

# Greenfield South Generating Station

## Next Steps

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Date: October XX, 2011

## Stopping Construction

- On September 24, in Mississauga, local Liberal party candidates announced that “construction on the project would be halted” and that “if elected the Government would work with Eastern to choose a new site.”
- The Mayor of Mississauga attended the announcement and endorsed the decision. On October 12 the Mississauga Council passed a motion requesting that the Government and the Premier take immediate action to cancel the contract, stop construction and return the site to pre-construction condition
- On September 28, the media carried pictures of the plant with construction well underway.

## Issues

- Construction continues at the Greenfield South site. The developer has requested formal notice from the government before ceasing construction.
- The project has a valid contract with the OPA and all applicable approvals, and is operating without breach so that any regulatory mechanism for stopping construction could be challenged.
- The OPA is party to and administers the contract with Eastern Power. The Province is not a party to the contract.
- The OPA would require instruction from government to approach the developer to begin procedures to negotiate a change or to terminate the contract.
- Construction at the site is proceeding. Eastern Power has informed the OPA that it will not 'down tools' until it receives formal notification that the contract has been cancelled
- Alternative site options and alternative ways to supply Mississauga have not been adequately identified at this time. Alternative sites would require new provincial and municipal approvals processes to be undertaken are likely to raise new issues.
- Statements have been made by local politicians that the plant would not be relocated to a site in Mississauga or Toronto. (THIS WOULD RULE OUT PORTLANDS)

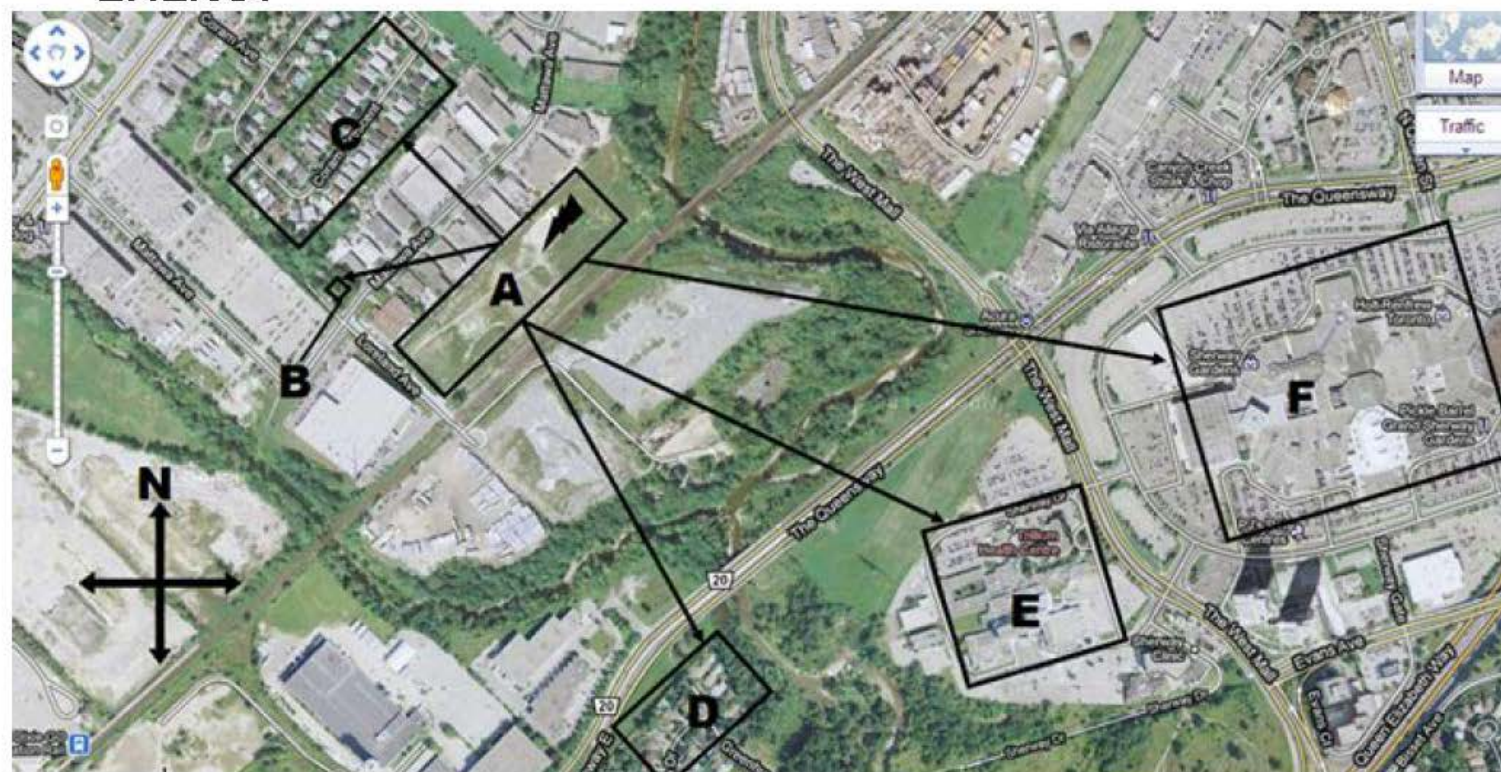
## Next Steps Involve the OPA

- OPA could be asked to approach Eastern Power about negotiating a settlement, which could include payment for costs to date (sunk costs), payment for foregone revenue, or negotiations for a contract at a new site. An incentive may be required. The project's lenders should be included in negotiations, assuming that Eastern Power is agreeable.
- The OPA has made some preliminary analysis of costs and foregone revenue and has identified a range of sites that require government review before being shared with Eastern Power. These alternative sites have various issues associated with them
- Proponent may not be interested in developing the proposed alternative sites and may be willing to settle for a financial cash settlement representing foregone net revenue or may view its prospects as being better through the courts.
- Could require a Ministerial direction to the OPA to renegotiate the contract or cancel the contract. The Government could agree to cover some or all of the settlement costs [to reduce the burden on the electricity consumer](#).

# Appendix

## Key Facts About the Greenfield South Plant

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



**Legend:**

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

**Distance:**

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



\*Plant construction as of 28 September 2011



## Fisher, Petra (ENERGY)

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**From:** Duguid\_Brad-MPP <bduguid.mpp@liberal.ola.org >  
**Sent:** October-18-11 2:58 PM  
**To:** Write2us (ENERGY)  
**Subject:** FW: Etobicoke Power Plant construction

---

**From:** Roy M. Boyce [mailto:royboyce@rogers.com]  
**Sent:** Sunday, October 02, 2011 11:43 PM  
**To:** anna.anderson@utoronto.ca; 'Daphne Korczak'  
**Cc:** oneeyeblicking@hotmail.com; inescolucci@hotmail.com; 'katie collett'; kinga@thinkers.cx; j\_levans@rogers.com; fullblast@sympatico.ca; monicakathrine@yahoo.com; nadia.douglas@gmail.com; r\_ruddle@yahoo.com; yvonne.cheng@gmail.com; dilekdag@gmail.com; hezfen@hotmail.com; jlvalvano@hotmail.com; chiaraarevalo@sympatico.ca; frosthomes@gmail.com; jacqueline.dowhaniuk@gmail.com; karen\_andrews@rogers.com; kd1020@hotmail.com; lori\_rob@rogers.com; marciacorreale@hotmail.ca; marisasalitulo@rogers.com; missymartini11@yahoo.com; nikki.mcintosh@medtronic.com; krawczyk123@hotmail.com; sarandipitous@rogers.com; stephaniennyilas@yahoo.ca; ssteale001@sympatico.ca; vanessacarty@rogers.com; adrianna.bogris@gmail.com; aylin\_ugur@hotmail.com; candace.freyseng@rogers.com; elenakontrec@yahoo.ca; rrobyne\_@hotmail.com; rbianchini@hotdocs.ca; smichaelis@rogers.com; tamara.miljevic@yahoo.ca; naranjov@yahoo.com; Broten\_Laurel-MPP-CO; Sousa\_Charles-MPP; hazel.mccallion@mississauga.ca; mayor\_ford@toronto.ca; councillor\_milczyn@toronto.ca; councillor\_grimes@toronto.ca; d.cansfield.mpp.co@liberal.ola.org; councillor\_holyday@toronto.ca; Duguid\_Brad-MPP; jim.tovey@mississauga.ca; bob.collins@powerauthority.on.ca; media@powerauthority.on.ca; andrew.pride@powerauthority.on.ca; derek.emerson@xpedx.com; d3748@rogers.com; rohn0562@rogers.com; aschaefer@rogers.com; news@marklandwood.com; terry.davidson@sunmedia.ca; kevin.connor@sunmedia.ca; news.to@citynews.ca; news@nowtoronto.com; city@thestar.ca; torsun.citydesk@sunmedia.ca; news@ctv.ca; globalnews.tor@globaltv.com; breakingnews@cp24.com  
**Subject:** RE: Etobicoke Power Plant construction

Hi Everyone,

With the election fast approaching it is so encouraging to see that many of our neighbours have forgone party and candidate signs in favour of a clear message regarding the proposed power station. Not only would this carbuncle impact our lives with noise, vibration, pollution it also poses a threat to the already stressed Etobicoke Creek.

The impact is far reaching when you take into account the tons of concrete and steel together with all the pcb's and metals used in switchgear and control systems, manufacturing and transportation that is required to construct such a plant. Crazy when you consider that we have been paying our US neighbours to take our power from the network.

The whole episode has been rolling along for some years now and our family is grateful to all those that have been involved throughout the ordeal.

Spend your vote wisely and hold them accountable.

Roy

Roy M. Boyce B.Sc.  
Sales Representative

**Sutton Group Elite Realty Inc.**  
3643 Cawthra Road, Ste 101  
Mississauga, ON L5A 2Y4

T. 905-848-9800  
F. 905-848-9803  
C. 647-404-4711

-----Original Message-----

**From:** anna.anderson@utoronto.ca [mailto:anna.anderson@utoronto.ca]

**Sent:** July-29-11 9:08 PM

**To:** Daphne Korczak

**Cc:** oneeyeblinking@hotmail.com; inescolucci@hotmail.com; katie collet; kinga@thinkers.cx; j\_levans@rogers.com; fullblast@sympatico.ca; monicakathrine@yahoo.com; nadia.douglas@gmail.com; r\_ruddle@yahoo.com; yvonne.cheng@gmail.com; dilekdag@gmail.com; hezfen@hotmail.com; jlvalvano@hotmail.com; chiaraarevalo@sympatico.ca; frosthme@gmail.com; jacqueline.dowhaniuk@gmail.com; karen\_andrews@rogers.com; kd1020@hotmail.com; lori\_rob@rogers.com; marciacorreale@hotmail.ca; marisasalitulo@rogers.com; missymartini11@yahoo.com; nikki.mcintosh@medtronic.com; krawczyk123@hotmail.com; sarandipitous@rogers.com; stephanienyilas@yahoo.ca; sstele001@sympatico.ca; vanessacarty@rogers.com; adrianna.bogris@gmail.com; aylin\_ugur@hotmail.com; candace.freyseng@rogers.com; elenakontrec@yahoo.ca; Roy Boyce; rrobyne\_@hotmail.com; rbianchini@hotmail.ca; smichaelis@rogers.com; tamara.miljevic@yahoo.ca; naranjov@yahoo.com; lbroten.mpp.co@liberal.ola.org; csousa.mpp@liberal.ola.org; hazel.mccallion@mississauga.ca; mayor\_ford@toronto.ca; councillor\_milczyn@toronto.ca; councillor\_grimes@toronto.ca; d.cansfield.mpp.co@liberal.ola.org; councillor\_holyday@toronto.ca; bduguid.mpp@liberal.ola.org; jim.tovey@mississauga.ca; bob.collins@powerauthority.on.ca; media@powerauthority.on.ca; andrew.pride@powerauthority.on.ca; derek.emerson@xpedx.com; d3748@rogers.com; rohn0562@rogers.com; aschaefer@rogers.com; news@marklandwood.com; terry.davidson@sunmedia.ca; kevin.connor@sunmedia.ca; news.to@citynews.ca; news@nowtoronto.com; city@thestar.ca; torsun.citydesk@sunmedia.ca; news@ctv.ca; globalnews.tor@globaltv.com; breakingnews@cp24.com

**Subject:** RE: Etobicoke Power Plant construction- Community Meeting

My request to participate in Thursday meeting was turned down. Why? Because I do not live close enough to the construction site.What?!

I really do not care if I do not reside in close proximity to the plant - our house is on the border between Mississauga and Etobicoke. My family is AGAINST this project. But nobody asks us(((( The air is already heavily polluted in the city. This plant is going to be a heavy burden on our lungs. By-products of burning will slowly but surely ruin us and our children. I am so angry! I guess our family will have to move somewhere else in GTA. If it is the matter of election, the officials will not get my voice.

Anna Anderson and family.

Quoting Daphne Korczak <daphnekorczak@hotmail.com>:

- >
- > Dear elected officials, media and power authorities,
- >
- > How does this happen in a civilized society? A systematic assault
- > on children and families, whose only crime is living in their homes
- > (and paying high taxes and land transfer fees to do so) and
- > breathing the air that their captors intend to use to pollute them?
- > I thought Toronto was better than this.

>

> "The issue seems to be that there will be a cost associated with  
 > cancelling the PowerPlant's permits " - This is akin to a  
 > shoplifter refusing to turn himself in because he will have to give  
 > the stolen goods back! We paid for the cancellation of the island  
 > airport/bridge construction - a project that would not physically  
 > harm anybody...it was just noise and traffic...this is health and  
 > life-threatening disease. The permits should never have been  
 > granted in the first instance; using this error as an obstacle to  
 > doing the right thing is an unthinkable perversion of logic and  
 > ethics.

>

> Where are the investigative journalists?? Is a systematic  
 > application of terror not worth pursuing? Who is responsible? Who  
 > is accountable? We will find out.

>

> This issue will be pursued. Which side will you be on when it is?

>

> Do the right thing and cancel this project now.

>

>

> Daphne Korczak and family

>

>

>

>

>

>

> From: oneeyeblicking@hotmail.com  
 > To: anna.anderson@utoronto.ca; daphnekorczak@hotmail.com;  
 > inescolucci@hotmail.com; kcollett53@hotmail.com; kinga@thinkers.cx;  
 > j\_levans@rogers.com; fullblast@sympatico.ca;  
 > monicakathrine@yahoo.com; nadia.douglas@gmail.com;  
 > r\_ruddle@yahoo.com; yvonne.cheng@gmail.com; dilekdag@gmail.com;  
 > hezfen@hotmail.com; jlvalvano@hotmail.com;  
 > chiaraarevalo@sympatico.ca; frosthme@gmail.com;  
 > jacqueline.dowhaniuk@gmail.com; karen\_andrews@rogers.com;  
 > kd1020@hotmail.com; lori\_rob@rogers.com; marciacorreale@hotmail.ca;  
 > marisasalituro@rogers.com; missymartini11@yahoo.com;  
 > nikki.mcintosh@medtronic.com; krawczyk123@hotmail.com;  
 > sarandipitous@rogers.com; stephanienyilas@yahoo.ca;  
 > sstele001@sympatico.ca; vanessacarty@rogers.com;  
 > adrianna.bogris@gmail.com; aylin\_ugur@hotmail.com;  
 > candace.freyseng@rogers.com; elenakontrec@yahoo.ca;  
 > royboyce@rogers.com; rrobyne\_@hotmail.com; rbianchini@hotdocs.ca;  
 > smichaelis@rogers.com; tamara.miljevic@yahoo.ca; naranjov@yahoo.com;  
 > lbrotten.mpp.co@liberal.ola.org; csousa.mpp@liberal.ola.org;  
 > hazel.mccallion@mississauga.ca; mayor\_ford@toronto.ca;  
 > councillor\_milczyn@toronto.ca; councillor\_grimes@toronto.ca;  
 > d.cansfield.mpp.co@liberal.ola.org; councillor\_holyday@toronto.ca;  
 > bduguid.mpp@liberal.ola.org; jim.tovey@mississauga.ca;



> the communications links for the elected Ministers who require  
> public pressure to help them oppose the continued construction of  
> this dangerously irresponsible project.  
>  
>  
>  
> John Wilkinson, Minister of Environment  
> <http://www.ene.gov.on.ca/environment/en/main/contacts/minister/index.htm>Brad  
> Duguid, Minister of Energy –  
> <http://www.mei.gov.on.ca/en/about/index.php?page=contact-information>  
>  
>  
> For those looking for info about the power plant, check out Rogers  
> TV's recent program about the issue: <http://goo.gl/7WqN9>  
>  
> Cheers,  
>  
> Heather, Derek and baby Kira Emerson  
> 18 Fieldstone Rd., M9C 2J6  
> 416 621-5107  
>  
>  
>  
>  
>

## Cayley, Daniel (ENERGY)

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**From:** Kovesfalvi, Sylvia (ENERGY)  
**Sent:** October-18-11 3:44 PM  
**To:** King, Ryan (ENERGY)  
**Subject:** FW: Mississauga power plant

fyi

---

**From:** Block, Andrew (ENERGY)  
**Sent:** October 18, 2011 3:24 PM  
**To:** Kovesfalvi, Sylvia (ENERGY)  
**Cc:** Botond, Erika (ENERGY)  
**Subject:** RE: Mississauga power plant

Perfect. Thanks Sylvia

Andrew Block | Senior Communications Advisor & Press Secretary | Minister of Energy | O: 416.327.6747 | M: 416.276.0511 | [andrew.block@ontario.ca](mailto:andrew.block@ontario.ca)

---

**From:** Kovesfalvi, Sylvia (ENERGY)  
**Sent:** October 18, 2011 3:24 PM  
**To:** Block, Andrew (ENERGY)  
**Cc:** Botond, Erika (ENERGY)  
**Subject:** RE: Mississauga power plant

Thanks Andrew ... I'll ask OPA to draft responses to Spears' q's, emphasizing the new location point, and send back to us ...

---

**From:** Block, Andrew (ENERGY)  
**Sent:** October 18, 2011 3:20 PM  
**To:** Kovesfalvi, Sylvia (ENERGY)  
**Cc:** Botond, Erika (ENERGY)  
**Subject:** RE: Mississauga power plant

Hi Sylvia,

OPA should remind him that the plant is not cancelled but will be moved to a new location and that details on that are to come...

Andrew Block | Senior Communications Advisor & Press Secretary | Minister of Energy | O: 416.327.6747 | M: 416.276.0511 | [andrew.block@ontario.ca](mailto:andrew.block@ontario.ca)

---

**From:** Kovesfalvi, Sylvia (ENERGY)  
**Sent:** October 18, 2011 3:09 PM  
**To:** Block, Andrew (ENERGY)  
**Cc:** Botond, Erika (ENERGY)  
**Subject:** FW: Mississauga power plant  
**Importance:** High

Hi Andrew –

Let me know when you are available to discuss.

---

**From:** Tim Butters [mailto:Tim.Butters@powerauthority.on.ca]  
**Sent:** October 18, 2011 3:01 PM  
**To:** Kovesfalvi, Sylvia (ENERGY)  
**Subject:** FW: Mississauga power plant  
**Importance:** High

Sylvia,

We just received the following email from John Spears. As noted, he's looking for some planning analysis with respect to the need for Greenfield South.

TB

---

**From:** Spears, John [mailto:JSpears@thestar.ca]  
**Sent:** October 18, 2011 2:48 PM  
**To:** Media  
**Subject:** Mississauga power plant

I'm interested in any analysis the OPA has done about the effect of not building Eastern Power's proposed generating station in Mississauga.

Could you please send me any studies or other analysis the OPA has done relating to this decision?

I'm not looking for contractual details with Eastern Power.

I'm looking instead on why the power plant is no longer needed. Why was the plant proposed in the first place? Why is it no longer considered necessary? What is the likely impact on service, safety and reliability? If the proposed plant's supply is not going to be available, what alternatives are likely to be needed to maintain service – e.g. other power plants, additional transmission lines, or the like?

What are the costs associated with the alternatives? (Again, I'm not asking for details of any payments that might have to be made relating to cancellation of the Eastern Power project.)

I'd be grateful for any studies or analyses that the OPA might have done bearing on these questions.

Thank you.

John Spears  
Toronto Star  
416-869-4353

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## Cayley, Daniel (ENERGY)

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**From:** Perun, Halyna N. (ENERGY)  
**Sent:** October-18-11 4:13 PM  
**To:** Lindsay, David (ENERGY); Jennings, Rick (ENERGY)  
**Cc:** Calwell, Carolyn (ENERGY)  
**Subject:** Fw: Greenfield South  
**Attachments:** Greenfield South Options.pdf

Privileged and Confidential

Please see attached

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

Sent using BlackBerry

---

**From:** Khatri, Anupa (ENERGY)  
**To:** Perun, Halyna N. (ENERGY)  
**Sent:** Tue Oct 18 16:11:24 2011  
**Subject:** Greenfield South

Hi Halyna,

The scanned version is attached, as requested.

Regards,  
*Anupa Khatri*  
*Director's Secretary*  
*Ministries of Energy & Infrastructure*  
*Legal Services Branch*  
*777 Bay Street, 4th Floor, Suite 425*  
*Toronto, ON M5G 2E5*  
*Ph: 416-325-1841*

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## Greenfield South Options

October 20, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

# Background

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- Greenfield South Power Corporation (“Greenfield”) and the OPA entered into a contract on 12 April 2005
- Greenfield is controlled by Eastern Power Corporation
- Contract was amended on 16 March 2009
- Reason for amendment was long delays project suffered in securing necessary approvals to construct the project and to do away with the oil-fired option for fuelling the plant
- OPA and Province also motivated in part to keep project alive by low cost to ratepayers of project established in the competitive RFP process in 2004/2005
- In May 2011 Greenfield achieved financial close, securing debt financing from Credit Suisse and EIG for \$550 million

## Contract Facility

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- The Contract Facility is an approximately 300 MW combined cycle gas-fired generation station
- Major components of facility include a GE 7FA gas turbine (“GT”) a heat recovery steam generator (“HRSG”) and a steam turbine
- All major items for the project are completed
- Construction began in June 2011 and is approximately x% complete now
- The Milestone Date for Commercial Operation is September 1, 2014

## Contract Facility

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- The total dollar value of capital expenditures (“CAPEX”) for the facility are between \$250 - \$350 million
- Gas and electrical interconnection work has not yet commenced
- Total estimated sunk and committed costs are on the neighbourhood of \$x million
- We estimate the profits from the contract, excluding any residual value, are approximately \$x million

## **Moving Greenfield South does not result in immediate unreliability, but accelerates the need for Tx solutions**

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- Planning studies indicate that transmission reinforcement in west GTA could be required 2 years earlier, as early as 2018, if Greenfield South is not located within west GTA
- These need dates are based on assumptions associated with the LTEP and current reliability criteria, which are likely to evolve
- The transmission reinforcements are extensive in scope and require the immediate initiation of planning and development work with local utilities, the IESO and transmitters

# Siting Options - There are several alternative site options

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## Some deliver more value than others with different levels of complexity

- Considerations
  - Value of Location, Gas Availability, Transmission, Counterparty
- There may be a system need starting in 2016 to 2018
- Regional needs include:
  - Northwest System
  - Cambridge
  - GTA
- Some sites have gas available in varying quantities
- Examples of potential sites :
  - OPG ( Lennox, Nanticoke (some gas there now), Thunder Bay (pipeline required))
  - NUGs (TCPL compressor sites, Trans Alta Pearson Airport, Whitby, Fort Frances(was on gas now on BIO))
  - Portlands, Goreway
- Some arrangements could be more straight forward or more complicated depending on the counterparty.

# Key Contractual Provisions

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- Grounds for termination of contract limited to certain types of breach and extended force majeure (none of which applicable here)
- Contract excludes liability for certain types of damages including loss of profits
- Contract provides right to damages including lost profits for discriminatory action (legislation or regulation passed) where impact focused on contract counter-party
- Damages for discriminatory action determined through arbitration process
- All other disputes only go to arbitration if both parties agree

# Payment Under Contract

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- Once plant in commercial operation, generator is paid monthly capacity payment to cover its costs and profit
- Monthly payment reduced by amount generator is deemed to earn in the market selling electricity
- This reduction is calculated using formula to determine when it is economic for generator to be generating electricity
- OPA may also direct the plant operator to dispatch or not dispatch its facility at specified dates and times

# Option 1- Contract Termination

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- Unilateral termination of contract – OPA informs contract counter-party that it will not perform its obligations under the contract
  - Pros:
    - » Greenfield South will be required to begin to mitigate its damages which means they should stop construction (or at the very least, the OPA will not likely be liable for those additional costs that could have been avoided after date of termination of contract)
  - Cons:
    - » Does not provide opportunity to explore options for relocating project
    - » Sends negative message to other OPA counter-parties

## Option 2 - Legislation

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- Legislation passed to terminate the contract, set compensation or provide a process and methodology for determining compensation
  - Pros:
    - » Allows Government to control level of compensation to be paid
    - » Government can specify that no compensation will be paid for costs incurred past certain date (e.g. announcement of Government's policy or date of first reading)
  - Cons:
    - » Will be controversial
    - » Potential impact on investment climate

## Option 3 - Negotiation

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- OPA attempts to commence negotiations with Greenfield South re stopping construction and new location for facility
  - Pros:
    - » OPA has opportunity to assess position of Greenfield South and what they are seeking to agree to stop construction
    - » OPA can begin discussion of alternative sites
  - Cons:
    - » Greenfield South may refuse to commence discussions or seek to drag discussions on while it continues to construct plant
    - » May need to revert at some stage to other options

## Option 4 - Pay Plant Not to Run

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- Allow plant to be constructed but ensure it does not operate using directed dispatch mechanism in contract
  - Pros:
    - » OPA obligations to make monthly payments are low based on outcome of 2005 RFP process and paying plant to not operate over 20 years may be cheaper than paying for sunk costs, remediation of the site and potentially some lost profits
  - Cons:
    - » Will be difficult to convince community that plant will not operate

## Recommendation

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- OPA to commence negotiations with Greenfield South (Option 3)
- If negotiations do not succeed in stopping construction of plant, will likely need to revert to one of the other options

## Fisher, Petra (ENERGY)

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**From:** Perun, Halyna N. (ENERGY)  
**Sent:** October-18-11 4:13 PM  
**To:** Lindsay, David (ENERGY); Jennings, Rick (ENERGY)  
**Cc:** Calwell, Carolyn (ENERGY)  
**Subject:** Fw: Greenfield South  
**Attachments:** Greenfield South Options.pdf

Duplicate Attachment Deleted.

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Please see attached

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

Sent using BlackBerry

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**To:** Perun, Halyna N. (ENERGY)  
**Sent:** Tue Oct 18 16:11:24 2011  
**Subject:** Greenfield South

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*Director's Secretary*  
*Ministries of Energy & Infrastructure*  
*Legal Services Branch*  
*777 Bay Street, 4th Floor, Suite 425*  
*Toronto, ON M5G 2E5*  
*Ph: 416-325-1841*

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**Cayley, Daniel (ENERGY)**

---

**From:** Jennings, Rick (ENERGY)  
**Sent:** October-18-11 4:31 PM  
**To:** Lindsay, David (ENERGY); Silva, Joseph (ENERGY); Perun, Halyna N. (ENERGY)  
**Cc:** King, Ryan (ENERGY)  
**Attachments:** Greenfield South Construction Oct 20 2011.ppt

Attached is a draft slide deck with a minute.

# Greenfield South Generating Station

## Next Steps

---

Date: October 20, 2011

## Stopping Construction

- On September 24, in Mississauga, local Liberal party candidates announced that “construction on the project would be halted” and that “if elected the Government would work with Eastern to choose a new site.”
- The Mayor of Mississauga attended the announcement and endorsed the decision. On October 12 the Mississauga Council passed a motion requesting that the Government and the Premier take immediate action to cancel the contract, stop construction and return the site to pre-construction condition
- On September 28, the media carried pictures of the plant with construction well underway.

## Issues

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- The project has a valid contract with the Ontario Power Authority and all applicable approvals, and is operating without breach so that any regulatory mechanism for stopping construction could be challenged.
- The OPA is party to and administers the contract with Eastern Power. The Province is not a party to the contract.
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- Construction at the site is proceeding. Eastern Power has informed the OPA that it will not 'down tools' until it receives formal notification that the contract has been cancelled
- Alternative site options and alternative ways to supply Mississauga have not been adequately identified at this time. Alternative sites would require new provincial and municipal approvals processes to be undertaken and are likely to raise new issues.
- Statements have been made by local politicians that the plant would not be relocated to a site in Mississauga or Toronto.

## Next Steps Involve the OPA

- The OPA to be asked to approach Eastern Power to discuss a settlement with Eastern Power. The discussion would include potential treatment of costs incurred to date (sunk costs), treatment of equipment costs and contracts, estimates and treatment of foregone revenue, and options and interest with respect to relocating to an alternative site. The discussions could include the project's lenders assuming that Eastern Power is agreeable.
- The OPA has made some preliminary analysis of costs and foregone revenue and has identified several sites that would require government review before being shared with Eastern Power. Each of these alternative sites have various issues associated with them
- Eastern Power may or may not be interested in developing the proposed alternative sites and may be willing to settle for a financial cash settlement or may view its prospects as being better through the courts.
- The Government could agree to cover some or all of the settlement costs with Eastern Power to reduce the burden on the electricity consumer.

## Cabinet Minute

Cabinet agreed that:

- The Minister of Energy will ask the Ontario Power Authority to immediately begin discussions with Eastern Power on: halting all construction at the Greenfield South site; treatment of and verification of approval and construction costs incurred by Eastern Power to date; treatment and verification of equipment costs and contractual issues; treatment and measurement of expected value of the plant; and, interest in and feasibility of relocating to an alternative site.
- The Ontario Power Authority be asked to report back to the Minister of Energy on the outcomes of its negotiations with Eastern Power by the end of November 2011.
- The Minister of Energy to report back to Cabinet by December 2011 with the details of the proposed settlement with Eastern Power. This report back would include recommendations as to what share, if any, of the cost would be appropriately borne by the Government through the Consolidated Revenue Fund.

## Cabinet Minute (Continued)

- The Ministry of Energy to work with Premier's Office/Cabinet Office on a stakeholder management and communications strategy.

DRAFT

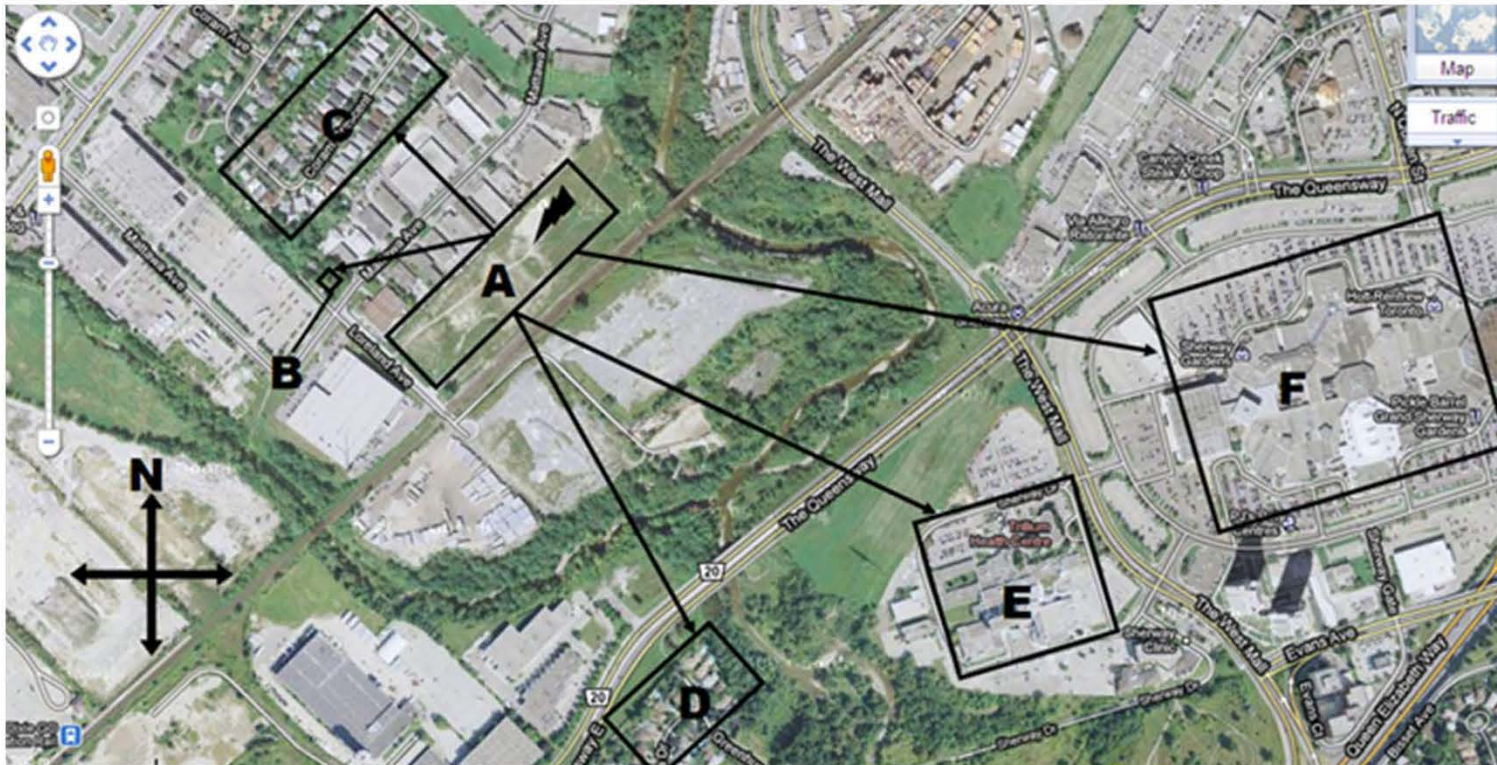
# Appendix

## Greenfield South Background

## **Key Facts About the Greenfield South Plant**

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

## MINISTRY OF ENERGY



### Legend:

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

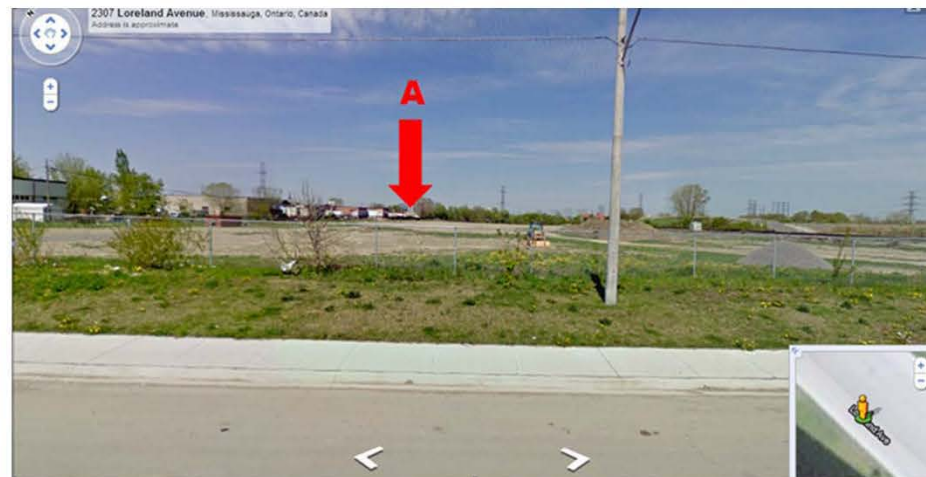
### Distance:

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

## MINISTRY OF ENERGY



\*Plant construction as of 28 September 2011



## Fisher, Petra (ENERGY)

---

**From:** Jennings, Rick (ENERGY)  
**Sent:** October-18-11 4:32 PM  
**To:** McKeever, Garry (ENERGY); MacCallum, Doug (ENERGY); Jenkins, Allan (ENERGY); King, Ryan (ENERGY)  
**Subject:** FW: Greenfield South  
**Attachments:** Duplicate attachment removed

Material from the OPA attached

---

**From:** Perun, Halyna N. (ENERGY)  
**Sent:** October 18, 2011 4:13 PM  
**To:** Lindsay, David (ENERGY); Jennings, Rick (ENERGY)  
**Cc:** Calwell, Carolyn (ENERGY)  
**Subject:** Fw: Greenfield South

Privileged and Confidential

Please see attached

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

Sent using BlackBerry

---

**From:** Khatri, Anupa (ENERGY)  
**To:** Perun, Halyna N. (ENERGY)  
**Sent:** Tue Oct 18 16:11:24 2011  
**Subject:** Greenfield South

Hi Halyna,

The scanned version is attached, as requested.

Regards,  
*Anupa Khatri*  
*Director's Secretary*  
*Ministries of Energy & Infrastructure*  
*Legal Services Branch*  
*777 Bay Street, 4th Floor, Suite 425*  
*Toronto, ON M5G 2E5*  
*Ph: 416-325-1841*

### Notice

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## Cayley, Daniel (ENERGY)

---

**From:** Calwell, Carolyn (ENERGY)  
**Sent:** October-18-11 4:44 PM  
**To:** King, Ryan (ENERGY)  
**Subject:** FW:  
**Attachments:** Greenfield South Construction Oct 20 2011.ppt

Duplicate attachment removed

Ryan, do you happen to have the text of the Mississauga motion?

---

**From:** Perun, Halyna N. (ENERGY)  
**Sent:** October 18, 2011 4:33 PM  
**To:** Calwell, Carolyn (ENERGY)  
**Subject:** Fw:

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

Sent using BlackBerry

---

**From:** Jennings, Rick (ENERGY)  
**To:** Lindsay, David (ENERGY); Silva, Joseph (ENERGY); Perun, Halyna N. (ENERGY)  
**Cc:** King, Ryan (ENERGY)  
**Sent:** Tue Oct 18 16:30:52 2011  
**Subject:**

Attached is a draft slide deck with a minute.

## Cayley, Daniel (ENERGY)

---

**From:** King, Ryan (ENERGY)  
**Sent:** October-18-11 5:04 PM  
**To:** Kovesfalvi, Sylvia (ENERGY)  
**Subject:** RE: Mississauga power plant

Our messaging should remain unchanged.

---

**From:** Kovesfalvi, Sylvia (ENERGY)  
**Sent:** October 18, 2011 4:26 PM  
**To:** King, Ryan (ENERGY)  
**Subject:** FW: Mississauga power plant  
**Importance:** High

FYI

---

**From:** Kristin Jenkins [mailto:Kristin.Jenkins@powerauthority.on.ca]  
**Sent:** October 18, 2011 4:14 PM  
**To:** Tim Butters; Patricia Phillips; Kovesfalvi, Sylvia (ENERGY)  
**Subject:** RE: Mississauga power plant  
**Importance:** High

Sylvia – based on agreed to messaging earlier in the week would it not be more appropriate for the ministry to handle this? If the messaging has changed, i.e. the commitment to relocate the plant is under review, please let us know. Thanks.

Kristin

---

**From:** Tim Butters  
**Sent:** October 18, 2011 3:42 PM  
**To:** Patricia Phillips  
**Cc:** Kristin Jenkins  
**Subject:** Fw: Mississauga power plant

Fyi

---

**From:** Kovesfalvi, Sylvia (ENERGY) [mailto:Sylvia.Kovesfalvi@ontario.ca]  
**Sent:** Tuesday, October 18, 2011 03:27 PM  
**To:** Tim Butters  
**Subject:** RE: Mississauga power plant

Hi Tim –

Could your folks please draft a response (emphasizing plant is not cancelled, it will be relocated) for our review.

Thanks again.

**From:** Tim Butters [mailto:Tim.Butters@powerauthority.on.ca]  
**Sent:** October 18, 2011 3:01 PM  
**To:** Kovesfalvi, Sylvia (ENERGY)  
**Subject:** FW: Mississauga power plant  
**Importance:** High

Sylvia,

We just received the following email from John Spears. As noted, he's looking for some planning analysis with respect to the need for Greenfield South.

TB

---

**From:** Spears, John [mailto:JSpears@thestar.ca]  
**Sent:** October 18, 2011 2:48 PM  
**To:** Media  
**Subject:** Mississauga power plant

I'm interested in any analysis the OPA has done about the effect of not building Eastern Power's proposed generating station in Mississauga.

Could you please send me any studies or other analysis the OPA has done relating to this decision?

I'm not looking for contractual details with Eastern Power.

I'm looking instead on why the power plant is no longer needed. Why was the plant proposed in the first place? Why is it no longer considered necessary? What is the likely impact on service, safety and reliability? If the proposed plant's supply is not going to be available, what alternatives are likely to be needed to maintain service – e.g. other power plants, additional transmission lines, or the like?

What are the costs associated with the alternatives? (Again, I'm not asking for details of any payments that might have to be made relating to cancellation of the Eastern Power project.)

I'd be grateful for any studies or analyses that the OPA might have done bearing on these questions.

Thank you.

John Spears  
Toronto Star  
416-869-4353

---

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---

## **Cayley, Daniel (ENERGY)**

---

**From:** Calwell, Carolyn (ENERGY)  
**Sent:** October-18-11 6:23 PM  
**To:** Perun, Halyna N. (ENERGY)  
**Attachments:** Greenfield South Construction Oct 20 2011.LSB.3.clean.ppt

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# Greenfield South Generating Station

## Next Steps – Advice to Cabinet

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Date: October 20, 2011

## Stopping Construction

- On September 24, in Mississauga, local Liberal party candidates announced that “construction on the project would be halted” and that “if elected the Government would work with Eastern to choose a new site.” The Mayor of Mississauga attended the announcement and endorsed the decision.
- On September 28, the media carried pictures of the plant with construction well underway.
- On October 12 the Mississauga Council passed a motion requesting that the Government and the Premier take immediate action to cancel the contract, stop construction and return the site to pre-construction condition

## Issues

- Construction continues at the Greenfield South site. The developer has requested formal notice before ceasing construction.
- The project has an enforceable contract with the Ontario Power Authority and all applicable approvals. The developer's work is in compliance with the contract and current approvals.
- The OPA is party to and administers the contract with Eastern Power. The Province is not a party to the contract. Current circumstances give the OPA no right under the contract to terminate.
- The OPA has asked for instruction from government to approach the developer to begin negotiations to change or to terminate the contract.
- Construction at the site is proceeding. Eastern Power has informed the OPA that it will not 'down tools' until it receives formal notification that the contract has been cancelled.
- Alternative site options and alternative ways to supply Mississauga have not been adequately identified at this time. Alternative sites would require new provincial and municipal approvals processes to be undertaken and are likely to raise new issues.
- Local politicians have stated that the plant would not be relocated to a site in Mississauga or Toronto.

## Next Steps Involve the OPA

- The OPA to be asked to approach Eastern Power to initiate discussions. The discussion would likely include potential treatment of costs incurred to date (sunk costs – including equipment costs), treatment of construction and equipment related contracts, estimates and treatment of foregone revenue, and options and Eastern's interest with respect to relocating to an alternative site.
- The OPA has made some preliminary analysis of costs and foregone revenue and has identified several sites that would require government review before being shared with Eastern Power. Each of these alternative sites have various issues associated with them.
- Eastern Power may or may not be interested in developing the proposed alternative sites, may be willing to walk away from the Mississauga plant for a financial cash settlement or may view its prospects as being better through the courts.
- The Government could agree to cover some or all of Eastern Power's price to walk away from the Mississauga plant to reduce the burden on the electricity consumer.

## Immediate Legal Risks

- Eastern Power could refuse to negotiate, requiring the Government to consider other options (e.g. legislation).
- Initiating discussions to relocate or otherwise cancel the Mississauga plant may immediately cause Eastern Power to launch a law suit against either or both of the OPA and the Government.
- The Minister's request of the OPA may be contractual interference and may attract liability to the Province.
- The OPA may ask for a "direction" from the Minister under the *Electricity Act, 1998* before undertaking any discussions with Eastern Power. The Minister's authority to direct the OPA in this way is unclear.
- Eastern Power's financiers may have a claim under NAFTA if this project does not proceed.

## Cabinet Minute

Cabinet agreed that:

- The Minister of Energy will ask the Ontario Power Authority to immediately begin discussions with Eastern Power with a view to reaching an agreement by December 2011 on: halting all construction at the Greenfield South site; treatment of and verification of project development and construction costs incurred by Eastern Power to date; treatment and verification of equipment costs and construction and equipment contracts; treatment and measurement of expected value of the plant; and, Eastern Power's interest in and feasibility of relocating to an alternative site.
- The Ontario Power Authority be asked to report back to the Minister of Energy on the outcomes of its discussions with Eastern Power by the end of November 2011.
- The Minister of Energy to report back to Cabinet by December 2011 with the details of the discussions with Eastern Power. This report back would include recommendations as to what share, if any, of the cost would be appropriately borne by the Government through the Consolidated Revenue Fund.

## Cabinet Minute (Continued)

- The Ministry of Energy to work with Premier's Office/Cabinet Office on a stakeholder management and communications strategy.

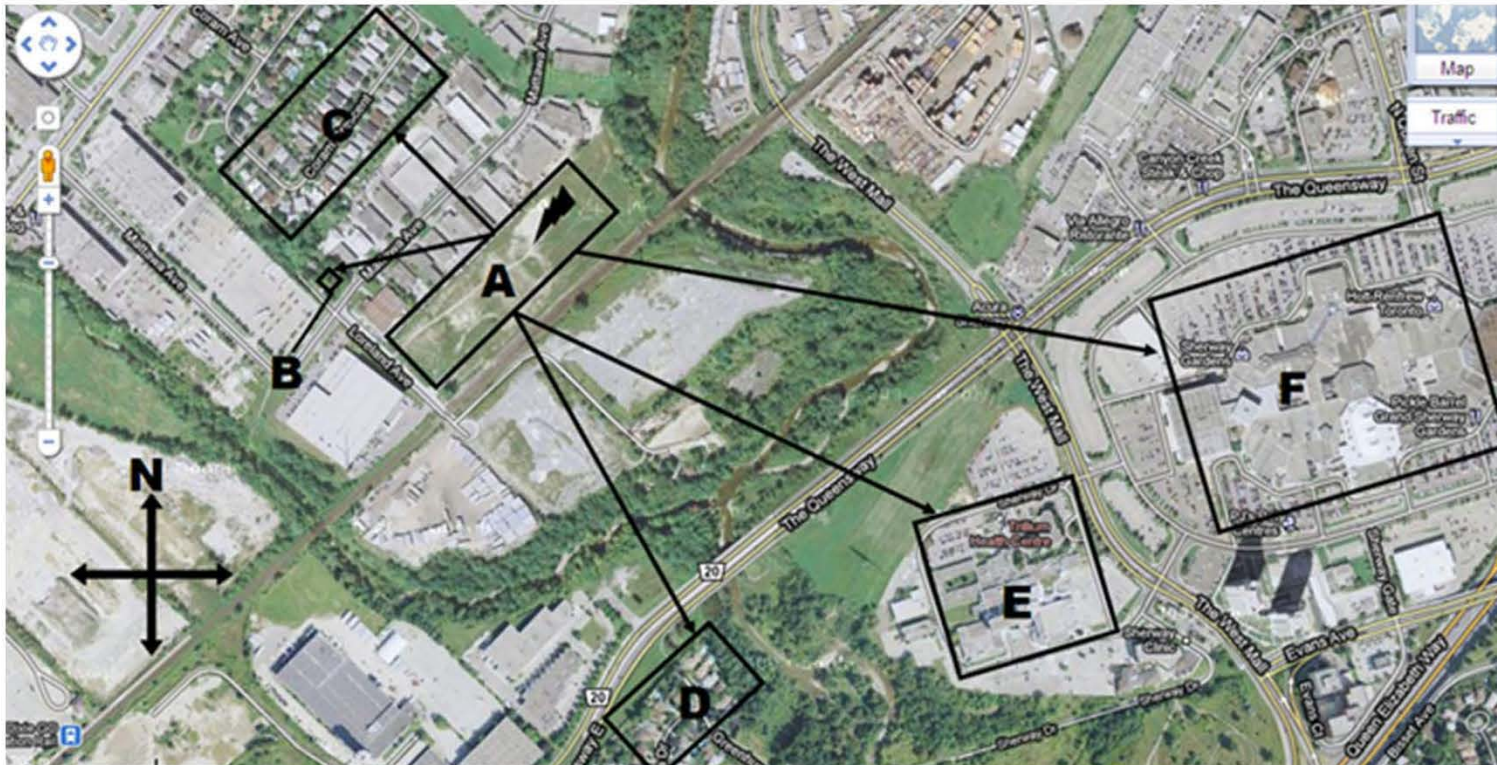
DRAFT

# Appendix

## Greenfield South Background

## **Key Facts About the Greenfield South Plant**

- Greenfield South Power Corporation (controlled by Eastern Power Corporation) was the successful applicant in Ministry of Energy run Clean Energy Supply (CES) RFP and signed a contract with the OPA in April 2005.
- Eastern Power, based in Ontario, has received all required provincial approvals, including Environmental Assessment and Certificates of Approval.
- Eastern Power has received all required municipal approvals, including building site approval from the City of Mississauga issued in May 2011.
- Eastern Power has secured debt financing from Credit Suisse and ElG (confirmed by the OPA).



**Legend:**

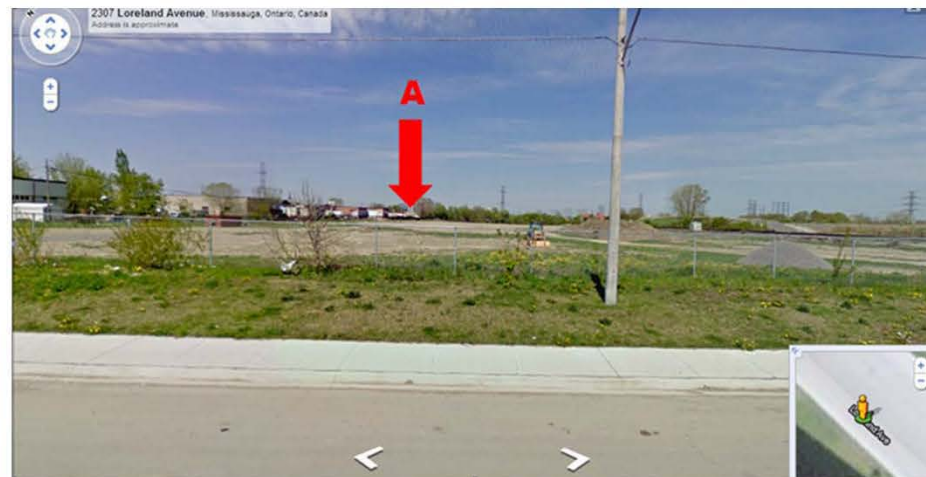
A – Proposed Greenfield Site  
B – Closest House  
C – Closest Subdivision (North)  
D – Closest Subdivision (South)  
E – Trillium Heath Centre  
F – Sherway Gardens Mall

**Distance:**

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



\*Plant construction as of 28 September 2011



## **Cayley, Daniel (ENERGY)**

---

**From:** Wilson, Malliha (JUS)  
**Sent:** October-18-11 6:45 PM  
**To:** Perun, Halyna N. (ENERGY); Slater, Craig (JUS)  
**Cc:** Lung, Ken (JUS); Calwell, Carolyn (ENERGY)  
**Subject:** Re: Proposed cab deck

What is time line on this Halyna

-----  
Sent from my BlackBerry Wireless Device

---

**From:** Perun, Halyna N. (ENERGY)  
**To:** Slater, Craig (JUS)  
**Cc:** Wilson, Malliha (JUS); Lung, Ken (JUS); Calwell, Carolyn (ENERGY)  
**Sent:** Tue Oct 18 18:27:23 2011  
**Subject:** Proposed cab deck

*Privileged and confidential*

For your review and input.

Deputy Lindsay has requested a "final" deck by mid day tomorrow.

We'd be happy to meet to discuss if this would help.

Thank you

***Halyna***

Halyna N. Perun  
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](mailto:Halyna.Perun2@ontario.ca)

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## **Fisher, Petra (ENERGY)**

---

**From:** Silva, Joseph (ENERGY)  
**Sent:** October-18-11 8:32 PM  
**To:** Lindsay, David (ENERGY); Sharkawi, Rula (ENERGY)  
**Subject:** Re: Mississauga plant

Thanks Deputy, will do

Joseph

Sent using BlackBerry Wireless

----- Original Message -----

From: Lindsay, David (ENERGY)  
To: Silva, Joseph (ENERGY); Sharkawi, Rula (ENERGY)  
Sent: Tue Oct 18 20:31:08 2011  
Subject: Mississauga plant

Hi Rula and Joseph,

As you know, during the election campaign the Liberals committed to enter into discussions with the Mississauga gas plant folks to discuss another site for this project.

If we get any media calls over the next few days we should be cautious and keep very close connected.

Until after the swearing-in ceremony the Ministers office should only be involved on a limited basis. Until after the new Cabinet is sworn in and we get clarity from Cabinet on direction let's not make any assumptions. Keep me posted if any enquiries before we engage the MO.

Thanks

David

## **Cayley, Daniel (ENERGY)**

---

**From:** Silva, Joseph (ENERGY)  
**Sent:** October-18-11 8:32 PM  
**To:** Kovesfalvi, Sylvia (ENERGY)  
**Cc:** Sharkawi, Rula (ENERGY)  
**Subject:** Fw: Mississauga plant

Hi Sylvie - fyi, pls see below from the DM Thank you Joseph

Sent using BlackBerry Wireless

----- Original Message -----

From: Lindsay, David (ENERGY)  
To: Silva, Joseph (ENERGY); Sharkawi, Rula (ENERGY)  
Sent: Tue Oct 18 20:31:08 2011  
Subject: Mississauga plant

Hi Rula and Joseph,

As you know, during the election campaign the Liberals committed to enter into discussions with the Mississauga gas plant folks to discuss another site for this project.

If we get any media calls over the next few days we should be cautious and keep very close connected.

Until after the swearing-in ceremony the Ministers office should only be involved on a limited basis. Until after the new Cabinet is sworn in and we get clarity from Cabinet on direction let's not make any assumptions. Keep me posted if any enquiries before we engage the MO.

Thanks

David

## Cayley, Daniel (ENERGY)

---

**From:** Kovesfalvi, Sylvia (ENERGY)  
**Sent:** October-18-11 11:43 PM  
**To:** Sharkawi, Rula (ENERGY)  
**Subject:** Re: IMPORTANTw: Mississauga Plant Fw: Toronto Star asking about need for Mississauga power plant

No response has been provided. OPA drafting for our review. Will fill you in in the morning.

-----  
Sent from my BlackBerry Wireless Handheld

---

**From:** Sharkawi, Rula (ENERGY)  
**To:** Kovesfalvi, Sylvia (ENERGY)  
**Sent:** Tue Oct 18 21:04:20 2011  
**Subject:** IMPORTANTw: Mississauga Plant Fw: Toronto Star asking about need for Mississauga power plant

See below.

---

**From:** Sharkawi, Rula (ENERGY)  
**To:** Silva, Joseph (ENERGY); Lindsay, David (ENERGY)  
**Sent:** Tue Oct 18 21:02:27 2011  
**Subject:** Mississauga Plant Fw: Toronto Star asking about need for Mississauga power plant

Deputy - Looks like John Spears put a call into the OPA today. Scroll to the bottom to see line of questioning of what seems to be a fishing expedition on the rationale for the plant in first place and why a change in direction.

We did follow the protocol in place which was to notify CO and MO. We are in the process of confirming that no responses were provided to Spears yet.

We will send you draft responses as soon as we have them. We may chose to simply say we are reviewing the matter at this time and not go beyond that.

Rula

---

**From:** Kovesfalvi, Sylvia (ENERGY)  
**To:** Robart, Lisa (CAB)  
**Cc:** McMichael, Rhonda (CAB); Sharkawi, Rula (ENERGY); @CAB-Issues; King, Ryan (ENERGY); Silva, Joseph (ENERGY); Perun, Halyna N. (ENERGY)  
**Sent:** Tue Oct 18 15:25:21 2011  
**Subject:** RE: Toronto Star asking about need for Mississauga power plant

We've asked OPA to draft responses for our review (emphasizing that plant hasn't been cancelled, it will be relocated)

---

**From:** Robart, Lisa (CAB)  
**Sent:** October 18, 2011 3:17 PM  
**To:** Kovesfalvi, Sylvia (ENERGY)  
**Cc:** McMichael, Rhonda (CAB); Sharkawi, Rula (ENERGY); @CAB-Issues  
**Subject:** RE: Toronto Star asking about need for Mississauga power plant

Thanks, Sylvia. Will let P.O. know.

---

**From:** Kovesfalvi, Sylvia (ENERGY)  
**Sent:** October 18, 2011 3:07 PM  
**To:** @CAB-Issues  
**Cc:** McMichael, Rhonda (CAB); Sharkawi, Rula (ENERGY); Silva, Joseph (ENERGY); King, Ryan (ENERGY); Perun, Halyna N. (ENERGY)  
**Subject:** Toronto Star asking about need for Mississauga power plant  
**Importance:** High

FYI. (I've forwarded to our MO and will follow-up with our suggested response).

---

**From:** Tim Butters [mailto:Tim.Butters@powerauthority.on.ca]  
**Sent:** October 18, 2011 3:01 PM  
**To:** Kovesfalvi, Sylvia (ENERGY)  
**Subject:** FW: Mississauga power plant  
**Importance:** High

Sylvia,

We just received the following email from John Spears. As noted, he's looking for some planning analysis with respect to the need for Greenfield South.

TB

---

**From:** Spears, John [mailto:JSpears@thestar.ca]  
**Sent:** October 18, 2011 2:48 PM  
**To:** Media  
**Subject:** Mississauga power plant

I'm interested in any analysis the OPA has done about the effect of not building Eastern Power's proposed generating station in Mississauga.

Could you please send me any studies or other analysis the OPA has done relating to this decision?

I'm not looking for contractual details with Eastern Power.

I'm looking instead on why the power plant is no longer needed. Why was the plant proposed in the first place? Why is it no longer considered necessary? What is the likely impact on service, safety and reliability? If the proposed plant's supply is not going to be available, what alternatives are likely to be needed to maintain service – e.g. other power plants, additional transmission lines, or the like?

What are the costs associated with the alternatives? (Again, I'm not asking for details of any payments that might have to be made relating to cancellation of the Eastern Power project.)

I'd be grateful for any studies or analyses that the OPA might have done bearing on these questions.

Thank you.

John Spears  
Toronto Star  
416-869-4353

---

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---

## Cayley, Daniel (ENERGY)

---

**From:** Sharkawi, Rula (ENERGY)  
**Sent:** October-19-11 9:55 AM  
**To:** Kovesfalvi, Sylvia (ENERGY)  
**Cc:** Reddy, Neetha (ENERGY)  
**Subject:** Fw: Greenfield South Communications

**Importance:** High

Sylvia - Please call my cell re the below. 416 579 7986

---

**From:** Kristin Jenkins <Kristin.Jenkins@powerauthority.on.ca>  
**To:** Sharkawi, Rula (ENERGY)  
**Sent:** Wed Oct 19 08:58:29 2011  
**Subject:** Greenfield South Communications

Hi Rula. Colin spoke to David Lindsay last night about tightening up communications on this issue. Colin told me that you are on the one, and only, point of contact for all communications on Greenfield. I will communicate this to my staff this morning. Can you please do same? Shortly, I will be sending you the draft response that OPA to respond to John Spears question from yesterday for your review and comment.

Kristin

Kristin Jenkins | Vice President, Corporate Communications | **Ontario Power Authority** | 120 Adelaide Street West, Suite 1600 | Toronto, ON M5H 1T1 | tel. 416.969.6007 | fax. 416.967.1947 | [www.powerauthority.on.ca](http://www.powerauthority.on.ca)

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---

## **Fisher, Petra (ENERGY)**

---

**From:** Devan, Jane (ENERGY)  
**Sent:** October-19-11 10:04 AM  
**To:** Teixeira, Wanda (ENERGY)  
**Subject:** FW: Emailing: Greenfield South Construction Oct 20 2011 LSB 3 cleanv2.ppt  
**Attachments:** Greenfield South Construction Oct 20 2011 LSB 3 cleanv2.ppt

Duplicate attachment removed

Forwarded to you as requested.

Jane Devan  
Administrative Assistant  
Assistant Deputy Minister's Office  
Energy Supply, Transmission and Distribution  
Policy Division  
Ministry of Energy  
880 Bay Street, 3rd Floor  
Toronto, ON M7A 2C1  
Tel: 416-314-6223  
Fax: 416-314-6224  
[Jane.Devan2@ontario.ca](mailto:Jane.Devan2@ontario.ca)

-----Original Message-----

From: King, Ryan (ENERGY)  
Sent: October 19, 2011 9:00 AM  
To: Devan, Jane (ENERGY)  
Subject: Emailing: Greenfield South Construction Oct 20 2011 LSB 3 cleanv2.ppt

Jane can you please print 2 colour copies of this deck?  
Thanks

## Cayley, Daniel (ENERGY)

---

**From:** Kristin Jenkins <Kristin.Jenkins@powerauthority.on.ca>  
**Sent:** October-19-11 10:11 AM  
**To:** Sharkawi, Rula (ENERGY)  
**Cc:** Kovesfalvi, Sylvia (ENERGY)  
**Subject:** Re: Greenfield South Communications

Great. Just waiting for feedback from Colin.

---

**From:** Sharkawi, Rula (ENERGY) [mailto:Rula.Sharkawi@ontario.ca]  
**Sent:** Wednesday, October 19, 2011 10:08 AM  
**To:** Kristin Jenkins  
**Cc:** Kovesfalvi, Sylvia (ENERGY) <Sylvia.Kovesfalvi@ontario.ca>  
**Subject:** Re: Greenfield South Communications

Thanks Kristen. Will await your responses. Please note that Sylvia Kovesfalvi is also on this file today as I am offsite all day. I'm comfortable with her coordinating with our DMO on this. I can also be reached on my cell at 416 579 7986, if you need to chat.

Rula

---

**From:** Kristin Jenkins <Kristin.Jenkins@powerauthority.on.ca>  
**To:** Sharkawi, Rula (ENERGY)  
**Sent:** Wed Oct 19 08:58:29 2011  
**Subject:** Greenfield South Communications

Hi Rula. Colin spoke to David Lindsay last night about tightening up communications on this issue. Colin told me that you are on the one, and only, point of contact for all communications on Greenfield. I will communicate this to my staff this morning. Can you please do same? Shortly, I will be sending you the draft response that OPA to respond to John Spears question from yesterday for your review and comment.

Kristin

Kristin Jenkins | Vice President, Corporate Communications | **Ontario Power Authority** | 120 Adelaide Street West, Suite 1600 | Toronto, ON M5H 1T1 | tel. 416.969.6007 | fax. 416.967.1947 | [www.powerauthority.on.ca](http://www.powerauthority.on.ca)

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---

## **Calwell, Carolyn (ENERGY)**

---

**From:** Calwell, Carolyn (ENERGY)  
**Sent:** October 19, 2011 11:11 AM  
**To:** Jennings, Rick (MEI); King, Ryan (ENERGY); Silva, Joseph (ENERGY)  
**Cc:** Perun, Halyna N. (ENERGY)  
**Subject:** Greenfield

Just off the phone with CLOC after getting advice from the DAG – am now significantly re-working the deck to make it more high level. Will send revisions shortly.

Carolyn

Carolyn Calwell  
Deputy Director  
Ministry of Energy & Ministry of Infrastructure  
Legal Services Branch  
Ministry of the Attorney General  
777 Bay Street, Suite 425  
Toronto ON M5G 2E5  
416.212.5409

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## **Cayley, Daniel (ENERGY)**

---

**From:** Calwell, Carolyn (ENERGY)  
**Sent:** October-19-11 11:55 AM  
**To:** Lindsay, David (ENERGY); Jennings, Rick (ENERGY); Silva, Joseph (ENERGY); Perun, Halyna N. (ENERGY)  
**Subject:** Deck  
**Attachments:** Greenfield South Construction Oct 20 2011.LSB.4.ppt

Revised as discussed.

Carolyn

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# Greenfield South Generating Station

## Next Steps – Advice to Cabinet

Date: October 20, 2011

## Local Context

- Local residents do not support the Greenfield South gas plant in Mississauga, which is currently under construction.
- On October 12 the Mississauga Council passed a motion requesting that the Government and the Premier take immediate action to cancel the contract, stop construction and return the site to pre-construction condition

## Issues

- Construction continues at the Greenfield South site.
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- The OPA to be asked to approach Eastern Power to initiate discussions. The discussion would likely include potential treatment of costs incurred to date (sunk costs – including equipment costs), treatment of construction and equipment related contracts, estimates and treatment of foregone revenue, and options and Eastern's interest with respect to relocating to an alternative site.
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- **Discussion with Eastern Power may not be successful and could require** the Government to consider other options (e.g. legislation).
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- The Minister's request of the OPA may be **found to be** contractual interference and may attract liability to the Province.
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## Cabinet Minute

Cabinet agreed that:

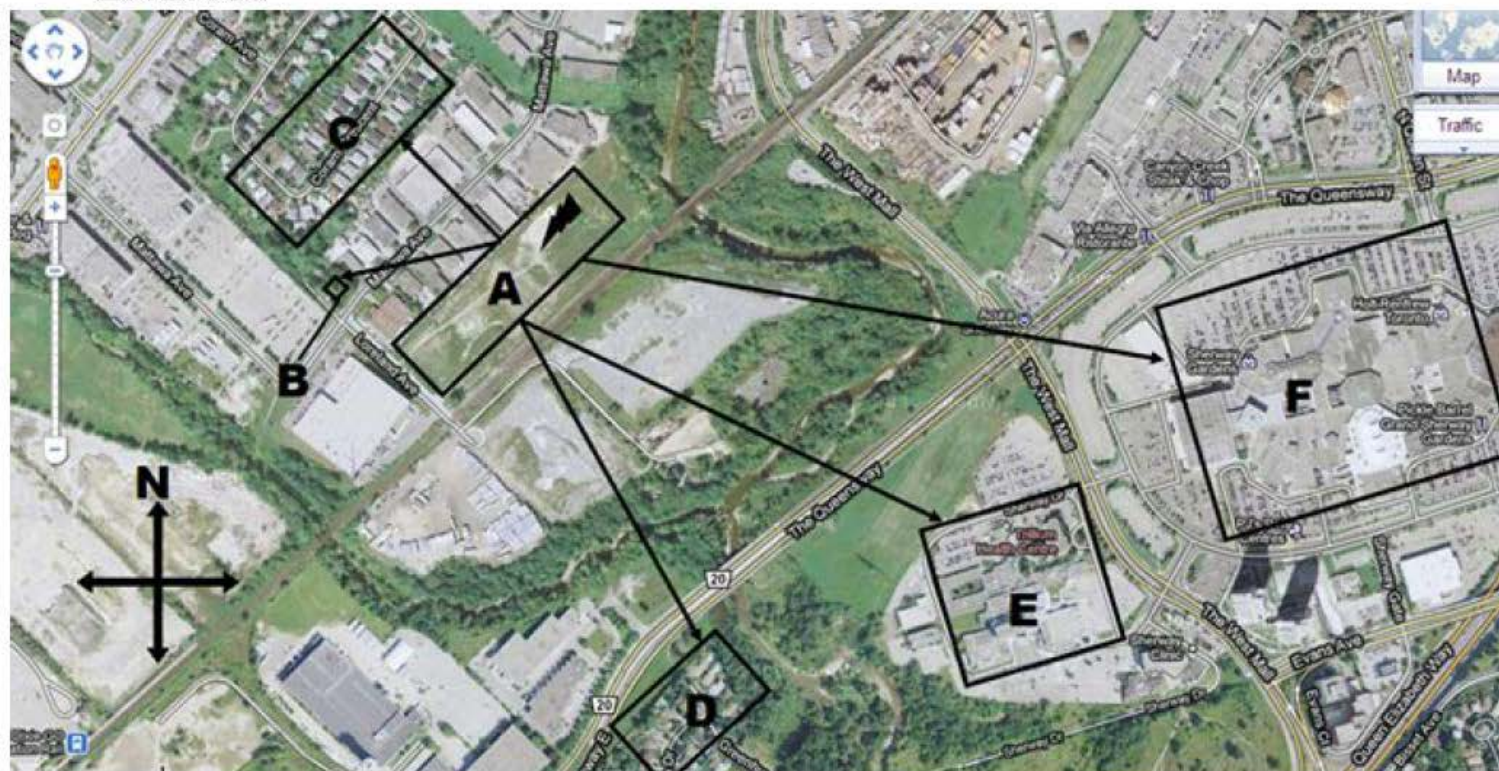
- **The Ministry of Energy to work with the Ontario Power Authority to enter into discussions with Eastern Power toward a satisfactory resolution of the Mississauga site.**
- **The Ministry of Energy to work with the Ontario Power Authority, the Ministry of Finance and the Ministry of the Attorney General to develop strategies to reach an agreement with Eastern Power.**
- The Minister of Energy to report back to Cabinet by December 2011 with the details of the discussions with Eastern Power.
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# Appendix 1

## Greenfield South Background

## Key Facts About the Greenfield South Plant

- Greenfield South Power Corporation (controlled by Eastern Power Corporation) was the successful applicant in Ministry of Energy run Clean Energy Supply (CES) RFP and signed a contract with the OPA in April 2005.
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Legend:

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C – Closest Subdivision (North)

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F – Sherway Gardens Mall

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A to C: 270 Meters

A to D: 500 Meters

A to E: 740 Meters

A to F: 910 Meters



\*Plant construction as of 28 September 2011



# Appendix 2

## Greenfield South Background

## Options Considered by the OPA

- **Unilateral termination of contract**
- **Legislation**
- **Negotiation**
- **Pay the plant not to run**

## **Cayley, Daniel (ENERGY)**

---

**From:** Calwell, Carolyn (ENERGY)  
**Sent:** October-19-11 12:00 PM  
**To:** Slater, Craig (JUS); Scarfone, Janet (JUS); Feltman, Scott (JUS); Intrator, Daphne (JUS)  
**Cc:** Perun, Halyna N. (ENERGY)  
**Subject:** Next draft  
**Attachments:** Duplicate attachment removed

Please see next draft attached. I had the opportunity to walk through the changes that we talked about with DM Lindsay, ADM Rick Jennings and Halyna. This draft reflects their input as well, with changes bolded for ease of reference (deletions are not highlighted).

I can walk you through ENE's comments if that is helpful. I'm wrapping up a call now and can be available in about 20 minutes.

Carolyn

This communication may be solicitor/client privileged and contain confidential information only intended for the person(s) to whom it is addressed. Any dissemination or use of this information by others than the intended recipient(s) is prohibited. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

## Cayley, Daniel (ENERGY)

---

**From:** Kristin Jenkins <Kristin.Jenkins@powerauthority.on.ca>  
**Sent:** October-19-11 12:25 PM  
**To:** Silva, Joseph (ENERGY)  
**Subject:** Fw: Campaign Commitment on Greenfield

Hi Joseph. Please see below.

----- Original Message -----

From: Kristin Jenkins  
Sent: Wednesday, October 19, 2011 12:19 PM  
To: 'Jesse.Kulendran@ontario.ca' <Jesse.Kulendran@ontario.ca>  
Subject: Campaign Commitment on Greenfield

Hi Jesse. Colin asked me to check with you to see if you, ie the ministry, have access yet to Cabinet Office's official tracking of campaign promises and if yes, is it possible for us to have the documentation on the promise to relocate the Greenfield plant? Thanks.

Kristin

-----  
This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited.

If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.  
-----

## Cayley, Daniel (ENERGY)

---

**From:** Kovesfalvi, Sylvia (ENERGY)  
**Sent:** October-19-11 12:27 PM  
**To:** Patricia Phillips; Sharkawi, Rula (ENERGY)  
**Subject:** RE: Proposed response to Toronto Star  
**Attachments:** image002.gif

Thanks Patricia. We will get back to you asap.

---

**From:** Patricia Phillips [mailto:Patricia.Phillips@powerauthority.on.ca]  
**Sent:** October 19, 2011 12:25 PM  
**To:** Sharkawi, Rula (ENERGY); Kovesfalvi, Sylvia (ENERGY)  
**Subject:** Proposed response to Toronto Star

Hi Rula & Sylvia – Below is our draft response to John Spears' inquiries. Please get back to me as soon as you can. Thanks, Pat

---

Hi John – The Ministry of Energy issued an RFP for the Greenfield South plant in 2004 to address local supply and reliability issues. The 2007 IPSP has info on these issues [http://archive.powerauthority.on.ca/Storage/69/6447\\_D-8-1\\_corrected\\_080505\\_mm.pdf](http://archive.powerauthority.on.ca/Storage/69/6447_D-8-1_corrected_080505_mm.pdf) (please see page 12). The government has committed to relocating the plant. We understand that next steps will be communicated shortly and we will have more to say then. In the meantime, please contact the Ministry of Energy if you have further questions.

Patricia Phillips . Director, Stakeholder Relations(A)  
Ontario Power Authority . 416-969-6326  
[patricia.phillips@powerauthority.on.ca](mailto:patricia.phillips@powerauthority.on.ca)



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## **Cayley, Daniel (ENERGY)**

---

**From:** Calwell, Carolyn (ENERGY)  
**Sent:** October-19-11 12:39 PM  
**To:** Perun, Halyna N. (ENERGY)  
**Subject:** RE: Deck

Waiting for Ryan

-----Original Message-----

From: Perun, Halyna N. (ENERGY)  
Sent: October 19, 2011 12:28 PM  
To: Calwell, Carolyn (ENERGY)  
Subject: Re: Deck

Your version does not include the pros and cons from opa deck in appendix 2 under other options considered - they need to be inserted (please ask ryan king about that) and then send to CLOC with note that Cab Off is asking for deck and is looking for confirmation that dag is ok w it - hope this is clear now! Am now on my way back Thank you

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

Sent using BlackBerry

----- Original Message -----

From: Calwell, Carolyn (ENERGY)  
To: Perun, Halyna N. (ENERGY)  
Sent: Wed Oct 19 12:24:42 2011  
Subject: RE: Deck

No word from DAG - what are you asking me to do?

-----Original Message-----

From: Perun, Halyna N. (ENERGY)  
Sent: October 19, 2011 12:24 PM  
To: Calwell, Carolyn (ENERGY)  
Subject: Deck

Joseph advises that CO is asking for dexk but wants to know if dag is ok w it - he'll need to see the version that includes pros and cons cut and pasted from opa deck (in appendix) which rick says ryan is working on - thanks

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

Sent using BlackBerry

## Fisher, Petra (ENERGY)

---

**From:** King, Ryan (ENERGY)  
**Sent:** October-19-11 12:49 PM  
**To:** Silva, Joseph (ENERGY); Lindsay, David (ENERGY)  
**Cc:** McKeever, Garry (ENERGY); MacCallum, Doug (ENERGY); Jenkins, Allan (ENERGY); Jennings, Rick (ENERGY); Cayley, Daniel (ENERGY); Perun, Halyna N. (ENERGY)  
**Subject:** RE: Deck  
**Attachments:** Greenfield South Construction Oct 20 2011 LSB ESTDP (v5).ppt

Hi Joseph,  
Updated deck attached.

---

**From:** Jennings, Rick (ENERGY)  
**Sent:** October 19, 2011 12:29 PM  
**To:** King, Ryan (ENERGY)  
**Cc:** McKeever, Garry (ENERGY); MacCallum, Doug (ENERGY); Jenkins, Allan (ENERGY)  
**Subject:** FW: Deck

Ryan this is the latest edited version from Legal. An addition to the Appendix per the Deputy's request is to add the other options proposed by the OPA. The list is in the deck now but please insert the description and pros and cons for each of the 3 other options from the OPA deck. I have left a copy on your desk.

Send to Joseph when this has been done. Thanks.

---

**From:** Calwell, Carolyn (ENERGY)  
**Sent:** October 19, 2011 11:55 AM  
**To:** Lindsay, David (ENERGY); Jennings, Rick (ENERGY); Silva, Joseph (ENERGY); Perun, Halyna N. (ENERGY)  
**Subject:** Deck

Revised as discussed.

Carolyn

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# Greenfield South Generating Station

## Next Steps – Advice to Cabinet

---

---

Date: October 20, 2011

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Cabinet agreed that:

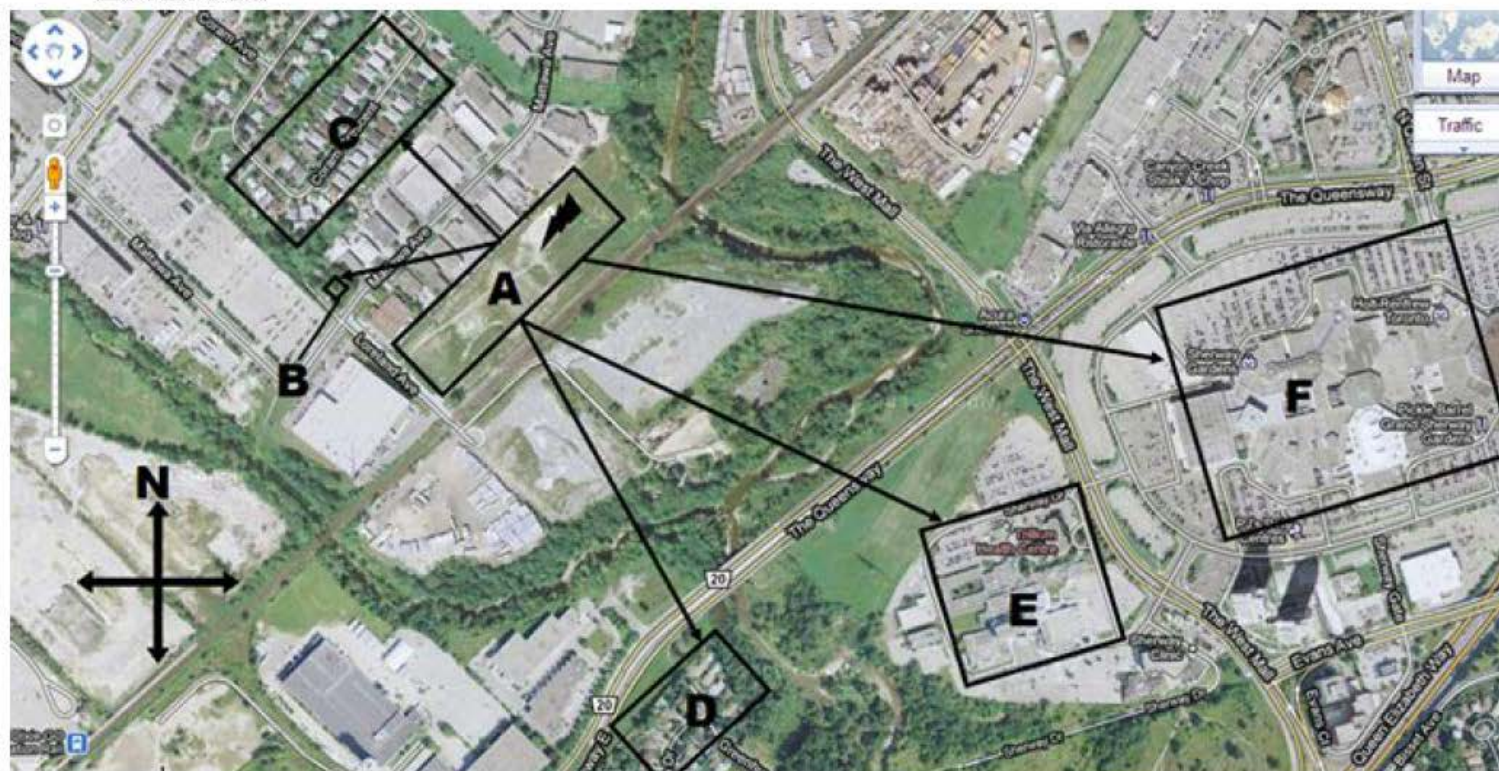
- **The Ministry of Energy to work with the Ontario Power Authority to enter into discussions with Eastern Power toward a satisfactory resolution of the Mississauga site.**
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# Appendix 1

## Greenfield South Background

## Key Facts About the Greenfield South Plant

- Greenfield South Power Corporation (controlled by Eastern Power Corporation) was the successful applicant in Ministry of Energy run Clean Energy Supply (CES) RFP and signed a contract with the OPA in April 2005.
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**Legend:**

A – Proposed Greenfield Site

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\*Plant construction as of 28 September 2011



# Appendix 2

## Greenfield South Background

## Options Considered by the OPA

- **Unilateral termination of contract**
  - **Pros**
    - Greenfield South will be required to being to mitigate its damages which means they should stop construction (or at the very least, the OPA will not likely be liable for those additional costs that could have been avoided after date of termination of contract)
  - **Cons**
    - Does not provide opportunity to explore options for relocating project
    - Sends negative message to other OPA counter-parties

## Other Options Considered by the OPA Con'd

- **Legislation**

- **Pros**

- Allows Government to control level of compensation to be paid
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- **Cons**

- Will be controversial
    - Potential impact on investment climate

## Other Options Considered by the OPA Con'd

- **Pay the plant not to run**
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    - OPA obligations to make monthly payments are low based on outcome of 2005 RFP process and paying plant not to operate over 20 years may be cheaper than paying for sunk costs, remediation of the site and potentially some lost profits
  - Cons
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## Cayley, Daniel (ENERGY)

---

**From:** Silva, Joseph (ENERGY)  
**Sent:** October-19-11 12:52 PM  
**To:** Calwell, Carolyn (ENERGY)  
**Cc:** Perun, Halyna N. (ENERGY)  
**Subject:** FW: Deck  
**Attachments:** Greenfield South Construction Oct 20 2011 LSB ESTDP (v6).ppt  
  
**Importance:** High

Revised...

---

**From:** King, Ryan (ENERGY)  
**Sent:** October 19, 2011 12:51 PM  
**To:** Silva, Joseph (ENERGY); Lindsay, David (ENERGY)  
**Cc:** McKeever, Garry (ENERGY); MacCallum, Doug (ENERGY); Jenkins, Allan (ENERGY); Jennings, Rick (ENERGY); Cayley, Daniel (ENERGY); Perun, Halyna N. (ENERGY)  
**Subject:** RE: Deck

This version replaces 'considered' with 'proposed' if it's not too late

---

**From:** King, Ryan (ENERGY)  
**Sent:** October 19, 2011 12:49 PM  
**To:** Silva, Joseph (ENERGY); Lindsay, David (ENERGY)  
**Cc:** McKeever, Garry (ENERGY); MacCallum, Doug (ENERGY); Jenkins, Allan (ENERGY); Jennings, Rick (ENERGY); Cayley, Daniel (ENERGY); Perun, Halyna N. (ENERGY)  
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**Sent:** October 19, 2011 11:55 AM  
**To:** Lindsay, David (ENERGY); Jennings, Rick (ENERGY); Silva, Joseph (ENERGY); Perun, Halyna N. (ENERGY)  
**Subject:** Deck

Revised as discussed.

Carolyn

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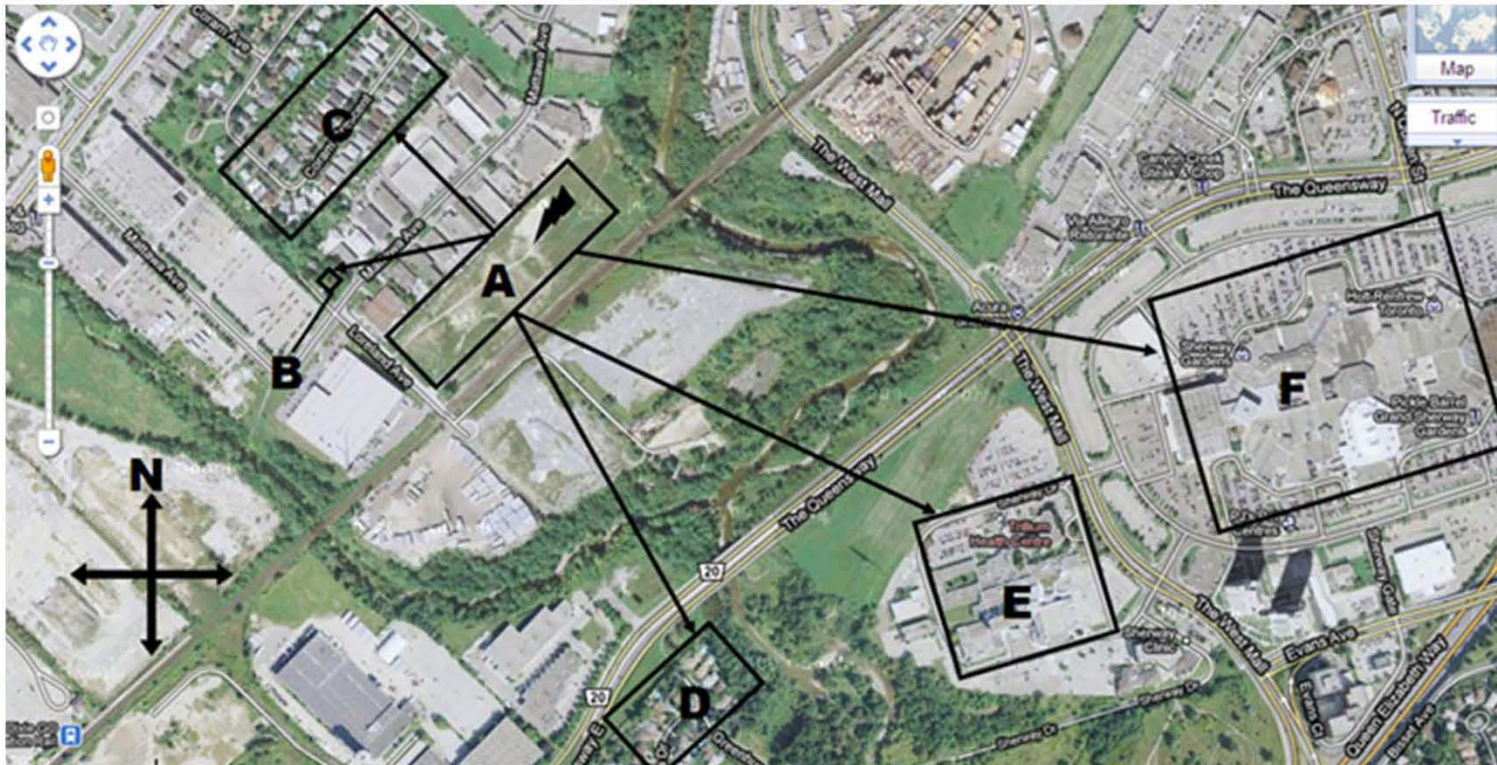
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\*Plant construction as of 28 September 2011



# Appendix 2

## Greenfield South Background

## Other Options Proposed by the OPA

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    - Greenfield South will be required to being to mitigate its damages which means they should stop construction (or at the very least, the OPA will not likely be liable for those additional costs that could have been avoided after date of termination of contract)
  - **Cons**
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- **Legislation**

- **Pros**

- Allows Government to control level of compensation to be paid
    - Government can specify that no compensation will be paid for costs incurred past certain date (e.g. announcement of Government's policy or date of first reading)

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- Will be controversial
    - Potential impact on investment climate

## Other Options Proposed by the OPA Con'd

- **Pay the plant not to run**
  - **Pros**
    - OPA obligations to make monthly payments are low based on outcome of 2005 RFP process and paying plant not to operate over 20 years may be cheaper than paying for sunk costs, remediation of the site and potentially some lost profits
  - **Cons**
    - Will be difficult to convince community that plant will not operate

## **Cayley, Daniel (ENERGY)**

---

**From:** Calwell, Carolyn (ENERGY)  
**Sent:** October-19-11 1:01 PM  
**To:** Silva, Joseph (ENERGY); Perun, Halyna N. (ENERGY); King, Ryan (ENERGY)  
**Subject:** RE: Deck  
**Attachments:** Greenfield South Construction Oct 20 2011 (v7).ppt

This is most current from our end.

Joseph, for ease of reference, I've added "Advice to Cabinet" in the footer, reworded first bullet on slide 2 and title on slide 11 (which was wrong).

Carolyn

-----Original Message-----

From: Silva, Joseph (ENERGY)  
Sent: October 19, 2011 12:56 PM  
To: Calwell, Carolyn (ENERGY); Perun, Halyna N. (ENERGY); Lindsay, David (ENERGY)  
Subject: FW: Deck

Fyi

-----Original Message-----

From: Brown, Meredith (JUS)  
Sent: October 19, 2011 12:56 PM  
To: Hume, Steen (CAB); Bromm, William (CAB); Silva, Joseph (ENERGY)  
Subject: Deck

Hang on! We are just working on the deck and will have it over to energy in minutes. It is complex.

-----  
Sent using my BlackBerry device.

# Greenfield South Generating Station

## Next Steps

---

Date: October 20, 2011

## Local Context

- Local residents strongly oppose the Greenfield South gas plant in Mississauga, which is currently under construction.
- On October 12 the Mississauga Council passed a motion requesting that the Government and the Premier take immediate action to cancel the contract, stop construction and return the site to pre-construction condition.

## Issues

- Construction continues at the Greenfield South site.
- The project has an enforceable contract with the Ontario Power Authority and all applicable approvals. The developer's work appears to be in compliance with the contract and current approvals.
- The OPA is party to and administers the contract with Eastern Power. The Province is not a party to the contract. The OPA has advised that it has no right under the contract to terminate in the current circumstances.
- The OPA has asked for instruction from government to approach the developer to begin negotiations to change or to terminate the contract.
- Eastern Power has informed the OPA that it will not 'down tools' until it receives formal notification of next steps.
- The identification of potential alternative site options has not yet been completed.
- Some local politicians have stated that the plant would not be relocated to a site in Mississauga or Toronto.

## Next Steps Involve the OPA

- The OPA to be asked to approach Eastern Power to initiate discussions. The discussion would likely include potential treatment of costs incurred to date (sunk costs – including equipment costs), treatment of construction and equipment related contracts, estimates and treatment of foregone revenue, and options and Eastern's interest with respect to relocating to an alternative site.
- The OPA has made some preliminary analysis of costs and foregone revenue. Further analysis of these costs is required and their allocation between the tax base and the rate base is required.
- The OPA has also identified several sites that would require government and OPA review before being shared with Eastern Power. Each of these alternative sites have various issues associated with them.
- Eastern Power may or may not be interested in developing the proposed alternative sites, may be willing to walk away from the Mississauga plant for a financial cash settlement or may view its prospects as being better through the courts.

## Immediate Legal Issues

- Discussion with Eastern Power may not be successful and could require the Government to consider other options (e.g. legislation).
- Initiating discussions to relocate or otherwise cancel the Mississauga plant may immediately cause Eastern Power to launch a law suit against either or both of the OPA and the Government.
- The Minister's request of the OPA may be found to be contractual interference and may attract liability to the Province.
- The OPA may ask for a "direction" from the Minister under the *Electricity Act, 1998* before undertaking any discussions with Eastern Power. The Minister's authority to direct the OPA in this way is unclear.
- Eastern Power's financiers may have a claim under NAFTA if this project does not proceed.

## Cabinet Minute

Cabinet agreed that:

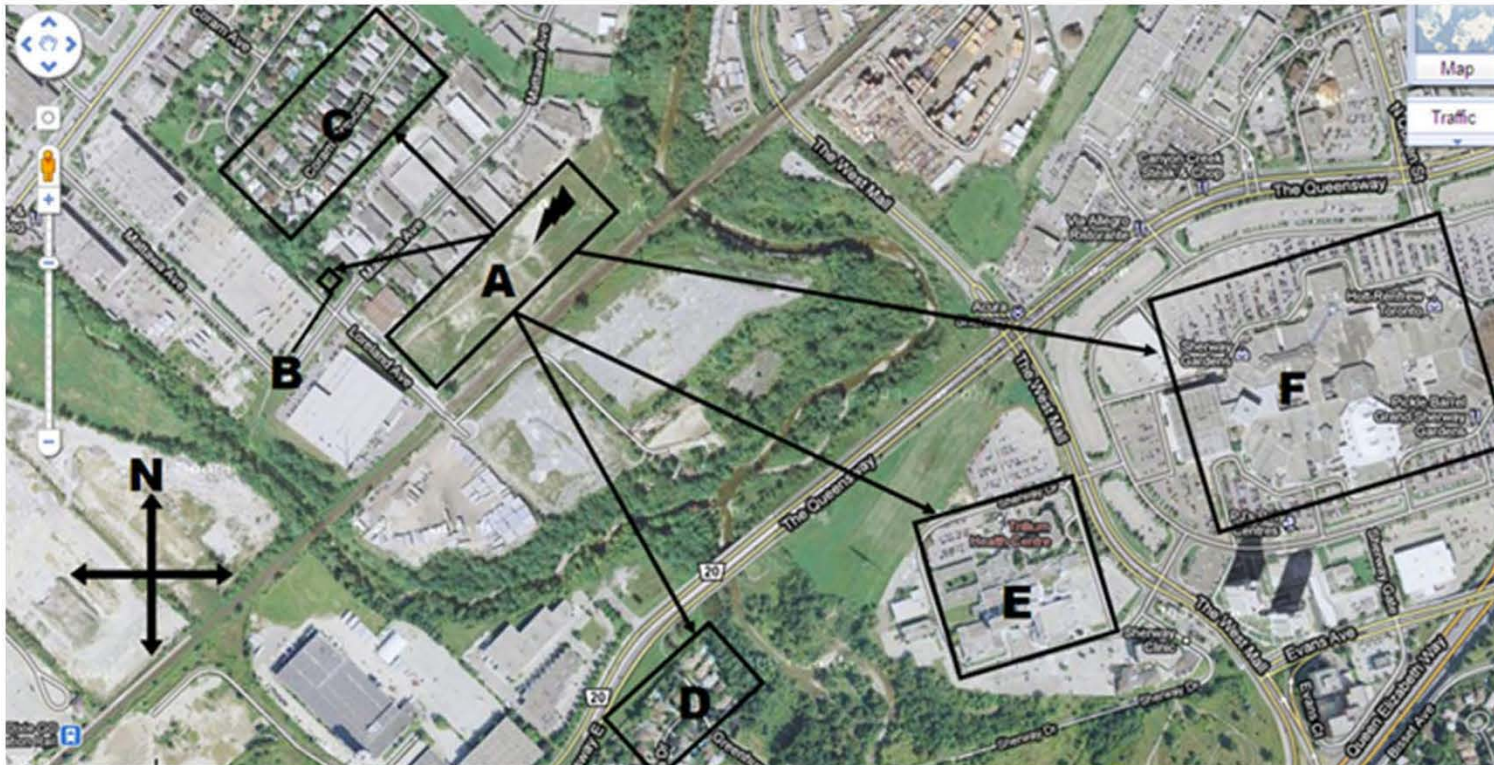
- The Ministry of Energy to work with the Ontario Power Authority to enter into discussions with Eastern Power toward a satisfactory resolution of the Mississauga site.
- The Ministry of Energy to work with the Ontario Power Authority, the Ministry of Finance and the Ministry of the Attorney General to develop strategies to reach an agreement with Eastern Power.
- The Minister of Energy to report back to Cabinet by December 2011 with the details of the discussions with Eastern Power.
- The Ministry of Energy to work with Premier's Office/Cabinet Office on a stakeholder management and communications strategy.

# Appendix 1

## Greenfield South Background

## **Key Facts About the Greenfield South Plant**

- Greenfield South Power Corporation (controlled by Eastern Power Corporation) was the successful applicant in Ministry of Energy run Clean Energy Supply (CES) RFP and signed a contract with the OPA in April 2005.
- Eastern Power, based in Ontario, has received all required provincial approvals, including Environmental Assessment and Certificates of Approval.
- Eastern Power has received all required municipal approvals, including building site approval from the City of Mississauga issued in May 2011.
- Eastern Power has secured debt financing from Credit Suisse and ElG (confirmed by the OPA).



**Legend:**

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

**Distance:**

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



\*Plant construction as of 28 September 2011



# Appendix 2

## Other Options Proposed by the OPA

## Other Options Proposed by the OPA

- **Unilateral termination of contract**
  - **Pros**
    - Greenfield South will be required to being to mitigate its damages which means they should stop construction (or at the very least, the OPA will not likely be liable for those additional costs that could have been avoided after date of termination of contract)
  - **Cons**
    - Does not provide opportunity to explore options for relocating project
    - Sends negative message to other OPA counter-parties

## Other Options Proposed by the OPA Con'd

- **Legislation**

- **Pros**

- Allows Government to control level of compensation to be paid
    - Government can specify that no compensation will be paid for costs incurred past certain date (e.g. announcement of Government's policy or date of first reading)

- **Cons**

- Will be controversial
    - Potential impact on investment climate

## Other Options Proposed by the OPA Con'd

- **Pay the plant not to run**
  - **Pros**
    - OPA obligations to make monthly payments are low based on outcome of 2005 RFP process and paying plant not to operate over 20 years may be cheaper than paying for sunk costs, remediation of the site and potentially some lost profits
  - **Cons**
    - Will be difficult to convince community that plant will not operate

## **Cayley, Daniel (ENERGY)**

---

**From:** Petersen, Shannon (ENERGY)  
**Sent:** October-19-11 2:03 PM  
**To:** Perun, Halyna N. (ENERGY)  
**Subject:** FW: Greemfield South Options OPG  
**Attachments:** doc20111019141522.pdf

As requested

Shannon Petersen  
Legal Assistant  
Ministry of Energy and  
Ministry of Infrastructure  
Legal Services Branch  
777 Bay Street, 4th Floor, Suite 425  
Toronto, ON M5G 2E5  
416-325-1840  
[shannon.petersen@ontario.ca](mailto:shannon.petersen@ontario.ca)

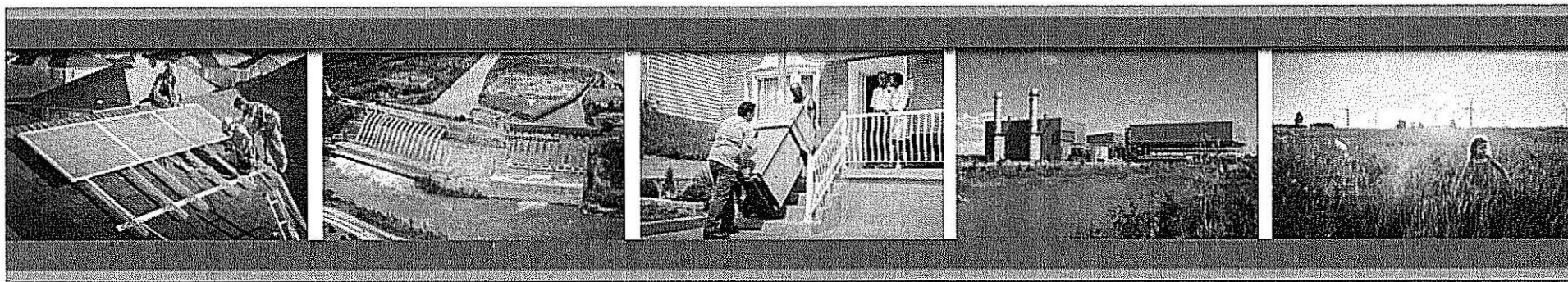
-----Original Message-----

From: dontoreply@4office.com [mailto:dontoreply@4office.com]  
Sent: Wednesday, October 19, 2011 2:16 PM  
To: Petersen, Shannon (ENERGY)  
Subject:

-----  
KM-5050

[00:c0:ee:1e:f4:49]  
-----

updated version  
Oct 20/11 1:50 pm



## Greenfield South Options

October 20, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

# Background

---

- RFP initiated and proponent selected by Ministry of Energy
- OPA directed by Minister of Energy to enter into contract
- Greenfield South Power Corporation (“Greenfield”) and the OPA entered into a contract on 12 April 2005
- Government is not a party to the contract
- Greenfield is controlled by Eastern Power Corporation

# Contract Amendment

---

- Contract was amended on 16 March 2009
- Reason for amendment was long delays project suffered in securing necessary approvals to construct the project and to do away with the oil-fired option for fuelling the plant
- OPA and Province also motivated in part to keep project alive by low cost to ratepayers of project established in the competitive RFP process in 2004/2005
- In May 2011 Greenfield achieved financial close, securing debt financing from Credit Suisse and EIG for \$550 million

# Contract Facility

---

- The Contract Facility is an approximately 300 MW combined cycle gas-fired generation station
- Major components of facility include a GE 7FA gas turbine (“GT”) a heat recovery steam generator (“HRSG”) and a steam turbine
- Construction began in June 2011 and is approximately x% complete now
- The Milestone Date for Commercial Operation is September 1, 2014

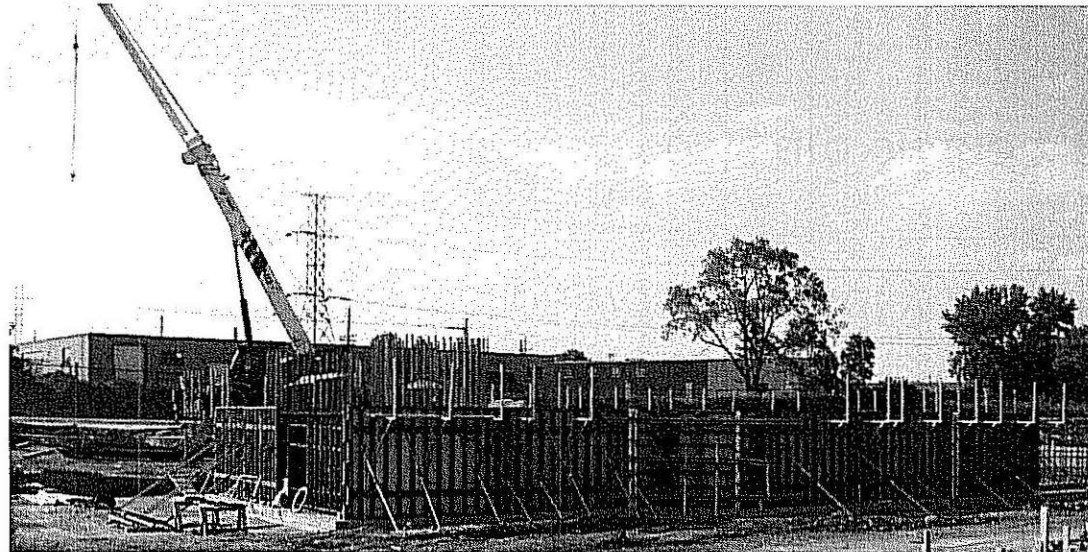
# Contract Facility

---

- The total dollar value of capital expenditures (“CAPEX”) for the facility are between \$250 - \$350 million
- Gas and electrical interconnection work has not yet commenced
- Total estimated sunk and committed costs are on the neighbourhood of \$x million
- We estimate the profits from the contract, excluding any residual value, are approximately \$x million

# Contract Facility

---



**Steam Turbine Pedestal Mat Being Formed**

# Contract Facility

---



**Steam Turbine Pedestal Mat Forms Stripped**

# Contract Facility

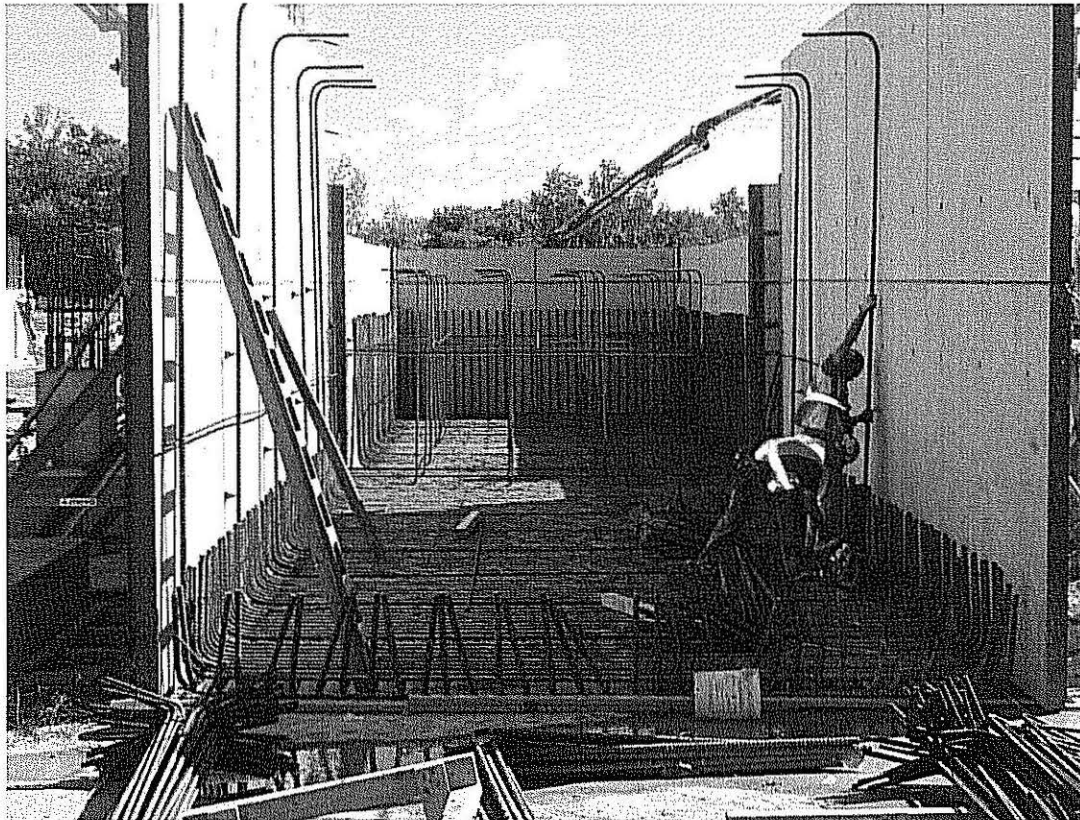
---



**Steam Turbine Table Top**

# Contract Facility

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**Gas Turbine Pedestal Reinforcing Steel**

# Contract Facility

---



**Unloading Steam Turbine**

## **Moving Greenfield South does not result in immediate unreliability, but accelerates the need for Tx solutions**

---

- Planning studies indicate that transmission reinforcement in west GTA could be required 2 years earlier, as early as 2018, if Greenfield South is not located within west GTA
- These need dates are based on assumptions associated with the LTEP and current reliability criteria, which are likely to evolve
- The transmission reinforcements are extensive in scope and require the immediate initiation of planning and development work with local utilities, the IESO and transmitters

# Siting Options - There are several alternative site options

---

## Some deliver more system value than others with different levels of complexity

- Considerations:
  - System value of Location, Gas Availability, Community Support, Transmission, Counterparty
- There may be a system need starting in 2016 to 2018
- Regional needs include:
  - Northwest System
  - Cambridge
  - GTA
- Some sites have gas available in varying quantities
- Examples of potential sites :
  - OPG ( Lennox, Nanticoke (some gas there now), Thunder Bay (pipeline required))
  - NUGs (TCPL compressor sites, Trans Alta Pearson Airport, Whitby, Fort Frances(was on gas now on BIO))
  - Portlands, Goreway

(continued next slide)

## **Siting Options - There are several alternative site options (continued)**

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- Siting discussions complicated by ongoing discussion with Trans Canada re a new site for a gas project
- Some arrangements could be more straight forward or more complicated depending on the counterparty, the willingness of the host community, the Government's statements re siting of gas plants in GTA and urban areas and any issues related to First Nations concerns

# Key Contractual Provisions

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- Grounds for termination of contract limited to certain types of breach and extended force majeure (none of which applicable here)
- Contract excludes liability for certain types of damages including loss of profits
- Contract provides right to damages including lost profits for discriminatory action (legislation or regulation passed) where impact focused on contract counter-party
- Damages for discriminatory action determined through arbitration process
- All other disputes only go to arbitration if both parties agree

# Payment Under Contract

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- Once plant in commercial operation, generator is paid monthly capacity payment to cover its costs and profit
- Monthly payment reduced by amount generator is deemed to earn in the market selling electricity
- This reduction is calculated using formula to determine when it is economic for generator to be generating electricity
- OPA may also direct the plant operator to dispatch or not dispatch its facility at specified dates and times

# Option 1- Contract Termination

---

- Unilateral termination of contract – OPA informs contract counter-party that it will not perform its obligations under the contract
  - Pros:
    - » Greenfield South will be required to begin to mitigate its damages which means they should stop construction (or at the very least, the OPA will not likely be liable for those additional costs that could have been avoided after date of termination of contract)
  - Cons:
    - » Does not provide opportunity to explore options for relocating project
    - » Sends negative message to other OPA counter-parties
- Precedent: Oakville Gas Plant

## Option 2 - Legislation

---

- Legislation passed to terminate the contract, set compensation or provide a process and methodology for determining compensation
  - Pros:
    - » Allows Government to control level of compensation to be paid
    - » Government can specify that no compensation will be paid for costs incurred past certain date (e.g. announcement of Government's policy or date of first reading) and take away right under contract re discriminatory action
  - Cons:
    - » Will be controversial
    - » Potential impact on investment climate
    - » Requires time to put in place
- Precedent: *Adams Mine Lake Act, 2004*

## Option 3 - Negotiation

---

- OPA attempts to commence negotiations with Greenfield South re stopping construction and new location for facility
  - Pros:
    - » OPA has opportunity to assess position of Greenfield South and what they are seeking to agree to stop construction
    - » OPA can begin discussion of alternative sites
  - Cons:
    - » Greenfield South may refuse to commence discussions
    - » Greenfield South likely to continue construction while discussions ongoing unless incentive provided to them to stop
    - » May need to revert at some stage to other options

## Option 4 - Pay Plant Not to Run

---

- Allow plant to be constructed but ensure it does not operate using directed dispatch mechanism in contract
  - Pros:
    - » May be cheapest option given low cost outcome of original RFP and alternative of paying for sunk costs, remediation of the site and potentially some lost profits
  - Cons:
    - » Will be difficult to convince community that plant will not operate
    - » Will be seen as having paid “money for nothing”
- Precedent: No Ontario precedent but has happened in Quebec with Bécancour facility

# Recommendation

---

- OPA to commence negotiations with Greenfield South (Option 3)
- If negotiations do not succeed in stopping construction of plant, will likely need to revert to one of the other options

## **Cayley, Daniel (ENERGY)**

---

**From:** Calwell, Carolyn (ENERGY)  
**Sent:** October-19-11 2:29 PM  
**To:** Perun, Halyna N. (ENERGY)  
**Subject:** RE: BN  
**Attachments:** Greenfield South BN LSB Oct 19-11.doc

Back to you for further work.

Carolyn

---

**From:** Perun, Halyna N. (ENERGY)  
**Sent:** October 19, 2011 10:22 AM  
**To:** Calwell, Carolyn (ENERGY)  
**Subject:** BN

This is not even a beginning – my apologies for sending to you in this form – can you please continue working on this? If you think it's useful to engage James – please go ahead. I still think we need to work on this note to set out the legal advice.

DM Lindsay has called a meeting now at 11:00 so I'll see what next steps are from his point of view then

Thanks Carolyn

***Halyna***

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](mailto:Halyna.Perun2@ontario.ca)

### Notice

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**Confidential and Solicitor-Client Privileged**

**Ministry of the Attorney General**

***Briefing Note***

**Legal Services Division**

**Legal Services Branch – ENE/MOI**

**ISSUE:**

- Greenfield South Gas Generating Plant in Mississauga.

**SUMMARY OF PROPOSAL:**

Discussion about location of the Greenfield South Generating Station under construction in the City of Mississauga.

**MAG POSITION:**

- 

**STATUS:**

- Item to proceed to Cabinet for discussion on Thursday October 20, 2011.

**BACKGROUND**

- Greenfield South Power Corporation (controlled by Eastern Power Corporation, referred to as “Greenfield”) is developing the Greenfield South Generating Station, a 280 MW combined cycle natural gas plant under construction in the City of Mississauga on a 4.5 hectare property at 2315 Loreland Avenue.
- The project arose out of a Ministry of Energy Clean Energy Supply (CES) procurement process in 2004. This contract was eventually assumed by the Ontario Power Authority (OPA).
- The project was undertaken to meet local reliability needs for the Southwest and Western GTA and has been positioned as part of the coal closure strategy.
- The plant is 200 metres from the nearest residence, 700 metres from the nearest hospital and 1.1 km from the nearest school.
- The project is strongly opposed by local residents. On October 12, 2011, the Mississauga Council passed a motion requesting that the government and the Premier take immediate action to cancel the contract, stop construction and return the site to pre-construction condition.

- In 2007, the Ontario Municipal Board reviewed and approved of the zoning of the project site after a lengthy and protracted process.
- In 2008, MOE granted all necessary environmental approvals.
- In March 2011, OPA renegotiated the initial Commercial Operation Date (C.O.D.) with Greenfield, in recognition of lengthy regulatory approvals and financing delays experienced by Greenfield. The new Milestone Date for Commercial Operation, when the plant is required to be fully operational, is September 1, 2014.
- In May 2011, Greenfield finalized its financing arrangements with Credit Suisse and EIG. Around that time, the City of Mississauga issued building permits for the construction at the site.
- In June 2011, MOE announced that it will conduct an updated review of the approval for the gas plant to assess recent developments. No end-date was set for this process.
- In July 2011, Greenfield reported that it had laid foundations for the steam and gas turbine halls and placed orders for the major equipment (generators, turbines, etc.).
- Construction continues at the site. Greenfield has informed the OPA that it will not “down tools” until it receives formal notification of next steps.
- Next steps would require the OPA to be asked to approach Greenfield to initiate discussions.
  - The discussion would likely include potential treatment of costs incurred to date (sunk costs – including equipment costs), treatment of construction and equipment related contracts, estimates and treatment of foregone revenue, and options and Eastern’s interest with respect to relocating to an alternative site.

## **FINANCIAL IMPLICATIONS:**

There are no financial implications for MAG.

## **DISCUSSION:**

- Discussion with Greenfield may not be successful and could require the Government to consider other options (e.g. legislation).
- Initiating discussions to relocate or otherwise cancel the Mississauga plant may immediately cause Greenfield to launch a law suit against either or both of the OPA and the Government.
  - Such a discussion will signal repudiation of the contract, which gives Greenfield the right to sue the OPA.

- The Minister's request of the OPA may be found to be contractual interference and may attract liability to the Province.
  - Greenfield could claim that the Crown induced the OPA's breach of contract where Greenfield can show: 1) that the Crown knew about the contract; 2) the Crown's action was intended to cause the OPA to breach the contract; 3) the Crown's action caused the OPA to breach the contract; and 4) Greenfield suffered damages as a result.
- The OPA may ask for a "direction" from the Minister under the *Electricity Act, 1998* before undertaking any discussions with Greenfield. The Minister's authority to direct the OPA in this way is unclear.
  - The Electricity Act, 1998 gives the Minister of Energy the authority to issue directions and directives to the OPA, which the OPA must follow.
    - Minister may issue, and the OPA shall follow in preparing its integrated power system plans, directives that have been approved by the Lieutenant Governor in Council that set out the goals to be achieved during the period to be covered by an integrated power system plan, including goals relating to,
      - (a) the production of electricity from particular combinations of energy sources and generation technologies;
      - (b) Increases in generation capacity from alternative energy sources, renewable energy sources or other energy sources;
      - (c) the phasing-out of coal-fired generation facilities; and
      - (d) the development and implementation of conservation measures, programs and targets on a system-wide basis or in particular service areas.
    - The Minister may direct the OPA to undertake any request for proposal, any other form of procurement solicitation or any other initiative or activity that relates to,
      - (a) the procurement of electricity supply or capacity derived from renewable energy sources;
      - (b) reductions in electricity demand; or
      - (c) measures related to conservation or the management of electricity demand.
    - The OPA shall enter into any contract following a procurement solicitation or other initiative referred to in clause (4) (a) if directed to do so by the Minister of Energy, and that contract shall be deemed to be a procurement contract that was entered into in accordance with any integrated power system plan and procurement process approved by the Board.

- None of these authorities unambiguously allows the Minister to direct the OPA to terminate a contract.
- Greenfield's financiers may have a trade-related (NAFTA) claim if this project does not proceed.
  - An investor could allege treatment less favourable than that accorded to investments of other investors or could allege arbitrary and unfair application of government (including OPA) measures.

## **ALTERNATIVES CONSIDERED (Developed in conjunction with OPA)**

### **Option 1 – Legislation**

- The contract could be cancelled by legislation that would include provisions such as:
  - A provision expressly terminating the agreement;
  - A provision immunizing the Crown and the OPA from any and all lawsuits arising from the cancellation of the agreement
  - If desired, a provision addressing the types of compensation that will be provided and a mechanism (such as arbitration) for determining compensation, or alternatively stipulating that no compensation at all will be provided.
  - As the courts interpret these types of provisions very restrictively, the legislation would have to be drafted very carefully and be very clear and explicit.
  - Pros
    - Allows Government to control level of compensation to be paid
    - Government can specify that no compensation will be paid for costs incurred past certain date (e.g. announcement of Government's policy or date of first reading)
  - Cons
    - Will be controversial and requires time to enact
    - Developer could bring law suit in the interim, though legislation could ultimately preclude liability and damages and address other issues under the contract, such as the discriminatory action clause
    - Potential impact on investment climate

### **Option 2 – Regulatory**

- Existing regulatory approvals could be revoked or other regulatory steps could be taken to terminate the project
  - Pros
    - Greenfield is subject to Certificate of Approval under the Environmental Protection Act. Technically, approvals can be amended or revoked if legally justified.

- Cons
  - Any revocation or other regulatory actions would be subject to appeal or judicial review. MOE would be required to demonstrate an environmental justification for the action in order to successfully defend the challenge. No apparent environmental basis for action at this point.
  - If such a challenge was successful, Eastern may initiate a civil action in tort against the Crown.
  - Eastern may also seek a remedy against OPA under the terms of the contract under the discriminatory action clause.

#### Option 3 – Negotiation (recommended)

- The OPA could attempt to commence negotiations with Greenfield regarding stopping construction and developing a new location for a different facility.
  - Pros
    - OPA has the opportunity to assess position of Greenfield and its interests in stopping construction.
    - OPA can begin discussion of a new site.
  - Cons
    - Greenfield may refuse to commence discussions or seek to drag on discussions while it continues to construct the plant.
    -

#### Option 4 – Unilateral termination of contract

- The OPA would inform Greenfield that it will not perform its obligations under the contract
  - Pros
    - Greenfield will be required to bring to mitigate its damages which means it should stop construction and the OPA's will avoid damages for Greenfield's additional costs that could have been avoided after the date of termination of contract
  - Cons
    - Does not provide opportunity to explore options for relocating project
    - Sends negative message to other OPA counterparties

#### Option 5 – Pay the plant not to run

- Allow plant to be constructed but ensure that it does not operate using contractual provisions related to directed dispatch.
  - Pros
    - OPA obligations to make monthly payments are low based on outcome of 2005 RFP process and paying plant not to operate over 20 years may be cheaper than paying for sunk costs, remediation of the site and potentially some lost profits

- Cons
  - Will be difficult to convince community that plant will not operate

Date: October 19, 2011

Prepared by: Halyna Perun, A/Director  
and Carolyn Calwell Deputy Director

Legal Service Branch  
Ministry of Energy/Ministry of Infrastructure  
5-6681

In consultation with:

**Cayley, Daniel (ENERGY)**

---

**From:** Silva, Joseph (ENERGY)  
**Sent:** October-19-11 3:00 PM  
**To:** Perun, Halyna N. (ENERGY); Calwell, Carolyn (ENERGY); Jennings, Rick (ENERGY); King, Ryan (ENERGY)  
**Subject:** FW: Greenfield South Construction Oct 20 2011 LSB 4.ppt  
**Attachments:** Greenfield South Construction Oct 20 2011 LSB 4.ppt  
**Importance:** High

Hi – for review please. Thanks.

---

**From:** Brown, Meredith (JUS)  
**Sent:** October 19, 2011 3:00 PM  
**To:** Silva, Joseph (ENERGY)  
**Subject:** Greenfield South Construction Oct 20 2011 LSB 4.ppt

Please find attached the DAG approved slides.

# Greenfield South Generating Station

## Next Steps – Advice to Cabinet

---

Date: October 20, 2011

## Local Context

- The plant is located in a residential area that has seen recent growth.
- For this reason, local residents do not support the Greenfield South gas plant in Mississauga, which is currently under construction.
- On October 12 the Mississauga Council passed a motion requesting that the Government and the Premier take immediate action to cancel the contract, stop construction and return the site to pre-construction condition.
- The proximity of the plant to the recently constructed residences has prompted a policy reconsideration of the location of the gas plant.

## Considerations

- Construction continues at the Greenfield South site.
- Greenfield South Power Corporation (controlled by Eastern Power Corporation) has an enforceable contract with the Ontario Power Authority and all applicable approvals. The developer's work appears to be in compliance with the contract and current approvals.
- The OPA is party to and administers the contract with Eastern Power. The Province is not a party to the contract. The OPA has advised that it has no right under the contract to terminate in the current circumstances.
- The OPA has asked for instruction from government to approach the developer to begin negotiations to change or to terminate the contract.
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- The identification of potential alternative site options has not yet been completed. Each of these alternative sites have various issues associated with them.

## Next Steps Involve the OPA

- The OPA to be asked to approach Eastern Power to initiate discussions. The discussion would likely include potential treatment of costs incurred to date (sunk costs – including equipment costs), treatment of construction and equipment related contracts, estimates and treatment of foregone revenue, and options and Eastern's interest with respect to relocating to an alternative site.
- At this stage, the OPA has only made a preliminary analysis of costs.
- Eastern Power may or may not be interested in developing the proposed alternative sites, may be willing to walk away from the Mississauga plant for a financial cash settlement or may view its prospects as being better through the courts.

## Legal Issues

- Discussion with Eastern Power may not be successful and could require the Government to consider other options (e.g. legislation).
- Initiating discussions to relocate or otherwise cancel the Mississauga plant may cause Eastern Power to launch a law suit against either or both of the OPA and the Government.
- The Minister's request of the OPA may be contractual interference and may attract liability to the Province.
- The OPA may ask for a "direction" from the Minister under the *Electricity Act, 1998* before undertaking any discussions with Eastern Power. The Minister's authority to direct the OPA in this way is unclear.
- Eastern Power's financiers may have a claim under NAFTA if this project does not proceed.

## Cabinet Minute

Cabinet agreed that:

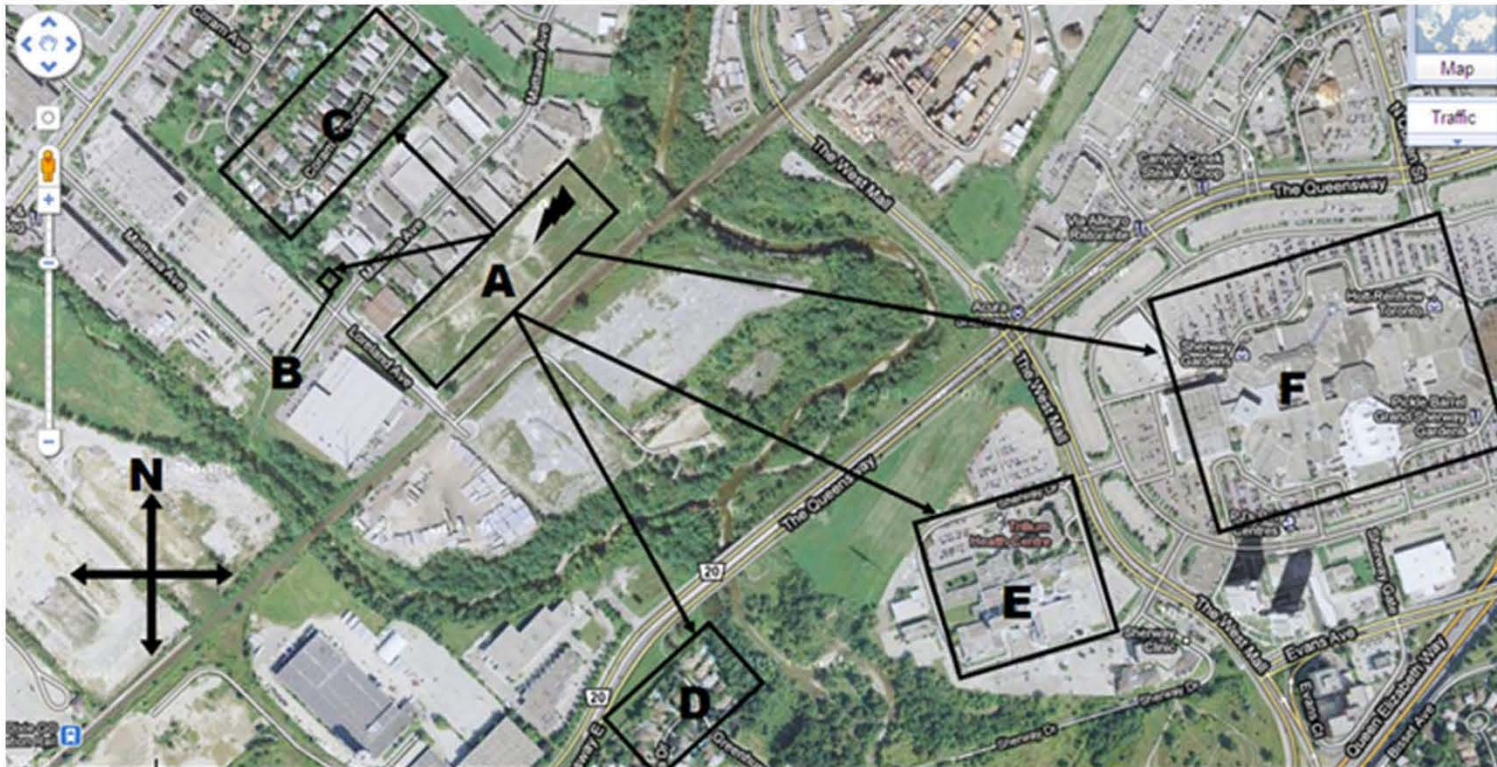
- The Ministry of Energy to work with the Ontario Power Authority to enter into discussions with Eastern Power toward a satisfactory resolution of the Mississauga site.
- The Minister of Energy to report back to Cabinet by December 2011 with the details of the discussions with Eastern Power.

# Appendix 1

## Greenfield South Background

## **Key Facts About the Greenfield South Plant**

- Greenfield South Power Corporation (controlled by Eastern Power Corporation) was the successful applicant in Ministry of Energy run Clean Energy Supply (CES) RFP and signed a contract with the OPA in April 2005.
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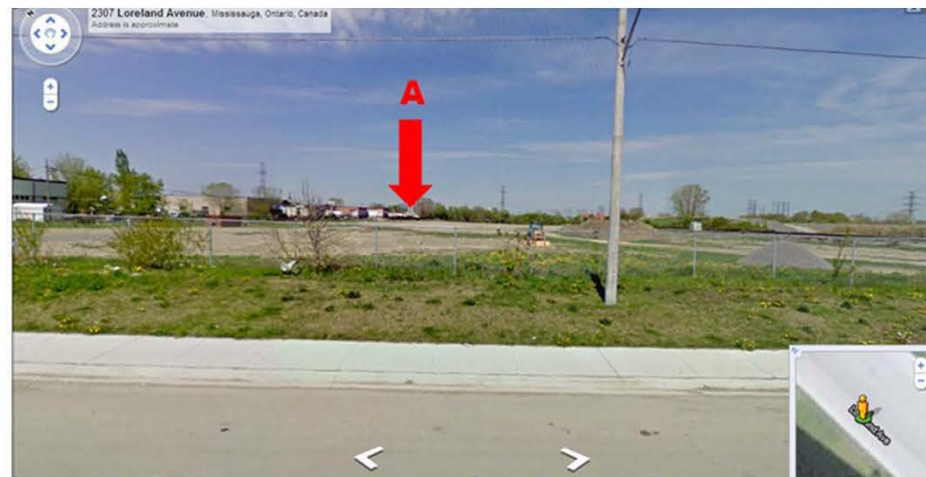
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**Distance:**

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



\*Plant construction as of 28 September 2011



## **Cayley, Daniel (ENERGY)**

---

**From:** Calwell, Carolyn (ENERGY)  
**Sent:** October-19-11 3:16 PM  
**To:** Perun, Halyna N. (ENERGY)  
**Subject:** RE: Greenfield South Construction Oct 20 2011 LSB 4.ppt

Want to work through this together? There are issues...

---

**From:** Perun, Halyna N. (ENERGY)  
**Sent:** October 19, 2011 3:15 PM  
**To:** Calwell, Carolyn (ENERGY)  
**Subject:** RE: Greenfield South Construction Oct 20 2011 LSB 4.ppt

Talked to Joseph – am reviewing now

***Halyna***

Halyna N. Perun  
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](mailto:Halyna.Perun2@ontario.ca)

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---

**From:** Silva, Joseph (ENERGY)  
**Sent:** October 19, 2011 3:00 PM  
**To:** Perun, Halyna N. (ENERGY); Calwell, Carolyn (ENERGY); Jennings, Rick (ENERGY); King, Ryan (ENERGY)  
**Subject:** FW: Greenfield South Construction Oct 20 2011 LSB 4.ppt  
**Importance:** High

Hi – for review please. Thanks.

---

**From:** Brown, Meredith (JUS)  
**Sent:** October 19, 2011 3:00 PM  
**To:** Silva, Joseph (ENERGY)  
**Subject:** Greenfield South Construction Oct 20 2011 LSB 4.ppt

Please find attached the DAG approved slides.

## Cayley, Daniel (ENERGY)

---

**From:** King, Ryan (ENERGY)  
**Sent:** October-19-11 3:48 PM  
**To:** Silva, Joseph (ENERGY); Calwell, Carolyn (ENERGY); Perun, Halyna N. (ENERGY); Jennings, Rick (ENERGY)  
**Subject:** RE: Greenfield South Construction Oct 20 2011 LSB 4.ppt  
**Attachments:** Greenfield South Construction Oct 20 2011 LSB 4 (estdp edit).ppt

Edit to the local context slide and considerations slide. It is incorrect to refer to this as residential. It is zoned heavy industrial.

---

**From:** Silva, Joseph (ENERGY)  
**Sent:** October 19, 2011 3:34 PM  
**To:** Calwell, Carolyn (ENERGY); Perun, Halyna N. (ENERGY); Jennings, Rick (ENERGY); King, Ryan (ENERGY)  
**Subject:** RE: Greenfield South Construction Oct 20 2011 LSB 4.ppt

Thanks Carolyn.

Just discussed below with the Deputy.

He's fine with the changes, except wants Rick to weigh in on the second bullet (thinking we should remove the word "residential").

Will also flag bullet 1 (advice to cabinet)

---

**From:** Calwell, Carolyn (ENERGY)  
**Sent:** October 19, 2011 3:27 PM  
**To:** Silva, Joseph (ENERGY); Perun, Halyna N. (ENERGY); Jennings, Rick (ENERGY); King, Ryan (ENERGY)  
**Subject:** RE: Greenfield South Construction Oct 20 2011 LSB 4.ppt

Here are the differences between our last version and MAG's. Legal's concerns (if any) in brackets that follow.

- Advice to Cabinet should be added to the footer
- Local Content (slide 2) – MAG added 2 bullets about location of plant in a residential area and proximity of plant to recently constructed residences prompting a policy reconsideration (Rick/Ryan – please address)
- Considerations (slide 3) – MAG took out the reference to some local politicians having concerns (no concerns)
- Next Steps Involve the OPA (slide 4) – MAG took out reference to allocation of costs between the rate and tax bases and the reference to work required on alternate sites (no concerns)
- Cabinet Minute (slide 6) – MAG took out the reference to ENE, OPA, MAG and MOF working together on strategies and the reference to the stakeholder/comms plan (no concerns)
- OPA alternative proposals – out (no concerns)

Carolyn

---

**From:** Silva, Joseph (ENERGY)  
**Sent:** October 19, 2011 3:00 PM  
**To:** Perun, Halyna N. (ENERGY); Calwell, Carolyn (ENERGY); Jennings, Rick (ENERGY); King, Ryan (ENERGY)  
**Subject:** FW: Greenfield South Construction Oct 20 2011 LSB 4.ppt  
**Importance:** High

Hi – for review please. Thanks.

---

**From:** Brown, Meredith (JUS)  
**Sent:** October 19, 2011 3:00 PM  
**To:** Silva, Joseph (ENERGY)  
**Subject:** Greenfield South Construction Oct 20 2011 LSB 4.ppt

Please find attached the DAG approved slides.

# Greenfield South Generating Station

## Next Steps – Advice to Cabinet

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Date: October 20, 2011

## Local Context

- Local residents strongly oppose the Greenfield South gas plant in Mississauga, which is currently under construction.
- On October 12 the Mississauga Council passed a motion requesting that the Government and the Premier take immediate action to cancel the contract, stop construction and return the site to pre-construction condition.
- The recent construction of condominium towers in the general area has prompted a policy reconsideration of the location of the gas plant.

## Considerations

- Construction continues at the Greenfield South site.
- Greenfield South Power Corporation (controlled by Eastern Power Corporation) has an enforceable contract with the Ontario Power Authority and all applicable approvals. The developer's work appears to be in compliance with the contract and current approvals.
- The OPA is party to and administers the contract with Eastern Power. The Province is not a party to the contract. The OPA has advised that it has no right under the contract to terminate in the current circumstances.
- The OPA has asked for instruction from government to approach the developer to begin negotiations to change or to terminate the contract.
- Eastern Power has informed the OPA that it is awaiting a decision from Cabinet before it will enter into discussions with the OPA.
- The identification of potential alternative site options has not yet been completed. Each of these alternative sites have various issues associated with them.

## Next Steps Involve the OPA

- The OPA to be asked to approach Eastern Power to initiate discussions. The discussion would likely include potential treatment of costs incurred to date (sunk costs – including equipment costs), treatment of construction and equipment related contracts, estimates and treatment of foregone revenue, and options and Eastern's interest with respect to relocating to an alternative site.
- At this stage, the OPA has only made a preliminary analysis of costs.
- Eastern Power may or may not be interested in developing the proposed alternative sites, may be willing to walk away from the Mississauga plant for a financial cash settlement or may view its prospects as being better through the courts.

## Legal Issues

- Discussion with Eastern Power may not be successful and could require the Government to consider other options (e.g. legislation).
- Initiating discussions to relocate or otherwise cancel the Mississauga plant may cause Eastern Power to launch a law suit against either or both of the OPA and the Government.
- The Minister's request of the OPA may be contractual interference and may attract liability to the Province.
- The OPA may ask for a "direction" from the Minister under the *Electricity Act, 1998* before undertaking any discussions with Eastern Power. The Minister's authority to direct the OPA in this way is unclear.
- Eastern Power's financiers may have a claim under NAFTA if this project does not proceed.

## Cabinet Minute

Cabinet agreed that:

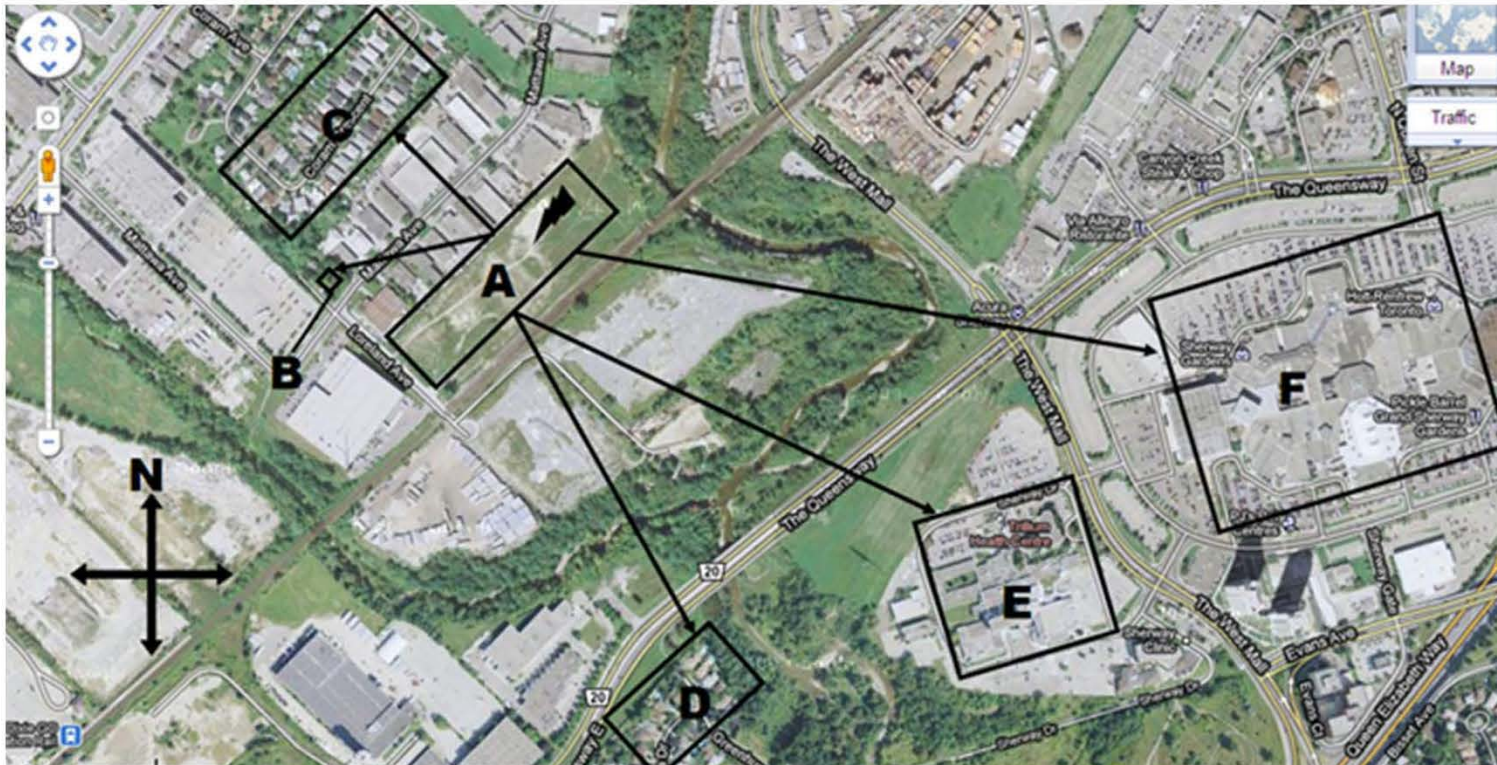
- The Ministry of Energy to work with the Ontario Power Authority to enter into discussions with Eastern Power toward a satisfactory resolution of the Mississauga site.
- The Minister of Energy to report back to Cabinet by December 2011 with the details of the discussions with Eastern Power.

# Appendix 1

## Greenfield South Background

## **Key Facts About the Greenfield South Plant**

- Greenfield South Power Corporation (controlled by Eastern Power Corporation) was the successful applicant in Ministry of Energy run Clean Energy Supply (CES) RFP and signed a contract with the OPA in April 2005.
- Eastern Power, based in Ontario, has received all required provincial approvals, including Environmental Assessment and Certificates of Approval.
- Eastern Power has received all required municipal approvals, including building site approval from the City of Mississauga issued in May 2011.
- Eastern Power has secured debt financing from Credit Suisse and EIG (confirmed by the OPA).



**Legend:**

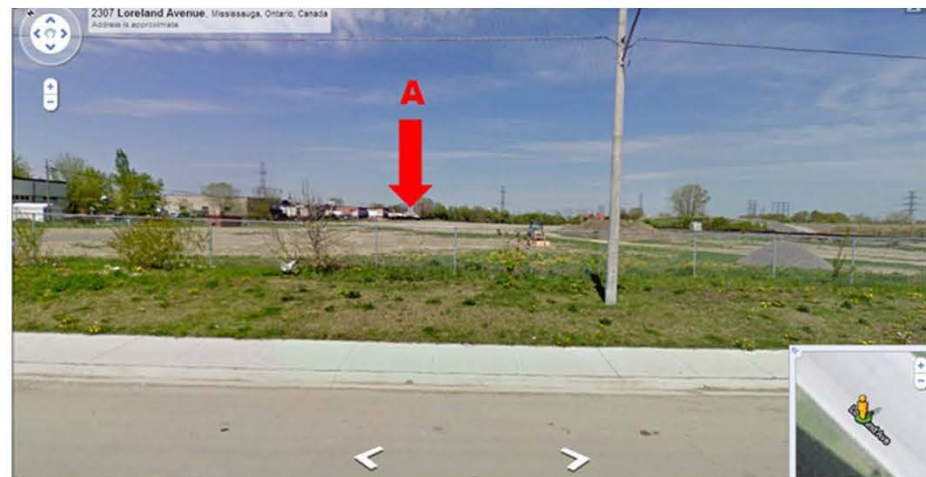
A – Proposed Greenfield Site  
B – Closest House  
C – Closest Subdivision (North)  
D – Closest Subdivision (South)  
E – Trillium Heath Centre  
F – Sherway Gardens Mall

**Distance:**

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



\*Plant construction as of 28 September 2011



**Cayley, Daniel (ENERGY)**

---

**From:** Silva, Joseph (ENERGY)  
**Sent:** October-19-11 3:59 PM  
**To:** Hume, Steen (CAB)  
**Cc:** Brown, Meredith (JUS); Stajduhar, Greg (FIN); Perun, Halyna N. (ENERGY); Calwell, Carolyn (ENERGY); Jennings, Rick (ENERGY)  
**Subject:** Deck - Greenfield Construction  
**Attachments:** Greenfield South Construction to CO Oct 19 2011 PM.ppt

Hi Steen,

Please find attached the draft deck on the construction of the Greenfield South Generation Station in Mississauga, incorporating input from MAG and MOF.

Joseph

---

**Joseph Silva**

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

# Greenfield South Generating Station

## Next Steps – Advice to Cabinet

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---

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Date: October 20, 2011

## Local Context

- Local residents do not support the Greenfield South gas plant in Mississauga, which is currently under construction.
- On October 12 the Mississauga Council passed a motion requesting that the Government and the Premier take immediate action to cancel the contract, stop construction and return the site to pre-construction condition.
- The recent construction of condominium towers in the general area has prompted a policy reconsideration of the location of the gas plant.

## Considerations

- Construction continues at the Greenfield South site.
- Greenfield South Power Corporation (controlled by Eastern Power Corporation) has an enforceable contract with the Ontario Power Authority and all applicable approvals. The developer's work appears to be in compliance with the contract and current approvals.
- The OPA is party to and administers the contract with Eastern Power. The Province is not a party to the contract. The OPA has advised that it has no right under the contract to terminate in the current circumstances.
- The OPA has asked for instruction from government to approach the developer to begin negotiations to change or to terminate the contract.
- Eastern Power has informed the OPA that it will not 'down tools' until it receives formal notification of next steps.
- The identification of potential alternative site options has not yet been completed. Each of these alternative sites have various issues associated with them.

## Next Steps Involve the OPA

- The OPA to be asked to approach Eastern Power to initiate discussions. The discussion would likely include potential treatment of costs incurred to date (sunk costs – including equipment costs), treatment of construction and equipment related contracts, estimates and treatment of foregone revenue, and options and Eastern's interest with respect to relocating to an alternative site.
- At this stage, the OPA has only made a preliminary analysis of costs.
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## Legal Issues

- Discussion with Eastern Power may not be successful and could require the Government to consider other options (e.g. legislation).
- Initiating discussions to relocate or otherwise cancel the Mississauga plant may cause Eastern Power to launch a law suit against either or both of the OPA and the Government.
- The Minister's request of the OPA may be contractual interference and may attract liability to the Province.
- The OPA may ask for a "direction" from the Minister under the *Electricity Act, 1998* before undertaking any discussions with Eastern Power. The Minister's authority to direct the OPA in this way is unclear.
- Eastern Power's financiers may have a claim under NAFTA if this project does not proceed.

## Cabinet Minute

Cabinet agreed that:

- The Ministry of Energy to work with the Ontario Power Authority to enter into discussions with Eastern Power toward a satisfactory resolution of the Mississauga site.
- The Minister of Energy to report back to Cabinet by December 2011 with the details of the discussions with Eastern Power.

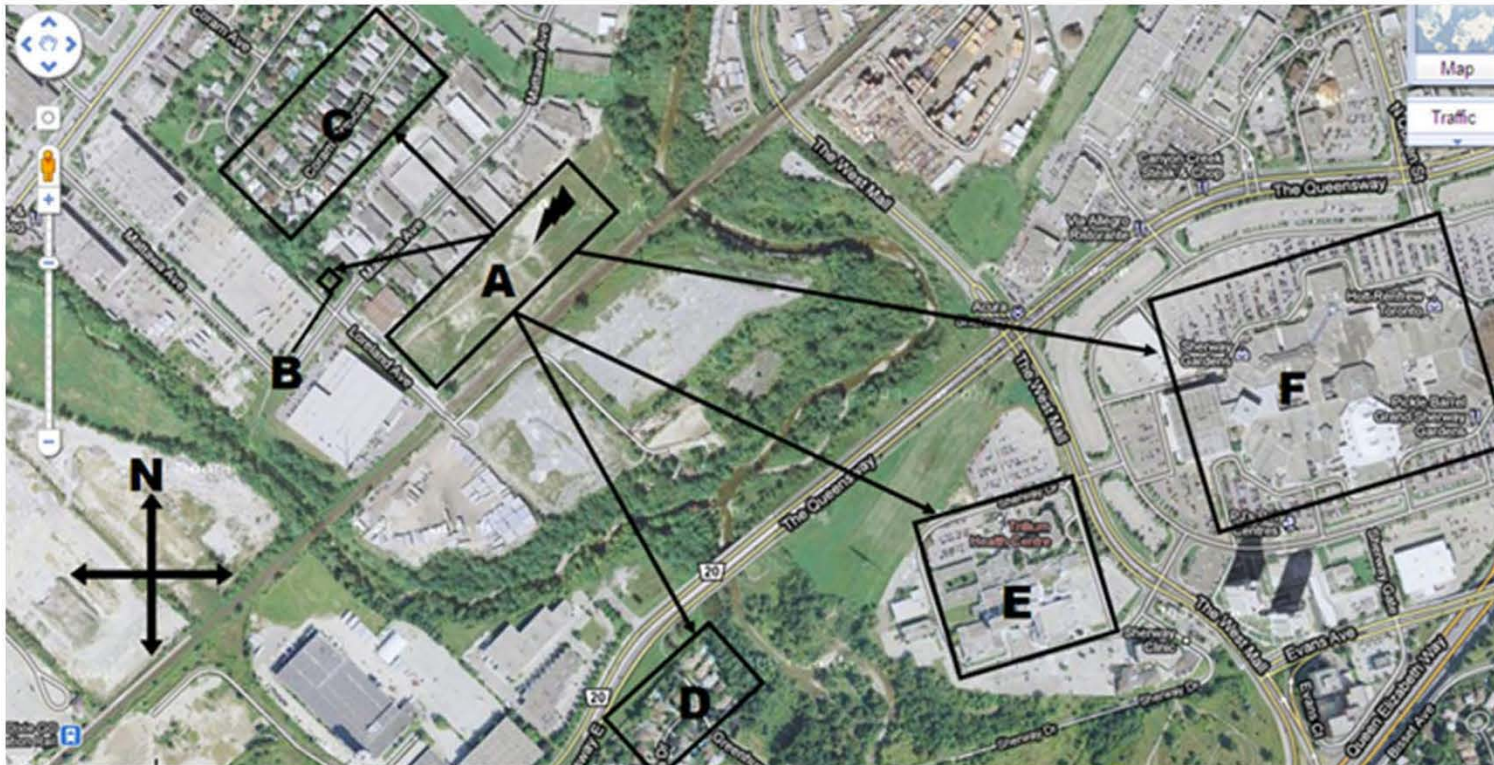
# Appendix 1

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MINISTRY OF **ENERGY**



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A to E: 740 Meters  
A to F: 910 Meters

MINISTRY OF **ENERGY**



\*Plant construction as of 28 September 2011



## Cayley, Daniel (ENERGY)

---

**From:** Perun, Halyna N. (ENERGY)  
**Sent:** October-19-11 4:11 PM  
**To:** Wilson, Malliha (JUS); Lung, Ken (JUS); Slater, Craig (JUS)  
**Cc:** Calwell, Carolyn (ENERGY)  
**Subject:** FW: Deck - Greenfield Construction  
**Attachments:** Duplicate attachment removed  
  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

FYI – many thanks for a very quick review and advice on this file.

*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  
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E-mail: [Halyna.Perun2@ontario.ca](mailto:Halyna.Perun2@ontario.ca)

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**To:** Hume, Steen (CAB)  
**Cc:** Brown, Meredith (JUS); Stajduhar, Greg (FIN); Perun, Halyna N. (ENERGY); Calwell, Carolyn (ENERGY); Jennings, Rick (ENERGY)  
**Subject:** Deck - Greenfield Construction

Hi Steen,

Please find attached the draft deck on the construction of the Greenfield South Generation Station in Mississauga, incorporating input from MAG and MOF.

Joseph

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**Joseph Silva**

Executive Assistant (A) to the Deputy Minister of Energy

Hearst Block 4th Flr, 900 Bay St Toronto ON M7A 2E1  
Tel: 416-325-2371 , Email: [Joseph.Silva@ontario.ca](mailto:Joseph.Silva@ontario.ca)

## Cayley, Daniel (ENERGY)

---

**From:** Kovesfalvi, Sylvia (ENERGY)  
**Sent:** October-19-11 4:29 PM  
**To:** Sumi, Craig (CAB)  
**Cc:** McMichael, Rhonda (CAB); Sharkawi, Rula (ENERGY); Silva, Joseph (ENERGY)  
**Subject:** RE: OPA call  
**Attachments:** image001.gif

Attachment is image below

Unrelated content removed

[Redacted content]

---

**From:** Sumi, Craig (CAB)  
**Sent:** October 19, 2011 3:36 PM  
**To:** Kovesfalvi, Sylvia (ENERGY)  
**Cc:** McMichael, Rhonda (CAB); Sharkawi, Rula (ENERGY); Silva, Joseph (ENERGY)  
**Subject:** RE: OPA call

Unrelated content removed

---

**From:** Kovesfalvi, Sylvia (ENERGY)  
**Sent:** October 19, 2011 3:32 PM  
**To:** Sumi, Craig (CAB)  
**Cc:** McMichael, Rhonda (CAB); Sharkawi, Rula (ENERGY); Silva, Joseph (ENERGY)  
**Subject:** RE: OPA call

Unrelated content removed

[Redacted content]

---

**From :** Patricia Phillips [mailto:Patricia.Phillips@powerauthority.on.ca]  
**Sent:** October 19, 2011 12:25 PM  
**To:** Sharkawi, Rula (ENERGY); Kovesfalvi, Sylvia (ENERGY)  
**Subject:** Proposed response to Toronto Star

Hi Rula & Sylvia – Below is our draft response to John Spears' inquiries. Please get back to me as soon as you can. Thanks, Pat

---

Hi John – The Ministry of Energy issued an RFP for the Greenfield South plant in 2004 to address local supply and reliability issues. The 2007 IPSP has info on these issues [http://archive.powerauthority.on.ca/Storage/69/6447\\_D-8-1\\_corrected\\_080505\\_mm.pdf](http://archive.powerauthority.on.ca/Storage/69/6447_D-8-1_corrected_080505_mm.pdf) (please see page 12). The government has committed to relocating the plant. We understand that next steps will be communicated shortly and we will have more to say then. In the meantime, please contact the Ministry of Energy if you have further questions.

**Patricia Phillips . Director, Stakeholder Relations(A)**  
Ontario Power Authority . 416-969-6326  
[patricia.phillips@powerauthority.on.ca](mailto:patricia.phillips@powerauthority.on.ca)



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---

**From :** Sumi, Craig (CAB)  
**Sent:** October 19, 2011 3:11 PM  
**To:** Kovesfalvi, Sylvia (ENERGY)  
**Cc:** McMichael, Rhonda (CAB)  
**Subject:** OPA call

Sylvia,

We talked with PO and they seem ok with the OPA approach and the "committed to relocation" message as we discussed earlier. Before final approval though, we need to see the response as well as the information/studies that will be released. Can you get those to me quickly?

Thanks

Craig

## **Cayley, Daniel (ENERGY)**

---

**From:** Wilson, Malliha (JUS)  
**Sent:** October-19-11 7:50 AM  
**To:** Perun, Halyna N. (ENERGY)  
**Cc:** Lung, Ken (JUS); Calwell, Carolyn (ENERGY); Slater, Craig (JUS)  
**Subject:** Re: Proposed cab deck

Halyna,

Assume when u say AG - u mean mag civil service as we do not know who will be AG

-----  
Sent from my BlackBerry Wireless Device

---

**From:** Perun, Halyna N. (ENERGY)  
**To:** Wilson, Malliha (JUS)  
**Cc:** Lung, Ken (JUS); Calwell, Carolyn (ENERGY); Slater, Craig (JUS)  
**Sent:** Wed Oct 19 07:43:15 2011  
**Subject:** Re: Proposed cab deck

Also - as the Cab deck is expected to be quite pithy we propose to produce a briefing note setting out more details and legal analysis to support the AG at the Cab mtg on Thurs - will work with Craig's folks -

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

Sent using BlackBerry

---

**From:** Perun, Halyna N. (ENERGY)  
**To:** Wilson, Malliha (JUS)  
**Cc:** Lung, Ken (JUS); Calwell, Carolyn (ENERGY); Slater, Craig (JUS)  
**Sent:** Tue Oct 18 18:47:10 2011  
**Subject:** RE: Proposed cab deck

*Privileged and Confidential*

Deputy Lindsay said the SOC would like to see a deck by mid afternoon tomorrow (Wed). The expectation is that the deck would be the first item of business for the new Cabinet post swearing in – sometime Thursday afternoon.

***Halyna***

Halyna N. Perun  
A/Director  
Legal Services Branch  
Ministries of Energy & Infrastructure  
777 Bay Street, 4th Floor, Suite 425  
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---

**From:** Wilson, Malliha (JUS)  
**Sent:** October 18, 2011 6:45 PM  
**To:** Perun, Halyna N. (ENERGY); Slater, Craig (JUS)  
**Cc:** Lung, Ken (JUS); Calwell, Carolyn (ENERGY)  
**Subject:** Re: Proposed cab deck

What is time line on this Halyna

-----  
Sent from my BlackBerry Wireless Device

---

**From:** Perun, Halyna N. (ENERGY)  
**To:** Slater, Craig (JUS)  
**Cc:** Wilson, Malliha (JUS); Lung, Ken (JUS); Calwell, Carolyn (ENERGY)  
**Sent:** Tue Oct 18 18:27:23 2011  
**Subject:** Proposed cab deck

*Privileged and confidential*

For your review and input.

Deputy Lindsay has requested a "final" deck by mid day tomorrow.

We'd be happy to meet to discuss if this would help.

Thank you

***Halyna***

Halyna N. Perun  
A/Director  
Legal Services Branch  
Ministries of Energy & Infrastructure  
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## Cayley, Daniel (ENERGY)

---

**From:** Perun, Halyna N. (ENERGY)  
**Sent:** October-19-11 8:49 AM  
**To:** Wilson, Malliha (JUS)  
**Subject:** FW: Proposed cab deck  
**Attachments:** Greenfield South Construction Oct 20 2011.LSB.3.clean.ppt

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

What was sent to you yesterday – this is Energy client product – which we reviewed and added to

*Halyna*

Halyna N. Perun  
A/Director  
Legal Services Branch  
Ministries of Energy & Infrastructure  
777 Bay Street, 4th Floor, Suite 425  
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For your review and input.

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We’d be happy to meet to discuss if this would help.

Thank you

*Halyna*

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