligations.	
Has the contract been terminated?	That has yet to be determined. The OPA is committed to resolving this matter with ratepayer value top of mind. <u>The OPA is working hard to come to a fair resolution. Unfortunately, after several weeks of discussion with the corporate owners of the plant, they have not agreed to stop construction and relocate. Not</u>	<i>We will take the time needed to find a fair solution.</i>

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<p>Who terminated the contract?</p>	<p><u>proceeding with the contract is simply the next step in the process to ensure ratepayers are protected.</u></p>	
<p>Why was the contract terminated? Were other solutions not viable?</p>	<p>The OPA will take the time necessary to come to a fair resolution. We intend to honour our commitment to relocate the gas generation plant. The OPA is working hard to come to a fair resolution. This is simply the next step in the process to ensure ratepayers are protected.</p>	<p>No. Such letters are not precedent-setting. Our agency conducts business on behalf of the people of Ontario. We do so in an open and transparent manner.</p>
<p>Did the OPA terminate the contract at the government's request?</p>	<p>No. Such letters are not precedent-setting. <u>This is a natural course of business.</u> Our government conducts business on behalf of the people of Ontario in an open and transparent manner.</p>	<p>We are in discussions with Greenfield South. We have notified them however that if our negotiations are not successful, we will not be proceeding with the contract. In the meantime, we have asked Greenfield South to stop construction at the site. Despite best efforts to work with Greenfield South Power Corporation, OPA will not be proceeding with the contract for Greenfield's Mississauga power plant. After several weeks of discussions, no agreement has been reached to stop construction and relocate. In light of this, we have notified Greenfield that we are not proceeding with the contract. Greenfield is financially liable for any further investments in the project.</p>
<p>Why wasn't the contract terminated sooner?</p>	<p>The OPA is in discussions with Greenfield South. The OPA has notified Greenfield South that it will not be proceeding with the contract if negotiations are not successful. In the meantime, the OPA has asked Greenfield South to stop construction at the site.The</p>	<p><u>IF SECOND LETTER IS SENT</u> <u>The OPA requires Greenfield South to stop construction at the site</u> After pursuing discussions to reach a negotiated</p>

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<p>If the OPA is terminating the contract, how can you get the company to work with the OPA to relocate the site?</p>	<p><u>OPA is working hard to come to a fair resolution. Unfortunately, after several weeks of discussion with the corporate owners of the plant, Greenfield has not agreed to stop construction and relocate. Not proceeding with the contract is simply the next step in the process to ensure ratepayers are protected.</u></p>	<p>agreement, w<u>We have notified Greenfield South that the OPA is not proceeding with the contract.</u></p> <p>We informed Greenfield that we will not proceed with the contract. Contract negotiations are commercially sensitive. These discussions are confidential. We will continue to negotiate in the best interests of Ontarians.</p>
<p>Will Greenfield South be the company to build the relocated plant? Do you have assurances from them on that?</p>	<p><u>IF SECOND LETTER IS SENT</u></p> <p><u>The Ontario Power Authority informed the corporation that it will not proceed with its contract. Not proceeding with the contract is simply the next step in the process to ensure ratepayers are protected.</u></p> <p><u>Following discussions with Greenfield South, OPA decided that not proceeding with the contract would best serve the public's interest.</u></p>	<p><u>Despite best efforts to work with Greenfield South Power Corporation, OPA will not be proceeding with the contract for Greenfield's Mississauga power plant. After several weeks of discussions, no agreement has been reached to stop construction and relocate. In light of this, we have notified Greenfield that we are not proceeding with the contract. Greenfield is financially liable for any further investments in the project.</u></p>
<p>Will you put this back out to tender?</p>	<p><u>Contract negotiations are commercially sensitive. These discussions are confidential. We are confident the OPA is working in the best interests of Ontarians. We made a specific commitment to residents in Mississauga and Etobicoke to relocate the gas generating plant currently under construction. For several weeks, the Ontario Power Authority has been in discussion with the owners of the plant. They have not agreed to stop construction and relocate.</u></p>	
<p>What is the process for finding another site?</p>	<p><u>The OPA has informed Greenfield that it is taking this step in the process and will not proceed with the contract. Contract negotiations are commercially sensitive. These discussions are confidential.</u></p>	<p><u>The government has been clear that it is committed relocating the plant. Given the government's commitment, and following discussions with Greenfield South, we decided not proceeding with the contract was the appropriate next step.</u></p>
<p>How come you've cancelled the plants in Mississauga and</p>		<p>Our goal has been to resolve this matter in the best interests of Ontarians. We believe this decision best serves the public interest. Contract negotiations are commercial sensitive and we cannot say more than that.</p>

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<p>Oakville but not in Northern York Region?</p>	<p>The OPA, as the contract holder, has been in discussions with Greenfield South to resolve this matter in the best interests of Ontarians. Following discussions with Greenfield South, OPA decided that not proceeding with the contract best serves the public's interest. We support the OPA's decision.</p> <p>For several weeks, the OPA has been in discussion with the owners of the plant; they have not agreed to stop construction and relocate.</p> <p>The OPA has informed the corporation that it is taking the next step in this process and will not proceed with its contract. Not proceeding with the contract is simply the next step in the process to ensure ratepayers are protected.</p> <p>Discussions began as soon as they could between OPA and Greenfield South. This decision is the result of those discussions. We want to resolve this in a fair way and these discussions take time. This is simply the next step in the process to ensure ratepayers are protected.</p> <p>The OPA will pursue further discussions with Greenfield South, and we expect them to find a satisfactory resolution.</p>	<p><i>We initiated discussions with Greenfield South as soon as we received the Minister's letter asking us to begin discussions. Not proceeding with the contract is the result of these discussions.</i></p> <p><i>We will pursue further discussions with Greenfield South.</i></p> <p><i>We expect to continue discussions with Greenfield South and hope to reach a satisfactory resolution.</i></p> <p><i>We expect to continue discussions with Greenfield South and hope to reach a satisfactory resolution.</i></p> <p><i><u>We will work with the government to identify a process that takes into consideration system planning requirements and can accommodate changes that we might make as a result of the plant siting review.</u></i> <i>This will require further consideration, but we will</i></p>
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	<p>The OPA will pursue further discussions with Greenfield South to find a satisfactory resolution. Discussions are ongoing. We intend to honour our commitment to relocate the gas generation plant. Ontario families need a reliable supply of clean power for our homes and businesses. ±</p> <p>Discussions are ongoing. We intend to honour our commitment to relocate the gas generation plant. Ontario families need a reliable supply of clean power for our homes and businesses. The OPA will pursue further discussions with Greenfield South to find a satisfactory resolution.</p> <p>We will work with the OPA to identify a process that takes into consideration system planning requirements and can accommodate changes that we might make as a result of the plant siting review. The OPA is best able to answer this. We can confirm that the site selection will include public consultation.</p> <p>These are two very different situations.</p> <p>The OPA has advised that Southwest GTA's local reliability issues can be addressed through building transmission. Transmission projects were rejected by the people of northern York Region, and a</p>	<p>consider local generation needs and transmission and distribution support. Once options are identified, the public will be consulted.</p> <p>These are two very different situations. Southwest GTA's local reliability issues can be addressed through building transmission. Transmission projects were rejected by the people of Northern York Region, and a generating facility is required immediately in the region to meet North American standards for reliability.</p>
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<p>Construction</p> <p>When will construction stop now that Greenfield has agreed to stop work while negotiations continue?</p> <p>What kind of penalty does the developer face if they don't stop construction?</p> <p>How much will the construction completed to date cost ratepayers?</p> <p>Why did it take so long to stop construction?</p> <p>Now that the OPA has terminated the contract, will work stop at the site?</p>	<p><u>IF GREENFIELD STOPS CONSTRUCTION:</u></p> <p>We understand that Greenfield South agreed to stop construction immediately. The OPA has notified the developer that it is not proceeding with the contract. The OPA has asked the developer to stop work at the site.</p> <p>The developer will not be able to recover its costs of ongoing construction. We expect Greenfield to stop construction.</p> <p>That has yet to be determined. The OPA is committed to resolving this matter with ratepayer value top of mind. The OPA has notified the developer that it is not proceeding with the contract. The OPA requires the developer to stop work at the site.</p> <p>Discussions began as soon as they could between OPA and Greenfield South. The agreement to stop construction is the result of these discussions.</p> <p>My understanding is that the OPA has notified the developer that it</p>	<p><i>We have asked the developer to stop work at the site. We have an agreement from Greenfield South to stop construction immediately.</i></p> <p><i>The developer will not be able to recover its costs of ongoing construction. We have asked them to stop and that is our expectation.</i></p> <p><i>We are committed to finding a fair resolution that upholds ratepayer value.</i></p> <p><i>We initiated discussions with Greenfield South as soon as we received the Minister's letter asking us to begin discussions. Not proceeding with the contract is the result of these discussions.</i></p> <p><i>We have notified Greenfield South that we are not proceeding with the contract. We have stated that we require Greenfield to stop construction. We have made it clear that Greenfield is financially liable if construction continues. We will pursue further</i></p>

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<p>Will legislation be required to stop construction?</p> <p>Minister, your spokesperson said that legislation was not needed, is this true?</p>	<p>will not be proceeding with the contract. The OPA has asked the developer to stop work at the site.</p> <p>Legislation is an option, however, the best option, and the one we are choosing at this time, is to have the OPA work with Greenfield South to find satisfactory resolution. we are hopeful that Greenfield South will work with the OPA to find a satisfactory resolution.</p> <p>Legislation is an option, however, we are hopeful that Greenfield South will work with the OPA to find a satisfactory resolution. It is our expectation the OPA and Greenfield South will work together to find a satisfactory resolution.</p> <p>The best option, and the one we are choosing at this time, is to have the OPA work with Greenfield South to find satisfactory resolution to the site.</p>	<p>discussions about stopping work at the site, and hope to reach a satisfactory resolution.</p> <p><i>The government is best able to answer this question.</i></p> <p><i>The government is best able to answer this question.</i></p>
<p><u>Contract Value</u></p> <p>Why should anyone want to contract with OPA or government after this?</p>	<p>The government and our agencies have successful track records for negotiating and fulfilling contracts in the best interest of Ontario taxpayers. This is a unique case, and these circumstances do not apply to other contracts or issues.</p> <p>Like any other business, energy partners work together to respond</p>	<p><i>Our agency has a successful track record for negotiating and fulfilling contracts in the best interest of Ontario ratepayers.</i></p> <p><i>This is a unique case, and these circumstances to not apply to other contracts or issues.</i></p>

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<p>What's the status of negotiations with TransCanada?</p> <p>Will the cost of these contract cancellations be made public knowledge at some time?</p>	<p>to changing conditions. Contracts are renegotiated or terminated on a small and large scale across businesses of all types.</p> <p>Discussions with TransCanada continue. We do not have an update at this time.</p> <p><u>Discussions are ongoing.</u> Our government is committed to conducting business in an open and transparent manner. We will provide what we can when we can.</p>	<p><i>Discussions with TransCanada continue. We do not have an update at this time.</i></p> <p><i>Contracts are commercially sensitive. It is up to the developer to determine what they are willing to make public and when.</i></p>
<p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>	<p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>	<p>Unrelated content removed</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>

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Greenfield Contract – OPA Not Proceeding
November 17, 2011 (5pm)

MEDIA PROTOCOL

Generally the Minister's Office responds to strategic questions and OPA responds to operational questions.

Strategic - Minister's Office (Minister or Erika Botond)

- Government's decision to relocate the plant
- Government's commitment to relocate the plant.

Operational - OPA (Colin Andersen or Kristen Jenkins)

- Status of contract negotiations, and process for finding another site
- History of Greenfield site selection (required approvals, public consultation, etc).

Process

- The OPA immediately notifies the Ministry of Energy of any Greenfield-related media call (Communications Director, Media Manager and Spokesperson).
- The Ministry immediately notifies Minister's Office, Deputy Minister's Office, Legal and Cabinet Office.
- The OPA submits proposed responses; the ministry secures approvals (Cabinet Office, DMO, Legal, Policy).
- The Minister's Office confirms who responds and how (phone/email).

Current Status

- On November 14, 2011, the OPA sent the first letter to Greenfield South, **requesting** that Greenfield stop construction and signalling OPA will not proceed with contract if negotiations are not successful. If agreement is not reached to stop construction while continuing to negotiate, the OPA will send a second letter **requiring** Greenfield South to stop construction and indicating OPA will not proceed with the contract.

WHO SAYS WHAT – General Guidelines

	MINISTER	OPA
Key Messages	<p><u>SCENARIO A – OPA advises Greenfield that it will not proceed with the contract and construction does not stop</u></p> <p>We made a specific commitment to residents in Mississauga and Etobicoke to relocate the gas generating plant currently under construction.</p> <p>We listened to local concerns from all residents, taking into consideration the changes in the area, including residential development since the plant was proposed.</p> <p>We heard that the current process to locate gas plants needed to improve. We committed to relocating the plant and are reviewing the process of how gas plants are located in communities – this will guide our future plans.</p> <p>After several weeks of discussions between the Ontario Power Authority and the owners of the plant, no agreement has been reached to stop construction and relocate.</p> <p>The Ontario Power Authority has informed the corporation that it is taking the next step in this process and is not proceeding with its contract.</p> <p>Ontario families and businesses need a reliable supply of clean power for our homes and businesses.</p> <p>We intend to honour our commitment to relocate the gas generation plant as quickly as possible.</p>	<p><i>Despite best efforts to work with Greenfield South Power Corporation, OPA will not be proceeding with the contract for Greenfield's Mississauga power plant.</i></p> <p><i>After several weeks of discussions, no agreement has been reached to stop construction and relocate. In light of this, we have notified Greenfield that we are not proceeding with the contract. Greenfield is financially liable for any further investments in the project.</i></p> <p><i>The OPA will continue to work with the government to identify another site for the gas plant based on local generation needs and transmission and distribution support to ensure a long-term reliable supply of electricity.</i></p>

	<p><u>SCENARIO B – OPA advised Greenfield that it will not proceed with the contract and agreement is reached to stop construction</u></p> <p>The OPA continues to negotiate with Greenfield South.</p> <p>While negotiations continue, Greenfield South has agreed to stop construction immediately.</p> <p>We are pleased with this progress and look forward to a satisfactory resolution.</p> <p>The government will continue to ensure that the best interests of Ontario's communities and ratepayers remain the primary priority.</p>	<p><i>(this section requires OPA input)</i></p> <p><i>We are continuing to negotiate with Greenfield South.</i></p> <p><i>While negotiations continue, Greenfield South has agreed to stop construction immediately.</i></p> <p><i>We are continuing our discussions with Greenfield South and hope to reach a satisfactory resolution.</i></p>
	<p><u>SCENARIO C – If letter/letters become public</u></p> <p>OPA has decided that the contract will come to an end and we support their decision.</p> <p>The government is committed to relocating this plant. It is in the ratepayer's interest to stop construction of this plant as soon as possible.</p> <p>It is also in the interest of Ontario's economy to resolve this as quickly as possible. We need to reassure electricity developers and investors that Ontario remains a good place to make energy investments.</p> <p>Gas-fired generation has an important and cost-effective role in building a cleaner, more modern electricity system that meets Ontario's energy needs.</p>	<p><i>We have decided that the contract will come to an end and appreciate the government's support.</i></p> <p><i>The government is committed to relocating this plant. It is in the ratepayer's interest to stop construction of this plant as soon as possible.</i></p> <p><i>It is also in the interest of Ontario's economy to resolve this as quickly as possible. We need to reassure electricity developers and investors that Ontario remains a good place to make energy investments.</i></p> <p><i>Gas-fired generation has an important and cost-effective role in building a cleaner, more modern electricity system that meets Ontario's energy</i></p>

Comment [C1]: This scenario doesn't require this statement.

	<p>The government remains committed to providing a strong, stable supply of electricity for Ontario. We also remain committed to those making investments in Ontario's electricity system.</p> <p>The government will continue to ensure that the best interests of Ontario's communities and ratepayers remain the primary priority.</p>	<p><i>needs.</i></p> <p><i>We share the government's commitment to ratepayer value.</i></p>
<p><u>Letters</u></p> <p>What does/do these letters mean?</p>	<p>We made a specific commitment to residents in Mississauga and Etobicoke to relocate the gas generating plant currently under construction. The OPA has been working hard to come to a fair resolution.</p> <p>Unfortunately after several weeks of discussion with the corporate owners of the plant, they have not been able to come to a resolution. Not proceeding with the contract is simply the next step in the process to ensure ratepayers are protected.</p> <p>We intend to relocate the plant.</p>	<p><i>If they mean that the OPA recognized the best next step for all parties involved – ratepayers, the developer and OPA – was not to proceed with the contract.</i></p>
<p>Does this mean construction stops immediately?</p>	<p>This means the OPA will no longer proceed with the contract and Greenfield is financially liable for any further investments in the project. This is in the best interests of Ontarians and their communities are our primary priority. It's important that the OPA continue to try and work with the company to resolve this in as quickly and fairly a way as possible.</p>	<p><i>This means we will no longer proceed with the contract and Greenfield is financially liable for any further investments in the project.</i></p>
<p>What kind of penalty does the developer face if they don't stop construction?</p>	<p>Not proceeding with the contract means Greenfield is financially liable for any further investments in the project. This next step will protect Ontario ratepayers from any future costs.</p>	<p><i>The developer will not be able to recover its costs of ongoing construction.</i></p>

<p>Why did negotiations fail?</p>	<p>For several weeks, the Ontario Power Authority has been in discussions with the owners of the plant. They have been unable to come to a resolution on this issue.</p> <p>The OPA has notified the corporation that it is taking the next step in this process and will not proceed with its contract.</p> <p>Ontario families and businesses need a reliable supply of clean power for our homes and businesses. We intend to honour our commitment to relocate the gas generation plant. The best interests of Ontarians and their communities are our primary priority.</p>	<p><i>We could not reach an agreement with the plant owners.</i></p>
<p>How long did the OPA give it? How extensive have the discussions been?</p>	<p>There have been several weeks of discussion between the OPA and Greenfield but the parties have been unable to come to a resolution on the issue.</p> <p>The OPA has informed the corporation that it is taking the next step in this process and will not proceed with its contract.</p>	<p><i>We have been speaking frequently with the developer for the past month.</i></p>
<p>There's been strong and persistent opposition in other communities – Northern York Region for example, yet those plants are proceeding. Why are you stopping this one?</p>	<p>We made a specific commitment to residents in Mississauga and Etobicoke to relocate the gas generating plant currently under construction. There have been significant changes to the area since the plant was originally approved in 2004, including the construction of several residential buildings. We listened to local concerns from all residents. We heard concerns about the location of the plant. We committed to relocating the plant and are reviewing the process of how gas plants are located in communities – this will guide our future plans.</p>	
<p>What does “most appropriate way to allocate compensation between the OPA and Crown” mean?</p>	<p>It means that we will sit down together to determine how to share the cost of not proceeding with the contract, giving full recognition to ratepayer value and contractual obligations.</p>	<p><i>It means that we will sit down together to determine how to share the cost of not proceeding with the contract, giving full recognition to ratepayer value and contractual obligations.</i></p>

<p>Exactly how much is it going to cost to cancel this contract?</p>	<p>The OPA is working hard to come to a fair resolution. Unfortunately, after several weeks of discussion with the corporate owners of the plant, they have not agreed to stop construction and relocate. Not proceeding with the contract is simply the next step in the process to ensure ratepayers are protected.</p>	<p><i>We are committed to finding a fair resolution that upholds ratepayer value.</i></p>
<p>How long will settlement negotiations take? Is there a drop-dead date?</p>	<p>We intend to honour our commitment to relocate the gas generation plant. The OPA is working hard to come to a fair resolution. This is simply the next step in the process to ensure ratepayers are protected.</p>	<p><i>We will take the time needed to find a fair solution.</i></p>
<p>Are these letters precedent-setting? Has the Ministry or OPA sent similar letters before?</p>	<p>No. Such letters are not precedent-setting. This is a natural course of business. Our government conducts business on behalf of the people of Ontario in an open and transparent manner.</p>	<p><i>No. Such letters are not precedent-setting. Our agency conducts business on behalf of the people of Ontario. We do so in an open and transparent manner.</i></p>
<p><u>Contract Termination</u></p>		
<p>Has the contract been terminated?</p>	<p>The OPA is working hard to come to a fair resolution. Unfortunately, after several weeks of discussion with the corporate owners of the plant, Greenfield has not agreed to stop construction and relocate. Not proceeding with the contract is simply the next step in the process to ensure ratepayers are protected. .</p>	<p><i>Despite best efforts to work with Greenfield South Power Corporation, OPA will not be proceeding with the contract for Greenfield's Mississauga power plant. After several weeks of discussions, no agreement has been reached to stop construction and relocate. In light of this, we have notified Greenfield that we are not proceeding with the</i></p>

<p>Who terminated the contract?</p>	<p>The Ontario Power Authority informed the corporation that it will not proceed with its contract. Not proceeding with the contract is simply the next step in the process to ensure ratepayers are protected.</p>	<p><i>contract. Greenfield is financially liable for any further investments in the project.</i></p>
<p>Why was the contract terminated? Were other solutions not viable?</p>	<p>We made a specific commitment to residents in Mississauga and Etobicoke to relocate the gas generating plant currently under construction. For several weeks, the Ontario Power Authority has been in discussion with the owners of the plant. They have not agreed to stop construction and relocate.</p> <p>The OPA has informed Greenfield that it is taking this step in the process and will not proceed with the contract. Contract negotiations are commercially sensitive. These discussions are confidential.</p>	<p><i>We informed Greenfield that we will not proceed with the contract.</i></p> <p><i>Despite best efforts to work with Greenfield South Power Corporation, OPA will not be proceeding with the contract for Greenfield's Mississauga power plant. After several weeks of discussions, no agreement has been reached to stop construction and relocate. In light of this, we have notified Greenfield that we are not proceeding with the contract. Greenfield is financially liable for any further investments in the project.</i></p>
<p>Did the OPA terminate the contract at the government's request?</p>	<p>The OPA, as the contract holder, has been in discussions with Greenfield South to resolve this matter .</p> <p>For several weeks, the OPA has been in discussion with the owners of the plant; they have not agreed to stop construction and relocate.</p> <p>The OPA has informed the corporation that it is taking the next step in this process and will not proceed with its contract. Not proceeding with the contract is simply the next step in the process to ensure ratepayers are protected.</p>	<p><i>The government has been clear that it is committed relocating the plant. Given the government's commitment, and following discussions with Greenfield South, we decided not proceeding with the contract was the appropriate next step.</i></p> <p><i>Contract negotiations are commercial sensitive and we cannot say more than that.</i></p>
<p>Why wasn't the contract terminated sooner?</p>	<p>Discussions began as soon as they could between OPA and Greenfield South. We want to resolve this in a fair way and these discussions take time. This is simply the next step in the process to ensure ratepayers are protected.</p>	<p><i>We initiated discussions with Greenfield South as soon as we received the Minister's letter asking us to begin discussions. Not proceeding with the contract is the result of these discussions.</i></p>

If the OPA is terminating the contract, how can you get the company to work with the OPA to relocate the site?	The OPA will pursue further discussions with Greenfield South.	<i>We will pursue further discussions with Greenfield South.</i>
Will Greenfield South be the company to build the relocated plant? Do you have assurances from them on that?	Discussions are ongoing. We intend to honour our commitment to relocate the gas generation plant. Ontario families need a reliable supply of clean power for our homes and businesses. T	<i>We expect to continue discussions with Greenfield South and hope to reach a satisfactory resolution.</i>
Will you put this back out to tender?	Discussions are ongoing. We intend to honour our commitment to relocate the gas generation plant. Ontario families need a reliable supply of clean power for our homes and businesses.	<i>We expect to continue discussions with Greenfield South and hope to reach a satisfactory resolution.</i>
What is the process for finding another site?	We will work with the OPA to identify a process that takes into consideration system planning requirements and can accommodate changes that we might make as a result of the plant siting review.	<i>We will work with the government to identify a process that takes into consideration system planning requirements and can accommodate changes that we might make as a result of the plant siting review.</i>
How come you've cancelled the plants in Mississauga and Oakville but not in Northern York Region?	<p>These are two very different situations.</p> <p>The OPA has advised that Southwest GTA's local reliability issues can be addressed through building transmission. Transmission projects were rejected by the people of northern York Region, and a generating facility is required immediately in the region to meet North American standards for reliability.</p>	<i>These are two very different situations. Southwest GTA's local reliability issues can be addressed through building transmission. Transmission projects were rejected by the people of Northern York Region, and a generating facility is required immediately in the region to meet North American standards for reliability.</i>

<p><u>Construction</u></p> <p>Now that the OPA has terminated the contract, will work stop at the site?</p> <p>Will legislation be required to stop construction?</p> <p>Minister, your spokesperson said that legislation was not needed, is this true?</p>	<p>The OPA has notified the developer that it is not proceeding with the contract. The OPA has asked the developer to stop work at the site.</p> <p>The OPA has notified the developer that it is not proceeding with the contract. The OPA requires the developer to stop work at the site.</p> <p>Legislation is an option, however, we are hopeful that Greenfield South will work with the OPA to find a satisfactory resolution.</p> <p>Legislation is an option, however, we are hopeful that Greenfield South will work with the OPA to find a satisfactory resolution.</p>	<p><i>We have asked the developer to stop work at the site</i></p> <p><i>The government is best able to answer this question.</i></p> <p><i>The government is best able to answer this question.</i></p>
<p><u>Contract Value</u></p> <p>Why should anyone want to contract with OPA or government after this?</p>	<p>The government and our agencies have successful track records for negotiating and fulfilling contracts in the best interest of Ontario taxpayers. This is a unique case. Like any other business, energy partners work together to respond to changing conditions. Contracts are renegotiated or terminated on a small and large scale across businesses of all types.</p>	<p><i>Our agency has a successful track record for negotiating and fulfilling contracts in the best interest of Ontario ratepayers.</i></p> <p><i>This is a unique case. .</i></p>

<p>What's the status of negotiations with TransCanada?</p> <p>Will the cost of these contract cancellations be made public knowledge at some time?</p>	<p>Discussions with TransCanada continue. We do not have an update at this time.</p> <p>Discussions are ongoing. Our government is committed to conducting business in an open and transparent manner.</p>	<p><i>Discussions with TransCanada continue. We do not have an update at this time.</i></p> <p><i>Contracts are commercially sensitive. It is up to the developer to determine what they are willing to make public and when.</i></p>
<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>Unrelated content removed [REDACTED]</p> <p>[REDACTED]</p>

Unrelated content
removed

[Redacted text block]

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[Redacted text block]

[Redacted text block]

Unrelated content
removed

Cayley, Daniel (ENERGY)

From: Perun, Halyna N. (ENERGY)
Sent: November-17-11 6:16 PM
To: Wilson, Malliha (JUS); Lung, Ken (JUS)
Cc: Calwell, Carolyn (ENERGY)
Attachments: Greenfield South Letters - Letterhead - November 11 2011 - reworded.wbk

Privileged and Confidential

Hi Malliha and Ken - A short update. The OPA plans to send its second letter to Greenfield tomorrow advising that the OPA will not proceed with the contract and requiring Greenfield to stop construction. You saw the draft letter last week, but here it is again (it's the second in the three letters attached – the first as you'll remember went out already).

We understand that the OPA and the Minister of Energy plan to issue statements shortly thereafter relating to the OPA's decision not to proceed with the contract. The Minister expects to be scrummed tomorrow morning. Talks between the OPA and Greenfield are expected to continue over the week.

We'll continue keeping you posted of developments

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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120 Adelaide Street West
Suite 1600
Toronto, Ontario M5H 1T1

T 416-967-7474

F 416-967-1947

www.powerauthority.on.ca

CONFIDENTIAL

November 11, 2011

Greenfield South Power Corporation
2275 Lakeshore Blvd. West, Suite 400
Toronto ON M8V 3Y3

Attention: Greg Vogt, President

Dear Mr. Vogt:

Re Amended and Restated Clean Energy Supply (ARCES) Contract between Greenfield South Power Corporation and Ontario Power Authority ("OPA") dated as of April 12, 2005 and amended and restated as of March 16, 2009 (the "Contract")

In response to the local community's concerns about the Greenfield South Generation Station, the Government has committed to relocate the plant. It is the OPA's continuing desire to reach mutual agreement to terminate the Contract and negotiate terms of a new contract for a facility in a different location. If these negotiations are not successful, the OPA will not proceed with the Contract.

Therefore, in light of your obligations to mitigate any damages resulting from the OPA's decision not to proceed with the Contract if negotiations are not successful, the OPA requests that you cease all further work and activities in connection with the Facility (as defined in the Contract), other than anything that may be reasonably necessary in the circumstances to bring such work or activities to a conclusion.

This letter constitutes Confidential Information (as such term is defined in the Contract).

Sincerely,

ONTARIO POWER AUTHORITY

By: _____
Name: Colin Andersen
Title: Chief Executive Officer

cc: McMillan LLP
Brookfield Place
181 Bay Street, Suite 2500
Toronto, Ontario M5J 2T7
Attention: Carl DeVuono
Fax: 416-304-3755



120 Adelaide Street West
Suite 1600
Toronto, Ontario M5H 1T1
T 416-967-7474
F 416-967-1947
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CONFIDENTIAL

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Therefore, in light of your obligations to mitigate any damages resulting from the OPA's decision to terminate the Contract, the OPA requires that you cease all further work and activities in connection with the Facility (as defined in the Contract), other than anything that may be reasonably necessary in the circumstances to bring such work or activities to a conclusion.

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By: _____
Name: Colin Andersen
Title: Chief Executive Officer



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ONTARIO POWER AUTHORITY

By: _____
Name: Colin Andersen
Title: Chief Executive Officer

Cayley, Daniel (ENERGY)

From: Perun, Halyna N. (ENERGY)
Sent: November-17-11 6:24 PM
To: Perun, Halyna N. (ENERGY)
Subject: minister's statement
Attachments: 2011-11-17 Minister's Statement - 3 PM - MO approved.doc

STATEMENT FROM ONTARIO MINISTER OF ENERGY CHRIS BENTLEY

November 18, 2011

We made a specific commitment to residents in Mississauga and Etobicoke to relocate the gas generating plant currently under construction.

We listened to local concerns from all residents, taking into consideration the changes in the area, including residential development since the plant was proposed.

We heard that the current process to locate gas plants needed to improve. We committed to relocating the plant and are reviewing the process of how gas plants are located in communities – this will guide our future plans.

After several weeks of discussions between the Ontario Power Authority and the owners of the plant, no agreement has been reached to stop construction and relocate.

The Ontario Power Authority has informed the corporation that it is taking the next step in this process and is not proceeding with its contract.

Ontario families and businesses need a reliable supply of clean power for our homes and businesses - we intend to honour our commitment to relocate the gas generation plant as quickly as possible.

For media inquiries call:
Jennifer Kett, Minister's Office, 416-327-6747
Jennifer.kett@ontario.ca

ontario.ca/energy-news
Disponible en français

Paul Gerard, Communications Branch, 416-327-7226
Paul.gerard@ontario.ca

For public inquiries call:
1-888-668-4636 TTY: 1-800-239-4224

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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November 18, 2011

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We heard that the current process to locate gas plants needed to improve. We committed to relocating the plant and are reviewing the process of how gas plants are located in communities – this will guide our future plans.

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Paul Gerard, Communications Branch, 416-327-7226
Paul.gerard@ontario.ca

For public inquiries call:
1-888-668-4636 TTY: 1-800-239-4224

Fisher, Petra (ENERGY)

From: Kulendran, Jesse (ENERGY)
Sent: November-17-11 6:26 PM
To: Silva, Joseph (ENERGY); Lindsay, David (ENERGY)
Subject: Statements/Qs&As
Attachments: Greenfield QA - Nov17 (Letter2)5pm.CLEAN.DOC

Duplicate attachment removed

Attached is the latest version of the Q&A. Below are the latest versions of the statements:

STATEMENT FROM ONTARIO MINISTER OF ENERGY CHRIS BENTLEY

November 18, 2011

We made a specific commitment to residents in Mississauga and Etobicoke to relocate the gas generating plant currently under construction.

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- 30 -

OPA NOT PROCEEDING WITH CONTRACT FOR MISSISSAUGA POWER PLANT

TORONTO, November 18, 2011- The Ontario Power Authority (OPA) announced today, that despite best efforts to work with Greenfield South Power Corporation, OPA is not proceeding with the contract for Greenfield's Mississauga power plant.

After several weeks of discussions between the Ontario Power Authority and the company, no agreement has been reached to stop construction and relocate. In light of this, the OPA notified the company today that they will not proceed with the contract. Greenfield is financially liable for any further investments in the project.

-30-

Cayley, Daniel (ENERGY)

From: Calwell, Carolyn (ENERGY)
Sent: November-17-11 10:23 PM
To: Perun, Halyna N. (ENERGY)
Subject: Fw:

For you to cut and paste for Malliha:

The OPA and Greenfield are negotiating to stop construction at the site and to settle the Keele Valley (OEFC) litigation. Negotiations of those issues are ongoing and are expected to continue over the weekend. If successful, the OPA and Greenfield will then move on to negotiate the costs associated with the Mississauga plant and possibly a new contract for a different facility.

The purpose of the letter tomorrow is primarily, it seems, to deal with the media pressure as the wording of this letter uses the same "will not proceed with the contract" language as the first letter - the OPA received legal advice to avoid the word termination. This letter will "require" Eastern to stop construction, rather than just "request" that they stop.

From: Wilson, Malliha (JUS)
To: Perun, Halyna N. (ENERGY); Lung, Ken (JUS)
Cc: Calwell, Carolyn (ENERGY)
Sent: Thu Nov 17 22:02:19 2011
Subject: Re:

Halyna,

Dag was under the impression that they were negotiating. Also, thought some toher work - other than repudiation was being done. So do u know what is going on?

Sent from my BlackBerry Wireless Device

From: Wilson, Malliha (JUS)
To: Perun, Halyna N. (ENERGY); Lung, Ken (JUS)
Cc: Calwell, Carolyn (ENERGY)
Sent: Thu Nov 17 20:17:19 2011
Subject: Re:

Thx

Sent from my BlackBerry Wireless Device

From: Perun, Halyna N. (ENERGY)
To: Wilson, Malliha (JUS); Lung, Ken (JUS)
Cc: Calwell, Carolyn (ENERGY)
Sent: Thu Nov 17 18:15:37 2011
Subject:

Privileged and Confidential

Hi Malliha and Ken - A short update. The OPA plans to send its second letter to Greenfield tomorrow advising that the OPA will not proceed with the contract and requiring Greenfield to stop construction. You saw the draft letter last week, but here it is again (it's the second in the three letters attached – the first as you'll remember went out already).

We understand that the OPA and the Minister of Energy plan to issue statements shortly thereafter relating to the OPA's decision not to proceed with the contract. The Minister expects to be scrummed tomorrow morning. Talks between the OPA and Greenfield are expected to continue over the week.

We'll continue keeping you posted of developments

Halyna

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Cayley, Daniel (ENERGY)

From: Perun, Halyna N. (ENERGY)
Sent: November-17-11 10:45 PM
To: Wilson, Malliha (JUS); Lung, Ken (JUS)
Cc: Calwell, Carolyn (ENERGY)
Subject: Re:

Yes, OPA and Greenfield are still negotiating - at this point discussions are about stopping construction at the site and settling outstanding litigation Greenfield has with the Ontario Electricity Financial Corporation (aka Keele Valley). If successful, OPA and Greenfield will then move on to negotiating the costs associated w the plant and possibly a new contract at a different facility. Talks are expected to continue over the weekend.

Tomorrow's OPA letter appears to be intended to "turn up the heat" - as it now moves from requesting that all work cease at the site to "requiring" the work stop. Further, this second letter would articulate that the OPA is not proceeding w the contract while the first letter indicated that if negotiations are not successful, the OPA will not be proceeding w the contract. I should clarify that the letter going out tomorrow does not say that the contract is being terminated (so when you see the attachment I included in my earlier email - it's the third of the three letters that is going out tomorrow, not the middle one).

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

Sent using BlackBerry

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We'll continue keeping you posted of developments

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Cayley, Daniel (ENERGY)

From: Calwell, Carolyn (ENERGY)
Sent: November-18-11 9:07 AM
To: Perun, Halyna N. (ENERGY)
Subject: GS Update

Hi - The timeline is changing for the letter and the releases – not by day, but by hour. I've also been asked to look at a "construction stops" statement. From this, I deduce that the OPA and GS may have at least an agreement in principle to stop construction (I wouldn't go so far on the whole Construction Stoppage and Settlement Agreement). Will keep you posted.

C

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Cayley, Daniel (ENERGY)

From: Botond, Erika (ENERGY)
Sent: November-18-11 9:57 AM
To: Kovesfalvi, Sylvia (ENERGY); Nutter, George (ENERGY); Sharkawi, Rula (ENERGY); Gemmiti, Paola (ENERGY); Kulendran, Jesse (ENERGY); Kett, Jennifer (ENERGY); MacLennan, Craig (ENERGY); Dunn, Ryan (ENERGY); Calwell, Carolyn (ENERGY)
Cc: King, Ryan (ENERGY)
Subject: RE: if construction stops statement

Thx. Do we need that last line?

From: Kovesfalvi, Sylvia (ENERGY)
Sent: November 18, 2011 9:09 AM
To: Botond, Erika (ENERGY); Nutter, George (ENERGY); Sharkawi, Rula (ENERGY); Gemmiti, Paola (ENERGY); Kulendran, Jesse (ENERGY); Kett, Jennifer (ENERGY); MacLennan, Craig (ENERGY); Dunn, Ryan (ENERGY); Calwell, Carolyn (ENERGY)
Cc: King, Ryan (ENERGY)
Subject: RE: if construction stops statement

Here is OPA's "if construction stops, negotiations continue statement"

OPA has reached an agreement with Greenfield Power Corporation to immediately stop construction of Greenfield's power plant in Mississauga. OPA and Greenfield are now negotiating an agreement to relocate the plant. OPA will not make any further comments while the negotiations are underway.

From: Botond, Erika (ENERGY)
Sent: November 18, 2011 8:58 AM
To: Nutter, George (ENERGY); Sharkawi, Rula (ENERGY); Gemmiti, Paola (ENERGY); Kulendran, Jesse (ENERGY); Kovesfalvi, Sylvia (ENERGY); Kett, Jennifer (ENERGY); MacLennan, Craig (ENERGY); Dunn, Ryan (ENERGY); Calwell, Carolyn (ENERGY)
Subject: if construction stops statement

Hi guys – tweaked this a bit. Can we have this one on stand-by as well. Carolyn, can you check it for us also? Then let's send up the chain.

Can you shoot over the OPA construction stops statement as well for us to take a look at again.

Thx,
e

Fisher, Petra (ENERGY)

From: Nutter, George (ENERGY)
Sent: November-18-11 11:12 AM
To: Botond, Erika (ENERGY)
Cc: Gemmiti, Paola (ENERGY); Kovesfalvi, Sylvia (ENERGY)
Subject: Greenfield South
Attachments: 2011-11-17 Minister's Statement - 3 PM - MO approved.DOC

Hi Erika –

My understanding is that this is the version to be posted as a Newsroom Bulletin today at 12:50. Can you please confirm?

George Nutter
Manager, Energy Communications
Communications Branch
Ministry of Energy
Ministry of Infrastructure

4th fl. Hearst Block
900 Bay Street
Queen's Park, Toronto
Ontario, Canada M7A 2E1

416-326-9602 office
416-326-3947 fax

george.nutter@ontario.ca

STATEMENT FROM ONTARIO MINISTER OF ENERGY CHRIS BENTLEY

November 18, 2011

We made a specific commitment to residents in Mississauga and Etobicoke to relocate the gas generating plant currently under construction.

We listened to local concerns from all residents, taking into consideration the changes in the area, including residential development since the plant was proposed.

We heard that the current process to locate gas plants needed to improve. We committed to relocating the plant and are reviewing the process of how gas plants are located in communities – this will guide our future plans.

After several weeks of discussions between the Ontario Power Authority and the owners of the plant, no agreement has been reached to stop construction and relocate.

The Ontario Power Authority has informed the corporation that it is taking the next step in this process and is not proceeding with its contract.

Ontario families and businesses need a reliable supply of clean power for our homes and businesses - we intend to honour our commitment to relocate the gas generation plant as quickly as possible.

For media inquiries call:
Jennifer Kett, Minister's Office, 416-327-6747
Jennifer.kett@ontario.ca

ontario.ca/energy-news
Disponible en français

Paul Gerard, Communications Branch, 416-327-7226
Paul.gerard@ontario.ca

For public inquiries call:
1-888-668-4636 TTY: 1-800-239-4224

Cayley, Daniel (ENERGY)

From: Nutter, George (ENERGY)
Sent: November-18-11 11:17 AM
To: Danyluk, Erica (CAB)
Cc: Gemmiti, Paola (ENERGY)
Subject: Greenfield South
Attachments: 2011-11-17 Minister's Statement - 3 PM - MO approved.DOC

Duplicate attachment removed

I am currently confirming with our MO that this is indeed, still, the latest and final version.

Assuming it is, it will be posted, once confirmation received, at 1250h as a Bulletin on Newsroom.

George Nutter
Manager, Energy Communications
Communications Branch
Ministry of Energy
Ministry of Infrastructure

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Queen's Park, Toronto
Ontario, Canada M7A 2E1

416-326-9602 office
416-326-3947 fax

george.nutter@ontario.ca

Cayley, Daniel (ENERGY)

From: Botond, Erika (ENERGY)
Sent: November-18-11 11:20 AM
To: Nutter, George (ENERGY)
Cc: Gemmiti, Paola (ENERGY); Kovesfalvi, Sylvia (ENERGY); Kett, Jennifer (ENERGY)
Subject: RE: Greenfield South

Stand by. An update will go out soon.

From: Nutter, George (ENERGY)
Sent: November 18, 2011 11:12 AM
To: Botond, Erika (ENERGY)
Cc: Gemmiti, Paola (ENERGY); Kovesfalvi, Sylvia (ENERGY)
Subject: Greenfield South

Hi Erika –

My understanding is that this is the version to be posted as a Newsroom Bulletin today at 12:50. Can you please confirm?

George Nutter
Manager, Energy Communications
Communications Branch
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416-326-3947 fax

george.nutter@ontario.ca

Cayley, Daniel (ENERGY)

From: Nutter, George (ENERGY)
Sent: November-18-11 11:21 AM
To: Danyluk, Erica (CAB)
Subject: RE: Greenfield South

It is my understanding that we are going with this scenario – no agreement to stop construction.

I have asked MO for confirmation that they want to go with the version I sent you.

I am waiting to hear. I have just been asked by MO to stand by.

George Nutter
Manager, Energy Communications
Communications Branch
Ministry of Energy
Ministry of Infrastructure

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900 Bay Street
Queen's Park, Toronto
Ontario, Canada M7A 2E1

416-326-9602 office
416-326-3947 fax

george.nutter@ontario.ca

From: Danyluk, Erica (CAB)
Sent: November 18, 2011 11:19 AM
To: Nutter, George (ENERGY)
Subject: Re: Greenfield South

Have negotiations broken off? This is the final version?

From: Nutter, George (ENERGY)
To: Danyluk, Erica (CAB)
Cc: Gemmiti, Paola (ENERGY)
Sent: Fri Nov 18 11:17:02 2011
Subject: Greenfield South

I am currently confirming with our MO that this is indeed, still, the latest and final version.

Assuming it is, it will be posted, once confirmation received, at 1250h as a Bulletin on Newsroom.

George Nutter
Manager, Energy Communications
Communications Branch
Ministry of Energy
Ministry of Infrastructure

4th fl. Hearst Block
900 Bay Street

Queen's Park, Toronto
Ontario, Canada M7A 2E1

416-326-9602 office
416-326-3947 fax

george.nutter@ontario.ca

Cayley, Daniel (ENERGY)

From: Nutter, George (ENERGY)
Sent: November-18-11 11:57 AM
To: Danyluk, Erica (CAB)
Subject: RE: Greenfield South

Nope.

George Nutter
Manager, Energy Communications
Communications Branch
Ministry of Energy
Ministry of Infrastructure

4th fl. Hearst Block
900 Bay Street
Queen's Park, Toronto
Ontario, Canada M7A 2E1

416-326-9602 office
416-326-3947 fax

george.nutter@ontario.ca

From: Danyluk, Erica (CAB)
Sent: November 18, 2011 11:56 AM
To: Nutter, George (ENERGY)
Subject: Fw: Greenfield South

Hi George...

Any word?

From: Gemmiti, Paola (ENERGY)
To: Nutter, George (ENERGY); Danyluk, Erica (CAB)
Sent: Fri Nov 18 11:23:11 2011
Subject: RE: Greenfield South

Just heard 12:50 time is on hold. Will keep you posted. Thanks, paola

From: Nutter, George (ENERGY)
Sent: November 18, 2011 11:17 AM
To: Danyluk, Erica (CAB)
Cc: Gemmiti, Paola (ENERGY)
Subject: Greenfield South

I am currently confirming with our MO that this is indeed, still, the latest and final version.

Assuming it is, it will be posted, once confirmation received, at 1250h as a Bulletin on Newsroom.

George Nutter
Manager, Energy Communications

Communications Branch
Ministry of Energy
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4th fl. Hearst Block
900 Bay Street
Queen's Park, Toronto
Ontario, Canada M7A 2E1

416-326-9602 office
416-326-3947 fax

george.nutter@ontario.ca

Cayley, Daniel (ENERGY)

From: Rehob, James (ENERGY)
Sent: November-18-11 12:02 PM
To: Letourneau, Amanda (ENERGY)
Cc: Linington, Brenda (ENERGY)
Subject: RE: Greenfield South Matters - Municipal and Legal Description

Categories: Orange Category

Privileged & Confidential Legal Advice / Solicitor & Client Privileged

November 18, 2011

Hi, Amanda. Your instincts are excellent on this point, and I appreciate your raising the issue in the way you have. I do not want you disclose any of the background on the file at all to Ralph. Rather, please only give Ralph the municipal address and ask him for all information he has on the land – we'll put a legal description of the land together from the information Ralph provides. (Brenda, if I've missed anything, please let me know.)

Kind regards,

James

From: Letourneau, Amanda (ENERGY)
Sent: November 18, 2011 11:39 AM
To: Rehob, James (ENERGY)
Subject: RE: Greenfield South Matters - Municipal and Legal Description

Hi James,

Sorry I didn't contact Ralph, but it wasn't clear to me that you wanted me to contact him. I just want to clarify with you what I can disclose to him and exactly what information you're looking for from him (is it just access to the land titles registry we need?). Please let me know, I can come by to discuss before I contact him.

Thanks!

Amanda

From: Rehob, James (ENERGY)
Sent: November 18, 2011 11:29 AM
To: Letourneau, Amanda (ENERGY)
Cc: Linington, Brenda (ENERGY)
Subject: Greenfield South Matters - Municipal and Legal Description

Hi, Amanda – please do remember to touch base with Ralph Eades, on the MOI side, in order to get some assistance with developing language for a "legal description" of the land(s). I think I'd better include that language along with Brenda's good suggestion about whether a map of the property could be included as a schedule, and present both the legal description and the idea / question from Brenda with my next set of instructions.

Kindly,

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
Fax: 416-325-1781
james.rehob@ontario.ca

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Cayley, Daniel (ENERGY)

From: Kovesfalvi, Sylvia (ENERGY)
Sent: November-18-11 12:38 PM
To: McMichael, Rhonda (CAB)
Cc: Gemmiti, Paola (ENERGY); Nutter, George (ENERGY)
Subject: QA/Messaging (FINAL!?)
Attachments: Greenfield QA - Nov18 LegalandPolicy.CLEAN.doc

The latest approved version. These may have to be slightly revised once we know final direction.

MEDIA PROTOCOL

Generally the Minister's Office responds to strategic questions and OPA responds to operational questions.

Strategic - Minister's Office (Minister or Erika Botond)

- Government's decision to relocate the plant
- Government's commitment to relocate the plant.

Operational - OPA (Colin Andersen or Kristen Jenkins)

- Status of contract negotiations, and process for finding another site
- History of Greenfield site selection (required approvals, public consultation, etc).

Process

- The OPA immediately notifies the Ministry of Energy of any Greenfield-related media call (Communications Director, Media Manager and Spokesperson).
- The Ministry immediately notifies Minister's Office, Deputy Minister's Office, Legal and Cabinet Office.
- The OPA submits proposed responses; the ministry secures approvals (Cabinet Office, DMO, Legal, Policy).
- The Minister's Office confirms who responds and how (phone/email).

Current Status

- On November 14, 2011, the OPA sent the first letter to Greenfield South, **requesting** that Greenfield stop construction and signalling OPA will not proceed with contract if negotiations are not successful. If agreement is not reached to stop construction while continuing to negotiate, the OPA will send a second letter **requiring** Greenfield South to stop construction and indicating OPA will not proceed with the contract.

WHO SAYS WHAT – General Guidelines

	MINISTER	OPA
Key Messages	<p><u>SCENARIO A – OPA advises Greenfield that it will not proceed with the contract and construction does not stop</u></p> <p>We made a specific commitment to residents in Mississauga and Etobicoke to relocate the gas generating plant currently under construction.</p> <p>We listened to local concerns from all residents, taking into consideration the changes in the area, including residential development since the plant was proposed.</p> <p>We heard that the current process to locate gas plants needed to improve. We committed to relocating the plant and are reviewing the process of how gas plants are located in communities – this will guide our future plans.</p> <p>After several weeks of discussions between the Ontario Power Authority and the owners of the plant, no agreement has been reached to stop construction and relocate.</p> <p>The Ontario Power Authority has informed the corporation that it is taking the next step in this process and is not proceeding with its contract.</p> <p>Ontario families and businesses need a reliable supply of clean power for our homes and businesses.</p> <p>We intend to honour our commitment to relocate the plant</p>	<p><i>Despite best efforts to work with Greenfield South Power Corporation, OPA will not be proceeding with the contract for Greenfield’s Mississauga power plant.</i></p> <p><i>After several weeks of discussions, no agreement has been reached to stop construction and relocate. In light of this, we have notified Greenfield that we are not proceeding with the contract. Greenfield is financially liable for any further investments in the project.</i></p> <p><i>The OPA will continue to work with the government to identify another site for the gas plant based on local generation needs and transmission and distribution support to ensure a long-term reliable supply of electricity.</i></p>

	<p><u>SCENARIO B – OPA advises Greenfield that it will not proceed with the contract and agreement is reached to stop construction</u></p> <p>The OPA continues to negotiate with Greenfield South.</p> <p>While negotiations continue, Greenfield South has agreed to stop construction immediately.</p> <p>We are pleased with this progress and look forward to a satisfactory resolution.</p> <p>The government will continue to ensure that the best interests of Ontario's communities and ratepayers remain the primary priority.</p>	<p><i>OPA has reached an agreement with Greenfield Power Corporation to immediately stop construction of Greenfield's power plant in Mississauga.</i></p> <p><i>OPA and Greenfield are now negotiating an agreement to relocate the plant.</i></p> <p><i>OPA will not make any further comments while the negotiations are underway.</i></p>
	<p><u>SCENARIO C – If letter/letters become public</u></p> <p>The government is committed to relocating this plant. It is in the ratepayer's interest to stop construction of this plant as soon as possible.</p> <p>It is also in the interest of Ontario's economy to resolve this as quickly as possible. We need to reassure electricity developers and investors that Ontario remains a good place to make energy investments.</p> <p>Gas-fired generation has an important and cost-effective role in building a cleaner, more modern electricity system that meets Ontario's energy needs.</p> <p>The government remains committed to providing a strong, stable supply of electricity for Ontario. We also remain committed to those making investments in Ontario's electricity system.</p>	<p><i>The government is committed to relocating this plant. It is in the ratepayer's interest to stop construction of this plant as soon as possible.</i></p> <p><i>It is also in the interest of Ontario's economy to resolve this as quickly as possible. We need to reassure electricity developers and investors that Ontario remains a good place to make energy investments.</i></p> <p><i>Gas-fired generation has an important and cost-effective role in building a cleaner, more modern electricity system that meets Ontario's energy needs.</i></p> <p><i>We share the government's commitment to ratepayer value.</i></p>

<p>Why did negotiations fail?</p>	<p>For several weeks, the Ontario Power Authority has been in discussions with the owners of the plant. They have been unable to come to a resolution on this issue.</p> <p>The OPA has notified the corporation that it is taking the next step in this process and will not proceed with its contract.</p> <p>Ontario families and businesses need a reliable supply of clean power for our homes and businesses. We intend to honour our commitment to relocate the gas generation plant. The best interests of Ontarians and their communities are our primary priority.</p>	<p><i>We could not reach an agreement with the plant owners.</i></p>
<p>How long did the OPA give it? How extensive have the discussions been?</p>	<p>There have been several weeks of discussion between the OPA and Greenfield but the parties have been unable to come to a resolution on the issue.</p> <p>The OPA has informed the corporation that it is taking the next step in this process and will not proceed with its contract.</p>	<p><i>We have been speaking frequently with the developer for the past month.</i></p>
<p>There's been strong and persistent opposition in other communities – Northern York Region for example, yet those plants are proceeding. Why are you stopping this one?</p>	<p>We made a specific commitment to residents in Mississauga and Etobicoke to relocate the gas generating plant currently under construction. We listened to local concerns from all residents. We heard concerns about the location of the plant. We committed to relocating the plant and are reviewing the process of how gas plants are located in communities – this will guide our future plans.</p>	

<p>What does “most appropriate way to allocate compensation between the OPA and Crown” mean?</p> <p>Exactly how much is it going to cost to cancel this contract?</p> <p>How long will settlement negotiations take? Is there a drop-dead date?</p> <p>Are these letters precedent-setting? Has the Ministry or OPA sent similar letters before?</p>	<p>It means that we will sit down together to determine how to share the cost of not proceeding with the contract, giving full recognition to ratepayer value and contractual obligations.</p> <p>The OPA is working hard to come to a fair resolution. Unfortunately, after several weeks of discussion with the corporate owners of the plant, the issue has not been resolved. Not proceeding with the contract is simply the next step in the process to ensure ratepayers are protected.</p> <p>We intend to honour our commitment to relocate the gas generation plant. The OPA is working hard to come to a fair resolution. This is simply the next step in the process to ensure ratepayers are protected.</p> <p>No. Such letters are not precedent-setting. Our government conducts business on behalf of the people of Ontario in an open and transparent manner.</p>	<p><i>It means that we will sit down together to determine how to share the cost of not proceeding with the contract, giving full recognition to ratepayer value and contractual obligations.</i></p> <p><i>We are committed to finding a fair resolution that upholds ratepayer value.</i></p> <p><i>We will take the time needed to find a fair solution.</i></p> <p><i>No. Such letters are not precedent-setting. Our agency conducts business on behalf of the people of Ontario. We do so in an open and transparent manner.</i></p>
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<p><u>Contract Termination</u></p> <p>Has the contract been terminated?</p> <p>Who terminated the contract?</p> <p>Why was the contract terminated? Were other solutions not viable?</p>	<p>The OPA is working hard to come to a fair resolution. Unfortunately, after several weeks of discussion with the corporate owners of the plant the issue has not been resolved. Not proceeding with the contract is simply the next step in the process to ensure ratepayers are protected.</p> <p>The Ontario Power Authority informed the corporation that it will not proceed with its contract. Not proceeding with the contract is simply the next step in the process to ensure ratepayers are protected.</p> <p>We made a specific commitment to residents in Mississauga and Etobicoke to relocate the gas generating plant currently under construction. For several weeks, the Ontario Power Authority has been in discussion with the owners of the plant the issue has not been resolved</p> <p>The OPA has informed Greenfield that it is taking this step in the process and will not proceed with the contract. Contract negotiations are commercially sensitive. These discussions are confidential.</p>	<p><i>Despite best efforts to work with Greenfield South Power Corporation, OPA will not be proceeding with the contract for Greenfield's Mississauga power plant. After several weeks of discussions, the issue has not been resolved. In light of this, we have notified Greenfield that we are not proceeding with the contract. Greenfield is financially liable for any further investments in the project.</i></p> <p><i>We informed Greenfield that we will not proceed with the contract.</i></p> <p><i>Despite best efforts to work with Greenfield South Power Corporation, OPA will not be proceeding with the contract for Greenfield's Mississauga power plant. After several weeks of discussions, no agreement has been reached to stop construction and relocate. In light of this, we have notified Greenfield that we are not proceeding with the contract. Greenfield is financially liable for any further investments in the project.</i></p>
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<p>Did the OPA terminate the contract at the government's request?</p>	<p>The OPA, as the contract holder, has been in discussions with Greenfield South to resolve this matter .</p> <p>For several weeks, the OPA has been in discussion with the owners of the plant but have not been able to resolve the issue..</p> <p>The OPA has informed the corporation that it is taking the next step in this process and will not proceed with its contract. Not proceeding with the contract is simply the next step in the process to ensure ratepayers are protected.</p>	<p><i>The government has been clear that it is committed relocating the plant. Given the government's commitment, and following discussions with Greenfield South, we decided not proceeding with the contract was the appropriate next step.</i></p> <p><i>Contract negotiations are commercial sensitive and we cannot say more than that.</i></p>
<p>Why wasn't the contract terminated sooner?</p>	<p>Discussions began as soon as they could between OPA and Greenfield South. We want to resolve this in a fair way and these discussions take time. This is simply the next step in the process to ensure ratepayers are protected.</p>	<p><i>We initiated discussions with Greenfield South as soon as we received the Minister's letter asking us to begin discussions. Not proceeding with the contract is the result of these discussions.</i></p>
<p>If the OPA is terminating the contract, how can you get the company to work with the OPA to relocate the site?</p>	<p>The OPA will pursue further discussions with Greenfield South.</p>	<p><i>We will pursue further discussions with Greenfield South.</i></p>
<p>Will Greenfield South be the company to build the relocated plant? Do you have assurances from them on that?</p>	<p>Discussions are ongoing. We intend to honour our commitment to relocate the gas generation plant. Ontario families need a reliable supply of clean power for our homes and businesses.</p>	<p><i>We expect to continue discussions with Greenfield South and hope to reach a satisfactory resolution.</i></p>

<p>Will you put this back out to tender?</p> <p>What is the process for finding another site?</p> <p>How come you've cancelled the plants in Mississauga and Oakville but not in Northern York Region?</p>	<p>Discussions are ongoing. We intend to honour our commitment to relocate the gas generation plant. Ontario families need a reliable supply of clean power for our homes and businesses.</p> <p>We will work with the OPA to identify a process that takes into consideration system planning requirements and can accommodate changes that we might make as a result of the plant siting review.</p> <p>These are two very different situations.</p> <p>The OPA has advised that Southwest GTA's local reliability issues can be addressed through building transmission. Transmission projects were rejected by the people of northern York Region, and a generating facility is required immediately in the region to meet North American standards for reliability.</p>	<p><i>We expect to continue discussions with Greenfield South and hope to reach a satisfactory resolution.</i></p> <p><i>We will work with the government to identify a process that takes into consideration system planning requirements and can accommodate changes that we might make as a result of the plant siting review.</i></p> <p><i>These are two very different situations. Southwest GTA's local reliability issues can be addressed through building transmission. Transmission projects were rejected by the people of Northern York Region, and a generating facility is required immediately in the region to meet North American standards for reliability.</i></p>
<p><u>Construction</u></p> <p>Now that the OPA has terminated the contract, will work stop at the site?</p>	<p>The OPA has notified the developer that it is not proceeding with the contract. The OPA has asked the developer to stop work at the site.</p>	<p><i>We have asked the developer to stop work at the site</i></p>

<p>Will legislation be required to stop construction?</p> <p>Minister, your spokesperson said that legislation was not needed, is this true?</p>	<p>The OPA has notified the developer that it is not proceeding with the contract. The OPA requires the developer to stop work at the site.</p> <p>Legislation is an option, however, we are hopeful that Greenfield South will work with the OPA to find a satisfactory resolution.</p> <p>Legislation is an option, however, we are hopeful that Greenfield South will work with the OPA to find a satisfactory resolution.</p>	<p><i>The government is best able to answer this question.</i></p> <p><i>The government is best able to answer this question.</i></p>
<p><u>Contract Value</u></p> <p>Why should anyone want to contract with OPA or government after this?</p> <p>What's the status of negotiations with TransCanada?</p>	<p>The government and our agencies have successful track records for negotiating and fulfilling contracts in the best interest of Ontario taxpayers.</p> <p>This is a unique case. Like any other business, energy partners work together to respond to changing conditions. Contracts are renegotiated or terminated on a small and large scale across businesses of all types.</p> <p>Discussions with TransCanada continue. We do not have an update at this time.</p>	<p><i>Our agency has a successful track record for negotiating and fulfilling contracts in the best interest of Ontario ratepayers.</i></p> <p><i>This is a unique case. .</i></p> <p><i>Discussions with TransCanada continue. We do not have an update at this time.</i></p>

<p>Will the cost of these contract cancellations be made public knowledge at some time?</p>	<p>Discussions are ongoing. Our government is committed to conducting business in an open and transparent manner.</p>	<p><i>Contracts are commercially sensitive. It is up to the developer to determine what they are willing to make public and when.</i></p>
<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>Unrelated content removed [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

Unrelated content
removed

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

<p>Unrelated content removed</p>		
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Cayley, Daniel (ENERGY)

From: Kovesfalvi, Sylvia (ENERGY)
Sent: November-18-11 12:45 PM
To: Botond, Erika (ENERGY); Kett, Jennifer (ENERGY); 'Kristin Jenkins'; Patricia Phillips; Silva, Joseph (ENERGY); Calwell, Carolyn (ENERGY); King, Ryan (ENERGY); Dunn, Ryan (ENERGY); Kulendran, Jesse (ENERGY)
Cc: Nutter, George (ENERGY); Gemmiti, Paola (ENERGY)
Subject: QA/Messaging
Attachments: Greenfield QA - Nov18 LegalandPolicy.CLEAN.doc

Duplicate attachment removed

Latest.

Cayley, Daniel (ENERGY)

From: Rehob, James (ENERGY)
Sent: November-18-11 1:12 PM
To: King, Ryan (ENERGY)
Cc: Calwell, Carolyn (ENERGY)
Subject: Sending Copy of Bill, Update

Privileged & Confidential Legal Advice / Solicitor & Client Privileged

November 18, 2011

Hi, Ryan. Spoke to Carolyn and she and you may have slightly different views as to what was landed upon. Given the state of flux that's going on just now, perhaps it would be better for me to give you a chance to touch base with Carolyn and also for the state of affairs to settle a bit more as regards the non-legislative moving parts (negotiations). With that in mind, I would propose sending you a draft version of the Bill to go through with Rick at some point on Monday – let me know if that seems appropriate to you?

Thanks very much,

Kind regards,

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
Fax: 416-325-1781
james.rehob@ontario.ca

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Cayley, Daniel (ENERGY)

From: Silva, Joseph (ENERGY)
Sent: November-18-11 1:15 PM
To: Lindsay, David (ENERGY)
Cc: Kulendran, Jesse (ENERGY)
Subject: FW: QA/Messaging
Attachments: Greenfield QA - Nov18 LegalandPolicy.CLEAN.doc

Duplicate attachment removed

FYI – latest set of QAs

From: Kovesfalvi, Sylvia (ENERGY)
Sent: November 18, 2011 12:45 PM
To: Botond, Erika (ENERGY); Kett, Jennifer (ENERGY); 'Kristin Jenkins'; Patricia Phillips; Silva, Joseph (ENERGY); Calwell, Carolyn (ENERGY); King, Ryan (ENERGY); Dunn, Ryan (ENERGY); Kulendran, Jesse (ENERGY)
Cc: Nutter, George (ENERGY); Gemmiti, Paola (ENERGY)
Subject: QA/Messaging

[Latest.](#)

Cayley, Daniel (ENERGY)

From: Calwell, Carolyn (ENERGY)
Sent: November-18-11 2:34 PM
To: Kovesfalvi, Sylvia (ENERGY); Silva, Joseph (ENERGY); King, Ryan (ENERGY); Kulendran, Jesse (ENERGY)
Cc: Nutter, George (ENERGY); Gemmiti, Paola (ENERGY)
Subject: RE: QA/Messaging
Attachments: Greenfield QA - Nov18 LegalandPolicy CLEAN.LSB.doc

Thanks a lot, Sylvia and team. 2 substantive changes on pages 1 and 8 (page 1 matters most). I caught a couple of other typos.

Carolyn

From: Kovesfalvi, Sylvia (ENERGY)
Sent: November 18, 2011 12:45 PM
To: Botond, Erika (ENERGY); Kett, Jennifer (ENERGY); 'Kristin Jenkins'; Patricia Phillips; Silva, Joseph (ENERGY); Calwell, Carolyn (ENERGY); King, Ryan (ENERGY); Dunn, Ryan (ENERGY); Kulendran, Jesse (ENERGY)
Cc: Nutter, George (ENERGY); Gemmiti, Paola (ENERGY)
Subject: QA/Messaging

Latest.

MEDIA PROTOCOL

Generally the Minister's Office responds to strategic questions and OPA responds to operational questions.

Strategic - Minister's Office (Minister or Erika Botond)

- ~~Government's decision to relocate the plant~~
- Government's commitment to relocate the plant.

Operational - OPA (Colin Andersen or Kristen Jenkins)

- Status of contract negotiations, and process for finding another site
- History of Greenfield site selection (required approvals, public consultation, etc).

Process

- The OPA immediately notifies the Ministry of Energy of any Greenfield-related media call (Communications Director, Media Manager and Spokesperson).
- The Ministry immediately notifies Minister's Office, Deputy Minister's Office, Legal and Cabinet Office.
- The OPA submits proposed responses; the ministry secures approvals (Cabinet Office, DMO, Legal, Policy).
- The Minister's Office confirms who responds and how (phone/email).

Current Status

- On November 14, 2011, the OPA sent the first letter to Greenfield South, **requesting** that Greenfield stop construction and signalling OPA will not proceed with contract if negotiations are not successful. If agreement is not reached to stop construction while continuing to negotiate, the OPA will send a second letter **requiring** Greenfield South to stop construction and indicating OPA will not proceed with the contract.

WHO SAYS WHAT – General Guidelines

	MINISTER	OPA
Key Messages	<p><u>SCENARIO A – OPA advises Greenfield that it will not proceed with the contract and construction does not stop</u></p> <p>We made a specific commitment to residents in Mississauga and Etobicoke to relocate the gas generating plant currently under construction.</p> <p>We listened to local concerns from all residents, taking into consideration the changes in the area, including residential development since the plant was proposed.</p> <p>We heard that the current process to locate gas plants needed to improve. We committed to relocating the plant and are reviewing the process of how gas plants are located in communities – this will guide our future plans.</p> <p>After several weeks of discussions between the Ontario Power Authority and the owners of the plant, no agreement has been reached to stop construction and relocate.</p> <p>The Ontario Power Authority has informed the corporation that it is taking the next step in this process and is not proceeding with its contract.</p> <p>Ontario families and businesses need a reliable supply of clean power for our homes and businesses.</p> <p>We intend to honour our commitment to relocate the plant</p>	<p><i>Despite best efforts to work with Greenfield South Power Corporation, OPA will not be proceeding with the contract for Greenfield's Mississauga power plant.</i></p> <p><i>After several weeks of discussions, no agreement has been reached to stop construction and relocate. In light of this, we have notified Greenfield that we are not proceeding with the contract. Greenfield is financially liable for any further investments in the project.</i></p> <p><i>The OPA will continue to work with the government to identify another site for the gas plant based on local generation needs and transmission and distribution support to ensure a long-term reliable supply of electricity.</i></p>

	<p><u>SCENARIO B – OPA advises Greenfield that it will not proceed with the contract and agreement is reached to stop construction</u></p> <p>The OPA continues to negotiate with Greenfield South.</p> <p>While negotiations continue, Greenfield South has agreed to stop construction immediately.</p> <p>We are pleased with this progress and look forward to a satisfactory resolution.</p> <p>The government will continue to ensure that the best interests of Ontario's communities and ratepayers remain the primary priority.</p>	<p><i>OPA has reached an agreement with Greenfield Power Corporation to immediately stop construction of Greenfield's power plant in Mississauga.</i></p> <p><i>OPA and Greenfield are now negotiating an agreement to relocate the plant.</i></p> <p><i>OPA will not make any further comments while the negotiations are underway.</i></p>
	<p><u>SCENARIO C – If letter/letters become public</u></p> <p>The government is committed to relocating this plant. It is in the ratepayer's interest to stop construction of this plant as soon as possible.</p> <p>It is also in the interest of Ontario's economy to resolve this as quickly as possible. We need to reassure electricity developers and investors that Ontario remains a good place to make energy investments.</p> <p>Gas-fired generation has an important and cost-effective role in building a cleaner, more modern electricity system that meets Ontario's energy needs.</p> <p>The government remains committed to providing a strong, stable supply of electricity for Ontario. We also remain committed to those making investments in Ontario's electricity system.</p>	<p><i>The government is committed to relocating this plant. It is in the ratepayer's interest to stop construction of this plant as soon as possible.</i></p> <p><i>It is also in the interest of Ontario's economy to resolve this as quickly as possible. We need to reassure electricity developers and investors that Ontario remains a good place to make energy investments.</i></p> <p><i>Gas-fired generation has an important and cost-effective role in building a cleaner, more modern electricity system that meets Ontario's energy needs.</i></p> <p><i>We share the government's commitment to ratepayer value.</i></p>

<p>Why did negotiations fail?</p>	<p>For several weeks, the Ontario Power Authority has been in discussions with the owners of the plant. They have been unable to come to a resolution on this issue.</p> <p>The OPA has notified the corporation that it is taking the next step in this process and will not proceed with its contract.</p> <p>Ontario families and businesses need a reliable supply of clean power for our homes and businesses. We intend to honour our commitment to relocate the gas generation plant. The best interests of Ontarians and their communities are our primary priority.</p>	<p><i>We could not reach an agreement with the plant owners.</i></p>
<p>How long did the OPA give it? How extensive have the discussions been?</p>	<p>There have been several weeks of discussion between the OPA and Greenfield but the parties have been unable to come to a resolution on the issue.</p> <p>The OPA has informed the corporation that it is taking the next step in this process and will not proceed with its contract.</p>	<p><i>We have been speaking frequently with the developer for the past month.</i></p>
<p>There's been strong and persistent opposition in other communities – Northern York Region for example, yet those plants are proceeding. Why are you stopping this one?</p>	<p>We made a specific commitment to residents in Mississauga and Etobicoke to relocate the gas generating plant currently under construction. We listened to local concerns from all residents. We heard concerns about the location of the plant. We committed to relocating the plant and are reviewing the process of how gas plants are located in communities – this will guide our future plans.</p>	

<p>What does “most appropriate way to allocate compensation between the OPA and Crown” mean?</p> <p>Exactly how much is it going to cost to cancel this contract?</p> <p>How long will settlement negotiations take? Is there a drop-dead date?</p> <p>Are these letters precedent-setting? Has the Ministry or OPA sent similar letters before?</p>	<p>It means that we will sit down together to determine how to share the cost of not proceeding with the contract, giving full recognition to ratepayer value and contractual obligations.</p> <p>The OPA is working hard to come to a fair resolution. Unfortunately, after several weeks of discussion with the corporate owners of the plant, the issue has not been resolved. Not proceeding with the contract is simply the next step in the process to ensure ratepayers are protected.</p> <p>We intend to honour our commitment to relocate the gas generation plant. The OPA is working hard to come to a fair resolution. This is simply the next step in the process to ensure ratepayers are protected.</p> <p>No. Such letters are not precedent-setting. Our government conducts business on behalf of the people of Ontario in an open and transparent manner.</p>	<p><i>It means that we will sit down together to determine how to share the cost of not proceeding with the contract, giving full recognition to ratepayer value and contractual obligations.</i></p> <p><i>We are committed to finding a fair resolution that upholds ratepayer value.</i></p> <p><i>We will take the time needed to find a fair solution.</i></p> <p><i>No. Such letters are not precedent-setting. Our agency conducts business on behalf of the people of Ontario. We do so in an open and transparent manner.</i></p>
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<p><u>Contract Termination</u></p> <p>Has the contract been terminated?</p> <p>Who terminated the contract?</p> <p>Why was the contract terminated? Were other solutions not viable?</p>	<p>The OPA is working hard to come to a fair resolution. Unfortunately, after several weeks of discussion with the corporate owners of the plant the issue has not been resolved. Not proceeding with the contract is simply the next step in the process to ensure ratepayers are protected.</p> <p>The Ontario Power Authority informed the corporation that it will not proceed with its contract. Not proceeding with the contract is simply the next step in the process to ensure ratepayers are protected.</p> <p>We made a specific commitment to residents in Mississauga and Etobicoke to relocate the gas generating plant currently under construction. For several weeks, the Ontario Power Authority has been in discussion with the owners of the plant the issue has not been resolved</p> <p>The OPA has informed Greenfield that it is taking this step in the process and will not proceed with the contract. Contract negotiations are commercially sensitive. These discussions are confidential.</p>	<p><i>Despite best efforts to work with Greenfield South Power Corporation, OPA will not be proceeding with the contract for Greenfield's Mississauga power plant. After several weeks of discussions, the issue has not been resolved. In light of this, we have notified Greenfield that we are not proceeding with the contract. Greenfield is financially liable for any further investments in the project.</i></p> <p><i>We informed Greenfield that we will not proceed with the contract.</i></p> <p><i>Despite best efforts to work with Greenfield South Power Corporation, OPA will not be proceeding with the contract for Greenfield's Mississauga power plant. After several weeks of discussions, no agreement has been reached to stop construction and relocate. In light of this, we have notified Greenfield that we are not proceeding with the contract. Greenfield is financially liable for any further investments in the project.</i></p>
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<p>Did the OPA terminate the contract at the government's request?</p>	<p>The OPA, as the contract holder, has been in discussions with Greenfield South to resolve this matter .</p> <p>For several weeks, the OPA has been in discussion with the owners of the plant but have not been able to resolve the issue.</p> <p>The OPA has informed the corporation that it is taking the next step in this process and will not proceed with its contract. Not proceeding with the contract is simply the next step in the process to ensure ratepayers are protected.</p>	<p><i>The government has been clear that it is committed relocating the plant. Given the government's commitment, and following discussions with Greenfield South, we decided not proceeding with the contract was the appropriate next step.</i></p> <p><i>Contract negotiations are commercial sensitive and we cannot say more than that.</i></p>
<p>Why wasn't the contract terminated sooner?</p>	<p>Discussions began as soon as they could between OPA and Greenfield South. We want to resolve this in a fair way and these discussions take time. This is simply the next step in the process to ensure ratepayers are protected.</p>	<p><i>We initiated discussions with Greenfield South as soon as we received the Minister's letter asking us to begin discussions. Not proceeding with the contract is the result of these discussions.</i></p>
<p>If the OPA is terminating the contract, how can you get the company to work with the OPA to relocate the site?</p>	<p>The OPA will pursue further discussions with Greenfield South.</p>	<p><i>We will pursue further discussions with Greenfield South.</i></p>
<p>Will Greenfield South be the company to build the relocated plant? Do you have assurances from them on that?</p>	<p>Discussions are ongoing. We intend to honour our commitment to relocate the gas generation plant. Ontario families need a reliable supply of clean power for our homes and businesses.</p>	<p><i>We expect to continue discussions with Greenfield South and hope to reach a satisfactory resolution.</i></p>

<p>Will you put this back out to tender?</p> <p>What is the process for finding another site?</p> <p>How come you've cancelled the plants in Mississauga and Oakville but not in Northern York Region?</p>	<p>Discussions are ongoing. We intend to honour our commitment to relocate the gas generation plant. Ontario families need a reliable supply of clean power for our homes and businesses.</p> <p>We will work with the OPA to identify a process that takes into consideration system planning requirements and can accommodate changes that we might make as a result of the plant siting review.</p> <p>These are two very different situations.</p> <p>The OPA has advised that Southwest GTA's local reliability issues can be addressed through building transmission. Transmission projects were rejected by the people of northern York Region, and a generating facility is required immediately in the region to meet North American standards for reliability.</p>	<p><i>We expect to continue discussions with Greenfield South and hope to reach a satisfactory resolution.</i></p> <p><i>We will work with the government to identify a process that takes into consideration system planning requirements and can accommodate changes that we might make as a result of the plant siting review.</i></p> <p><i>These are two very different situations. Southwest GTA's local reliability issues can be addressed through building transmission. Transmission projects were rejected by the people of Northern York Region, and a generating facility is required immediately in the region to meet North American standards for reliability.</i></p>
<p><u>Construction</u></p> <p>Now that the OPA has terminated the contract, will work stop at the site?</p>	<p>The OPA has notified the developer that it is not proceeding with the contract. The OPA has asked the developer to stop work at the site.</p>	<p><i>We have asked the developer to stop work at the site</i></p>

<p>Will legislation be required to stop construction?</p> <p>Minister, your spokesperson said that legislation was not needed, is this true?</p>	<p>The OPA has notified the developer that it is not proceeding with the contract. The OPA requires the developer to stop work at the site.</p> <p>Legislation is an option, however, we are hopeful that Greenfield South will work with the OPA to find a satisfactory resolution.</p> <p>Legislation is an option, however, we are hopeful that Greenfield South will work with the OPA to find a satisfactory resolution.</p>	<p><i>The government is best able to answer this question.</i></p> <p><i>The government is best able to answer this question.</i></p>
<p><u>Contract Value</u></p> <p>Why should anyone want to contract with OPA or government after this?</p> <p>What's the status of negotiations with TransCanada?</p>	<p>The government and our agencies have successful track records for negotiating and fulfilling contracts in the best interest of Ontario taxpayers.</p> <p>This is a unique case. Like any other business, energy partners work together to respond to changing conditions. Contracts are renegotiated or terminated on a small and large scale across businesses of all types.</p> <p>Discussions with TransCanada continue. We do not have an update at this time.</p>	<p><i>Our agency has a successful track record for negotiating and fulfilling contracts in the best interest of Ontario ratepayers.</i></p> <p><i>This is a unique case. —</i></p> <p><i>Discussions with TransCanada continue. We do not have an update at this time.</i></p>

<p>Will the cost of these contract cancellations be made public knowledge at some time?</p>	<p>Discussions are ongoing. Our government is committed to conducting business in an open and transparent manner.</p>	<p><i>Contracts are commercially sensitive. It is up to the developer to determine what they are willing to make public and when.</i></p>
<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>Unrelated content removed [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

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Fisher, Petra (ENERGY)

From: Kovesfalvi, Sylvia (ENERGY)
Sent: November-18-11 3:17 PM
To: McMichael, Rhonda (CAB)
Cc: Gemmiti, Paola (ENERGY); Nutter, George (ENERGY); Calwell, Carolyn (ENERGY); King, Ryan (ENERGY)
Subject: QA/Messaging
Attachments: Greenfield QA - Nov18 LegalandPolicyAPPROVED CLEAN.3pm.doc

Latest as of 3pm (including recent change to delete “despite best efforts” from OPA’s statement and messaging).

MEDIA PROTOCOL

Generally the Minister's Office responds to strategic questions and OPA responds to operational questions.

Strategic - Minister's Office (Minister or Erika Botond)

- Government's commitment to relocate the plant.

Operational - OPA (Colin Andersen or Kristen Jenkins)

- Status of contract negotiations, and process for finding another site
- History of Greenfield site selection (required approvals, public consultation, etc).

Process

- The OPA immediately notifies the Ministry of Energy of any Greenfield-related media call (Communications Director, Media Manager and Spokesperson).
- The Ministry immediately notifies Minister's Office, Deputy Minister's Office, Legal and Cabinet Office.
- The OPA submits proposed responses; the ministry secures approvals (Cabinet Office, DMO, Legal, Policy).
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Current Status

- On November 14, 2011, the OPA sent the first letter to Greenfield South, **requesting** that Greenfield stop construction and signalling OPA will not proceed with contract if negotiations are not successful. If agreement is not reached to stop construction while continuing to negotiate, the OPA will send a second letter **requiring** Greenfield South to stop construction and indicating OPA will not proceed with the contract.

WHO SAYS WHAT – General Guidelines

	MINISTER	OPA
Key Messages	<p><u>SCENARIO A – OPA advises Greenfield that it will not proceed with the contract and construction does not stop</u></p> <p>We made a specific commitment to residents in Mississauga and Etobicoke to relocate the gas generating plant currently under construction.</p> <p>We listened to local concerns from all residents, taking into consideration the changes in the area, including residential development since the plant was proposed.</p> <p>We heard that the current process to locate gas plants needed to improve. We committed to relocating the plant and are reviewing the process of how gas plants are located in communities – this will guide our future plans.</p> <p>After several weeks of discussions between the Ontario Power Authority and the owners of the plant, no agreement has been reached to stop construction and relocate.</p> <p>The Ontario Power Authority has informed the corporation that it is taking the next step in this process and is not proceeding with its contract.</p> <p>Ontario families and businesses need a reliable supply of clean power for our homes and businesses.</p> <p>We intend to honour our commitment to relocate the plant</p>	<p><i>We announced today that we are not proceeding with the contract for Greenfield's Mississauga power plant.</i></p> <p><i>After several weeks of discussions with Greenfield South Power Corporation, no agreement has been reached to stop construction and relocate. In light of this, we notified the company today that we will not proceed with the contract. Greenfield is financially liable for any further investments in the project.</i></p> <p><i>The OPA will continue to work with the government to identify another site for the gas plant based on local generation needs and transmission and distribution support to ensure a long-term reliable supply of electricity.</i></p>

	<p><u>SCENARIO B – OPA advises Greenfield that it will not proceed with the contract and agreement is reached to stop construction</u></p> <p>The OPA continues to negotiate with Greenfield South.</p> <p>While negotiations continue, Greenfield South has agreed to stop construction immediately.</p> <p>We are pleased with this progress and look forward to a satisfactory resolution.</p> <p>The government will continue to ensure that the best interests of Ontario's communities and ratepayers remain the primary priority.</p>	<p><i>OPA has reached an agreement with Greenfield Power Corporation to immediately stop construction of Greenfield's power plant in Mississauga.</i></p> <p><i>OPA and Greenfield are now negotiating an agreement to relocate the plant.</i></p> <p><i>OPA will not make any further comments while the negotiations are underway.</i></p>
	<p><u>SCENARIO C – If letter/letters become public</u></p> <p>The government is committed to relocating this plant. It is in the ratepayer's interest to stop construction of this plant as soon as possible.</p> <p>It is also in the interest of Ontario's economy to resolve this as quickly as possible. We need to reassure electricity developers and investors that Ontario remains a good place to make energy investments.</p> <p>Gas-fired generation has an important and cost-effective role in building a cleaner, more modern electricity system that meets Ontario's energy needs.</p> <p>The government remains committed to providing a strong, stable supply of electricity for Ontario. We also remain committed to those making investments in Ontario's electricity system.</p>	<p><i>The government is committed to relocating this plant. It is in the ratepayer's interest to stop construction of this plant as soon as possible.</i></p> <p><i>It is also in the interest of Ontario's economy to resolve this as quickly as possible. We need to reassure electricity developers and investors that Ontario remains a good place to make energy investments.</i></p> <p><i>Gas-fired generation has an important and cost-effective role in building a cleaner, more modern electricity system that meets Ontario's energy needs.</i></p> <p><i>We share the government's commitment to ratepayer value.</i></p>

<p>Why did negotiations fail?</p>	<p>For several weeks, the Ontario Power Authority has been in discussions with the owners of the plant. They have been unable to come to a resolution on this issue.</p> <p>The OPA has notified the corporation that it is taking the next step in this process and will not proceed with its contract.</p> <p>Ontario families and businesses need a reliable supply of clean power for our homes and businesses. We intend to honour our commitment to relocate the gas generation plant. The best interests of Ontarians and their communities are our primary priority.</p>	<p><i>We could not reach an agreement with the plant owners.</i></p>
<p>How long did the OPA give it? How extensive have the discussions been?</p>	<p>There have been several weeks of discussion between the OPA and Greenfield but the parties have been unable to come to a resolution on the issue.</p> <p>The OPA has informed the corporation that it is taking the next step in this process and will not proceed with its contract.</p>	<p><i>We have been speaking frequently with the developer for the past month.</i></p>
<p>There's been strong and persistent opposition in other communities – Northern York Region for example, yet those plants are proceeding. Why are you stopping this one?</p>	<p>We made a specific commitment to residents in Mississauga and Etobicoke to relocate the gas generating plant currently under construction. We listened to local concerns from all residents. We heard concerns about the location of the plant. We committed to relocating the plant and are reviewing the process of how gas plants are located in communities – this will guide our future plans.</p>	

<p>What does “most appropriate way to allocate compensation between the OPA and Crown” mean?</p> <p>Exactly how much is it going to cost to cancel this contract?</p> <p>How long will settlement negotiations take? Is there a drop-dead date?</p> <p>Are these letters precedent-setting? Has the Ministry or OPA sent similar letters before?</p>	<p>It means that we will sit down together to determine how to share the cost of not proceeding with the contract, giving full recognition to ratepayer value and contractual obligations.</p> <p>The OPA is working hard to come to a fair resolution. Unfortunately, after several weeks of discussion with the corporate owners of the plant, the issue has not been resolved. Not proceeding with the contract is simply the next step in the process to ensure ratepayers are protected.</p> <p>We intend to honour our commitment to relocate the gas generation plant. The OPA is working hard to come to a fair resolution. This is simply the next step in the process to ensure ratepayers are protected.</p> <p>No. Such letters are not precedent-setting. Our government conducts business on behalf of the people of Ontario in an open and transparent manner.</p>	<p><i>It means that we will sit down together to determine how to share the cost of not proceeding with the contract, giving full recognition to ratepayer value and contractual obligations.</i></p> <p><i>We are committed to finding a fair resolution that upholds ratepayer value.</i></p> <p><i>We will take the time needed to find a fair solution.</i></p> <p><i>No. Such letters are not precedent-setting. Our agency conducts business on behalf of the people of Ontario. We do so in an open and transparent manner.</i></p>
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<p><u>Contract Termination</u></p> <p>Has the contract been terminated?</p> <p>Who terminated the contract?</p> <p>Why was the contract terminated? Were other solutions not viable?</p>	<p>The OPA is working hard to come to a fair resolution. Unfortunately, after several weeks of discussion with the corporate owners of the plant the issue has not been resolved. Not proceeding with the contract is simply the next step in the process to ensure ratepayers are protected.</p> <p>The Ontario Power Authority informed the corporation that it will not proceed with its contract. Not proceeding with the contract is simply the next step in the process to ensure ratepayers are protected.</p> <p>We made a specific commitment to residents in Mississauga and Etobicoke to relocate the gas generating plant currently under construction. For several weeks, the Ontario Power Authority has been in discussion with the owners of the plant the issue has not been resolved</p> <p>The OPA has informed Greenfield that it is taking this step in the process and will not proceed with the contract. Contract negotiations are commercially sensitive. These discussions are confidential.</p>	<p><i>We will not be proceeding with the contract for Greenfield's Mississauga power plant. After several weeks of discussions, the issue has not been resolved. In light of this, we have notified Greenfield that we are not proceeding with the contract. Greenfield is financially liable for any further investments in the project.</i></p> <p><i>We informed Greenfield that we will not proceed with the contract.</i></p> <p><i>We will not be proceeding with the contract for Greenfield's Mississauga power plant. After several weeks of discussions, no agreement has been reached to stop construction and relocate. In light of this, we have notified Greenfield that we are not proceeding with the contract. Greenfield is financially liable for any further investments in the project.</i></p>
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Did the OPA terminate the contract at the government's request?	<p>The OPA, as the contract holder, has been in discussions with Greenfield South to resolve this matter .</p> <p>The OPA has informed the corporation that it is taking the next step in this process and will not proceed with its contract. Not proceeding with the contract is simply the next step in the process to ensure ratepayers are protected.</p>	<p><i>The government has been clear that it is committed relocating the plant. Given the government's commitment, and following discussions with Greenfield South, we decided not proceeding with the contract was the appropriate next step.</i></p> <p><i>Contract negotiations are commercial sensitive and we cannot say more than that.</i></p>
Why wasn't the contract terminated sooner?	<p>Discussions began as soon as they could between OPA and Greenfield South. We want to resolve this in a fair way and these discussions take time. This is simply the next step in the process to ensure ratepayers are protected.</p>	<p><i>We initiated discussions with Greenfield South as soon as we received the Minister's letter asking us to begin discussions. Not proceeding with the contract is the result of these discussions.</i></p>
If the OPA is terminating the contract, how can you get the company to work with the OPA to relocate the site?	<p>The OPA will pursue further discussions with Greenfield South.</p>	<p><i>We will pursue further discussions with Greenfield South.</i></p>
Will Greenfield South be the company to build the relocated plant? Do you have assurances from them on that?	<p>Discussions are ongoing. We intend to honour our commitment to relocate the gas generation plant. Ontario families need a reliable supply of clean power for our homes and businesses.</p>	<p><i>We expect to continue discussions with Greenfield South and hope to reach a satisfactory resolution.</i></p>

<p>Will you put this back out to tender?</p> <p>What is the process for finding another site?</p> <p>How come you've cancelled the plants in Mississauga and Oakville but not in Northern York Region?</p>	<p>Discussions are ongoing. We intend to honour our commitment to relocate the gas generation plant. Ontario families need a reliable supply of clean power for our homes and businesses.</p> <p>We will work with the OPA to identify a process that takes into consideration system planning requirements and can accommodate changes that we might make as a result of the plant siting review.</p> <p>These are two very different situations.</p> <p>The OPA has advised that Southwest GTA's local reliability issues can be addressed through building transmission. Transmission projects were rejected by the people of northern York Region, and a generating facility is required immediately in the region to meet North American standards for reliability.</p>	<p><i>We expect to continue discussions with Greenfield South and hope to reach a satisfactory resolution.</i></p> <p><i>We will work with the government to identify a process that takes into consideration system planning requirements and can accommodate changes that we might make as a result of the plant siting review.</i></p> <p><i>These are two very different situations. Southwest GTA's local reliability issues can be addressed through building transmission. Transmission projects were rejected by the people of Northern York Region, and a generating facility is required immediately in the region to meet North American standards for reliability.</i></p>
<p><u>Construction</u></p> <p>Now that the OPA has terminated the contract, will work stop at the site?</p>	<p>The OPA has notified the developer that it is not proceeding with the contract. The OPA has asked the developer to stop work at the site.</p>	<p><i>We have asked the developer to stop work at the site</i></p>

<p>Will legislation be required to stop construction?</p> <p>Minister, your spokesperson said that legislation was not needed, is this true?</p>	<p>The OPA has notified the developer that it is not proceeding with the contract. The OPA requires the developer to stop work at the site.</p> <p>Legislation is an option, however, we are hopeful that Greenfield South will work with the OPA to find a satisfactory resolution.</p> <p>Legislation is an option, however, we are hopeful that Greenfield South will work with the OPA to find a satisfactory resolution.</p>	<p><i>The government is best able to answer this question.</i></p> <p><i>The government is best able to answer this question.</i></p>
<p><u>Contract Value</u></p> <p>Why should anyone want to contract with OPA or government after this?</p> <p>What's the status of negotiations with TransCanada?</p>	<p>The government and our agencies have successful track records for negotiating and fulfilling contracts in the best interest of Ontario taxpayers.</p> <p>This is a unique case. Like any other business, energy partners work together to respond to changing conditions. Contracts are renegotiated or terminated on a small and large scale across businesses of all types.</p> <p>Discussions with TransCanada continue. We do not have an update at this time.</p>	<p><i>Our agency has a successful track record for negotiating and fulfilling contracts in the best interest of Ontario ratepayers.</i></p> <p><i>This is a unique case.</i></p> <p><i>Discussions with TransCanada continue. We do not have an update at this time.</i></p>

<p>Will the cost of these contract cancellations be made public knowledge at some time?</p>	<p>Discussions are ongoing. Our government is committed to conducting business in an open and transparent manner.</p>	<p><i>Contracts are commercially sensitive. It is up to the developer to determine what they are willing to make public and when.</i></p>
<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>Unrelated content removed [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

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Fisher, Petra (ENERGY)

From: Kovesfalvi, Sylvia (ENERGY)
Sent: November-18-11 3:18 PM
To: Botond, Erika (ENERGY); Kristin Jenkins; Kett, Jennifer (ENERGY); Patricia Phillips; Dunn, Ryan (ENERGY); Silva, Joseph (ENERGY); Kulendran, Jesse (ENERGY)
Subject: QA/Messaging
Attachments: Greenfield QA - Nov18 LegalandPolicyAPPROVED CLEAN.3pm.doc

Duplicate attachment removed

Latest as of 3pm (including recent change to delete “despite best efforts” from OPA’s statement and messaging).

Cayley, Daniel (ENERGY)

From: MacCallum, Doug (ENERGY)
Sent: November-18-11 4:43 PM
To: King, Ryan (ENERGY)
Cc: McKeever, Garry (ENERGY); Teixeira, Wanda (ENERGY)
Subject: FW: OPA DM MN
Attachments: OPA DM MN (8 Nov 2011) final AJ.doc

[Our update](#)

[Doug](#)

From: Jenkins, Allan (ENERGY)
Sent: November 18, 2011 4:35 PM
To: MacCallum, Doug (ENERGY)
Subject: RE: OPA DM MN

Unrelated content removed




From: MacCallum, Doug (ENERGY)
Sent: November 18, 2011 4:24 PM
To: Jenkins, Allan (ENERGY)
Subject: FW: OPA DM MN

[Allan: any updates?](#)

[Doug](#)

From: King, Ryan (ENERGY)
Sent: November 18, 2011 2:50 PM
To: Bishop, Ceiran (ENERGY); Chapman, Tom (ENERGY); MacCallum, Doug (ENERGY); Nakahara, Ken (ENERGY); Jobe, Cedric (ENERGY); Bergman, Mark (ENERGY)
Cc: McKeever, Garry (ENERGY); Norman, Jonathan (ENERGY); Teixeira, Wanda (ENERGY)
Subject: OPA DM MN

Attached is the last version of the OPA DM MN. Please advise of any updates for end of day monday.

Thanks

MEETING NOTE

NAME OF ORGANIZATION: Ontario Power Authority
DATE/TIME OF MEETING: November 10, 2011
LOCATION OF MEETING: Executive Boardroom, 4th Floor, Hearst Block, 900 Bay Street

PURPOSE: Bi-weekly meeting with the Deputy Minister

ATTENDEES: Ontario Power Authority (OPA):
Colin Andersen, CEO

Ministry of Energy
David Lindsay, Deputy Minister

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- Greenfield South Gas Plan

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GREENFIELD SOUTH GENERATING STATION

ISSUE

During the provincial election campaign the Liberal Party made a commitment to stop the construction of the plant. As the contract party representing government the OPA will need to take steps to stop construction of the plant.

BACKGROUND

- The Greenfield South Generating Station has all necessary approvals and is proceeding with construction in order to remain in compliance with its contract with the OPA and its contracts with its suppliers and financiers.
- The Minister has written to the OPA to commence discussions on a priority basis with Greenfield South.

SUGGESTED RESPONSE

- As you are aware I have requested that the OPA commence discussions with Greenfield South.
- We need to work closely and expeditiously on this issue and I will need regular reporting on the progress of your discussions.
- Please be ready with resources and advice as we proceed.

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[Redacted]

Input from: Allan Jenkins
Senior Policy Specialist, Energy Markets
416-325-6926

Amy Gibson
A/Manager, First Nation and Métis Policy and Partnerships
416-327-2116

Audrey Guillot
A/Manager, Strategic Policy
416-327-7178

Ceiran Bishop
Manager, Transmission Policy
416 327 7204

Karen Slawner, Sunita Chander, Mirrun Zaveri and Leo Tasca
Renewables and Energy Facilitation Branch

416-314-9473/ 416 212 7701

Mark Bergman
Senior Advisor, Energy Economics
416-327-8298

Robert Gordon
Senior Policy Advisor
416-325-6725

Ryan King
Senior Advisor and Executive Assistant, ADM's Office
416-314-6204

Tim Christie
Senior Advisor, Energy Economics
416-325-6708

Cedric Jobe
Director, Energy Supply, Nuclear
416-325-6545

Paula Lukan
Senior Policy Advisor, Energy Economics
416-325-3606

Approved by: Jon Norman
Director, Transmission and Distribution Policy
416-326-1759

Cedric Jobe
Director, Energy Supply, Nuclear
416-325.6545

Garry McKeever
Director, Energy Supply and Competition
416-325-8627

Alex Killoch
Director, Planning and Agency Relations Branch
416-326-5572

Pearl Ing
Director, Renewables and Energy Facilitation

416-327-3868

Rick Jennings
ADM, Energy Supply, Transmission & Distribution Policy
416-314-6190

Sue Lo
ADM, Renewables & Energy Efficiency Division
416-327-8552

Cayley, Daniel (ENERGY)

From: Perun, Halyna N. (ENERGY)
Sent: November-18-11 5:01 PM
To: Calwell, Carolyn (ENERGY)
Subject: RE: Greenfield

Thank you Carolyn!

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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From: Calwell, Carolyn (ENERGY)
Sent: November 18, 2011 4:58 PM
To: Perun, Halyna N. (ENERGY)
Subject: RE: Greenfield

I will keep an eye on my bb over the weekend. I am in town should anything come up.

Carolyn

From: Perun, Halyna N. (ENERGY)
Sent: November 18, 2011 4:57 PM
To: Lindsay, David (ENERGY)
Cc: Jennings, Rick (ENERGY); Silva, Joseph (ENERGY); Calwell, Carolyn (ENERGY)
Subject: Greenfield

Privileged and Confidential

Mike Lyle advises that looks like there is an agreement in principle but he had to hang up before he could explain more. He asked us to stand by on the weekend – I'll follow up shortly with him for more details

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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Cayley, Daniel (ENERGY)

From: Lindsay, David (ENERGY)
Sent: November-18-11 5:09 PM
To: Perun, Halyna N. (ENERGY)
Cc: Jennings, Rick (ENERGY); Silva, Joseph (ENERGY); Calwell, Carolyn (ENERGY)
Subject: RE: Greenfield

Great news. Thanks for the heads up.

David

From: Perun, Halyna N. (ENERGY)
Sent: November 18, 2011 4:57 PM
To: Lindsay, David (ENERGY)
Cc: Jennings, Rick (ENERGY); Silva, Joseph (ENERGY); Calwell, Carolyn (ENERGY)
Subject: Greenfield

Privileged and Confidential

Mike Lyle advises that looks like there is an agreement in principle but he had to hang up before he could explain more. He asked us to stand by on the weekend – I'll follow up shortly with him for more details

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Cayley, Daniel (ENERGY)

From: Botond, Erika (ENERGY)
Sent: November-18-11 5:10 PM
To: Gemmiti, Paola (ENERGY); Kovesfalvi, Sylvia (ENERGY); Kulendran, Jesse (ENERGY)
Cc: Nutter, George (ENERGY); Kett, Jennifer (ENERGY)
Subject: RE: update

Maybe say: we made a specific commitment to residents in Mississauga and Etobicoke to relocate the Greenfield South gas generating plant.

From: Gemmiti, Paola (ENERGY)
Sent: November 18, 2011 5:08 PM
To: Botond, Erika (ENERGY); Kovesfalvi, Sylvia (ENERGY); Kulendran, Jesse (ENERGY)
Cc: Nutter, George (ENERGY); Kett, Jennifer (ENERGY)
Subject: Re: update

Since construction is stopping immediately, recommend we delete 'currently under construction' in the first paragraph.

Sent using BlackBerry

From: Botond, Erika (ENERGY)
To: Gemmiti, Paola (ENERGY); Kovesfalvi, Sylvia (ENERGY); Kulendran, Jesse (ENERGY)
Cc: Nutter, George (ENERGY); Kett, Jennifer (ENERGY)
Sent: Fri Nov 18 17:02:06 2011
Subject: update

Hi there – as discussed, attached is our updated statement. I have also attached the OPA statement – this includes revisions we have suggested back to them (waiting to hear if they are accepted).

Waiting to hear if the OPA has any issues with our statement, Kristin didn't think they would.

We will stay in touch on timing.

We are reviewing qs and as next.

Thx,
e

Cayley, Daniel (ENERGY)

From: Lindsay, David (ENERGY)
Sent: November-18-11 5:50 PM
To: Jennings, Rick (ENERGY)
Subject: RE: A few updates

Thanks Rick,

Sorry my afternoon fell apart and we had to put off our one-on-one. We can follow-up on these and other things next week. In the meantime have a good weekend.

David

From: Jennings, Rick (ENERGY)
Sent: November 18, 2011 5:44 PM
To: Lindsay, David (ENERGY)
Subject: A few updates

Unrelated content removed



Planning – Ministry of the Environment has been asked to put together ideas on this related to siting gas plants – they are taking as their mandate a public commitment (apparently at the Mississauga announcement on September 24) that gas plants would not be built near “schools, hospitals and families”. I have added to the list of options applying more stringent EA process to gas plants given the public perception is different than was assumed when the original criteria were put together. Environment is not in favour of numerical setbacks and prefers requiring compliance or recognition of guidelines. Gail Beggs will likely call you on this.

Vapour – Infrastructure Ontario now favours a Commercial Negotiation with TCE although it still may be in the framework of an arbitration. Negotiations could begin late next week, it appears that Serge Imbrogno and I are being volunteered to participate.

Cayley, Daniel (ENERGY)

From: Sinclair, James (FIN)
Sent: November-18-11 6:32 PM
To: Perun, Halyna N. (ENERGY)
Cc: Hanslep, Malle (FIN); Calwell, Carolyn (ENERGY)
Subject: Re: OEFC

Thanks Halyna. We have been working on the approvals at our end this evening. Let us know when or if they are needed.

Sent using BlackBerry

From: Perun, Halyna N. (ENERGY)
To: Sinclair, James (FIN)
Cc: Hanslep, Malle (FIN); Calwell, Carolyn (ENERGY)
Sent: Fri Nov 18 18:30:48 2011
Subject: RE: OEFC

Privileged and Confidential

Hi Jim and Malle – Apparently, the Ontario Power Authority and Greenfield South Power Corporation are getting closer to an agreement to stop construction on the Mississauga site. It entails settling the litigation with the OEFC on Keele Valley claims. Mike Lyle has been working with Sarah Neville at OEFC on details of settling that litigation. I suspect that you'd want to be in the loop as this unfolds. There is a very strong political desire to land this before the end of the weekend – for an announcement on Monday.

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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From: Perun, Halyna N. (ENERGY)
Sent: November 4, 2011 8:18 AM
To: Sinclair, James (FIN)
Cc: Hanslep, Malle (FIN)
Subject: Re: OEFC

Yes please if you are able to that would be great thank you

Halyna Perun

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

Sent using BlackBerry

From: Sinclair, James (FIN)
To: Perun, Halyna N. (ENERGY)
Cc: Hanslep, Malle (FIN)
Sent: Fri Nov 04 08:16:56 2011
Subject: OEFC

Halyna:

I now have your voice mail. Although we know of the discussions regarding the Mississauga plant and the need for settlement of the earlier litigation we do not, unfortunately, have any term sheet. Would you like us to chase it down from the client?

Jim

James D. Sinclair
Director, Legal Services Branch
Ministry of Finance
Ministry of Revenue
777 Bay Street, 11th Floor
Toronto ON M5G 2C8

T: 416 325 1450
F: 416 325 1460

This e-mail is confidential and may be subject to solicitor-client privilege.

Cayley, Daniel (ENERGY)

From: Calwell, Carolyn (ENERGY)
Sent: November-18-11 6:46 PM
To: Perun, Halyna N. (ENERGY)
Subject: Re: Greenfield

Fascinating!

From: Perun, Halyna N. (ENERGY)
To: Lindsay, David (ENERGY)
Cc: Jennings, Rick (ENERGY); Silva, Joseph (ENERGY); Calwell, Carolyn (ENERGY)
Sent: Fri Nov 18 18:16:54 2011
Subject: RE: Greenfield

Privileged and Confidential

Greenfield came back with settlement on the OEFC Keele Valley claims in the amount of \$15.3 M. There has been some discussion that Greenfield would settle for \$10 M plus \$5 + M in some other form – like a NUG contract. He thought that this extra \$5 M was not significant and would not be a deal breaker.

Also, Keele Valley settlement may need to be set out in a separate agreement. OPA counsel has been in discussion with OEFC counsel (Sarah Neville) today about such agreement.

Issue of NUG contract not landed as yet – Mike advises that OPA is looking at whether a Minister's direction is needed should this route be desired. We'll look at the need for a direction as well.

Also, I'll loop in MOF legal.

OPA is planning to send out next draft to Greenfield tomorrow and counsel are working on drafting this evening. He'll be sending the next draft to me tomorrow then as well.

Aim is to land all of this for an announcement on Monday.

Halyna

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A/Director
Legal Services Branch
Ministries of Energy & Infrastructure
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Toronto, ON M5G 2E5
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From: Lindsay, David (ENERGY)
Sent: November 18, 2011 5:09 PM

To: Perun, Halyna N. (ENERGY)
Cc: Jennings, Rick (ENERGY); Silva, Joseph (ENERGY); Calwell, Carolyn (ENERGY)
Subject: RE: Greenfield

Great news. Thanks for the heads up.

David

From: Perun, Halyna N. (ENERGY)
Sent: November 18, 2011 4:57 PM
To: Lindsay, David (ENERGY)
Cc: Jennings, Rick (ENERGY); Silva, Joseph (ENERGY); Calwell, Carolyn (ENERGY)
Subject: Greenfield

Privileged and Confidential

Mike Lyle advises that looks like there is an agreement in principle but he had to hang up before he could explain more. He asked us to stand by on the weekend – I'll follow up shortly with him for more details

Halyna

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Cayley, Daniel (ENERGY)

From: Perun, Halyna N. (ENERGY)
Sent: November-18-11 7:17 PM
To: 'Michael Lyle'
Cc: Calwell, Carolyn (ENERGY)
Subject: RE: Greenfield
Attachments: image001.gif

Attachment is image below

Privileged and Confidential

Thanks Mike – understood. A draft you send this evening will be great to see and we'll keep it to ourselves. I am thinking of holding off on sending more to clients (unless pressed) until we have the version you send to Greenfield. If I send anything more this evening it would be with caveats. By the way, Jim Sinclair at MOF legal is aware of the OEFC litigation discussions and has MOF approvals prepared and on stand by.

Halyna

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From: Michael Lyle [mailto:Michael.Lyle@powerauthority.on.ca]
Sent: November 18, 2011 7:09 PM
To: Perun, Halyna N. (ENERGY)
Cc: Calwell, Carolyn (ENERGY)
Subject: Re: Greenfield

My sense is that would be pretty misleading. They came back with a very one sided response that had us convinced we would go nowhere last night. They moved very far in negotiation today. We will have a draft from external counsel tonight which I can send along this evening as long as it is clear that it will likely change somewhat before it is sent to the other side.

From: Perun, Halyna N. (ENERGY) [mailto:Halyna.Perun2@ontario.ca]
Sent: Friday, November 18, 2011 06:53 PM
To: Michael Lyle
Cc: Calwell, Carolyn (ENERGY) <Carolyn.Calwell@ontario.ca>
Subject: Greenfield

Privileged and Confidential

In the meantime, any chance you could send me what Greenfield came back with, aside from the Keele Valley claims/NUG contract idea? If it's quicker – perhaps you could just note what's new/different in the below summary of the first draft that Carolyn produced for the clients? I am anticipating being asked this so would like to be clearer about the details so far.

This agreement would require Greenfield to:

- immediately cease construction of the plant and demobilize from site
- maintain the safety and security of the site
- seek to have its environmental approval and its generation license cancelled

The OPA would be required to:

- pay Greenfield its costs of ceasing construction and demobilizing and costs of maintaining safety and security of the site
- provide a letter of credit (amount to be determined) that Greenfield can draw upon if the OPA doesn't pay the costs in the bullet above

All of Greenfield's costs may be verified through documentation and audit.

The Keele Valley claims would be settled for \$10M to be paid from the OEFC to Eastern Power and the related litigation would be dismissed.

The Clean Energy Supply (ARCES) contract between Greenfield and the OPA would be suspended for the duration of this Construction Stoppage and Settlement Agreement. The parties agree to work together in good faith to negotiate the mutual termination of the ARCES agreement and negotiate a new contract for a facility at a different location.

All discussions in relation to this agreement and in relation to the ARCES contract are confidential. Greenfield and the OPA may make a public announcement that they have entered into an agreement that provides for the permanent end to construction, the revocation of environmental approvals and licenses and further negotiation to determine the resolution of the cancellation of the facility.

The agreement has a term of 60 days, which may be extended for an additional 60 days. When this agreement expires, the ARCES Contract is terminated and the OPA and Greenfield shall commence a dispute resolution process (that ultimately includes arbitration) to determine the compensation owed to Greenfield.

Many thanks Mike! Hope you get some part of this weekend to yourself

Halyna

Halyna N. Perun
A/Director
Legal Services Branch
Ministries of Energy & Infrastructure
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Toronto, ON M5G 2E5
Ph: (416) 325-6681 / Fax: (416) 325-1781
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Fisher, Petra (ENERGY)

From: Kovesfalvi, Sylvia (ENERGY)
Sent: November-18-11 7:45 PM
To: Calwell, Carolyn (ENERGY); King, Ryan (ENERGY)
Subject: Approval required: M0's updated Qs and As
Attachments: Greenfield Q's and A's Updated - MO copy - Nov 18 6 PM.doc

Hi - for fact-check. Mins' office has made some changes - pls let me know if you have concerns/changes. Thank you.

Sent from my BlackBerry Wireless Handheld

From: Botond, Erika (ENERGY)
To: Gemmiti, Paola (ENERGY); Nutter, George (ENERGY); Kovesfalvi, Sylvia (ENERGY)
Cc: Kett, Jennifer (ENERGY); Dunn, Ryan (ENERGY)
Sent: Fri Nov 18 18:05:11 2011
Subject: updated Qs and As

KEY MESSAGES

Greenfield agrees to stop construction - negotiations proceed:

- We made a specific commitment to residents in Mississauga and Etobicoke to relocate the Greenfield South gas generating plant.
- Over the last several weeks, the Ontario Power Authority has been in discussions with Greenfield South.
- Over the weekend, the OPA notified me that Greenfield has agreed to stop construction immediately.
- We are pleased with this progress. We listened to local concerns from all residents, taking into consideration the changes in the area, including residential development since the plant was proposed.
- We heard from residents that our current process to locate gas plants needed to improve.
- As we move forward with our commitment to relocate this plant, we are reviewing the process how future gas plants will be located in communities.

QUESTIONS AND ANSWERS

When will construction stop now that Greenfield has agreed to stop work while negotiations continue?

Today, the OPA notified me that Greenfield has agreed to stop construction immediately. We are pleased with this progress. We listened to local concerns from all residents, taking into consideration the changes in the area, including residential development since the plant was proposed.

Residents may see workers still on the site as the site will need to be secured. Health and safety is of utmost importance.

What kind of penalty does the developer face if they don't stop construction?

The developer will not be able to recover its costs of ongoing construction. We expect Greenfield to stop construction. This is the next step to further protect ratepayers.

How much will the construction completed to date cost ratepayers?

These discussions are ongoing. Going forward the developer will not be able to recover its costs of ongoing construction. This ensures ratepayers are protected from any further costs.

Why did it take so long to stop construction?

Discussions began as soon as they could between OPA and Greenfield South. We wanted to resolve this in a fair way - these discussions take time. We are pleased with this progress.

Minister, your spokesperson said that legislation was not needed, is this true?

Legislation was an option, however we were hopeful that Greenfield South would work with the OPA to find satisfactory resolution. We are pleased with the progress that has been made.

Will you put this back out to tender?

Discussions are ongoing - we intend to honour our commitment to relocate the gas generation plant as quickly as possible. The best interests of Ontarians and their communities are our primary priority.

What is the process for finding another site?

We heard from residents that our current process to locate gas plants needed to improve. As we move forward with our commitment to relocate this plant, we are reviewing the process how future gas plants will be located in communities. We will work with the OPA to identify a process that takes into consideration system planning requirements and changes as a result of the review.

How come you've cancelled the plants in Mississauga and Oakville but not in Northern York Region?

These are two very different situations.

We made a specific commitment to the residents of Mississauga during the election, and Mississauga voters overwhelmingly agreed with our commitment to relocate the gas generating plant. We intend to honour our commitment

Contract Value**Why should anyone want to contract with OPA or government after this?**

The government and our agencies have successful track records for negotiating and fulfilling contracts in the best interest of Ontario taxpayers. This is a unique case and these circumstances do not apply to other contracts or issues.

Like any other business, energy partners work together to respond to changing conditions. We made a commitment to the residents of Mississauga and Etobicoke and this is the next step to honour that commitment.

What's the status of negotiations with TransCanada?

Discussions with TransCanada continue.

Will the cost of these contract cancellations be made public knowledge at some time?

Discussions are ongoing – I can tell you our government is committed to conducting business in an open and transparent manner.

Does this mean construction stops immediately?

Yes. The OPA notified me that Greenfield has agreed to stop construction immediately. We are pleased with this progress. We listened to local concerns from all residents, taking into consideration the changes in the area, including residential development since the plant was proposed.

What kind of penalty does the developer face if they don't stop construction?

Greenfield has agreed to stop construction immediately. If they do not, Greenfield is financial liable for any further investments in the project. This will protect Ontario ratepayers from any future costs.

There's been strong and persistent opposition in other communities – Northern York Region for example, yet those plants are proceeding. Why are you stopping this one?

We made a specific commitment to residents in Mississauga and Etobicoke to relocate the gas generating plant currently under construction. There have been significant changes to the area since the plant was originally approved in 2004, including the construction of several residential buildings. We listened to local concerns from all residents. We heard concerns about the location of the plant and we committed to relocating the plant. In addition, we are reviewing the process of how gas plants are located in communities – this will guide our future plans.

What does “most appropriate way to allocate compensation between the OPA and Crown” mean?

It means that we will sit down together to determine how to share the cost of cancelling the contract, giving full recognition to ratepayer value and contractual obligations.

Are these letters precedent-setting? Has the Ministry or OPA sent similar letters before?

No. Such letters are not precedent-setting. Our government conducts business on behalf of the people of Ontario in an open and transparent manner.

Locating Gas Plants:

What does this review involve and how long will it take?

Earlier this year the Ministry began to investigate what criteria are used when locating gas plants in other jurisdictions. This information will help guide our planning for future gas plants in Ontario. Natural gas plants are designed and operated to a very high safety standard in Ontario and the province has a strong safety record when it comes to natural gas plants.

Will the OPA be leading this review?

This is currently a government review. The OPA will certainly provide their input.

Why are you starting the review now?

Earlier this year the Ministry began to investigate what criteria are used when locating gas plants in other jurisdictions. This information will help guide our planning for future gas plants in Ontario. Natural gas plants are designed and operated to a very high safety standard in Ontario and the province has a strong safety record when it comes to natural gas plants.

Why didn't you initiate a review for Northern York, or Oakville or Mississauga?

The decision was made to seek alternatives in the cases of Oakville and Mississauga. The northern York community had voted against the transmission alternative and need the plant to meet local requirements.

Will the review affect the public consultation process?

Public consultation will remain a key component of any decisions regarding alternate locations.

Will the review findings affect other gas plant locations?

We are still in the preliminary stages. The findings will look at best practices and what changes should be adopted here in Ontario.

A rigorous process is in place today that involves numerous approvals including zoning, environmental assessment approvals and public consultations. Sites are selected based on local generation requirements, transmission capability, environmental needs and cost.

What has the gas siting process been to date?

A rigorous process is in place today that involves numerous approvals including zoning, environmental assessment approvals and public consultations. Sites are selected based on local generation requirements, transmission capability, environmental needs and cost.

How was the Mississauga site picked?

The site was selected based on local generation requirements and available options. The site was located in a predominantly industrial area, bounded by a railway line, transmission corridor and the Queen Elizabeth Highway. It was selected *at the time* because it was zoned for industrial activity, including power generation.

Will this review be limited to gas plants only – and if so, why?

Yes. Gas-fired generation is helping our province replace coal with cleaner sources of power. As it is playing an increasingly important role in our energy mix, we believe it is prudent to review our existing practices to ensure we continue to follow best practices.

Cayley, Daniel (ENERGY)

From: Michael Lyle <Michael.Lyle@powerauthority.on.ca>
Sent: November-19-11 1:18 PM
To: Perun, Halyna N. (ENERGY)
Subject: Fw: Revised FRSA
Attachments: #22077989v8_LEGAL_1_ - Facility Relocation and Settlement Agreement (Osler draft).docx; Blackline - November 17 McMillan draft to November 19 Osler draft.pdf; image002.gif; greenest2011_english-(custom)verysmall.gif; #22077989v8_LEGAL_1_ - Facility Relocation and Settlement Agreement (Osler draft).docx; image003.gif

gif attachments are images below

FYI. Latest turn.

From : Smith, Elliot [mailto:ESmith@osler.com]
Sent: Saturday, November 19, 2011 10:46 AM
To: 'Carl De Vuono' <Carl.DeVuono@mcmillan.ca>; Sebastiano, Rocco <RSebastiano@osler.com>
Cc: Michael Lyle
Subject: Revised FRSA

Carl,

Please find attached a revised draft of the Facility Relocation and Settlement Agreement, along with a blackline referencing the version you sent on November 17. If you have any questions, let us know.

In the interest of time I am sending this to the OPA simultaneously and as such it remains subject to further comment by the OPA.

Elliot

OSLER

Elliot Smith, P.Eng.
Associate

416.862.6435 DIRECT
416.862.6666 FACSIMILE
esmith@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8



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From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
Sent: Friday, November 18, 2011 6:22 PM
To: Sebastiano, Rocco
Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
Subject: RE: Agreement in Principle Letter

Please see fully signed agreement attached.



Carl De Vuono

Partner
direct 416.307.4055 | mobile 416.918.1046
carl.devuono@mcmillan.ca

Assistant: Nadia Malleye | 416.865.7000 ext.2311 | nadia.malleye@mcmillan.ca

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From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Friday, November 18, 2011 6:06 PM
To: Carl De Vuono
Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
Subject: RE: Agreement in Principle Letter

Carl, I have just been advised that the letter was being sent lawyer to lawyer. So, would you please send it to Greg for his execution.

Thanks, Rocco

From: Sebastiano, Rocco
Sent: Friday, November 18, 2011 6:04 PM
To: 'Carl De Vuono'
Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
Subject: RE: Agreement in Principle Letter

The letter has been signed and enclosed is a copy. I believe that it has been sent to GSPC also. Perhaps you can confirm that Greg has received it.

Thanks, Rocco

From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
Sent: Friday, November 18, 2011 6:00 PM
To: Sebastiano, Rocco
Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
Subject: RE: Agreement in Principle Letter

Ok. Is the OPA sending the letter to GSPC for signature?

Cc: Michael Lyle (Michael.Lyle@powerauthority.on.ca); Smith, Elliot

Subject: Agreement in Principle Letter

Confidential and Without Prejudice

Carl,

We are ok with your changes to the letter with one minor change. We have also added a positive statement that the OPA will be issuing a media statement in connection with the letter.

If you are ok with the letter then we will proceed to have the OPA sign it and send it over to Greenfield.

Regards, Rocco

OSLER

Rocco Sebastiano
Partner

416.862.5859 DIRECT
416.862.8666 FACSIMILE
rsebastiano@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com

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FACILITY RELOCATION AND SETTLEMENT AGREEMENT

This Facility Relocation and Settlement Agreement (the “**Agreement**”) is dated as of the ● day of November, 2011 (the “**Effective Date**”) between Greenfield South Power Corporation (“**Greenfield**”) and the Ontario Power Authority (the “**OPA**”). Greenfield and the OPA are each referred to as a “**Party**” and collectively as the “**Parties**”.

WHEREAS the OPA and Greenfield executed a Clean Energy Supply Contract dated as of the 12th day of April, 2005 and amended and restated as of the 16th day of March, 2009 (the “**ARCES Contract**”);

AND WHEREAS in response to the local community’s concerns about the Greenfield South Generating Station, the Government of Ontario committed to relocate the Facility;

AND WHEREAS Greenfield has, as a result of the commitment of the Government of Ontario to relocate the Facility and at the request of the OPA, agreed to stop construction work on the Facility and the OPA and Greenfield have agreed to relocate the Facility, all on the terms and conditions set forth in this Agreement;

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
INTERPRETATION**

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:

“**Affiliate**” of a Person means any Person that Controls, is Controlled by, or is under common Control with, that Person.

“**Amended ARCES**” has the meaning given to that term in Section 2.6.

“**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.

“**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.

“**Confidential Information**” means this Agreement, any prior drafts of this Agreement and correspondence related to this Agreement, any arbitration pursuant to this Agreement (including, without limitation, the proceedings, written materials and any decision) and all information that has been identified as confidential and which is furnished or disclosed by the Disclosing Party

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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.

“Contractor” means any Person engaged to perform work on the Facility.

“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, provided that where such Person is a non-share capital corporation, in respect of which the majority of the members of the board of directors are appointed by the Lieutenant Governor in Council or a member of the Executive Council of Ontario, such Person shall be considered to be Controlled by the Government of Ontario.

“Credit Facility” means any loans, notes, bonds, letter of credit facilities, or debentures or other indebtedness, liabilities or obligations, for the financing of the Facility, which include 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 Greenfield that is security for any indebtedness, liability or obligation of Greenfield, together with any amendment, change, supplement, restatement, extension, renewal or modification thereof.

“Disclosing Party”, with respect to Confidential Information, is the Party providing or disclosing such Confidential Information and may be the OPA or Greenfield, as applicable.

“Facility” means the natural gas fuelled combined cycle generating facility being constructed at 2315 Loreland Avenue, Mississauga, ON, L4X 2A6, commonly known as Greenfield South Generating Station.

“Facility Equipment” means any materials, products, equipment, machinery, components or apparatus which does or will form part of the Facility.

“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 Government of Ontario, the Independent Electricity System Operator, the Ontario Energy Board, the Electrical

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Safety Authority, and any Person acting under the authority of any Governmental Authority, but excluding the Ontario Power Authority.

“HRSG” means the heat recovery steam generator for the Facility.

“Independent Engineer” means an engineer who has been selected by the OPA and is acceptable to Greenfield, 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 Greenfield or the OPA and that does not have a vested interest in the design, engineering, procurement, construction, testing, and/or operation of the Facility.

“Losses” means, any and all loss, liability, cost, claim, interest, fine, penalty, assessment, damages available at law or in equity, expense, including the costs and expenses of any action, application, claim, complaint, suit, proceeding, demand, assessment, judgement, settlement or compromise relating thereto (including the costs, fees and expenses of legal counsel on a substantial indemnity basis).

“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.

“Receiving Party”, with respect to Confidential Information, is the Party or Parties receiving Confidential Information and may be OPA or Greenfield, as applicable.

“Relocated Equipment” has the meaning given to that term in Section 2.1(a).

“Relocated Facility” has the meaning given to that term in Section 2.6.

“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 OPA, shall include the Government of Ontario and any corporation owned or Controlled by the Government of Ontario, and their respective directors, officers, employees, auditors, consultants (including economic and legal advisors), contractors and agents.

“Secured Lender” has the meaning given to that term in the ARCES Contract.

“Secured Lender’s Security Agreement” has the meaning given to that term in the ARCES Contract.

“Site” means the location of the Facility and includes laydown lands in the vicinity of the Facility, if any.

“Supplier” means any Person engaged to supply Facility Equipment.

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“Supplier’s Interest” means the right, title and interest of Greenfield in or to the Facility and the ARCES Contract, or any benefit or advantage of any of the foregoing.

1.2 Exhibits

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

Exhibit A	Form of Irrevocable Standby Letter of Credit
Exhibit B	Copy of Certificate of Approval-Air number 2023-7HUMVW

1.3 Headings

The inclusion of headings 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 Canadian dollars and cents.

1.6 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.

1.7 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.

1.8 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.

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1.9 Preparation of Agreement

Notwithstanding the fact that this Agreement was drafted by the OPA'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 OPA or in favour of Greenfield when interpreting such term or provision, by virtue of such fact.

1.10 Severability of Clauses

If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, the provision shall, as to that jurisdiction, be ineffective only to the extent of the restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting its application to other Parties or circumstances.

ARTICLE 2 COVENANTS

2.1 Cessation of Construction

- (a) Greenfield shall forthwith cease construction of the Facility and any part thereof and shall cause all of its Contractors to cease any work at the Facility and to fully demobilize from the Site, other than any activities that may be reasonably necessary in the circumstances to bring such work to a conclusion. Greenfield shall also cause the Suppliers to cease manufacturing the Facility Equipment, except for the gas turbine, the HRSG, the transformers, and the pumps (the "**Relocated Equipment**"). Suppliers may continue to manufacture the Relocated Equipment and Greenfield shall continue to perform its payment and other obligations under the contracts relating to the manufacture and supply of the Relocated Equipment. Greenfield shall not permit any of the Facility Equipment to be delivered to the Site. Greenfield shall arrange for suitable storage for the Relocated Equipment as completed and all costs for the transportation, insurance and storage of the Relocated Equipment shall be dealt with in accordance with Section 2.2. **[NTD: Reimbursement has been deleted from this paragraph as it is already covered in Section 2.2 which addresses the costs of complying with Section 2.1(a).]**
- (b) Notwithstanding Section 2.1(a), Greenfield shall, or shall cause a Contractor to (i) maintain safety and security of the Site consistent with the standards to which safety and security of the Site was maintained prior to the Effective Date, (ii) fulfill all applicable obligations under the *Occupational Health and Safety Act* (Ontario), and (iii) maintain insurance coverage in accordance with Section 2.10 of the ARCES Contract, with the costs of maintaining such safety and security and the costs of such insurance to be included in the costs provided for in Section 2.2(a).
- (c) Within thirty (30) days after the Effective Date, Greenfield shall apply for a review of Certificate of Approval-Air number 2023-7HUMVW (a copy of which

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is attached as Exhibit B) pursuant to section 20.4(1) of the *Environmental Protection Act* (Ontario) and request that such approval be revoked without the issuance of a new Certificate of Approval-Air for the Facility, and, to the extent permitted, Greenfield shall request that consideration of the application be expedited.

- (d) Greenfield shall not at any time (i) reapply for an environmental compliance approval for the Facility or for any other electricity generation facility at the Site, or (ii) recommence any construction activity in connection with the Facility at the Site.

2.2 Payment of Costs

- (a) The OPA shall be responsible for and shall reimburse Greenfield for: (i) all costs incurred by Greenfield or for which Greenfield is or may become liable in complying with the obligations of Greenfield set out in Section 2.1(a) and Section 2.1(b), and (ii) all costs incurred by Greenfield in connection with the development and construction of the Facility prior to the Effective Date and becoming due on or after the Effective Date, which have not been advanced, drawn, or committed to be advanced or drawn, on any Credit Facility. **[NTD: We would normally expect that all costs of Affiliates would flow back to Greenfield, who would then pass the cost on to the OPA, so we do not understand the need to include Affiliates in this provision.]**
- (b) Greenfield shall provide an Independent Engineer with a detailed list of all costs incurred by Greenfield up to the Effective Date in connection with the design, development, permitting and construction of the Facility, including without limitation in respect of engineering, design, permitting, letter of credit interest and other development costs excluding any such costs which have been paid for or reimbursed by draws or advances from any Credit Facility, (the “**Equity Sunk Costs**”), along with such documentation as is reasonably required by the Independent Engineer to substantiate such Equity Sunk Costs and confirm that such costs have not been paid for or reimbursed by draws or advances from any Credit Facility. The OPA shall reimburse Greenfield for the Equity Sunk Costs in accordance with Section 2.2(e).
- (c) The OPA shall indemnify, defend and hold harmless each of Greenfield and **[insert name of General Contractor]** and each of their respective directors, officers and employees (collectively, the “**Greenfield Indemnified Parties**”) from and against any and all Losses of the Greenfield Indemnified Parties relating to, arising out of, or resulting from any claims by Contractors, Suppliers, Governmental Authorities and employees resulting from the cessation of construction of the Facility, provided that such Losses are not the result of any negligence or wilful misconduct of any Greenfield Indemnified Party. **[NTD: Claims by Secured Lenders has been deleted as matters dealing with the Credit Facilities have been dealt with under Section 2.5.]**
 - (i) In the case of claims made with respect to which indemnification is sought pursuant to Section 2.2(c), Greenfield shall give prompt written notice to

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the OPA of such claim including a description of such claim in reasonable detail, copies of all material written evidence of such claim and the actual or estimated amount of the damages that have been or will be sustained by the applicable Greenfield Indemnified Party, including reasonable supporting documentation therefor. The OPA shall assume the control of the defence, compromise or settlement of such claim. Upon the assumption of control of any claim by the OPA, the applicable Greenfield Indemnified Party shall co-operate fully to make available to the OPA all pertinent information and witnesses under the Greenfield Indemnified Party's control, make such assignments and take such other steps as in the opinion of counsel for the OPA are reasonably necessary to enable the OPA to conduct such defence. Greenfield shall not and shall not permit any Greenfield Indemnified Party to compromise or settle any claim with respect to which indemnification is sought pursuant to Section 2.2(c), without the OPA's prior written consent.

- (d) The Parties acknowledge that the OPA has, upon execution of this Agreement, provided to Greenfield, security for the performance of the OPA's indemnity and other obligations set out in Section 2.2 in an amount equal to \$[●] in the form attached as Exhibit A (the "**Costs Security**"). If the OPA fails to pay any amount certified by the Independent Engineer as being properly owing under this Agreement as set out in Section 2.2(e) or fails to comply with its indemnity obligations under Section 2.2(c), Greenfield shall have the right to draw such unpaid amount from the Costs Security, provided that Greenfield provides the OPA with **[ten (10)]** Business Days' prior notice of its intent to draw on the Costs Security and at the end of such notice period, such unpaid amount remains outstanding.
- (e) Greenfield shall submit detailed invoices for the costs referred to in Section 2.2(a), in connection with Equity Sunk Costs, and any other amounts payable by the OPA to Greenfield under this Agreement to the Independent Engineer. The Independent Engineer shall, within ten (10) Business Days after receipt of such detailed invoices and any required supporting documentation, issue a certificate certifying the amount payable in connection with such detailed invoices under this Agreement. The OPA shall, within five (5) Business Days after receipt of such certificate from the Independent Engineer, pay Greenfield the amount certified by the Independent Engineer.
- (f) Notwithstanding any provision in this Agreement to the contrary, to the extent the OPA is liable to Greenfield for any costs charged by a Person who does not deal at Arm's Length with Greenfield, such cost shall be deemed to exclude the amount that is in excess of the costs that would have been charged had such Person been at Arm's Length with Greenfield.
- (g) The costs of the Independent Engineer shall be borne by the OPA.

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2.3 *Intentionally Deleted [NTD: The settlement of the Keele Valley claims will be dealt with in a separate document.]*

2.4 **ARCES Contract**

By entering into this Agreement, neither Greenfield nor the OPA waives any provision of the ARCES Contract, provided that the obligations of Greenfield and the OPA under the ARCES Contract shall be suspended during the term of this Agreement, except as otherwise set out herein. For greater certainty, the OPA and Greenfield agree that the ARCES Contract continues to be in full force and effect.

2.5 **Credit Facilities**

- (a) Greenfield agrees to promptly seek any required consent of any Secured Lenders to the entering into of this Agreement by the OPA and Greenfield. Greenfield and the OPA agree to negotiate in good faith any reasonable amendments to this Agreement requested by the Secured Lenders.
- (b) The OPA shall pay to the Secured Lenders all accrued and unpaid interest and any make whole payments or breakage fees which Greenfield is obliged to pay to the Secured Lenders pursuant to the Credit Facilities, together with the outstanding principal amount of the debt funded under the Credit Facilities in exchange for full and final releases from the Secured Lenders of all obligations of Greenfield **[and its Affiliates]** under the Credit Facilities and the Secured Lender's Security Agreements held by such Secured Lenders and the release of all security held by such Secured Lenders on and against the Site, the Facility and all other property and assets of Greenfield **[and its Affiliates]**. **[NTD: Why does the security relate to any of the assets of the Affiliates?]**
- (c) Greenfield shall not grant any security interests in the Facility, the Facility Equipment and the Site, and shall keep title to the Facility, the Facility Equipment and the Site free and clear of all encumbrances. Greenfield shall not sell, transfer, dispose of, or otherwise enter into any agreement (directly or indirectly) relating to the ownership of the Facility, Facility Equipment or the Site, without the OPA's prior written consent, which consent may be withheld in the OPA's sole and absolute discretion.
- (d) The Parties agree that any amounts paid by the OPA pursuant to Section 2.5(b) shall be reflected in any quantification of damages under this Agreement and/or any adjustment to the "Net Revenue Requirement" under the Amended ARCES.

2.6 **Good Faith Negotiations**

Greenfield and the OPA agree to work together in good faith to determine a suitable site for a new nominal 300 MW natural gas fuelled combined cycle generating facility (the "**Relocated Facility**") and the OPA shall in good faith cooperate with and assist Greenfield in obtaining all licenses, permits, certificates, registrations, authorizations, consents or approvals issued by Governmental Authorities and required for the development, construction and operation of the Relocated Facility by advising such Governmental Authorities of the OPA's support for the

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Relocated Facility. In addition, Greenfield and the OPA agree to work together in good faith to negotiate an amendment to the ARCES Contract so that it relates to and applies to the Relocated Facility (the “**Amended ARCES**”). The Amended ARCES shall provide for (i) such amendments to the ARCES as are required to reflect the fact that the Relocated Facility is at a different location, (ii) the opportunity for Greenfield to engage the OPA in good faith negotiations during the term of the Amended ARCES regarding potential opportunities to expand the Relocated Facility by an incremental 300 MW depending upon system needs, IESO requirements and other technical and commercial factors, and (iii) a level of completion and performance security that is fifty percent (50%) less than that set out in the ARCES Contract.

2.7 Power and Authority

- (a) The OPA represents and warrants in favour of Greenfield that it has the corporate power and capacity to enter into this Agreement and to perform its obligations hereunder and this Agreement has been duly authorized by all required board approvals on the part of the OPA. This Agreement has been duly executed and delivered by the OPA and is a legal, valid and binding obligation of the OPA, enforceable against the OPA in accordance with its terms. The execution and delivery of this Agreement by the OPA and the performance by the OPA of its obligations hereunder will not result in the violation of or constitute a default under applicable law or any judgment, decree, order or award of any Governmental Authority having jurisdiction over the OPA. The OPA has received or obtained all directives, consents (other than those contemplated to be obtained hereunder after the Effective Date) and other authorizations required to be received or obtained as a condition to the entering into of this Agreement by the OPA and the performance of its obligations hereunder.
- (b) Greenfield represents and warrants in favour of the OPA that it has the corporate power and capacity to enter into this Agreement and to perform its obligations hereunder and this Agreement has been duly authorized by all required board and shareholder approvals on the part of Greenfield. This Agreement has been duly executed and delivered by Greenfield and is a legal, valid and binding obligation of Greenfield, enforceable against Greenfield in accordance with its terms. The execution and delivery of this Agreement by Greenfield and the performance by Greenfield of its obligations hereunder will not result in the violation of or constitute a default under applicable law or any judgment, decree, order or award of any Governmental Authority having jurisdiction over Greenfield. Greenfield has received or obtained all consents (other than those contemplated to be obtained hereunder after the Effective Date) and other authorizations required to be received or obtained as a condition to the entering into of this Agreement by Greenfield and the performance of its obligations hereunder.

ARTICLE 3 CONFIDENTIALITY, FIPPA AND PRIVILEGED COMMUNICATIONS

3.1 Confidential Information

From the Effective Date 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 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 3 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 3.2.
- (c) Where Greenfield is the Receiving Party, Greenfield 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 Relocated Facility, provided that any such prospective lender or investor has been informed of the Supplier's confidentiality obligations hereunder and such prospective lender or investor has covenanted in favour of the OPA to hold such Confidential Information confidential and entered into a Confidentiality Undertaking in substantially the form set out in Exhibit W to the ARCES Contract or in a similar form prepared by Greenfield and approved by the OPA.

3.2 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.

3.3 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

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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 3.

3.4 FIPPA Records and Compliance

The Parties acknowledge and agree that the OPA is subject to the *Freedom of Information and Protection of Privacy Act* (Ontario) ("FIPPA") and that FIPPA applies to and governs all Confidential Information in the custody or control of the OPA ("FIPPA Records") and may, subject to FIPPA, require the disclosure of such FIPPA Records to third parties. Greenfield agrees to provide a copy of any FIPPA Records that it previously provided to the OPA if Greenfield continues to possess such FIPPA Records in a deliverable form at the time of the OPA's request. If Greenfield 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 OPA. The provisions of this section shall survive any termination or expiry of this Agreement and shall prevail over any inconsistent provisions in this Agreement.

3.5 Privileged Communications

- (a) The Parties agree that all discussions, communications and correspondence between the Parties or their Representatives from and after the date of this Agreement, whether oral or written, and whether Confidential Information or not, in connection with the termination of the ARCES Contract or otherwise relating to any differences between the Parties respecting the ARCES Contract or relating to other projects or potential opportunities being discussed between the Parties are without prejudice and privileged.
- (b) Notwithstanding Section 3.5(a), nothing in this Agreement shall prevent Greenfield and the OPA from communicating with one another on a without prejudice basis at any point in time by designating its communication, whether oral or written, as a "without prejudice" communication, provided that such "without prejudice" communication does not include or refer, either directly or indirectly, to any without prejudice and privileged discussions, communications and correspondence. **[NTD: Section 3.5 should be deleted. Everything should be "without prejudice" once agreement signed][NTD: It is the OPA's intent that this agreement would be "without prejudice" but that the subsequent negotiations for a Relocated Facility would be on a "without prejudice" basis.]**

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ARTICLE 4 TERM AND EXPIRY

4.1 Term and Expiry

- (a) The term of this Agreement shall be effective from the Effective Date for a period of 60 days and shall automatically expire at the end of such 60 day period, provided that the term may be extended once by an additional period of 60 days by either the OPA or Greenfield providing the other Parties with written notice no less than five (5) Business Days prior to the expiry of the original term and may be further extended for an agreed upon period of time with the mutual agreement in writing of the OPA and Greenfield.
- (b) Upon expiry of the term of this Agreement, following any extension exercised in accordance with Section 4.1(a):
 - (i) the ARCES Contract shall be terminated and the amount owed by the OPA to Greenfield in addition to those amounts payable pursuant to Section 2.2 shall be determined in accordance with Section 4.2;
 - (ii) Greenfield shall return to the OPA any remaining portion of the Costs Security at such time as Greenfield is satisfied, acting reasonably, that it does not have and is not likely to have any further obligations for costs or other liabilities in respect of the cessation of construction of the Facility as contemplated by Section 2.2, or for which the OPA may be liable to indemnify any of the Greenfield Indemnified Parties under Section 2.2(c), provided that in no event shall such period of time extend beyond sixty (60) days following the expiry of the term of this Agreement; and
 - (iii) subject to Section 7.10, no Party shall have any further obligations hereunder.

4.2 Damages

If the ARCES Contract is terminated in accordance with Section 4.1(b)(i) or Section 7.1(a) of this Agreement, Greenfield's damages shall be determined as the net present value of the net revenues from the Facility that are forecast to be earned by Greenfield during the "Term" (as defined in the ARCES Contract), taking into account any actions that Greenfield should reasonably be expected to take to mitigate the effect of the termination of the ARCES Contract. For greater certainty, the net revenues from the Facility shall be calculated by deducting the costs that would have been incurred by Greenfield in connection with the development, construction, financing, operation and maintenance of the Facility from payments that would have been made to Greenfield under the ARCES Contract, taking into account those payments made to Greenfield hereunder. **[NTD: This language is partially derived from the determination of the Discriminatory Action Compensation payment set out in Article 13 of the ARCES Contract.]**

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ARTICLE 5 NOTICES

5.1 Notices

- (a) All notices pertaining to this Agreement shall be in writing and shall be addressed as follows:

If to Greenfield: Greenfield South Power Corporation
2275 Lake Shore Blvd. West
Suite 401
Toronto, Ontario M8V 3Y3

Attention: Greg Vogt, President
Facsimile: (416) 234-8336

and to: McMillan LLP
Brookfield Place
181 Bay Street, Suite 4400
Toronto, Ontario M5J 2T3

Attention: Carl DeVuono
Facsimile: (416) 304-3755

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

Attention: Michael Lyle, General Counsel
Facsimile: (416) 969-6071

Either Party may, by written notice to the other Parties, change the address to which notices are to be sent.

- (b) Notices shall be delivered or transmitted by facsimile, by hand, or by courier, and shall be considered to have been received by the other Party on the date of delivery if delivered prior to 5:00 p.m. (Toronto time) on a Business Day and otherwise on the next following Business Day, provided that any notice given pursuant to Section 2.2(d) shall be sent by facsimile and by courier.

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ARTICLE 6 DISPUTE RESOLUTION

6.1 Informal Dispute Resolution

If any 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 affected Party or Parties describing the nature and the particulars of such dispute. Within ten (10) Business Days following delivery of such notice to the affected Party or Parties, a senior executive (Senior Vice-President or higher) from each affected 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 shall be settled by arbitration pursuant to Section 6.2.

6.2 Arbitration

Any matter in issue between the Parties as to their rights under this Agreement shall be decided by arbitration pursuant to this Section 6.2, provided, however, that the Parties have first completed a Senior Conference pursuant to Section 6.1. Any dispute to be decided in accordance with this Section 6.2 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 reference of the dispute to arbitration, upon the application of any 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. [NTD: Being reviewed by Greenfield.]

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ARTICLE 7 MISCELLANEOUS

7.1 Default

- (a) If the OPA fails to perform any material covenant or obligation set forth in this Agreement and such failure is not remedied within **[ten (10)]** Business Days after written notice of such failure from Greenfield, the ARCES Contract shall be terminated and the amount owed by the OPA to Greenfield shall be determined in accordance with Section 4.2.
- (b) If Greenfield fails to perform any covenant or obligation set forth in Section 2.1(a), Section 2.1(c), Section 2.1(d) or Section 2.5(c) of this Agreement and such failure is not remedied within **[ten (10)]** Business Days after written notice of such failure from the OPA, such failure shall constitute a “Supplier Event of Default” under the ARCES Contract and shall entitle the OPA to exercise any remedies thereunder in connection with such default.

7.2 Injunctive and Other Relief

Each of Greenfield and the OPA acknowledge that a breach of this Agreement by the other Party, including, without limitation, Section 2.1, 2.2, 2.5, and Article 3 shall cause irreparable harm to the non breaching Party, and that the injury to non breaching Party shall be difficult to calculate and inadequately compensable in damages. The breaching Party agrees that the non breaching Party is entitled to obtain injunctive relief (without proving any damage sustained by it) or any other remedy against any actual or potential breach of the provisions of this Agreement by the breaching Party.

7.3 Record Retention; Audit Rights

Greenfield shall keep complete and accurate records and all other data required 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 seven (7) years after the creation of the record or data. Greenfield, on a confidential basis as provided for in Article 3 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 OPA to (i) comply with its obligations to Governmental Authorities, (ii) verify or audit billings or to verify or audit information provided in accordance with this Agreement, and (iii) to determine any amounts owing or payable pursuant to Sections 2.2(a), 2.2(b), 2.2(c) and 2.5(b). The OPA 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 3. Alternatively, the OPA may at its own expense appoint an auditor to conduct its review.

7.4 Inspection of Site

- (a) The OPA 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 and during the term of this Agreement, have access to the Site and every part thereof during regular business hours and Greenfield shall, and shall cause all

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personnel at the Site within the control of Greenfield to furnish the OPA with all reasonable assistance in inspecting the Site 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 Greenfield.

- (b) The inspection of the Site by or on behalf of the OPA shall not relieve Greenfield of any of its obligations to comply with the terms of this Agreement. **[In no event will any inspection by the OPA hereunder be a representation that there has been or will be compliance with this Agreement and laws and regulations.][NTD: This is from the ARCES Contract. Why has it been deleted?]**

7.5 Inspection Not Waiver

Failure by OPA to inspect the Site or any part thereof under Section 7.4, or to exercise its audit rights under Section 7.3, shall not constitute a waiver of any of the rights of the OPA hereunder. An inspection or audit not followed by a notice of a default by Greenfield shall not constitute or be deemed to constitute a waiver of any such default, nor shall it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by Greenfield with this Agreement.

7.6 No Publicity

No Party shall make any public statement or announcement regarding the existence or contents of this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing and Article 3, following execution of this Agreement, the OPA and its Representatives shall be permitted to make a public announcement, which is provided to Greenfield in advance, that an agreement has been entered into between the OPA and Greenfield which provides for (i) the permanent cessation of work on the Facility, (ii) the revocation of the permit set out in Section 2.1(c) in the circumstances described therein, and (iii) further negotiations between the OPA and Greenfield to determine the ultimate resolution of the relocation of the Facility, failing which, the ultimate resolution will be determined through binding arbitration. **[NTD: This clause remains subject to further revision as the OPA has not yet finalized this language.]**

7.7 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 any of the Parties shall be considered employees of any 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.

7.8 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,

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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.

7.9 Assignment

- (a) Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by Greenfield, without the prior written consent of the OPA, which consent shall not be unreasonably withheld; provided that Greenfield may without the consent of the OPA assign this Agreement and all benefits and obligations hereunder to the Affiliate which will develop, construct, own and operate the Relocated Facility as contemplated by Section 2.6, provided that the assignee agrees in writing in a form satisfactory to the OPA, acting reasonably, to assume and be bound by the terms and conditions of this Agreement. **[NTD: This was deleted because some of the obligations of Greenfield are specific to the Site and need to remain with Greenfield.]**
- (b) Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by the OPA, without the prior written consent of Greenfield, which consent shall not be unreasonably withheld; provided that the OPA shall have the right to assign this Agreement and all benefits and obligations hereunder without the consent of Greenfield to the Government of Ontario or any corporation owned or Controlled by the Government of Ontario with a credit rating that is equal to or better than the OPA's credit rating, and which assumes all of the obligations and liabilities of the Ontario Power Authority under this Agreement and agrees to be novated into this Agreement in the place and stead of the OPA, provided that the assignee agrees in writing to assume and be bound by the terms and conditions of this Agreement, whereupon, the OPA shall be relieved of all obligations and liability arising pursuant to this Agreement.

7.10 Survival

The provisions of Section 2.1, Section 2.2, Article 3, Section 4.1(b), Article 6, and Section 7.3, shall survive the expiration of the term.

7.11 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.

7.12 Time of Essence

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

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7.13 No Third-Party Beneficiaries

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

7.14 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.

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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EXHIBIT A
FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

DATE OF ISSUE: ●

APPLICANT: Ontario Power Authority

BENEFICIARY: Greenfield South Power Corporation

AMOUNT: ●

EXPIRY DATE: ●

EXPIRY PLACE: Counters of the issuing financial institution in Toronto, Ontario

CREDIT RATING: **[Insert credit rating only if the issuer is not a financial institution listed in either Schedule I or II of the Bank Act]**

TYPE: Irrevocable Standby Letter of Credit

NUMBER:

We hereby authorize you to draw on **[insert name of financial institution and financial institution's address in Toronto, Ontario]** in respect of irrevocable standby letter of credit No. _____ (the "**Credit**"), for the account of the Applicant up to an aggregate amount of \$● (● Canadian dollars) available by your draft at sight, accompanied by:

1. A certificate signed by an officer of the Beneficiary stating that:

"The Ontario Power Authority is in breach of its obligation set out in Section 2.2 of the Facility Relocation and Settlement Agreement between the Beneficiary and the Applicant, and therefore the Beneficiary is entitled to draw upon the Credit in the amount of the draft attached hereto."; and
2. A certified true copy of a letter sent by the Beneficiary to the Applicant, by facsimile to 416-969-6071 and by courier to the attention of Michael Lyle, General Counsel, 120 Adelaide Street West, Suite 1600, Toronto ON M5H 1T1, notifying the Applicant that the Beneficiary intends to draw on this Credit, together with a copy of the facsimile confirmation and courier receipt evidencing that the letter was received by the Beneficiary no less than **[ten (10)]** business days prior to the date of the draw.

Drafts drawn hereunder must bear the clause "Drawn under irrevocable Standby Letter of Credit No. **[insert number]** issued by **[the financial institution]** dated **[insert date]**".

Partial drawings are permitted.

This Credit is issued in connection with the Facility Relocation and Settlement Agreement dated as of the ● day of November, 2011 between the Beneficiary and the Applicant.

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We agree with you that all drafts drawn under, and in compliance with the terms of this Credit will be duly honoured, if presented at the counters of **[insert the financial institution and financial institution's address, which must be located in Toronto, Ontario]** at or before 5:00 pm (EST) on **[insert the expiry date]**.

This irrevocable standby letter of credit is subject to the International Standby Practices ISP 98, International Chamber of Commerce publication No. 590 and, as to matters not addressed by the ISP 98, shall be governed by the laws of the Province of Ontario and applicable Canadian federal law, and the parties hereby irrevocably agree to attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

– END –

[Insert name of Financial Institution]

By: _____
Authorized Signatory

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EXHIBIT B
COPY OF CERTIFICATE OF APPROVAL-AIR NUMBER 2023-7HUMVW

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AND WITHOUT PREJUDICE NOVEMBER 19, 2011

FACILITY RELOCATION AND SETTLEMENT AGREEMENT

This Facility Relocation and Settlement Agreement (the “**Agreement**”) is dated as of the ● day of November, 2011 (the “**Effective Date**”) between Greenfield South Power Corporation (“**Greenfield**”); and the Ontario Power Authority (the “**OPA**”); ~~and Eastern Power Limited (“**Eastern Power**”)~~. Greenfield; and the OPA ~~and Eastern Power~~ are each referred to as a “**Party**” and collectively as the “**Parties**”.

WHEREAS the OPA and Greenfield executed a Clean Energy Supply Contract dated as of the 12th day of April, 2005 and amended and restated as of the 16th day of March, 2009 (the “**ARCES Contract**”);

AND WHEREAS in response to the local community’s concerns about the Greenfield South Generating Station, the Government of Ontario committed to relocate the Facility;

AND WHEREAS Greenfield has, as a result of the commitment of the Government of Ontario to relocate the Facility and at the request of the OPA, agreed to stop construction work on the Facility and the OPA and Greenfield have agreed to relocate the Facility, all on the terms and conditions set forth in this Agreement;

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 INTERPRETATION

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:

“**Affiliate**” of a Person means any Person that ~~directly or indirectly~~ Controls, is Controlled by, or is under common Control with, that Person.

“**Amended ARCES**” has the meaning given to that term in Section 2.6.

“**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.

“**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.

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“Confidential Information” means this Agreement, any prior drafts of this Agreement and correspondence related to this Agreement, any arbitration pursuant to this Agreement (including, without limitation, the proceedings, written materials and any decision) and 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.

“Contractor” means any Person engaged to perform work on the Facility.

“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, provided that where such Person is a non-share capital corporation, in respect of which the majority of the members of the board of directors are appointed by the Lieutenant Governor in Council or a member of the Executive Council of Ontario, such Person shall be considered to be Controlled by the Government of Ontario.

“Credit Facility” means any loans, notes, bonds, letter of credit facilities, or debentures or other indebtedness, liabilities or obligations, for the financing of the Facility, which include 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~~ Greenfield that is security for any indebtedness, liability or obligation of Greenfield, together with any amendment, change, supplement, restatement, extension, renewal or modification thereof.

“Disclosing Party”, with respect to Confidential Information, is the Party providing or disclosing such Confidential Information and may be the OPA, or Greenfield ~~or Eastern Power~~, as applicable.

“Facility” means the natural gas fuelled combined cycle generating facility being constructed at 2315 Loreland Avenue, Mississauga, ON, L4X 2A6, commonly known as Greenfield South Generating Station.

“Facility Equipment” means any materials, products, equipment, machinery, components or apparatus which does or will form part of the Facility.

“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 Government of Ontario, the Independent Electricity System Operator, the Ontario Energy Board, the Electrical Safety Authority, and any Person acting under the authority of any Governmental Authority, but excluding the Ontario Power Authority.

“HRSG” means the heat recovery steam generator for the Facility.

“Independent Engineer” means an engineer who has been selected by the OPA and is acceptable to Greenfield, 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 Greenfield or the OPA and that does not have a vested interest in the design, engineering, procurement, construction, testing, and/or operation of the Facility.

“Losses” means, any and all loss, liability, cost, claim, interest, fine, penalty, assessment, damages available at law or in equity, expense, including ~~liquidated damages, break fees, make whole payments and~~ the costs and expenses of any action, application, claim, complaint, suit, proceeding, demand, assessment, judgement, settlement or compromise relating thereto (including the costs, fees and expenses of legal counsel on a ~~full~~substantial indemnity basis ~~without reduction for tariff rates or similar reductions and all reasonable costs of investigation) or diminution of value~~).

“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.

“Receiving Party”, with respect to Confidential Information, is the Party or Parties receiving Confidential Information and may be OPA, or Greenfield ~~and Eastern Power~~, as applicable.

“Relocated Equipment” has the meaning given to that term in Section 2.1(a).

“Relocated Facility” has the meaning given to that term in Section 2.6.

“Representatives” means a Party’s directors, officers, employees, auditors, consultants (including economic and legal advisors), contractors and agents and those of its ~~a~~Affiliates and, in the case of the OPA, shall include the Government of Ontario and any corporation owned or Controlled by the Government of Ontario, and their respective directors, officers, employees, auditors, consultants (including economic and legal advisors), contractors and agents.

“Secured Lender” has the meaning given to that term in the ARCES Contract.

“Secured Lender’s Security Agreement” has the meaning given to that term in the ARCES Contract.

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“Site” means the location of the Facility and includes laydown lands in the vicinity of the Facility, if any.

~~“Subject Equipment” has the meaning given to that term in Section 2.1(a).~~

“Supplier” means any Person engaged to supply ~~any materials, products, equipment, machinery, components or apparatus for the~~ Facility Equipment.

“Supplier’s Interest” means the right, title and interest of Greenfield in or to the Facility and the ARCES Contract, or any benefit or advantage of any of the foregoing.

1.2 Exhibits

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

Exhibit A	Form of Irrevocable Standby Letter of Credit
Exhibit B	Full and Final Release
Exhibit <u>CB</u>	Copy of Certificate of Approval-Air number 2023-7HUMVW
Exhibit D	Copy of Electricity Generation Licence EG 2009-0023

1.3 Headings

The inclusion of headings 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 Canadian dollars and cents.

1.6 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.

1.7 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.

1.8 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.

1.9 Preparation of Agreement

Notwithstanding the fact that this Agreement was drafted by the OPA'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 OPA or in favour of ~~Eastern Power or~~ Greenfield when interpreting such term or provision, by virtue of such fact.

1.10 Severability of Clauses

If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, the provision shall, as to that jurisdiction, be ineffective only to the extent of the restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting its application to other Parties or circumstances.

ARTICLE 2 COVENANTS

2.1 Cessation of Construction

- (a) Greenfield shall forthwith cease construction of the Facility and any part thereof and shall ~~exercise all rights available to it, including under the applicable contracts, to~~ cause all of its Contractors to cease any work at the Facility and to fully demobilize from the Site, other than any activities that may be reasonably necessary in the circumstances to bring such work to a conclusion. Greenfield shall also ~~exercise all rights available to it, including under the applicable contracts, to cause the Suppliers of the materials, products, equipment, machinery, components and apparatus to be incorporated into the Facility set out on Schedule 2.1(a) (the "Subject Equipment")~~ cause the Suppliers to cease manufacturing the ~~Subject Equipment~~. Greenfield shall instruct the Suppliers of all other materials, products, equipment, machinery, components or apparatus other than the Subject Equipment, ~~including for greater certainty~~ Facility Equipment, except for the gas turbines, the HRSG, the transformers, and the pumps (the "**Relocated Equipment**"), ~~to~~ Suppliers may continue to manufacture the Relocated Equipment and Greenfield shall continue to perform its payment and other obligations under the contracts relating to the manufacture and supply of the Relocated Equipment ~~and the OPA shall be responsible for and shall reimburse Greenfield for all amounts payable under such contracts for the Relocated Equipment~~. Greenfield shall not permit any

of the ~~Subject Equipment or any of the Relocated Equipment (including for greater certainty the gas turbines),~~ Facility Equipment to be delivered to the Site ~~during the term of this Agreement~~. Greenfield shall arrange for suitable storage for the Relocated Equipment as completed ~~pending relocation to the Relocated Facility~~ and the OPA shall be responsible for and reimburse Greenfield for all amounts ~~payable and all costs~~ for the transportation, insurance and storage of the Relocated Equipment ~~pending relocation thereof to the Relocated Facility~~. shall be dealt with in accordance with Section 2.2. [NTD: Reimbursement has been deleted from this paragraph as it is already covered in Section 2.2 which addresses the costs of complying with Section 2.1(a).]

- (b) Notwithstanding Section 2.1(a), Greenfield shall, or shall ~~exercise all rights available to it, including under the applicable contracts, to~~ cause a Contractor to (i) maintain safety and security of the Site consistent with the standards to which safety and security of the Site was maintained prior to the Effective Date, (ii) fulfill all applicable obligations under the *Occupational Health and Safety Act* (Ontario), and (iii) maintain insurance coverage in accordance with Section 2.10 of the ARCES Contract, with the costs of maintaining such safety and security and the costs of such insurance to be included in the costs provided for in Section 2.2(a).
- (c) Within thirty (30) days after the ~~later of the date upon which Greenfield has obtained a satisfactory Certificate of Approval Air with respect to the Relocated Facility and the date upon which Greenfield and the OPA have entered into the contract for the Relocated Facility contemplated by Section 2.6:~~
- (i) Effective Date, Greenfield shall apply for a review of Certificate of Approval-Air number 2023-7HUMVW (a copy of which is attached as Exhibit ~~CB~~) pursuant to section 20.4(1) of the *Environmental Protection Act* (Ontario) and request that such approval be revoked without the issuance of a new Certificate of Approval-Air for the Facility; ~~and~~
- (ii) ~~Greenfield shall request in writing that Electricity Generation Licence EG 2009 0023 (a copy of which is attached as Exhibit D) be [amended] [pursuant to section 77(5) of the Ontario Energy Board Act, 1998] [NTD: This Licence is not site specific and therefore should not be cancelled, but rather will be used for the Relocated Facility]~~ In both cases, and, to the extent permitted, Greenfield shall request that consideration of the application ~~or request~~ be expedited.
- (d) Greenfield shall not at any time (i) reapply for an ~~electricity generation licence or an~~ environmental compliance approval for the Facility or for any other electricity generation facility, ~~in each case, at the Site, or (ii) recommence any construction activity in connection with the Facility~~ at the Site.

2.2 Payment of Costs

- (a) The OPA shall be responsible for and shall reimburse Greenfield for: (i) all costs incurred by Greenfield ~~and its Affiliates~~ or for which Greenfield ~~and its Affiliates~~ is or may become liable in complying with the obligations of Greenfield set out in

Section 2.1(a) and Section 2.1(b), and (ii) all costs incurred by Greenfield ~~and its Affiliates~~ in connection with the development and construction of the Facility prior to the Effective Date and becoming due on or after the Effective Date, which have not been advanced, drawn, or committed to be advanced or drawn, on any Credit Facility. ~~In this connection, and without limiting the OPA's responsibility for such costs, the OPA shall within five days after receipt of a detailed invoice from Greenfield, reimburse Greenfield for all such costs.~~ [NTD: We would normally expect that all costs of Affiliates would flow back to Greenfield, who would then pass the cost on to the OPA, so we do not understand the need to include Affiliates in this provision.]

- (b) ~~The Parties acknowledge that the OPA has, upon execution of this Agreement, paid to Greenfield the amount of \$[●] as a reimbursement for the developments~~ shall provide an Independent Engineer with a detailed list of all costs incurred by Greenfield and its Affiliates, including Eastern Power up to the date hereof Effective Date in connection with the design, development, permitting and construction of the Facility, including without limitation in respect of engineering, design, permitting, letter of credit interest and other development costs, ~~excluding any such costs which have been paid for or reimbursed by draws or advances from any Credit Facility, (the "Equity Sunk Costs"), along with such documentation as is reasonably required by the Independent Engineer to substantiate such Equity Sunk Costs and confirm that such costs have not been paid for or reimbursed by draws or advances from any Credit Facility. The OPA shall reimburse Greenfield for the Equity Sunk Costs in accordance with Section 2.2(e).~~
- (c) The OPA ~~agrees to and~~ shall indemnify, defend and hold harmless each of ~~Eastern Power and~~ Greenfield and ~~their Affiliates~~ [insert name of General Contractor] and each of their respective ~~Representatives~~ directors, officers and employees (collectively, the "**Greenfield Indemnified Parties**") from and against any and all Losses of the Greenfield Indemnified Parties relating to, arising out of, or resulting* ~~from the cessation of construction of the Facility, *including, without limitation, Losses arising from any claims by Contractors, Suppliers, Secured Lenders, Governmental Authorities and employees, resulting* from the cessation of construction of the Facility, *provided that such Losses are not the result of any negligence or wilful misconduct of any Greenfield Indemnified Party. [NTD: Claims by Secured Lenders has been deleted as matters dealing with the Credit Facilities have been dealt with under Section 2.5.]~~
- (i) In the case of claims made with respect to which indemnification is sought pursuant to Section 2.2(c), Greenfield shall give prompt written notice to the OPA of such claim including a description of such claim in reasonable detail, copies of all material written evidence of such claim and the actual or estimated amount of the damages that have been or will be sustained by the applicable Greenfield Indemnified Party, including reasonable supporting documentation therefor. The OPA shall assume the control of the defence, compromise or settlement of such claim. Upon the assumption of control of any claim by the OPA, the applicable Greenfield Indemnified Party shall co-operate fully to make available to the OPA all pertinent information and

witnesses under the Greenfield Indemnified Party's control, make such assignments and take such other steps as in the opinion of counsel for the OPA are reasonably necessary to enable the OPA to conduct such defence. Greenfield shall not and shall not permit any Greenfield Indemnified Party to compromise or settle any claim with respect to which indemnification is sought pursuant to Section 2.2(c), without the OPA's prior written consent.

- (d) The Parties acknowledge that the OPA has, upon execution of this Agreement, provided to Greenfield, security for the performance of the OPA's indemnity and other obligations set out in Section 2.2(a) and ~~Section 2.2(e)~~ in an amount equal to \$[●] in the form attached as Exhibit A (the "~~Cessation~~ Costs Security"). If the OPA fails to pay any amount certified by the Independent Engineer as being properly owing under this Agreement as set out in ~~an invoice from Greenfield or for which Greenfield is or may become liable in accordance with~~ Section 2.2(a), or fails to ~~pay or satisfy any Loss of the Greenfield Indemnified Parties as provided in~~ comply with its indemnity obligations under Section 2.2(c), Greenfield shall have the right to draw such unpaid amount from the ~~Cessation~~ Costs Security, provided that Greenfield provides the OPA with ~~five~~ten (~~\$10~~) Business Days' prior notice of its intent to draw on the ~~Cessation~~ Costs Security and at the end of such notice period, such unpaid amount remains outstanding. ~~The OPA agrees to provide replacement Cessation Costs Security at such time or times as the then undrawn amount of the existing Cessation Costs Security falls below \$[●], such that the undrawn portion of the Cessation Costs Security shall at all times be at least \$[●].~~
- (e) Greenfield shall submit detailed invoices for the costs referred to in Section 2.2(a), in connection with Equity Sunk Costs, and any other amounts payable by the OPA to Greenfield under this Agreement to the Independent Engineer. The Independent Engineer shall, within ten (10) Business Days after receipt of such detailed invoices and any required supporting documentation, issue a certificate certifying the amount payable in connection with such detailed invoices under this Agreement. The OPA shall, within five (5) Business Days after receipt of such certificate from the Independent Engineer, pay Greenfield the amount certified by the Independent Engineer.
- (f) Notwithstanding any provision in this Agreement to the contrary, to the extent the OPA is liable to Greenfield for any costs charged by a Person who does not deal at Arm's Length with Greenfield, such cost shall be deemed to exclude the amount that is in excess of the costs that would have been charged had such Person been at Arm's Length with Greenfield.
- (g) The costs of the Independent Engineer shall be borne by the OPA.

2.3 ~~Settlement~~Intentionally Deleted [NTD: The settlement of the Keele Valley Claims~~claims will be dealt with in a separate document.]~~

~~The Parties acknowledge that the Ontario Electricity Financial Corporation has, upon execution of this Agreement, paid to Eastern Power the sum of \$15,381,231.81 and has executed and delivered the "Full and Final Mutual Release" attached as Exhibit B, and Eastern Power has executed and delivered the "Full and Final Mutual Release" attached as Exhibit B. Eastern Power shall forthwith~~

~~obtain an order dismissing the following proceedings on a without cost basis: (i) in the Ontario Superior Court, Court File No. 98-CV-152604, (ii) in the Court of Appeal for Ontario, Docket No. C49598, and (iii) Ontario Court of Justice (General Division) Court File No. RE7280/96. [NTD: This matter involves Eastern Power, which is separate in interest from Greenfield and accordingly this item should be in a separate agreement among the relevant parties]~~

2.4 ARCES Contract

By entering into this Agreement, neither Greenfield nor the OPA waives any provision of the ARCES Contract, provided that the obligations of Greenfield and the OPA under the ARCES Contract shall be suspended during the term of this Agreement, except as otherwise set out herein. For greater certainty, the OPA and Greenfield agree that the ARCES Contract continues to be in full force and effect.

2.5 Credit Facilities

- (a) Greenfield agrees to promptly seek any required consent of any Secured Lenders to the entering into of this Agreement by the OPA and Greenfield. Greenfield and the OPA agree to negotiate in good faith any reasonable amendments to this Agreement requested by the Secured Lenders.
- (b) The OPA shall ~~fund and Greenfield shall~~ pay to the Secured Lenders, all accrued and unpaid interest and any make whole payments or breakage fees which Greenfield is obliged to pay to the Secured Lenders pursuant to the Credit Facilities, together with the outstanding principal amount of the debt funded under the Credit Facilities in exchange for full and final releases from the Secured Lenders of all obligations of Greenfield [and its Affiliates] under the Credit Facilities and the Secured Lender's Security Agreements held by such Secured Lenders and the release of all security held by such Secured Lenders on and against the Site, the Facility and all other property and assets of Greenfield [and its Affiliates]. [NTD: Why does the security relate to any of the assets of the Affiliates?]
- (c) Greenfield shall not grant any security interests in the Facility, the Facility Equipment and the Site, and shall keep title to the Facility, the Facility Equipment and the Site free and clear of all encumbrances. Greenfield shall not sell, transfer, dispose of, or otherwise enter into any agreement (directly or indirectly) relating to the ownership of the Facility, Facility Equipment or the Site, without the OPA's prior written consent, which consent may be withheld in the OPA's sole and absolute discretion.
- (d) The Parties agree that any amounts paid by the OPA pursuant to Section 2.5(b) shall be reflected in any quantification of damages under this Agreement and/or any adjustment to the "Net Revenue Requirement" under the Amended ARCES.

2.6 Good Faith Negotiations

~~The OPA covenants and agrees that Greenfield shall be entitled to relocate the Facility to an alternate suitable site in the Province of Ontario acceptable to Greenfield and the OPA and to~~

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~~develop, construct, own and operate (directly or through an Affiliate) a new nominal 600*~~ Greenfield and the OPA agree to work together in good faith to determine a suitable site for ~~a new nominal 300~~ MW natural gas fuelled combined cycle generating facility ~~at such alternate site (the “Relocated Facility”). In this connection, *Greenfield and the OPA agree to work together in good faith to determine a suitable site for~~ *the Relocated Facility and the OPA shall in good faith cooperate with and assist Greenfield in obtaining all licenses, permits, certificates, registrations, authorizations, consents or approvals issued by Governmental Authorities and required for the development, construction and operation of the Relocated Facility by advising such* Governmental Authorities* of the OPA’s support for the Relocated Facility. In addition, Greenfield and the OPA agree to work together in good faith to negotiate an amendment to the ARCES Contract so that it relates to and applies to the Relocated Facility (the “**Amended ARCES**”). The Amended ARCES shall provide for (i) such amendments to the ARCES required to reflect and address the following matters: [larger size, the ability to build the plant in one or two 300 MW phases, inflation, increased connection costs, new location, new Milestone Dates, cooperation and assistance from the OPA for Greenfield in connection with its development efforts with the IESO, HydroOne, the ORC and other applicable* Governmental Authorities*, to provide that if Completion and Performance Security is required, such Completion and Performance Security will be arranged by the OPA] as are required to reflect the fact that the Relocated Facility is at a different location, (ii) the opportunity for Greenfield to engage the OPA in good faith negotiations during the term of the Amended ARCES regarding potential opportunities to expand the Relocated Facility by an incremental 300 MW depending upon system needs, IESO requirements and other technical and commercial factors, and (iii) a level of completion and performance security that is fifty percent (50%) less than that set out in the ARCES Contract.

2.7 Power and Authority

- (a) The OPA represents and warrants in favour of Greenfield ~~and Eastern Power~~ that it has the corporate power and capacity to enter into this Agreement and to perform its obligations hereunder and this Agreement has been duly authorized by all required board ~~and shareholder~~ approvals on the part of the OPA. This Agreement has been duly executed and delivered by the OPA and is a legal, valid and binding obligation of the OPA, enforceable against the OPA in accordance with its terms. The execution and delivery of this Agreement by the OPA and the performance by the OPA of its obligations hereunder will not result in the violation of or constitute a default under applicable law or any judgment, decree, order or award of any Governmental Authority having jurisdiction over the OPA. The OPA has received or obtained all directives, consents (other than those contemplated to be obtained hereunder after the Effective Date) and other authorizations required to be received or obtained as a condition to the entering into of this Agreement by the OPA and the performance of its obligations hereunder. ~~contemplated by this Agreement.~~
- (b) Greenfield* represents and warrants *in favour of the OPA that it has the corporate power and capacity to enter into this Agreement and to perform its obligations hereunder and this Agreement has been duly authorized by all required board and shareholder approvals on the part of Greenfield. This Agreement has been duly executed and delivered by Greenfield and is a legal, valid and binding obligation of Greenfield, enforceable against Greenfield in accordance with its terms. The

execution and delivery of this Agreement by Greenfield and the performance by Greenfield of its obligations hereunder will not result in the violation of or constitute a default under applicable law or any judgment, decree, order or award of any Governmental Authority having jurisdiction over Greenfield. Greenfield has received or obtained all consents (other than those contemplated to be obtained hereunder after the Effective Date) and other authorizations required to be received or obtained as a condition to the entering into of this Agreement by Greenfield and the performance of its obligations hereunder.

ARTICLE 3 CONFIDENTIALITY, FIPPA AND PRIVILEGED COMMUNICATIONS

3.1 Confidential Information

From the Effective Date 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 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 3 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 3.2.
- (c) ~~[NTD: Please add equivalent of Section 8.1(e) of ARCES]~~ Where Greenfield is the Receiving Party, Greenfield 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 Relocated Facility, provided that any such prospective lender or investor has been informed of the Supplier's confidentiality obligations hereunder and such prospective lender or investor has covenanted in favour of the OPA to hold such Confidential Information confidential and entered into a Confidentiality Undertaking in substantially the form set out in Exhibit W to the ARCES Contract or in a similar form prepared by Greenfield and approved by the OPA.

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3.2 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.

3.3 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 3.

3.4 FIPPA Records and Compliance

The Parties acknowledge and agree that the OPA is subject to the *Freedom of Information and Protection of Privacy Act* (Ontario) ("**FIPPA**") and that FIPPA applies to and governs all Confidential Information in the custody or control of the OPA ("**FIPPA Records**") and may, subject to FIPPA, require the disclosure of such FIPPA Records to third parties. Greenfield ~~and Eastern Power agree~~agrees to provide a copy of any FIPPA Records that it previously provided to the OPA if Greenfield ~~or Eastern Power, as applicable,~~ continues to possess such FIPPA Records in a deliverable form at the time of the OPA's request. If Greenfield ~~or Eastern Power, as applicable,~~ 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 OPA. The provisions of this section shall survive any termination or expiry of this Agreement and shall prevail over any inconsistent provisions in this Agreement.

3.5 ~~†~~Privileged Communications

- (a) The Parties agree that all discussions, communications and correspondence between the Parties or their Representatives from and after the date of this

Agreement, whether oral or written, and whether Confidential Information or not, in connection with the termination of the ARCES Contract or otherwise relating to any differences between the Parties respecting the ARCES Contract or relating to other projects or potential opportunities being discussed between the Parties are without prejudice and privileged.

- (b) Notwithstanding Section 3.5(a), nothing in this Agreement shall prevent Greenfield and the OPA from communicating with one another on a with prejudice basis at any point in time by designating its communication, whether oral or written, as a “with prejudice” communication, provided that such “with prejudice” communication does not include or refer, either directly or indirectly, to any without prejudice and privileged discussions, communications and correspondence. [NTD: Section 3.5 should be deleted. Everything should be “with prejudice” once agreement signed][NTD: It is the OPA’s intent that this agreement would be “with prejudice” but that the subsequent negotiations for a Relocated Facility would be on a “without prejudice” basis.]

ARTICLE 4 TERM AND EXPIRY

4.1 Term and Expiry

- (a) The term of this Agreement shall be effective from the Effective Date for a period of 60 days and shall automatically expire at the end of such 60 day period, provided that the term may be extended once by an additional period of 60 days by either the OPA or Greenfield providing the other Parties with written notice no less than five (5) Business Days prior to the expiry of the original term and may be further extended for an agreed upon period of time with the mutual agreement in writing of the OPA and Greenfield.
- (b) Upon expiry of the term of this Agreement, following any extension exercised in accordance with Section 4.1(a):
- (i) the ARCES Contract shall be terminated and ~~Greenfield and the OPA shall commence dispute resolution pursuant to Article 6 to determine the amount owed by the OPA to Greenfield, which amount shall be determined assuming that a Discriminatory Action (as defined in the ARCES Contract) occurred and for the purposes of determining the amount of*~~ Discriminatory Action Compensation* ~~(as defined in the ARCES Contract) arising as a result thereof, assuming, at the option of the OPA, either: (A) that Greenfield shall have the right to recommence and complete construction of the Facility at the Site using the existing permits and approvals and authorizations, including the Certificate of Approval Air described in Section 2.1(c)(i) (in which case, Greenfield shall have and shall be entitled to exercise such right); or (B) that Greenfield was not permitted to complete construction of and to operate the Facility as a result of its obligations under this Agreement; in addition to those amounts payable pursuant to Section 2.2 shall be determined in accordance with Section 4.2;~~

- (ii) Greenfield shall return to the OPA any remaining portion of the ~~Cessation~~ Costs Security at such time as Greenfield is satisfied, acting reasonably, that it does not have and is not likely to have any further obligations for costs or other liabilities in respect of the cessation of construction of the ~~F~~Facility as contemplated by Section 2.2, or for which the OPA may be liable to indemnify any of the Greenfield Indemnified Parties under Section 2.2(c), provided that in no event shall such period of time extend beyond sixty (60) days following the expiry of the term of this Agreement; and
- (iii) subject to Section 7.10, no Party shall have any further obligations hereunder.

4.2 Damages

If the ARCES Contract is terminated in accordance with Section 4.1(b)(i) or Section 7.1(a) of this Agreement, Greenfield's damages shall be determined as the net present value of the net revenues from the Facility that are forecast to be earned by Greenfield during the "Term" (as defined in the ARCES Contract), taking into account any actions that Greenfield should reasonably be expected to take to mitigate the effect of the termination of the ARCES Contract. For greater certainty, the net revenues from the Facility shall be calculated by deducting the costs that would have been incurred by Greenfield in connection with the development, construction, financing, operation and maintenance of the Facility from payments that would have been made to Greenfield under the ARCES Contract, taking into account those payments made to Greenfield hereunder. [NTD: This language is partially derived from the determination of the* Discriminatory Action Compensation* payment set out in Article 13 of the ARCES Contract.]

ARTICLE 5 NOTICES

5.1 Notices

- (a) All notices pertaining to this Agreement shall be in writing and shall be addressed as follows:

If to Greenfield: Greenfield South Power Corporation
2275 Lake Shore Blvd. West
Suite 401
Toronto, Ontario M8V 3Y3

Attention: Greg Vogt, President
Facsimile: (416) 234-8336

and to: McMillan LLP
Brookfield Place
181 Bay Street, Suite 4400
Toronto, Ontario M5J 2T3

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Attention: Carl DeVuono
Facsimile: (416) 304-3755

~~If to Eastern Power: Eastern Power Limited
2275 Lake Shore Blvd. West
Suite 401
Toronto, Ontario M8V 3Y3~~

~~Attention: Greg Vogt, President
Facsimile: (416) 234-8336~~

~~and to: McMillan LLP
Brookfield Place
181 Bay Street, Suite 4400
Toronto, Ontario M5J 2T3~~

~~Attention: Carl DeVuono
Facsimile: (416) 304-3755~~

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

Attention: Michael Lyle, General Counsel
Facsimile: (416) 969-6071

Either Party may, by written notice to the other Parties, change the address to which notices are to be sent.

- (b) Notices shall be delivered or transmitted by facsimile, by hand, or by courier, and shall be considered to have been received by the other Party on the date of delivery if delivered prior to 5:00 p.m. (Toronto time) on a Business Day and otherwise on the next following Business Day, provided that any notice given pursuant to Section 2.2(d) shall be sent by facsimile and by courier.

ARTICLE 6 DISPUTE RESOLUTION

6.1 Informal Dispute Resolution

If any 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 affected Party or Parties describing the nature and the particulars of such dispute. Within ten (10) Business Days following delivery of such notice to the affected Party or Parties, a senior executive (Senior Vice-President or higher) from each affected 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

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propose a solution to the dispute. If, following the Senior Conference, the dispute is not resolved, the dispute shall be settled by arbitration pursuant to Section 6.2.

6.2 Arbitration

Any matter in issue between the Parties as to their rights under this Agreement shall be decided by arbitration pursuant to this Section 6.2, provided, however, that the Parties have first completed a Senior Conference pursuant to Section 6.1. Any dispute to be decided in accordance with this Section 6.2 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 reference of the dispute to arbitration, upon the application of any 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. [NTD: Being reviewed by Greenfield.]

ARTICLE 7 MISCELLANEOUS

7.1 Default

- (a) If the OPA fails to perform any material covenant or obligation set forth in this Agreement and such failure is not remedied within ~~fifteen~~ten ~~(15)~~(10) Business Days after written notice of such failure from Greenfield, ~~such failure shall constitute a "Discriminatory Action" under the ARCES Contract and shall entitle Greenfield to exercise any remedies thereunder in connection with such Discriminatory Action shall be terminated and the amount owed by the OPA to Greenfield shall be determined in accordance with Section 4.2.~~
- (b) If Greenfield fails to perform any ~~material~~ covenant or obligation set forth in Section 2.1(a), Section 2.1(c) ~~or~~ Section 2.1(d) or Section 2.5(c) of this Agreement and such failure is not remedied within ~~fifteen~~ten ~~(15)~~(10) Business Days after written notice of such failure from the OPA, such failure shall constitute a

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“Supplier Event of Default” under the ARCES Contract and shall entitle the OPA to exercise any remedies thereunder in connection with such default.

7.2 Injunctive and Other Relief

Each of Greenfield and the OPA acknowledge that a breach of this Agreement by the other Party, including, without limitation, Section 2.1, 2.2, ~~2.5~~2.5, and Article 3 shall cause irreparable harm to the non breaching Party, and that the injury to non breaching Party shall be difficult to calculate and inadequately compensable in damages. The breaching Party agrees that the non breaching Party is entitled to obtain injunctive relief (without proving any damage sustained by it) or any other remedy against any actual or potential breach of the provisions of this Agreement by the breaching Party.

7.3 Record Retention; Audit Rights

Greenfield shall keep complete and accurate records and all other data required 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 seven (7) years after the creation of the record or data. Greenfield, on a confidential basis as provided for in Article 3 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 OPA to (i) comply with its obligations to Governmental Authorities, ~~and~~ (ii) verify or audit billings or to verify or audit information provided in accordance with this Agreement, and (iii) to determine any amounts owing or payable pursuant to Sections 2.2(a), 2.2(b), 2.2(c) and 2.5(b). The OPA 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 3. Alternatively, the OPA may at its own expense appoint an auditor to conduct its review.

7.4 Inspection of Site

- (a) The OPA 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 and during the term of this Agreement, have access to the Site and every part thereof during regular business hours and Greenfield shall, and shall cause all personnel at the Site within the control of Greenfield to furnish the OPA with all reasonable assistance in inspecting the Site 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 Greenfield.
- (b) The inspection of the Site by or on behalf of the OPA shall not relieve Greenfield of any of its obligations to comply with the terms of this Agreement. [In no event will any inspection by the OPA hereunder be a representation that there has been or will be compliance with this Agreement and laws and regulations.][NTD: This is from the ARCES Contract. Why has it been deleted?]

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7.5 Inspection Not Waiver

Failure by OPA to inspect the Site or any part thereof under Section 7.4, or to exercise its audit rights under Section 7.3, shall not constitute a waiver of any of the rights of the OPA hereunder. An inspection or audit not followed by a notice of a default by Greenfield shall not constitute or be deemed to constitute a waiver of any such default, nor shall it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by Greenfield with this Agreement.

7.6 No Publicity

No Party shall make any public statement or announcement regarding the existence or contents of this Agreement without, ~~in the case of the OPA, the prior written consent of Greenfield, and in the case of Greenfield or Eastern Power, the prior written consent of the OPA~~ the other Party. Notwithstanding the foregoing and Article 3, following execution of this Agreement, the OPA and its Representatives shall be permitted to make a public announcement, which is provided to Greenfield in advance ~~and which is acceptable to Greenfield~~, that an agreement has been entered into between the OPA and Greenfield which provides for (i) the permanent cessation of work on the Facility, (ii) the ~~rescission or~~ revocation of the permits set out in Section 2.1(c) in the circumstances described therein, and (iii) further negotiations between the OPA and Greenfield to determine the ultimate resolution of the relocation of the Facility, failing which, the ultimate resolution will be determined through binding arbitration. [NTD: This clause remains subject to further revision as the OPA has not yet finalized this language.]

7.7 Business Relationship

~~Without limiting the obligations of the OPA under Section 2.2, each~~ 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 any of the Parties shall be considered employees of any 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.

7.8 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.

7.9 Assignment

- (a) Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by ~~either Greenfield or Eastern Power~~, without the prior written consent of the OPA, which consent shall not be unreasonably withheld; provided that Greenfield may without the consent of the OPA assign this Agreement and all benefits and obligations hereunder to the Affiliate which will

develop, construct, own and operate the Relocated Facility as contemplated by Section 2.6, provided that the assignee agrees in writing in a form satisfactory to the OPA, acting reasonably, to assume and be bound by the terms and conditions of this Agreement, ~~whereupon, Greenfield shall be relieved of all obligations and liabilities arising pursuant to this Agreement.~~ [NTD: This was deleted because some of the obligations of Greenfield are specific to the Site and need to remain with Greenfield.]

- (b) Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by the OPA, without the prior written consent of Greenfield, which consent shall not be unreasonably withheld; provided that the OPA shall have the right to assign this Agreement and all benefits and obligations hereunder without the consent of Greenfield ~~or Eastern Power~~ to the Government of Ontario or any corporation owned or Controlled by the Government of Ontario ~~and whose obligations and liabilities are guaranteed by the Government of Ontario~~ with a credit rating that is equal to or better than the OPA's credit rating, and which assumes all of the obligations and liabilities of the Ontario Power Authority under this Agreement and agrees to be novated into this Agreement in the place and stead of the OPA, provided that the assignee agrees in writing to assume and be bound by the terms and conditions of this Agreement, whereupon, the OPA shall be relieved of all obligations and liability arising pursuant to this Agreement.

7.10 Survival

The provisions of Section 2.1, Section 2.2, Article 3, Section 4.1(b) ~~and~~, Article 6, and Section 7.3, shall survive the expiration of the term.

7.11 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.

7.12 Time of Essence

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

7.13 No Third-Party Beneficiaries

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

7.14 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.

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.

~~EASTERN POWER LIMITED~~

~~By: _____
Name: Gregory M. Vogt
Title: President~~

~~I have authority to bind the corporation~~

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**EXHIBIT A
FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT**

DATE OF ISSUE: ●

APPLICANT: Ontario Power Authority

BENEFICIARY: Greenfield South Power Corporation

AMOUNT: ●

EXPIRY DATE: ●

EXPIRY PLACE: Counters of the issuing financial institution in Toronto, Ontario

CREDIT RATING: **[Insert credit rating only if the issuer is not a financial institution listed in either Schedule I or II of the Bank Act]**

TYPE: Irrevocable Standby Letter of Credit

NUMBER:

We hereby authorize you to draw on **[insert name of financial institution and financial institution's address in Toronto, Ontario]** in respect of irrevocable standby letter of credit No. _____ (the "**Credit**"), for the account of the Applicant up to an aggregate amount of \$● (● Canadian dollars) available by your draft at sight, accompanied by:

1. A certificate signed by an officer of the Beneficiary stating that:

"The Ontario Power Authority is in breach of its obligation set out in Section 2.2 of the Facility Relocation and Settlement Agreement between the Beneficiary, and the Applicant ~~and Eastern Power Limited~~, and therefore the Beneficiary is entitled to draw upon the Credit in the amount of the draft attached hereto."; and
2. A certified true copy of a letter sent by the Beneficiary to the Applicant, by facsimile to 416-969-6071 and by courier to the attention of Michael Lyle, General Counsel, 120 Adelaide Street West, Suite 1600, Toronto ON M5H 1T1, notifying the Applicant that the Beneficiary intends to draw on this Credit, together with a copy of the facsimile confirmation and courier receipt evidencing that the letter was received by the Beneficiary no less than ~~five~~ten (~~5~~10) business days prior to the date of the draw.

Drafts drawn hereunder must bear the clause "Drawn under irrevocable Standby Letter of Credit No. **[insert number]** issued by **[the financial institution]** dated **[insert date]**".

Partial drawings are permitted.

This Credit is issued in connection with the Facility Relocation and Settlement Agreement dated as of the ● day of November, 2011 between the Beneficiary and the Applicant.

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We agree with you that all drafts drawn under, and in compliance with the terms of this Credit will be duly honoured, if presented at the counters of **[insert the financial institution and financial institution's address, which must be located in Toronto, Ontario]** at or before 5:00 pm (EST) on **[insert the expiry date]**.

This irrevocable standby letter of credit is subject to the International Standby Practices ISP 98, International Chamber of Commerce publication No. 590 and, as to matters not addressed by the ISP 98, shall be governed by the laws of the Province of Ontario and applicable Canadian federal law, and the parties hereby irrevocably agree to attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

– END –

[Insert name of Financial Institution]

By: _____
Authorized Signatory

Draft

EXHIBIT B
~~FULL AND FINAL MUTUAL RELEASE~~

1. ~~In consideration of the payment of the sum of \$15,381,231.81 to Eastern Power Limited, the covenants contained in this Full and Final Mutual Release, and other consideration, the receipt and sufficiency of which is hereby acknowledged,~~

~~**EASTERN POWER LIMITED (“Eastern Power”)**~~

~~hereby releases and discharges~~

~~**ONTARIO ELECTRICITY FINANCIAL CORPORATION (“OEFC”), and**~~

~~each of its affiliated corporations, trusts, partnerships and other entities, and each of the respective past, present and future directors, trustees, officers, employees and agents of OEFC or any such affiliate (collectively the “Additional OEFC Releasees”)~~

~~and~~

~~**OEFC**~~

~~hereby releases and discharges~~

~~**Eastern Power, and**~~

~~each of its affiliated corporations, trusts, partnerships and other entities, and each of the respective past, present and future directors, trustees, officers, employees and agents of Eastern Power or any such affiliate (collectively the “Additional Eastern Power Releasees”)~~

~~of and from all claims and demands whatsoever, presently known or unknown, which Eastern Power or OEFC, as the case may be, ever had, now has or may hereafter have, arising from or in connection with or in consequence of any cause, matter or thing existing up to the date of this Full and Final Mutual Release, including, without limiting the generality of the foregoing, all claims and demands arising from or in connection with a power purchase agreement between Eastern Power and OEFC for the purchase of electricity generated from Eastern Power’s site in the Keele Valley including all claims and demands which are or could have been asserted in a proceeding in the Ontario Superior Court bearing Court File No. 98 CV 152604 and a proceeding in the Court of Appeal for Ontario bearing Docket No. C49598. [NTD: There is another court proceeding between Eastern and the OEFC to be added.]~~

2. ~~And for the said consideration,~~

- (a) ~~Eastern Power further covenants and agrees that it will not take or continue, and will not permit any entity which it now or hereafter controls to take or continue, proceedings of any kind against any person who might claim contribution, indemnity or other relief over against OEFC or any of the Additional OEFC Releasees in respect of any matter falling within the scope of the matters described~~

~~in paragraph 1. Eastern Power agrees that this Full and Final Mutual Release constitutes sufficient grounds to enjoin the taking or continuation of any such proceedings. Eastern Power further agrees to indemnify OEFC and the Additional OEFC Releasees against any loss or damages, including legal fees on a full indemnity basis, incurred by any of them in consequence of proceedings taken or continued in breach of this covenant; and~~

~~(b) OEFC further covenants and agrees that it will not take or continue, and will not permit any entity which it now or hereafter controls to take or continue, proceedings of any kind against any person who might claim contribution, indemnity or other relief over against Eastern Power or any of the Additional Eastern Power Releasees in respect of any matter falling within the scope of the matters described in paragraph 1. OEFC agrees that this Full and Final Mutual Release constitutes sufficient grounds to enjoin the taking or continuation of any such proceedings. OEFC further agrees to indemnify Eastern Power and the Additional Eastern Power Releasees against any loss or damages, including legal fees on a full indemnity basis, incurred by any of them in consequence of proceedings taken or continued in breach of this covenant.~~

~~3. Each of Eastern Power and OEFC* represents and warrants* to the other that it has not assigned or otherwise disposed of any of the claims or demands which are the subject of this Full and Final Mutual Release.~~

~~4. (a) Eastern Power agrees that the Additional OEFC Releasees are third party beneficiaries of this Full and Final Mutual Release and that it intends to confer a benefit upon each of them which is enforceable by each of them.~~

~~(b) OEFC agrees that the Additional Eastern Power Releasees are third party beneficiaries of this Full and Final Mutual Release and that it intends to confer a benefit upon each of them which is enforceable by each of them.~~

~~5. Eastern Power and OEFC agree that neither of them, and none of the Additional Eastern Power Releasees or the Additional OEFC Releasees, admit liability in respect of the matters which are the subject of this Full and Final Mutual Release, and that such liability is expressly denied by each of them.~~

~~6. Eastern Power and OEFC undertake and agree to maintain confidential both the fact of the settlement, in connection with which this Full and Final Mutual Release is delivered, and the terms of such settlement, except to the extent that disclosure is required by law, provided that they may disclose the settlement and its terms to their respective professional advisers for the purpose of receiving their professional advice.~~

~~7. This Full and Final Mutual Release shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein. Eastern Power and OEFC attorn to the non exclusive jurisdiction of the courts of the Province of Ontario in respect of any dispute arising from or in connection with or in consequence of this Full and Final Mutual Release.~~

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8. ~~Each of Eastern Power and OEFC acknowledges and agrees that it fully understands the terms of this Full and Final Mutual Release and has delivered same voluntarily, after receiving independent legal advice, for the purpose of making full and final compromise and settlement of the claims and demands which are the subject of this Full and Final Mutual Release.~~
9. ~~This Full and Final Mutual Release may be executed in any number of counterparts with the same effect as if all parties had executed the same document. All counterparts shall be construed together and shall constitute one and the same Full and Final Mutual Release. Each counterpart of this Full and Final Mutual Release may be executed in either original or faxed form.~~

~~Executed as of _____, 2011.~~

~~EASTERN POWER LIMITED~~

~~Per:~~

~~I have authority to bind the corporation~~

~~Name:~~

~~Title:~~

~~ONTARIO ELECTRICITY FINANCIAL
CORPORATION~~

~~Per:~~

~~I have authority to bind the corporation~~

~~Name:~~

~~Title:~~

~~EXHIBIT C~~

~~COPY OF CERTIFICATE OF APPROVAL-AIR NUMBER 2023-7HUMVW~~

~~EXHIBIT D~~

~~COPY OF ELECTRICITY GENERATION LICENCE EG 2009 0023~~

Draft

Cayley, Daniel (ENERGY)

From: Calwell, Carolyn (ENERGY)
Sent: November-19-11 3:19 PM
To: Perun, Halyna N. (ENERGY)
Subject: Re: Revised FRSA
Attachments: image002.gif; greenest2011_english-(custom)verysmall.gif; #22077989v8_LEGAL_1_ - Facility Relocation and Settlement Agreement (Osler draft).docx; image003.gif

I'll take a look at as well.

Carolyn

1) gif attachments are images below
2) Duplicate attachment removed

From: Perun, Halyna N. (ENERGY)
To: Calwell, Carolyn (ENERGY)
Sent: Sat Nov 19 14:07:29 2011
Subject: Fw: Revised FRSA

Hi - just noticed this - I aim to be in the office within the hour so will review then - happy to do so as is quiet for me this aft -

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

Sent using BlackBerry

From: Michael Lyle <Michael.Lyle@powerauthority.on.ca>
To: Perun, Halyna N. (ENERGY)
Sent: Sat Nov 19 13:18:28 2011
Subject: Fw: Revised FRSA

FYI. Latest turn.

From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: Saturday, November 19, 2011 10:46 AM
To: 'Carl De Vuono' <Carl.DeVuono@mcmillan.ca>; Sebastiano, Rocco <RSebastiano@osler.com>
Cc: Michael Lyle
Subject: Revised FRSA

Carl,
Please find attached a revised draft of the Facility Relocation and Settlement Agreement, along with a blackline referencing the version you sent on November 17. If you have any questions, let us know.

In the interest of time I am sending this to the OPA simultaneously and as such it remains subject to further comment by the OPA.

Elliot



Elliot Smith, P.Eng.
Associate

416.862.6435 DIRECT
416.862.6666 FACSIMILE
esmith@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8



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From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
Sent: Friday, November 18, 2011 6:22 PM
To: Sebastiano, Rocco
Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
Subject: RE: Agreement in Principle Letter

Please see fully signed agreement attached.



Carl De Vuono

Partner
direct 416.307.4055 | mobile 416.918.1046
carl.devuono@mcmillan.ca

Assistant: Nadia Malleve | 416.865.7000 ext.2311 | nadia.malleve@mcmillan.ca

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From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Friday, November 18, 2011 6:06 PM
To: Carl De Vuono
Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
Subject: RE: Agreement in Principle Letter

Carl, I have just been advised that the letter was being sent lawyer to lawyer. So, would you please send it to Greg for his execution.

Thanks, Rocco

From: Sebastiano, Rocco
Sent: Friday, November 18, 2011 6:04 PM
To: 'Carl De Vuono'
Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
Subject: RE: Agreement in Principle Letter

The letter has been signed and enclosed is a copy. I believe that it has been sent to GSPC also. Perhaps you can confirm that Greg has received it.

Thanks, Rocco

From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
Sent: Friday, November 18, 2011 6:00 PM
To: Sebastiano, Rocco
Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
Subject: RE: Agreement in Principle Letter

Ok. Is the OPA sending the letter to GSPC for signature?

mcmillan

Carl De Vuono

Partner
direct 416.307.4055 | mobile 416.918.1046
carl.devuono@mcmillan.ca

Assistant: Nadia Malleve | 416.865.7000 ext.2311 | nadia.malleve@mcmillan.ca

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From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Friday, November 18, 2011 5:57 PM
To: Carl De Vuono
Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
Subject: RE: Agreement in Principle Letter

Yes, the media statement is the one that I sent you. It is my understanding that the media statement may be issued on Monday as opposed to today.

Regards, Rocco

From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
Sent: Friday, November 18, 2011 5:36 PM
To: Sebastiano, Rocco
Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
Subject: RE: Agreement in Principle Letter

The letter is ok. I assume the media statement is the one you sent me a couple of minutes ago.

Please have the OPA sign and send the letter GSPC and GSPC will sign and send it back.



Carl De Vuono

Partner

direct 416.307.4055 | mobile 416.918.1046

carl.devuono@mcmillan.ca

Assistant: Nadia Malley | 416.865.7000 ext.2311 | nadia.malley@mcmillan.ca

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Please consider the environment before printing this e-mail.

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]

Sent: Friday, November 18, 2011 5:29 PM

To: Carl De Vuono

Cc: Michael Lyle (Michael.Lyle@powerauthority.on.ca); Smith, Elliot

Subject: Agreement in Principle Letter

Confidential and Without Prejudice

Carl,

We are ok with your changes to the letter with one minor change. We have also added a positive statement that the OPA will be issuing a media statement in connection with the letter.

If you are ok with the letter then we will proceed to have the OPA sign it and send it over to Greenfield.

Regards, Rocco



Rocco Sebastiano

Partner

416.862.5859 DIRECT

416.862.6666 FACSIMILE

rsebastiano@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com

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Cayley, Daniel (ENERGY)

From: Silva, Joseph (ENERGY)
Sent: November-19-11 4:02 PM
To: King, Ryan (ENERGY); Jennings, Rick (ENERGY)
Cc: Lindsay, David (ENERGY)
Subject: Fw: Monday - statement
Attachments: 2011-11-19 Minister's Statement - revised12 pm.DOC; Greenfield Q's and A's Updated - MO copy - Nov 19 1 PM (2).doc; OPA Media Statement - Stop Construction 11-19-11-11am.docx

Duplicate attachments removed

Hi Rick, Ryan - fyi
I'm sure you have seen the materials. There are QAs on siting review.
Joseph

Sent using BlackBerry Wireless

From: Kulendran, Jesse (ENERGY)
To: Silva, Joseph (ENERGY); Lindsay, David (ENERGY)
Sent: Sat Nov 19 14:27:33 2011
Subject: Monday - statement

FYI.

Jesse Kulendran - Senior Coordinator, Policy & Special Projects - Deputy Minister's Office - Ministry of Energy - Tel.: 416-327-7025 - Blackberry: 416-206-1394

From: Botond, Erika (ENERGY)
To: Botond, Erika (ENERGY); Nutter, George (ENERGY); Danyluk, Erica (CAB); McMichael, Rhonda (CAB); 'Kristin Jenkins' <Kristin.Jenkins@powerauthority.on.ca>; Johnston, Alicia (OPO); Kett, Jennifer (ENERGY); MacLennan, Craig (ENERGY); Calwell, Carolyn (ENERGY)
Cc: Gemmiti, Paola (ENERGY); Dunn, Ryan (ENERGY); Kulendran, Jesse (ENERGY); Charlebois, Tyler (OPO); Almeida, Jane (OPO); Levitan, Daniel (ENERGY); Kovesfalvi, Sylvia (ENERGY); Fong, Sharon (ENERGY)
Sent: Sat Nov 19 13:21:01 2011
Subject: one more update - Monday - statement

Hi everyone – please find attached the updated materials.

Ministry statement - We have added the point that this is a permanent work stoppage and that there will not be a plant on that site as committed (in yellow).
OPA statement – added the same points.

We are still all systems go for Monday still:

9:15 AM – OPA statement – CNW Toronto

9:30 AM – ENERGY statement – Jen will email directly to media – ministry, please post to newsroom using Toronto distribution (no longer just a bulletin)

10:00 AM – Scrum

Paola – can you guys make sure the translator captures the revisions and note the change in distribution of our statement - thx!

Cheers,

Cayley, Daniel (ENERGY)

From: Calwell, Carolyn (ENERGY)
Sent: November-19-11 5:06 PM
To: Perun, Halyna N. (ENERGY)
Subject: Re: Revised FRSA
Attachments: image002.gif; greenest2011_english-(custom)verysmall.gif; image003.gif

Attachments are images below

No issue - OPA isn't subject to the FAA.

Carolyn

From: Perun, Halyna N. (ENERGY)
To: Calwell, Carolyn (ENERGY)
Sent: Sat Nov 19 16:18:00 2011
Subject: Re: Revised FRSA

Thanks Carolyn - re the indemnity as well - does this raise FAA issues for us to flag?

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

Sent using BlackBerry

From: Calwell, Carolyn (ENERGY)
To: Perun, Halyna N. (ENERGY)
Sent: Sat Nov 19 16:16:11 2011
Subject: RE: Revised FRSA

A couple of interesting developments:

--allowance for the continuing manufacture of gas turbine, the HRSG, the transformers, and the pumps , which will presumably be used in the relocated facility (up to 300 MW, plus potentially an additional 300 MW depending on system needs)

--the indemnity from the OPA to Greenfield "arising out of, or resulting from any claims by Contractors, Suppliers, Governmental Authorities and employees resulting from the cessation of construction of the Facility"

--provision for damages as the net present value of the net revenues from the Facility that are forecast to be earned by Greenfield during the term of the ARCES contract.

We'll see what the next iteration brings.

Carolyn

From: Perun, Halyna N. (ENERGY)
Sent: Sat 19/11/2011 2:07 PM
To: Calwell, Carolyn (ENERGY)
Subject: Fw: Revised FRSA

Hi - just noticed this - I aim to be in the office within the hour so will review then - happy to do so as is quiet for me this aft -

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

Sent using BlackBerry

From: Michael Lyle <Michael.Lyle@powerauthority.on.ca>
To: Perun, Halyna N. (ENERGY)
Sent: Sat Nov 19 13:18:28 2011
Subject: Fw: Revised FRSA

FYI. Latest turn.

From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: Saturday, November 19, 2011 10:46 AM
To: 'Carl De Vuono' <Carl.DeVuono@mcmillan.ca>; Sebastiano, Rocco <RSebastiano@osler.com>
Cc: Michael Lyle
Subject: Revised FRSA

Carl,

Please find attached a revised draft of the Facility Relocation and Settlement Agreement, along with a blackline referencing the version you sent on November 17. If you have any questions, let us know.

In the interest of time I am sending this to the OPA simultaneously and as such it remains subject to further comment by the OPA.

Elliot

OSLER

Elliot Smith, P.Eng.
Associate

416.862.6435 DIRECT
416.862.6666 FACSIMILE
esmith@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8



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From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
Sent: Friday, November 18, 2011 6:22 PM
To: Sebastiano, Rocco
Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
Subject: RE: Agreement in Principle Letter

Please see fully signed agreement attached.



Carl De Vuono

Partner
direct 416.307.4055 | mobile 416.918.1046
carl.devuono@mcmillan.ca

Assistant: Nadia Malleye | 416.865.7000 ext.2311 | nadia.malleye@mcmillan.ca

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From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Friday, November 18, 2011 6:06 PM
To: Carl De Vuono
Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
Subject: RE: Agreement in Principle Letter

Carl, I have just been advised that the letter was being sent lawyer to lawyer. So, would you please send it to Greg for his execution.

Thanks, Rocco

From: Sebastiano, Rocco
Sent: Friday, November 18, 2011 6:04 PM
To: 'Carl De Vuono'
Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
Subject: RE: Agreement in Principle Letter

The letter has been signed and enclosed is a copy. I believe that it has been sent to GSPC also. Perhaps you can confirm that Greg has received it.

Thanks, Rocco

From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
Sent: Friday, November 18, 2011 6:00 PM
To: Sebastiano, Rocco
Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
Subject: RE: Agreement in Principle Letter

Ok. Is the OPA sending the letter to GSPC for signature?



Carl De Vuono

Partner

direct 416.307.4055 | mobile 416.918.1046
carl.devuono@mcmillan.ca

Assistant: Nadia Malleye | 416.865.7000 ext.2311 | nadia.malleye@mcmillan.ca

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From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Friday, November 18, 2011 5:57 PM
To: Carl De Vuono
Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
Subject: RE: Agreement in Principle Letter

Yes, the media statement is the one that I sent you. It is my understanding that the media statement may be issued on Monday as opposed to today.

Regards, Rocco

From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
Sent: Friday, November 18, 2011 5:36 PM
To: Sebastiano, Rocco
Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
Subject: RE: Agreement in Principle Letter

The letter is ok. I assume the media statement is the one you sent me a couple of minutes ago.

Please have the OPA sign and send the letter GSPC and GSPC will sign and send it back.



Carl De Vuono

Partner

direct 416.307.4055 | mobile 416.918.1046
carl.devuono@mcmillan.ca

Assistant: Nadia Malleye | 416.865.7000 ext.2311 | nadia.malleye@mcmillan.ca

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From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Friday, November 18, 2011 5:29 PM
To: Carl De Vuono
Cc: Michael Lyle (Michael.Lyle@powerauthority.on.ca); Smith, Elliot
Subject: Agreement in Principle Letter

Confidential and Without Prejudice

Carl,

We are ok with your changes to the letter with one minor change. We have also added a positive statement that the OPA will be issuing a media statement in connection with the letter.

If you are ok with the letter then we will proceed to have the OPA sign it and send it over to Greenfield.

Regards, Rocco

OSLER

Rocco Sebastiano
Partner

416.862.5859 DIRECT
416.862.8666 FACSIMILE
rsebastiano@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com

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Cayley, Daniel (ENERGY)

From: Michael Lyle <Michael.Lyle@powerauthority.on.ca>
Sent: November-19-11 8:42 AM
To: Perun, Halyna N. (ENERGY); Calwell, Carolyn (ENERGY)
Subject: FW: Revised FRSA
Attachments: #22077989v7_LEGAL_1_ - Facility Relocation and Settlement Agreement (Osler draft).DOCX; blackline to McMillan draft.pdf; Blackline to previous Osler draft.pdf; greenest2011_english-(custom)verysmall.gif

gif attachment is image below

Sorry for not getting this to you last night. We are reviewing this shortly and should have a version out to Greenfield before noon.

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: Smith, Elliot [mailto:ESmith@osler.com]
Sent: November 18, 2011 8:52 PM
To: Michael Killeavy; Michael Lyle
Cc: Sebastiano, Rocco; Ivanoff, Paul
Subject: Revised FRSA

All,
Please find attached a revised FRSA along with blacklines to both the previous Osler draft and the McMillan draft. We are still reviewing this internally but wanted to get it out to the team for your review as well.

We would propose to have a call tomorrow morning at 9:30 AM to discuss. Please let us know if this works or if there is an alternate time you would prefer.

Elliot



Elliot Smith, P.Eng.
Associate

416.862.6435 DIRECT
416.862.6666 FACSIMILE
esmith@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8



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FACILITY RELOCATION AND SETTLEMENT AGREEMENT

This Facility Relocation and Settlement Agreement (the “**Agreement**”) is dated as of the ● day of November, 2011 (the “**Effective Date**”) between Greenfield South Power Corporation (“**Greenfield**”) and the Ontario Power Authority (the “**OPA**”). Greenfield and the OPA are each referred to as a “**Party**” and collectively as the “**Parties**”.

WHEREAS the OPA and Greenfield executed a Clean Energy Supply Contract dated as of the 12th day of April, 2005 and amended and restated as of the 16th day of March, 2009 (the “**ARCES Contract**”);

AND WHEREAS in response to the local community’s concerns about the Greenfield South Generating Station, the Government of Ontario committed to relocate the Facility;

AND WHEREAS Greenfield has, as a result of the commitment of the Government of Ontario to relocate the Facility and at the request of the OPA, agreed to stop construction work on the Facility and the OPA and Greenfield have agreed to relocate the Facility, all on the terms and conditions set forth in this Agreement;

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
INTERPRETATION**

1.1 Definitions

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

“**Affiliate**” of a Person means any Person that Controls, is Controlled by, or is under common Control with, that Person.

“**Amended ARCES**” has the meaning given to that term in Section 2.6.

“**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.

“**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.

“**Confidential Information**” means this Agreement, any prior drafts of this Agreement and correspondence related to this Agreement, any arbitration pursuant to this Agreement (including, without limitation, the proceedings, written materials and any decision) and all information that has been identified as confidential and which is furnished or disclosed by the Disclosing Party

Draft